



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER

NEWFOUNDLAND AND LABRADOR

A-2024-001

January 16, 2024

Memorial University

Summary:

The Complainant made an access request to Memorial University in October 2019. Four years later, the University had not provided a response and was deemed to have refused access to the requested information. A complaint was filed with this Office in October 2023. The Commissioner found that Memorial had failed to comply with sections 13 (duty to assist applicant) and 16 (time limit for final response) and recommended that the University comply with its statutory duties in the future and provide a final response to the Complainant within 30 business days of receipt of this Report.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 13 and 16.

BACKGROUND

- [1] On October 24, 2019, the Complainant made an access to information request under the *Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015)* to Memorial University for the following:

All emails sent/received by Ancillary Operations re QEII cafe expansion project.

- [2] This Office approved three extensions of time for Memorial to respond to this request, totaling 47 days, and Memorial's final response was due March 6, 2020. This deadline was not met, and the University's final response remains outstanding as it continues to work on processing this request, as well as numerous other requests from the Complainant and other access to information applicants.
- [3] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

PUBLIC BODY'S POSITION

- [4] Memorial submits that the request, being quite broad and not restricted to any timeframe, involved a significant volume of records. Many of the records involved potential third party business information of various contractors involved in a construction project and required careful review by the University's Access and Privacy Advisor (the most senior position within the University's Information Access and Privacy Office). The University estimates that the package of responsive records will consist of some 700 pages of records.
- [5] Being more than four years old, the processing of this request has seen several events which have been taxing on the access to information system at Memorial and across other public bodies in Newfoundland and Labrador. January 2020 saw the University, and most other businesses and public bodies in the City of St. John's, shut down for a week by a snowstorm. At the time the response was due in March 2020, the COVID-19 pandemic brought the access to information system to a halt until work-from-home arrangements could

be made. Over the past several years, Memorial's Information Access and Privacy Office has also seen various staff turnover and prolonged absences of senior staff over this period.

- [6] Finally, Memorial notes that the Complainant is one of the University's most prolific access to information applicants having made 231 access requests since October 2019. In order to manage this workload, along with requests made by other applicants, the University chose to prioritize responding to new access requests as they were received. By doing so, the University has generally avoided missing deadlines on other access requests and has even been able to provide early responses to nearly 20% of the Complainant's subsequent access requests.

COMPLAINANT'S POSITION

- [7] The Complainant submits that other than receiving notices of extensions approved by this Office in 2019 and early 2020, they had not been updated on the status of their request. The Complainant advises they contacted Memorial in July 2023 for an update, but had still not received a final response by the time this complaint was filed on October 16, 2023.

ISSUES

- [8] Memorial's delay in responding to this request raises two issues: its compliance with the deadlines set at section 16, and the duty to assist at section 13.

DECISION

- [9] Section 16 of *ATIPPA, 2015* requires a public body to respond to an access request within 20 business days. There are provisions at section 23 for a public body to apply to this Office for an extension of this time, which Memorial did on three occasions, receiving extensions totaling 47 days, giving it a total of 67 days to respond. It should be noted that this Office did not fully approve the University's applications for time extensions and it had sought, in total, an additional 62 days. In any case, it is clear, more than four years later, that Memorial has not responded on time and is, pursuant to section 16(2), deemed to have refused the Complainant's request.

[10] Memorial's approach to its inability to meet the deadline for this request was essentially to, starting in March 2020, put it on the backburner and work to ensure that it continued to meet deadlines for new and future requests.

[11] Data published by the Government of Newfoundland and Labrador's Access to Information and Protection of Privacy Office in its 2020-2021 and 2021-2022 annual reports (the 2022-2023 annual report not being available) helps illustrate the volume of access requests received by Memorial and its ability to meet deadlines generally:

	Timeline Met	Met with Extension	Timeline Not Met	Not Closed	Total
2020-2021	68	24	3	1	96
2021-2022	192	20	3	0	215

[12] Memorial's handling of this request – by deprioritizing it – may have helped it continue to manage its workload and respond to other requests on time but, nonetheless, every request needs to be handled individually and on its own merits and every applicant is entitled to a timely and complete response to their request.

[13] Section 13 of *ATIPPA, 2015* states that a public body has a duty to assist an access to information applicant:

Duty to assist applicant

13. (1) The head of a public body shall make every reasonable effort to assist an applicant in making a request and to respond without delay to an applicant in an open, accurate and complete manner.

(2) The applicant and the head of the public body shall communicate with one another under this Part through the coordinator.

[14] The Complainant notes that the last communication they received from Memorial was in February 2020 when they were notified of the third time extension, and the new due date of March 6, 2020. There was no further news from Memorial on the status of this request until the Complainant contacted Memorial in July 2023. Since Memorial had developed a plan for

handling this request and had made a decision to focus on the Complainant's new requests (as well as new requests from other access to information applicants), Memorial should have communicated this to the Complainant.

[15] Given the lengthy delay in responding to this request, and the lack of updates to the Complainant, Memorial has not met its duty to assist under section 13. While the request may have been relatively complex and the volume of responsive records above average, there is nothing inherent in this request that in any way justifies anything near the length of time that has elapsed since the applicant applied for the information. This is a rather egregious blemish on Memorial's otherwise excellent record of responding to access requests within statutory time frames.


RECOMMENDATIONS

[16] As Memorial University has failed to comply with sections 13 and 16, under the authority of section 47 of *ATIPPA, 2015* I recommended that the University:

1. Comply in future with the statutory duties contained in sections 13 and 16 of *ATIPPA, 2015*;
2. Provide the Complainant with its final response within 30 business days of receipt of this Report.

[17] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of Memorial University must give written notice of his or her decision with respect to these recommendations to the Commissioner and any person who was sent a copy of this Report within 10 business days of receiving this Report.

[18] Dated at St. John's, in the Province of Newfoundland and Labrador, this 16th day of January, 2024.


Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador