



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

**Report A-2025-007**

**February 25, 2025**

**Memorial University**

**Summary:**

The Complainant made an access request to Memorial University for records related to the proposed joint development of the University of Prince Edward Island Faculty of Medicine. Memorial provided a large number of records, with redactions based on sections 29 (policy advice or recommendations), 30 (legal advice), 31 (disclosure harmful to law enforcement), 32 (confidential evaluations), 35 (harm to the financial and economic interests of a public body), 38 (disclosure harmful to labour relations), 39 (disclosure harmful to third party business interests), and 40 (disclosure harmful to personal privacy) of the **Access to Information and Protection of Privacy Act, 2015**. The Commissioner found that the exceptions had been properly applied and that it had not been clearly demonstrated, pursuant to section 9 of the Act, that the public interest in disclosure outweighed the reasons for the exceptions. The Commissioner recommended Memorial continue to withhold the redacted information.

**Statutes Cited:**

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 9, 29, 30, 31, 32, 35, 38, 39, and 40.

## BACKGROUND

- [1] The Complainant made an access request to Memorial University under the **Access to Information and Protection of Privacy Act, 2015** (the “Act”) for records related to the proposed joint development by Memorial and the University of Prince Edward Island (“UPEI”) of the UPEI Faculty of Medicine, for a time span of just over four years.
- [2] Though the requester agreed to narrow the request, it resulted in almost 4,000 pages of responsive records, including correspondence, meeting minutes, meeting notes, drafts of the memorandum of understanding between the two universities, budget documents and proposals for (and applications for) new positions.
- [3] Memorial provided a large number of records to the Complainant, but withheld information on the basis of a number of different exceptions to access. The Complainant asked our Office to review the redactions.
- [4] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of the Act.

## PUBLIC BODY’S POSITION

- [5] In addition to providing justifications for its redactions, Memorial submitted that the topics discussed throughout the records are sensitive and complex. In these circumstances, the University submitted, the public interest does not outweigh the application of the exceptions to which section 9 applies. The disclosure of discussions of project status, budgets, and other project items and their associated timeframes at this stage would be premature and risk potential harm to not only Memorial University but also UPEI.

## COMPLAINANT’S POSITION

- [6] The Complainant, in requesting that our Office review the redactions, submitted that the responsive records relate to issues that have the potential to significantly impact the delivery

of medical care and post-secondary education in several jurisdictions. Given the significant public investment involved and the importance of ensuring public confidence in the provincial medical and post-secondary education systems, the public interest in disclosing this information outweighs the purpose of the relevant exceptions relied upon by the public body.

## ISSUES

- [7] At issue in this Report is whether the exceptions to access were properly applied, and if they were, whether the public interest set out in section 9 outweighs the reasons for any of those exceptions.

## DECISION

- [8] There were a number of different provisions of the **Access to Information and Protection of Privacy Act, 2015** used by Memorial to withhold information, and we will examine each one briefly in turn.

### Section 29(1)(a) (policy advice or recommendations)

- [9] The purpose of this exception is to foster and protect an environment in which public servants can produce full, free and frank advice, without being concerned that their work might be subject to public scrutiny. This will include such things as views, opinions, warnings, questions, disagreements or approvals. It also includes drafts of documents such as policies or agreements, because they are, essentially, proposals for the creation of instruments that are subject to further discussion and amendment, and ultimately require executive approval. In addition, information about decisions that have been made, but not yet implemented, may be withheld if their premature disclosure would be harmful.
- [10] A substantial amount of information throughout the package of responsive records was redacted on this basis, including discussions about the building project, creation and filling of positions, or accreditation of the medical school. Factual information, or decisions that had already been made public at the time of the request, were disclosed. After review we have concluded that section 29 was appropriately applied.

Section 30(1) (legal advice)

[11] This exception was applied to withhold communications between legal counsel and senior executive staff, seeking or providing legal advice, about such things as, for example, the memorandum of understanding between the two universities. Following current jurisprudence, Memorial declined to provide our Office with the unredacted records for which this exception was claimed. However, Memorial provided enough contextual and descriptive information to enable us to conclude that the redactions were properly applied.

Section 31(1)(l) (disclosure harmful to law enforcement)

[12] Paragraph (l) of this provision allows a public body to withhold information where the disclosure of that information could reasonably be expected to reveal the security arrangements for a computer or communication system. It was used to redact online meeting links, access codes, and passwords. This approach follows current best practices and the exception was applied appropriately.

Section 32(a) (confidential evaluations)

[13] This provision was used, appropriately, to withhold some individuals' opinions about preferred candidates for positions.

Section 35(1)(c) (harm to the financial and economic interests of a public body)

[14] The specific provision used here covers "plans that relate to the management of personnel or the administration of a public body and that have not yet been implemented or made public." Some discussions within the responsive records include the creation of new positions, draft material for job postings, evaluations, and management of previous positions. That information falls within the provision in paragraph (c) and was appropriately withheld.

Section 38(1)(a) (disclosure harmful to labour relations)

[15] The information protected pursuant to this provision relates to the collective agreement implications of certain kinds of decisions and was treated as confidential. It was appropriate to withhold this information.

Section 39(1)(a) (disclosure harmful to third party business interests)

[16] This specific provision was applied appropriately, in our view, to protect the commercial and technical information of a third party (specifically, discussion of the considerations and strategies used by a consulting firm). It was confidential information, and we agree that disclosure of this information could reasonably result in similar information no longer being supplied.

Section 40(1) (disclosure harmful to personal privacy)

[17] Section 40 prohibits the disclosure of personal information if it would constitute an unreasonable invasion of personal privacy. It covers both the personal information of public body employees, and that of other individuals.

[18] In the present case, a great deal of information redacted under section 40 consisted of the letters and resumes of people applying for positions. Even though some of that information, such as lists of academic publications, would otherwise be public, disclosure of any of it would inevitably identify the applicants, violating the confidence with which their applications had been made.

[19] Other section 40 redactions throughout the record consist of individuals' employment history, personal email addresses or phone numbers, or personal remarks included in official communications. All of those redactions were appropriate.

Section 9 (public interest)

[20] The Complainant has specifically raised the question of the public interest. Section 9 of the Act provides that some discretionary exceptions, including sections 29, 30, 32, 35 and 38, will not apply "where it is clearly demonstrated that the public interest in disclosure of the information outweighs the reason for the exception."

[21] There is no question that the project involved here, the development of a medical school for Prince Edward Island, is a matter of great public importance and there is therefore a substantial public interest in transparency of, and accountability for, the decisions being made.

[22] Memorial's position on the public interest issue is that the application of those exceptions is critical and necessary, because the premature disclosure of information about ongoing projects, which require further discussion and deliberation, would risk potential harm to both Memorial University and UPEI. It is our view that given the continuing nature of the project, the public interest in the disclosure of the redacted information, in the present circumstances, does not outweigh the reasons for the exceptions that Memorial has applied.

[23] In conclusion, we find that that the exceptions applied by Memorial in the present case were reasonably and appropriately applied. We therefore recommend that Memorial University continue to withhold the redacted information.

[24] We wish to note that the original access request was made in February of 2024. Much has happened in the year since then, but under the process set out in the Act, exceptions to access must be applied by the public body, and reviewed by our Office, as of the date that the access request was made. It may be that some information that was properly withheld a year ago might be disclosed if it were requested today. However, that cannot be remedied except through a new access request.

## RECOMMENDATIONS

[25] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015** I recommend that Memorial University continue to withhold the information redacted from the records responsive to the access request provided to the Complainant.

[26] As set out in section 49(1)(b) of the **Access to Information and Protection of Privacy Act, 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.

[27] Dated at St. John's, in the Province of Newfoundland and Labrador, this 25<sup>th</sup> day of February, 2025.



Kerry Hatfield  
Information and Privacy Commissioner  
Newfoundland and Labrador