



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2025-011

March 3, 2025

Memorial University

Summary:

The Complainant made an access to information request to Memorial University seeking records on the use of animals for research purposes at the University's Animal Care Centre. Memorial retrieved several hundred pages of responsive records. Some records were disclosed to the Complainant, while just over 200 pages were withheld pursuant to section 5(1)(g), which exempts from disclosure research and teaching material at a post-secondary institution under the **Access to information and Protection of Privacy Act, 2015**. This Office reviewed the records and agreed with Memorial's determination. The Commissioner recommended that Memorial continue to withhold these records.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, section 5(1)(g).

Authorities Relied On: NL OIPC Reports [A-2012-009](#)

British Columbia OIPC [Order 00-36](#)

Ontario OIPC [PO-4254](#) and [PO-3943](#)

BACKGROUND

- [1] The Complainant made an access to information request to Memorial University pursuant to the **Access to Information and Protection of Privacy Act, 2015** (the “Act”) for the following:

Period: Jan. 1, 2021 – July 2, 2024

Scope:

The current version(s) of all Animal Care Committee (ACC) protocols related to the training of general surgery residents, all annual and triennial reviews and renewals associated with those protocol(s), communications to and from the ACC regarding those protocol(s) or review(s), and ACC meeting minutes during which those protocol(s) or review(s) were discussed.

The current version(s) of all ACC protocols related to Advanced Training Operative Management (ATOM) courses, all annual and triennial reviews and renewals associated with those protocol(s), communications to and from the ACC regarding those protocol(s) or review(s), and ACC meeting minutes during which those protocol(s) or review(s) were discussed.

Documents that include schedules that involve animal use for training general surgery residents.

Documents that include schedules that involve animal use for ATOM courses.

Documents related to the purchase or acquisition of animals for use in training general surgery residents.

Documents related to the purchase or acquisition of animals for use in conducting ATOM courses.

Necropsy reports, veterinary records, and adverse event documents related to the use of animals for ATOM courses.

All photographs and video footage related to the use of animals for training general surgery residents.

All photographs and video footage related to the use of animals for ATOM courses.

- [2] Memorial conducted a search and located several hundred pages of responsive records. The records were divided into two groups: the first, consisting of just over 100 pages, was disclosed to the Complainant while the second group of records, consisting of just over 200 pages, was withheld entirely on the grounds the Act did not apply pursuant to section 5(1)(g).
- [3] The Complainant does not agree that section 5(1)(g) applies to the withheld records and is requesting that they be disclosed.

- [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] Memorial states that the records that are withheld contain both teaching material and research information of faculty and, as such, these records are exempt from the Act pursuant to section 5(1)(g).

COMPLAINANT'S POSITION

- [6] The Complainant states that Memorial is stretching the meaning of “teaching material” and “research” to avoid having records of its treatment of animals for medical purposes publicly disclosed.

DECISION

- [7] Section 5(1)(g) states that certain educational and research records are not subject to the Act:

5.(1) This Act applies to all records in the custody of or under the control of a public body but does not apply to

(g) a record containing teaching materials or research information of an employee of a post-secondary institution;

- [8] In general, a core principle of the Act provides an applicant with a broad right of access to records in the custody or control of a public body subject to limited and specific exceptions. However, there are certain records that the legislature has determined should not be subject to the Act. These types of records are listed in section 5(1).

- [9] Section 5(1) is a record-level exception, meaning there is no obligation to release parts of a record. If the information within a record falls within one or more of the categories set out in the provision, the Act does not apply.

[10] When a public body claims that records are exempt under section 5(1)(g), the following criteria must be met:

- a. the record must contain either teaching materials or research information, and
- b. the teaching or research material must belong to an employee of a post-secondary institution.

[11] In this case, the Complainant asserts that the records are neither teaching material nor research but are instead records that describe how Memorial's Animal Care Centre functions and acquires and uses animals.

[12] This Office has addressed what is teaching material or research information in [Report A-2012-009](#). In that Report, this Office looked to a decision of the British Columbia Information and Privacy Commissioner for guidance. In [Order 00-36](#), an Adjudicator with the Information and Privacy Commissioner for British Columbia stated:

It should be said that section 3(1)(e) will not apply simply because someone who happened to be employed by a post-secondary educational body is engaged, under contract or otherwise, to do research for or with a public body...Section 3(1)(e) is intended to protect individual academic endeavour. It will protect the intellectual value in teaching materials or research information developed by an employee of a post-secondary educational body, for her professional purposes, by protecting it from disclosure to those who might exploit it to her disadvantage.

[13] More recently, an Adjudicator with the Information and Privacy Commissioner of Ontario has addressed how research and teaching material should be interpreted. In Order [PO 4254](#), the Adjudicator gave the following interpretation of the term "research" as it is stated within the Ontario **Freedom of Information and Protection of Privacy Act**:

Research is defined as "a systematic investigation designed to develop or establish principles, facts, or generalizable knowledge or any combination of them and includes the development, testing and evaluation of research." The research must be referable to specific, identifiable research projects that have been conceived by a specific faculty member, employee or association of an education institution.

Section 65(8.1) [the equivalent of section 5(1)(g) in the Ontario Act] applies where it is reasonable to conclude that there is *some connection* between the

record and the specific, identifiable research proposed by an employee of an education institution or by a or by a person associated with an education institution.

[14] The Ontario Adjudicator's definition of research is broader than that of British Columbia, but the two definitions do not conflict with each other. The key points are that the research must be identifiable with a research project, it has to be related to an academic pursuit, and it has to be conducted at a post-secondary institution.

[15] With respect to "teaching material," Order [PO-3943](#) of the Ontario Information and Privacy Commissioner noted that teaching material is "material collected, prepared or maintained by an employee of an educational institution for use at the educational institution." The same Order also provides a useful example of what is not teaching material. In that decision, the record at issue was a review of courses offered at York University that contained the syllabi of certain courses that were reviewed. As the purpose of the record at issue was a review of the course and was not related to teaching, the record was determined to not be exempt from Ontario's **Freedom of Information and Protection of Privacy Act**.

[16] After review of the records in question, this Office agrees with Memorial's determination that section 5(1)(g) applies. Most of the records are related directly to research being conducted by the faculty at Memorial's School of Medicine and includes detailed outlines of ongoing research, plans for how the research is to be conducted, and feedback from the project's oversight committee. The records also contain teaching material that is derived from the research project. This material includes class presentations and interactions with students on various components of the course.

RECOMMENDATIONS

[17] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015** I recommend that Memorial University maintain its position on this matter.

[18] 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.

[19] Dated at St. John's, in the Province of Newfoundland and Labrador, this 3rd day of March 2025.



Kerry Hatfield
Information and Privacy Commissioner
Newfoundland and Labrador