



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2025-031

August 4, 2025

Memorial University

Summary:

The Complainant made an access to information request to Memorial University for the financial statements of the Canadian Centre for Fisheries Innovation. Memorial denied access to records stating that the Canadian Centre for Fisheries Innovation is a separately incorporated entity and Memorial did not have custody or control of the records. The Commissioner concluded that Memorial did not have custody or control of the Canadian Centre for Fisheries Innovation's records and recommended that Memorial maintain its position.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c A-1.2, section 8(1).

Authorities Relied On: *Bose v. Newfoundland and Labrador (Information and Privacy Commissioner)*, 2025 NLSC 18.

[Canada \(Information Commissioner\) v. Canada \(Minister of National Defence\)](#), 2011 SCC 25.

BACKGROUND

- [1] The Complainant made an access to information request under the **Access to Information and Protection of Privacy Act, 2015** (the “Act”), to Memorial University for “Canadian Centre for Fisheries Innovation most recent financial statements”. Memorial responded to the request by stating that it did not have custody or control of the records, noting that the Canadian Centre for Fisheries Innovation (“**CCFI**”) is a separately incorporated entity and not subject to the Act.
- [2] The Complainant disagreed with this assessment and filed a complaint with this Office.
- [3] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of the Act.

PUBLIC BODY’S POSITION

- [4] Memorial argued that given the recent Supreme Court of Newfoundland and Labrador decision in **Bose v. Newfoundland and Labrador (Information and Privacy Commissioner)** (“**Bose**”), the records were not in Memorial’s custody or control, and therefore it was unable to provide them to the Complainant. Memorial noted that it does act as CCFI’s payroll agent, but in that capacity it only has bare possession of the records.

COMPLAINANT’S POSITION

- [5] The Complainant noted that while the Court in Bose stated that CCFI may be treated the same as other separately incorporated entities, it had not been provided with sufficient evidence to determine that Memorial did not have custody or control of the records. As such, the Court ordered the release of the records in that matter. The Complainant also argued that Memorial’s release of the records in response to the Court’s decision in Bose is evidence that Memorial did have custody or control of the records.

DECISION

- [6] The right of access provided under section 8 of ATIPPA, 2015 applies to records in the custody of or under the control of a public body. The Supreme Court of Newfoundland and Labrador considered the issue of custody or control with respect to three separately incorporated entities in the recent Bose decision. However, with respect to CCFI, the Court declined to make a definitive assessment as it had not been provided with sufficient details of the relationship between MUN and CCFI.
- [7] However, the Court did note that if sufficient evidence was provided, the relationship between CCFI and Memorial may be similar to that of two other entities that were also under consideration by the Court, C-CORE and the Genesis Center; meaning that Memorial would not be considered to have custody or control of CCFI's records. As a result of this, the issue of Memorial's custody and control of CCFI's records was not resolved by the Bose decision.
- [8] There is a two-part test to determine custody or control, set out by the Court in *Canada (Information Commissioner) v. Canada (Minister of National Defence)*. Both parts of the test must be answered in the affirmative:
1. Whether the contents of the document relate to a departmental matter, and
 2. Whether the relevant government institution could reasonably expect to obtain a copy of the document upon request.

Part 1 of the Test

- [9] While dealing with slightly different requested information (that decision dealt with specific expense claims), the Court stated in Bose at paragraph 87 that, "the requested information does not relate to the workings of Memorial in the sense of 'throwing light on the case.'" The financial statements of CCFI are not a Memorial matter. CCFI is a separate entity from Memorial and, according to its website, the mandate of the CCFI is as, "a facilitator for innovation in the seafood industry. We work with stakeholders across the country and with various sizes and types of operations, including harvesting, processing, and aquaculture. Our goal is to help all innovators and problem solvers enhance Canada's place as a world leader

in the burgeoning Blue Economy.” Regardless of Memorial’s role as a payroll agent, the information is related to the core functions of CCFI, not Memorial.

Part 2 of the Test

[10] As noted above, both parts of the test must be satisfied to find a record is in the custody or control of a public body. Having determined the financial statements of the CCFI do not relate to a core function of Memorial, that is sufficient to conclude those records are not in Memorial’s custody or control. However, in our assessment of this complaint, we have considered the second part of the test nonetheless and can comment briefly.

[11] The Supreme Court of Canada in *Minister of National Defence* stated all relevant factors must be considered in assessing the second part of the test. A non-exhaustive list of factors has been developed, as can be seen in Order MO-2750 from the Information and Privacy Commissioner of Ontario.

[12] Reviewing these factors and the present matter, it appears the second part of the test cannot be met. The financial statements were not created by Memorial, but by CCFI and its accounting firm, and Memorial has no authority to regulate or control the contents of the record. If the records are in Memorial’s possession, it is strictly bare possession and Memorial’s use of the record is limited to its role as payroll agent.

RECOMMENDATIONS

[13] 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.

[14] As set out in section 49(1)(b) of the **Access to Information and Protection of Privacy Act, 2015**, the head of Memorial 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.

[15] Dated at St. John's, in the Province of Newfoundland and Labrador, this 4th day of August 2025.



Kerry Hatfield
Information and Privacy Commissioner
Newfoundland and Labrador