Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER PO-2761

Appeal PA07-420

Carleton University

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NATURE OF THE APPEAL:

The requester was expelled from Carleton University (the University) and permanently barred from University property following a hearing in which he was found to have tampered with the electronic copy of his academic transcript, or to have been complicit in the tampering.

The requester made the following request to the University under the *Freedom of Information and Protection of Privacy Act* (the *Act*):

> I would like to obtain my University transcripts. I am blocked from getting them for over six months. I really need access to this information.

On the request form, the requester indicated that his preferred method of access to the transcript was to examine the original and receive a copy of the record.

The University issued a decision denying the requester access to a certified transcript and the request to examine the original transcript on the University's computer. However, it did provide the appellant with a document that it stated reproduces the information contained in the "original log of the Appellant's marks."

In its decision, the University stated that "[t]he transcript record is in the care and control of the University and is therefore accessible under FIPPA." However, the University stated that:

> [a]lthough the record is accessible, the process of certifying the transcript is a separate function and does not fall under FIPPA. Thus the transcript and the certification can be separated for any request. We have therefore not provided a certified transcript.
>
> Due to the nature of the academic integrity violations for which you are currently expelled, the University has also decided not to print the original record and has provided you with a document … that reproduces the information contained in the original record.

The University cited section 30 of the *Act*, and the application of the discretionary exemptions in sections 49(a) and section 14(1)(l) in support of its decision.

With respect to the request to view the original record, the University stated that "[i]n order to view the original record, it would be necessary for you to view the electronic record, or a screen shot of that record." The University referred to section 30(2) of the *Act* and section 3(1) of Regulation 460 and decided that:

> due to the nature of [the requester's] academic integrity violations, security of the records within the electronic system cannot be ensured. Thus access has been denied to view the original record.

The requester (now the appellant) appealed the University's decision to this office.

During mediation, the appellant confirmed that he would like to receive an original certified transcript, and to view the screen shot of the original transcript as it exists electronically. Also during mediation, the University clarified its position. With respect to the appellant's request for the certified transcript, the University confirmed that in addition to taking the position that the process of certifying the transcript is a function that falls outside the *Act*, it is also denying access to the certified transcript pursuant to section 49(a), in conjunction with section 14(1)(l). With respect to the appellant's request to view the screen shot of the original record, the University stated that it is also relying on section 3(1) of Regulation 460 and section 49(a), in conjunction with section 14(1)(l), to deny the request. The University also stated that if the appellant applies to another university or for employment, it will, with his consent, release the certified transcript to the prospective university or employer.

Further mediation was not possible and this matter was moved to the inquiry stage of the appeal process. I began my inquiry into this appeal by issuing a Notice of Inquiry to the University, and invited the University to submit representations on the facts and issues set out in the notice. I received representations from the University.

In its representations, the University raised a number of issues for the first time, including claims that:

- The log of the appellant's results obtained while the appellant was a student at the University is not "record" as defined in the *Act*;

- The request for a certified copy of the academic transcript of the appellant is frivolous or vexatious pursuant to section 10(1)(b) of the *Act*.

The University took the position that certification of a copy of the record is the creation of a new record that did not exist at the time the request was made. The University's position is that ordering the disclosure of a certified copy would therefore require it to undertake something that is not required by the *Act*

The University also advised that it is no longer claiming that the records are exempt pursuant to section 49(a), in conjunction with section 14(1)(l), of the *Act*. As a result, sections 49(a) and 14(1)(l) are no longer an issue in this appeal. These were the only exemptions from disclosure claimed by the University in this appeal; the remaining arguments relate to whether the requested information constitutes a "record" within the meaning of the *Act* and the question of creating a new record.

I shared a complete copy of the University's representations with the appellant and issued a Notice of Inquiry to the appellant inviting representations. I received representations from the appellant. After reviewing the appellant's representations, I decided that it was not necessary to seek reply representations from the University.

RECORDS:

The request is for the original certified transcript and for an opportunity to view the "screen shot" of the original transcript. The University's representations refer to the screen shot of the appellant's academic results as an "electronic log" but I understand that the two terms are referring to the same thing, that is, the electronic database that contains the appellant's academic record.

DISCUSSION:

RECORD

As noted above, the University has withdrawn its claim that the information requested by the appellant is exempt under the *Act*. However, it argues that the screen shot of the appellant's academic record and the original official transcript are not "record(s)" as defined under the *Act*.

Record is defined in section 2(1) of the *Act*. That section reads:

> "record" means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,
>
> > (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and
> >
> > (b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution;

The Regulation 460, section 2 is also relevant. That section reads:

> A record capable of being produced from machine readable records is not included in the definition of "record" for the purposes of the Act if the process of producing it would unreasonably interfere with the operations of an institution.

Representations

The University argues that the electronic log of the appellant's results is not a "record" as defined in section 2(1) of the *Act* because if it were to provide the appellant with a view of that record it would unreasonably interfere with the operations of the University. It explains:

> The simple process *of producing the record* (the process of generating a copy of the log of the Appellant's academic results, but not providing that copy of those results to the appellant) *would not unreasonably interfere with the operations of the University*.
>
> However, the University refers to section 2 of regulation 460 passed pursuant to the Act, and says that providing a copy of the record to the Appellant will compromise the security of the record, and compromising the security of the record constitutes an unreasonable interference with the operations of the University.
>
> ….Therefore, the University has reasonable grounds to be concerned with providing information or copies of records to the Appellant which could compromise the security of the University's information technology system.
>
> …[A] copy of the record would contain sensitive information about the University's information technology system that could assist in the identification of weaknesses in that system. …by simply viewing a printed copy of the record which is the subject of this inquiry, it is possible for the viewer to collect information such as form and report names, software version numbers, and other information, all of which could be used at a later date to compromise the security of the system. [Emphasis added.]

The University also explains that the electronic log is not a certified transcript and the certified transcript is not a copy of the log.

With respect to the certified transcript, the University also argues that it is not a "record." It states:

> Certification of the copy of the record is a step in addition to the steps required of the University pursuant to the Act. There is nothing in law, whether in the Act or otherwise, to compel the university to undertake this additional step, that is, the process of certification. In effect, the request for a certified copy of the record, if allowed, would compel the University to create a new record, and this is not required by the Act.
>
> A certified copy of any student's academic results does not exist until it is created by the University following receipt of a request in this respect. The certified transcript, then, did not exist at the time when the Request was made, and

> therefore is not subject to creation and then release pursuant to the Act….The certified copy of the record, therefore, is not equivalent to the record itself. It is a separate record created by the University only after receipt of a request in that respect.
>
> …The log of the appellant's academic results, and the certified transcript, are not the same record.

The appellant did not address this issue in his representations other than to state that his rights under the *Act* have been violated by the University.

Analysis and Findings

My consideration of the University's arguments regarding the definition of a "record" in the *Act* begins with a review of the Ontario Court of Appeal decision in *Toronto Police Services Board v. (Ontario) Information and Privacy Commissioner*, [2009] O.J. No. 90 which deals with the interpretation of "record" in the equivalent sections of the *Municipal Freedom of Information and Protection of Privacy Act* and Regulation 823 under that statute. This case involved an appeal of a Divisional Court decision arising from the judicial review of Order MO-1989. In the appeal, the requester sought access to an electronic database of the Toronto Police Services Board (the Police) in a format that was different from the format in which the information was stored in the database. In order to retrieve the information sought by the requester, it was necessary for the Police to create an algorithm that was capable of extracting and manipulating the information that presently existed in the electronic databases.

The issue arose as to whether the requester was seeking access to a document that was not a "record" under the *Act* as it did not exist in the format that the requester sought access to. In Order MO-1989, Adjudicator Frank DeVries found that the information sought by requester constituted a "record" under the *Act* and he ordered the Board to respond to the request by issuing an access decision. Adjudicator DeVries' order was overturned by the Divisional Court on appeal. However, the Ontario Court of Appeal reinstated the decision of Adjudicator DeVries and, in doing so, made the following findings:

> My third reason for concluding that the Adjudicator's decision on the s. 2(1)(b) issue is not unreasonable is that the principles of statutory interpretation and the requirement that the Act be given a fair, large and liberal construction support the decision he reached. As recently held by this court in *City of Toronto Economic Development Corporation v. Information and Privacy Commissioner/Ontario* (2008), 292 D.L.R. (4th) 706, at paras. 28 and 30, the Act should be given a broad interpretation to best ensure the attainment of its object, according to its true intent, meaning and spirit.
>
> In accordance with this approach, any question of statutory interpretation must begin with a consideration of the purpose and intent of the legislation. Here, s. 1 of the *Act* takes the mystery out of that exercise. In particular, ss. 1(a)(i) and (ii)

> state that the purpose of the Act is to provide the public with a right of access to information under the control of municipal government institutions, in accordance with the principle that information should be made available subject only to limited and specified exemptions.
>
> That approach - one of presumptive access - reflects the fact that, because municipal institutions function to serve the public, they ought in general to be open to public scrutiny. In this regard, I agree with the submissions of the intervener that in enacting the Act, the legislature "wanted to improve the democratic process at the municipal and local board level" by ensuring members of the public would be able to access information needed "to participate in our democratic process in a worthwhile manner." As noted by the intervener, the Act was advanced by the legislature as an "important step towards ensuring an open and very public operation of government at both the provincial and municipal levels": Ontario, Legislative Assembly, *Official Reports of the Debates (Hansard),* 49 (10 October 1989) at 2772 (Mr. Elston).
>
> …
>
> A contextual and purposive analysis of s. 2(1)(b) must also take into account the prevalence of computers in our society and their use by government institutions as the primary means by which records are kept and information is stored. This technological reality tells against an interpretation of s. 2(1)(b) that would minimize rather than maximize the public's right of access to electronically recorded information.
>
> The Divisional Court made no mention of these principles of interpretation in constructing s. 2(l)(b) of the *Act* and in concluding that the Adjudicator's interpretation was unreasonable. This omission led the court to give s. 2(l)(b) a narrow construction - one which, in my respectful view, fails to reflect the purpose and spirit of the *Act* and the generous approach to access contemplated by it.
>
> The Divisional Court's interpretation of s. 2(1)(b) would eliminate all access to electronically recorded information stored in an institution's existing computer software where its production would require the development of an algorithm or software within its available technical expertise to create and using software it currently has. In my view, other provisions in the *Act* and the regulations tell against this interpretation.

The University was made an institution under the *Act* by inclusion in the schedule of institutions found in Regulation 460. In Order PO-2641, I stated that the intention of the Legislature in making universities subject to the *Act* was to ensure that universities are subject to the same degree of transparency and accountability as other government institutions. Therefore, the Court of Appeal's approach to the interpretation of the term "record" is applicable in the context of this

request. Applying the broad and liberal interpretation of the term "record" as suggested by the Court of Appeal, and subject to my discussion of "interference with the operations of the institution" below, I find that the electronic log of the appellant's academic record and the certified transcript are "record(s)" as defined in the *Act*. The former is merely an electronic database of information, or to use the language of the *Act*, it is a pre-existing "machine readable record" as described in the list of items included in the definition of "record" set out in paragraph (a) of the definition. The certified transcript of the academic record is a "record" within part (b) of the definition because it is a record that is capable of being produced from a machine readable record under the control of the University by means of computer hardware and software normally used by the University.

I note that the certified transcript contains all of the information that the University states is contained in the log of the appellant's academic records except that it is printed on "Scrip-Safe" coloured paper. On the back of the transcript is information relating to the terms used in the transcript and there is also a note about tests that can be done to evaluate the authenticity of the document. On the face of the transcript appears the signature of the Registrar, the appellant's academic information and the following note:

> This officially sealed and signed transcript is printed on red Scrip-Safe security paper with the name of the university printed in white type across the face of the document. A raised seal is not required. When photocopied a security statement containing the institution name will appear. A BLACK ON WHITE OR A COLOUR COPY SHOULD NOT BE ACCEPTED!

Having carefully reviewed the certified transcript, I find that it appears to be a print out of the appellant's academic record on "Scrip-Safe" paper. The University has not submitted any evidence about the process of producing this transcript. However, given the fact that official transcripts of this nature are produced on a regular basis by all universities, I find that paragraph (b) of the definition of record applies. It is a record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution.

I now turn to consider whether the exception in section 2 of Regulation 460 applies to either record. Section 2 creates an exception to the definition of a "record" for those cases where the "process of producing [the record] would unreasonably interfere with the operations of an institution." The University did not submit any representations regarding the application of this section to the certified transcript as it based its arguments on the fact that the certified transcript did not exist at the time that the request was filed. In doing so, the University appears to have overlooked the express language of paragraph (b) which applies to "any *record that is capable of being produced* from a machine readable record" (emphasis added), and as such, clearly contemplates the production of a record in a form that may not have existed at the time of the request.

I have considered the possible application of the exception to the certified transcript and I find that there is insufficient evidence before me to support a finding that the exception applies.

The University did make representations on the application of section 2 to the screen shot of the appellant's academic results. I have already found that paragraph (a) of the definition applies to that record on the basis that it is a pre-existing "machine readable record." The exception in section 2 of the Regulation 460 is only referable to a record that is "*capable of being produced from* a machine readable record" and this does not apply to the pre-existing electronic log or screen shot.

In any event, there is no evidence before me that "the process of producing it would unreasonably interfere with the operation" of the institution. However, I note that the University's arguments in this regard relate not to the difficulty in producing the record and the related interference with its operations, but rather to the impact of providing that record to the appellant. Issues relating to the threat to the security of the University's information systems as a result of providing the record to the appellant are more properly dealt with through the application of exemptions when making an access decision.

Accordingly, I find that the screen shot and the certified transcript are records as defined in section 2(1) of the *Act*.

FRIVOLOUS OR VEXATIOUS REQUEST

The *Act* and Regulations provide institutions with a summary mechanism to deal with requests that an institution views as frivolous or vexatious. It has been said in previous orders that these legislative provisions "confer a significant discretionary power on institutions which can have serious implications on the ability of a requester to obtain information under the *Act*," and that this power should not be exercised lightly. On an appeal to this office, the onus of demonstrating that there are reasonable grounds for concluding that a request is frivolous or vexatious is on the institution [Order M-850].

Several provisions of the *Act* and the Regulations are relevant to this issue. Section 10(1)(b) of the *Act* reads:

> Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless,
>
> > (b) the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.

Section 5.1 of Regulation 460 under the *Act* reads:

> A head of an institution that receives a request for access to a record or personal information shall conclude that the request is frivolous or vexatious if,

> (a) the head is of the opinion on reasonable grounds that the request is part of a pattern of conduct that amounts to an abuse of the right of access or would interfere with the operations of the institution; or
>
> (b) the head is of the opinion on reasonable grounds that the request is made in bad faith or for a purpose other than to obtain access.

Representations

The University claims that the appellant's request for access to a screen shot of his academic record is frivolous or vexatious although it does not make a similar argument in connection with the appellant's request for the official transcript.

The University argues that the appellant has already been provided with his personal information contained in his academic record and he would obtain access to no additional personal information by viewing the screen shot of the academic record or by obtaining a copy of the screen shot so that the request "must necessarily be frivolous." It argues that the request is part of a pattern of conduct that amounts to an abuse of the right of access and it unreasonably interferes with the operations of the University under section 5.1(a) of Regulation 460.

The University also argues that the request is made in bad faith or for a purpose other than to obtain access to the personal information and that section 5.1 (b) of the Regulation applies. It supports this argument by reference to the grounds for the appellant's expulsion and the fact that his personal information has already been disclosed to him.

It refers to Order M-850 where former Assistant Commissioner Tom Mitchinson states:

> If the requester was motivated not by a desire to obtain access pursuant to a request, but by some other objective, then the definition in section 5.1(b) would be met, and the request would be "frivolous" or "vexatious."

The University states that the section requires a determination of the appellant's motive in requesting access and relies on Order MO-1782. It states that ascertaining the appellant's motive requires the drawing of inferences from his or her behaviour because a requester seldom admits to a purpose other than access. The University argues that because the appellant has been provided with the personal information relating to his academic record, it is reasonable to draw an inference that this access request is motivated by something other than the desire for access to the information.

Analysis and Findings

Section 5.1(a)

The University's representations state that there is a pattern of conduct that amounts to an abuse of the right of access by the appellant and that there exists a pattern of conduct that would interfere with the operations of the institution. The University claims that section 5.1(a) of the Regulation applies.

Pattern of conduct that amounts to an abuse of the right of access

The following factors may be relevant in determining whether a pattern of conduct amounts to an "abuse of the right of access": number of requests, nature and scope of the requests, purpose of the requests, and the timing of the requests. The institution's conduct also may be a relevant consideration weighing against a "frivolous or vexatious" finding. However, misconduct on the part of the institution does not necessarily negate a "frivolous or vexatious" finding [Order MO-1782]. Other factors, particular to the case under consideration, can also be relevant in deciding whether a pattern of conduct amounts to an abuse of the right of access [Order MO-1782]. The focus should be on the cumulative nature and effect of a requester's behaviour. In many cases, ascertaining a requester's purpose requires the drawing of inferences from his or her behaviour because a requester seldom admits to a purpose other than access. [Order MO-1782].

The evidence relied on by the University relates to the nature, scope and purpose of the appellant's request in this appeal. Indeed, it has not argued that the number of requests and/or the timing of the requests are factors that I should consider.

Nature and Scope of Request

The University's argument is essentially that the appellant seeks access to personal information that he already has been provided with. With respect, I do not agree that this fact alone supports a finding that the appellant's request is frivolous or vexatious. The individual's right of access under the *Act* is to *records or portions of records* that contain his personal information. Once a finding is made that a record exists and it contains the personal information of the requester, the institution must make an access decision in relation to that record. If the record contains some information that is exempt under the *Act* and other information that is not, then the exempt information is severed from the record and the severed record is disclosed to the appellant.

The result is that the University does not satisfy its obligations under the *Act* by providing the appellant with a printed re-statement of the personal information. The appellant has a right to access the *record* subject to any claim that the record or portions of the record may be exempt. In these circumstances, I do not agree that the appellant's request for access to the two records represents a pattern of conduct that amounts to an abuse of the right of access. The appellant is merely exercising the rights that he has under the *Act* and he is entitled to do so even where the University claims that it has provided the requested personal information through another means. If the University's position were adopted, then requesters would have to be satisfied with

receiving "re-statements" of their personal information contained in original documents and would not have the right to access copies of the originals to verify the "re-statements".

Purpose of the Request

I also reject the University's position regarding the inferences that is has drawn about the purpose of the appellant's request. There clearly exists a dispute between the University and the appellant regarding the content of his academic transcript. While I appreciate that the University has made findings in that context about the actions of the appellant, the University has also said that it will provide prospective employers and other educational institutions with a certified transcript, with the consent of the appellant. The appellant has not stated what his purpose is in seeking access however, he may well want to verify the accuracy of his academic transcript, and the electronic database. This is an equally reasonable conclusion to draw from the actions of the appellant in seeking access in this appeal. I am not prepared, in these circumstances, to conclude that the purpose of the appellant's request is a factor that suggests a pattern of conduct that amounts to an abuse of process.

As there is insufficient evidence to support a finding that any of the factors discussed above apply, I find that the appellant's conduct in this appeal is not a pattern of conduct that amounts to an abuse of the right of access.

Pattern of conduct that would interfere with the operations of the institution

A pattern of conduct that would "interfere with the operations of an institution" is one that would obstruct or hinder the range of effectiveness of the institution's activities [Order M-850]. Interference is a relative concept that must be judged on the basis of the circumstances a particular institution faces. For example, it may take less of a pattern of conduct to interfere with the operations of a small municipality than with the operations of a large provincial government ministry, and the evidentiary onus on the institution would vary accordingly [Order M-850].

In my view, the University has also not submitted sufficient evidence to support a finding that the appellant's request exhibits a pattern of conduct that would interfere with the operations of the University. Any concerns that the University has in relation to the security of its information technology system and its operations can be resolved by the application of the exemptions under the *Act*. There is no suggestion here that the appellant's request for access to the information at issue namely a screen shot of the academic record and the official transcript would obstruct or hinder the range of effectiveness of the institution's operations in the sense contemplated by this section [Order M-850]. This is a single access request that relates to two records. In my view, the University has not provided sufficient evidence to support a finding that the request is part of a pattern of conduct that would interfere with the operations of the University. The provisions of the *Act* which exempt the disclosure of personal information provide an adequate remedy for the concerns raised by the University regarding the integrity of its information technology system and the security of its records.

Accordingly, I find that the University has not established that the request submitted by the appellant amounts to a pattern of conduct that would interfere with the operations of the institution.

Section 5.1(b)

Bad faith

Where a request is made in bad faith, the institution need not demonstrate a "pattern of conduct" [Order M-850].

"Bad faith" has been defined as:

> The opposite of "good faith", generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfil some duty or other contractual obligation, not prompted by an honest mistake as to one's rights, but by some interested or sinister motive. ... "bad faith" is not simply bad judgement or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; it is different from the negative idea of negligence in that it contemplates a state of mind affirmatively operating with furtive design or ill will [Order M-850].

Applying the definition of bad faith referred to above, I find that there is insufficient evidence before me to support a finding of bad faith on the part of the appellant in this appeal.

Purpose other than to obtain access

Where a request is made for a purpose other than to obtain access, the institution need not demonstrate a "pattern of conduct" [Order M-850]. A request is made for a purpose other than to obtain access if the requester is motivated not by a desire to obtain access, but by some other objective [Order M-850].

In Order MO-1924, followed by me in Order MO-2326, Senior Adjudicator John Higgins provided extensive comments on when a request may be found to have a purpose other than to obtain access. In that case, the institution argued that the objective of obtaining information for use in litigation or to further a dispute between an appellant and an institution was not a legitimate exercise of the right of access. In rejecting that position, Senior Adjudicator Higgins stated:

> This argument necessitates a discussion of whether access requests may be for some collateral purpose over and above an abstract desire to obtain information. Clearly, such purposes are permissible. Access to information legislation exists to ensure government accountability and to facilitate democracy (see *Dagg v. Canada* (Minister of Finance), [1997] 2 S.C.R. 403). This could lead to requests for information that would assist a journalist in writing an article or a student in

> writing an essay. *The Act itself, by providing a right of access to one's own personal information (section 36(1)) and a right to request correction of inaccurate personal information (section 36(2)) indicates that requesting one's personal information to ensure its accuracy is a legitimate purpose. Similarly, requesters may also seek information to assist them in a dispute with the institution, or to publicize what they consider to be inappropriate or problematic decisions or processes undertaken by institutions.*
>
> To find that these reasons for making a request are "a purpose other than to obtain access" would contradict the fundamental principles underlying the *Act*, stated in section 1, that "information should be available to the public" and that individuals should have a "right of access to information about themselves". In order to qualify as a "purpose other than to obtain access", in my view, the requester would need to have an improper objective above and beyond a collateral intention to use the information in some legitimate manner. [Emphasis added.]

I adopt the approach set out by Senior Adjudicator Higgins for the purposes of this appeal. I find that the University has not provided sufficient evidence to support a finding that the appellant's request was made for a purpose other than to obtain access. Although the appellant did not submit any representations regarding his purpose for seeking access, I am not prepared to find in the circumstances of this appeal that the request was made in bad faith. I am sensitive to the University's concerns about the security of its information technology system and its interest in protecting the security of its original records. However, in my view that is not a sufficient basis to make a finding that a request is frivolous and vexatious under the *Act*.

REMEDY

I have found that the electronic log of the appellant's academic record and the certified transcripts are records under the *Act* to which the appellant is entitled to seek access. I have also found that his request for access to these records is not frivolous and/or vexatious.

As noted above, initially, the University denied the appellant access to the records by claiming that the records were exempt. However, the University withdrew its claim to the exemptions in connection with these records at the representations stage of the inquiry process. Because I have found that the screen shot and the certified transcript are records, and therefore subject to the *Act*, the University is obligated to provide the appellant with an access decision and I will order that it do so in the order provisions below. In its revised decision, the University should also make a determination regarding the manner and form in which it is willing to grant access in accordance with section 48(3) of the *Act* and it should also make a determination regarding any exemptions that may apply to the records.

I have decided to give the University an opportunity to issue a revised decision letter in the circumstances of this appeal as it has indicated in its representations a willingness to provide the appellant with further disclosure in relation to the screen shot of the appellant's academic results.

I have also taken into account the representations of the University that allude to the possible application of discretionary exemptions in section 49(a) of the *Act*. Its initial decision letter stated that section 49(a) in conjunction with section 14(1)(l) applied however, I note that the evidence before me also raises the possible application of section 49(a) in conjunction with section 14(1)(i). Based on the evidence before me, it is quite possible that those exemptions, or others, may apply. In the circumstances of this appeal, I have decided to give the University an opportunity to address the possible application of the exemptions to these records.

ORDER:

1. I order the University to provide the appellant with a decision letter in response to the appellant's request for access to the "screen shot" of his academic results and the certified transcript of records in accordance with the provisions of the *Act*, considering the date of this order as the date of the request.

2. In order to verify compliance with provision 2 of this order, I reserve the right to require the University to provide me with a copy of any decision letter provided to the appellant.

Original Signed by: February 24, 2009
Brian Beamish
Assistant Commissioner