



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

FINAL ORDER PO-2939-F

Appeal PA09-286

York University



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NATURE OF THE APPEAL:

York University (the University) received a request pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to:

Copies in full of all records, including electronic, dating from January 1, 2009 that name me or relate or pertain to me in any way and that have been produced or received or come into the possession of the Board of Governors, the Executive Committee of the Board of Governors, the President, the Vice Presidents, and the counsel or their Offices.

The University located responsive records and issued a decision granting partial access to them, citing sections 19 (solicitor client privilege), 17 (third party information) and 49(b)/21(1) (personal privacy), as well as the exclusionary provision in section 65(6) (employment and labour relations) of the *Act* as the basis for denying access to the undisclosed information.

The requester, now the appellant, appealed the University's decision.

During mediation, the appellant withdrew his request for access to Records 4, 26 and 27 and the University clarified that it was relying on paragraph 3 of section 65(6). The appeal was not resolved during mediation and as a result, proceeded to adjudication, where an adjudicator conducts an inquiry.

I began my inquiry by sending a Notice of Inquiry setting out the facts and issues to the University, eight individuals whose personal information may be contained in the records (the affected persons) and a business whose third party information may be contained in the records (the affected party), seeking their representations. I received representations from the affected party, five affected persons and the University. Because the affected party consented to the complete disclosure of its information, section 17(1) is no longer at issue in this appeal. All of the affected persons who responded to the Notice of Inquiry objected to the release of their personal information. One affected person consented to the sharing of his representations. I then sent a copy of the University's and this one affected person's representations to the appellant and received his representations.

The affected persons' representations only address the applicability of the personal privacy exemptions in sections 21(1) or 49(b).

One of the records at issue in this appeal is Record 52, which is comprised of 52 individual documents. The University has claimed the application of the exemptions in sections 19(a) and (c) and the exclusion in section 65(6)3 to this record. During the adjudication stage of the process, the University sent a revised decision letter to the appellant agreeing to disclose seven of the 52 documents in Record 52 upon payment of the prescribed fee. However, the University did not provide me with copies of the 48 documents remaining at issue in Record 52. I had asked to be provided with copies of this record or to be allowed to attend at the University and examine them as contemplated by section 52(4) of that *Act*, which provides that:

In an inquiry, the Commissioner may require to be produced to the Commissioner and may examine any record that is in the custody or under the control of an institution, despite Parts II and III of this Act or any other Act or privilege, and may enter and inspect any premises occupied by an institution for the purposes of the investigation.

In response, the University provided an index for Record 52 and indicated that it was not prepared to allow me to have a copy of, or examine, Record 52 as it is a legal file from the Office of the University's Counsel. I determined that I could not adjudicate the issues concerning these 48 documents in Record 52 without further information as to their content. Accordingly, I issued Interim Order PO-2924-I which addressed all of the records at issue in this appeal except for Record 52.

I then wrote to the University and sought specific information concerning Record 52 as follows:

... The University has provided me with the affidavit of its Secretary and General Counsel which was prepared in support of the solicitor-client privilege exemption claimed under sections 19(a) and (c) of the *Act*...

The University's index of records and supporting affidavit only address why the University has claimed that Record 52 is exempt under sections 19(a) and (c) and not why it has claimed that this record is excluded from the *Act* by reason of section 65(6)3.

With respect to the University's claim that the documents at issue in Record 52 are not subject to the *Act* by reason of section 65(6)3, I note that a claim that records are excluded from the scope of the *Act* does not mean this office cannot order them to be produced. In *Ontario (Minister of Health) v. Big Canoe*, [1995] O.J. No. 1277 (C.A.), this includes a claim that an exclusion under section 65 applies. In that case, the Court found that the inquiry powers in section 52 of the *Act* are available where a claim is made that responsive records are excluded under a different subsection of section 65. The Court stated:

It is our opinion also that s. 52(4) must be construed as being applicable to all inquiries conducted pursuant to the Act. Having regard to the purposes of the Act and the manner in which the section is framed, *the procedures available to the Commissioner under s. 52 in conducting an inquiry to review a head's decision are applicable to inquiries relating to a head's decision that records sought by a requester are excluded by s. 65(2)*. [Emphasis added]

This judgment of the Court of Appeal was followed by Senior Adjudicator John Higgins in Order PO-2601-I, which involved a claim that records were excluded pursuant to section 65(8.1) of the *Act*. In that appeal, the institution had refused to produce responsive records that it claimed related to research and were excluded. In Order PO-2601-I, Senior Adjudicator Higgins quoted from the judgment and stated:

[I]t is clear that the Commissioner's power to conduct an inquiry, and all the powers in section 52 of the *Act*, are applicable even where an institution seeks to rely on a provision which, if applicable, means that the *Act* does not apply to the records.

Section 52 of the *Act* empowers the Commissioner to conduct an inquiry to determine the outcome of a *de novo* appeal from "any decision of the head" [see section 50(1) and *Ontario (Minister of Health) v. Big Canoe*, (cited above)], and in so doing, section 52(4) provides that the Commissioner may:

... require to be produced to the Commissioner and may examine any record that is in the custody or under the control of an institution, despite Parts II and III of this *Act* or any other *Act* or privilege....
[Emphasis added.]

In particular, in the case of *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, ([2004] O.J. No. 224, 181 O.A.C. 171 (Div. Ct.), affirmed by [2005] O.J. No. 4047 (C.A.), application for leave to appeal dismissed, [2005] S.C.C.A. No. 563, File No. 31224 (S.C.C.)), Madam Justice Dunnett of the Divisional Court of Ontario, relying on the case of *(Ontario) Workers' Compensation Board v. Ontario (Information and Privacy Assistant Commissioner)* 1998 CanLII 7154 (ON C.A.), (1998), 164 D.L.R. (4th) 129 (Ont. C.A.), stated that:

... the Commissioner is required to administer the *Act* and to provide an independent review of government decisions on access to information in determining whether any of the statutory exemptions apply.

Further, the legislature intended that fact-finding and the weighing of the contents of the submissions be dealt with by the Commissioner.

It follows that the Act requires a hearing de novo of the head's decision. Sections 50 to 54 provide that the Commissioner may conduct a full inquiry, including the power to compel witnesses and to require production of documents when reviewing the head's decision. The Commissioner, therefore, is broadly empowered to dispose of the issues on appeal on terms that the Commissioner considers appropriate. There is nothing in section 54(2) that precludes the Commissioner from reviewing the exercise of discretion of the head. [Emphasis added]

Most significantly, section 54(1) of the *Act* requires the Commissioner to conclude an inquiry by issuing a binding order:

After all of the evidence for an inquiry has been received, the Commissioner shall make an order disposing of the issues raised by the appeal.

These provisions clarify that, under the *Act*, the Commissioner is the decision maker concerning the application of the exclusions and exemption to records.

In this appeal, in addition to not being provided with specific information as to why section 65(6)3 applies to each document in Record 52, I have also not been provided with details of the specific emails and attachments comprising each email or email thread, which is necessary in order to determine whether any of them are severable as being not subject to the claimed exclusion or exemptions...

Having considered the description of the documents comprising Record 52 and the affidavit provided by the University, I have concluded that I am unable to make a determination on the application of sections 19(a) and (c) and section 65(6)3 to the documents within this record based on the information that has been provided to date by the University.

Accordingly, based on the circumstances of this case and the preceding analysis, and based on [the] description of Record 52 in the aforementioned affidavit and index of records, I have concluded that I require a more detailed affidavit concerning the reason why the University has claimed that the information at issue in Record 52 is subject to the exclusion in section 65(6)3 and the solicitor-client exemption in sections 19(a) and (c) of the *Act*. This affidavit should contain the following information:

- A description of the specific matter discussed in each email or other document listed in Record 52.
- In the case of each email or email thread, a description of each individual email and attachment, which description is to include the names and titles of the author, the recipient(s) and any person copied on the email.
- A detailed statement as to why each email or document in Record 52 is subject to all of the requirements of section 65(6)3 and sections 19(a) and (c).
- A statement as to why any privilege in an email or other document has not been waived or lost, in particular with respect to emails that have been sent to more than one recipient.
- Whether copies of any of the emails or documents in Record 52 are held in locations other than the legal file. Records held in locations other than a lawyer's file are not necessarily privileged

simply because copies of those records are found in the lawyer's file. (*Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457 at paras. 60-66 (Div. Ct.), *Maranda v. Richer*, [2003] 3 S.C.R. 193 at paras. 30, 34).

- The distinction between documents for which litigation privilege and solicitor client privilege are claimed.

After review of this detailed affidavit, I will then determine whether I am in the position to adjudicate upon each individual email or other document remaining at issue in Record 52...

In response to this letter, the University agreed to allow me to attend at its premises in order to review the documents at issue in Record 52. On December 6, 2010, I attended at the University and reviewed these documents.

This order represents my decision concerning the documents remaining at issue in Record 52.

RECORD:

The following index lists the documents remaining at issue in Record 52:

Document	Date	Description
52(8)	3-Feb-09	Email thread between University Secretary and General Counsel and outside counsel [overlaps in part with Record 22]
52(12)	3-Feb-09	Email thread between Chief Marketing Officer; President; University Secretary and General Counsel; Vice-President, Finance and Administration; Director, Media Relations; and Vice-President Academic [overlaps in part with Record 13]
52(13)	3-Feb-09	Email thread between Chief Marketing Officer, University Secretary and General Counsel, Vice-President Academic, President
52(14)	5-Feb-09	Email and attachment from Communications, Office of the President, to University Secretary and General Counsel re priv. and confidential
52(15)	5-Feb-09	Email thread between University Secretary and General Counsel and Executive Director, Department of Faculty Relations
52(16)	5-Feb-09	Email thread between Executive Director, Department of Faculty Relations and University Secretary and General Counsel
52(17)	5-Feb-09	Email from University Secretary and General Counsel to Manager, Communications re priv. and confidential
52(19)	5-Feb-09	Email thread between Executive Search Consultant; Manager, Communications, and University Secretary and General Counsel re priv. and confidential
52(20)	6-Feb-09	Email from Executive Assistant to the President, to President, University Secretary and General Counsel, Vice-President Academic and Manager, Communications [overlaps in part with Record 20]

52(21)	6-Feb-09	Email thread from University Secretary and General Counsel to Chair, Board of Governors, and Chair, Academic Resources Committee, Board of Governors re priv. and confidential
52(22)	7-Feb-09	Email thread between Executive Search Consultant, University Secretary and General Counsel, Executive Search Consultant, President, Vice-President Academic and Vice-President, Finance and Administration
52(23)	8-Feb-09	Email thread between Vice-President Academic, University Secretary and General Counsel, Executive Search Consultant and President
52(24)	8-Feb-09	Email thread between named lawyer at outside (law firm); University Secretary and General Counsel; Executive Search Consultant; President; and Vice-President Academic
52(25)	8-Feb-09	Email thread between Vice-President Academic, President, and Executive Search Consultant
52(26)	8-Feb-09	Email from Executive Search Consultant to University Secretary and General Counsel, President and Vice-President Academic
52(27)	8-Feb-09	Handwritten note of University Secretary and General Counsel re priv. & conf
52(28)	9-Feb-09	Email thread from Manager, Communications to University Secretary and General Counsel
52(29)	9-Feb-09	Email thread from Manager, Communications to University Secretary and General Counsel
52(30)	9-Feb-09	Email & attachments from Executive Search Consultant to University Secretary and General Counsel
52(31)	10-Feb-09	Email thread between Executive Director, Department of Faculty Relations, lawyer at outside law firm, University Secretary and General Counsel and outside counsel [overlaps in part with Records 28, 29 and 30]
52(33)	11-Feb-09	Email and attachment from University Secretary and General Counsel to Manager, Communications
52(34)	11-Feb-09	Email and attachment from Dean, Faculty of Arts to University Secretary and General Counsel [overlaps in part with Record 31]
52(35)	13-Feb-09	Email thread between lawyer at outside law firm, University Secretary and General Counsel, outside counsel and Chair, Community Affairs Committee, Board of Governors
52(36)	13-Feb-09	Email thread between Executive Search Consultant and University Secretary and General Counsel re an affected person
52(37)	13-Feb-09	Email from Executive Search Consultant to University Secretary and General Counsel re an affected person
52(38)	17-Feb-09	Email thread between Executive Director, Department of Faculty Relations, University Secretary and General Counsel and outside counsel [overlaps in part with Record 12]
52(39)	23-Feb-09	Handwritten note of Coordinator, Administrative Support Services, Office of the Counsel

52(40)	24-Feb-09	Email from University Secretary and General Counsel to lawyer at outside law firm, outside counsel and Executive Director, Department of Faculty Relations
52(41)	25-Feb-09	Email thread between University Secretary and General Counsel and Coordinator, Administrative Support Services
52(42)	25-Feb-09	Handwritten note of Coordinator, Administrative Support Services, Office of the Counsel
52(43)	3-Mar-09	Email thread between Coordinator, Administrative Support Services and University Secretary and General Counsel
52(44)	3-Mar-09	Handwritten note of Coordinator, Administrative Support Services, Office of the Counsel
52(45)	11-Mar-09	Email thread between Coordinator, Administrative Support Services; named lawyer at outside law firm; University Secretary and General Counsel, and lawyer at outside law firm
52(46)	12-Mar-09	Email thread between Chief Marketing Officer, Vice-President Academic, lawyer at outside law firm, University Secretary and General Counsel and outside counsel
52(47)	13-Mar-09	Email thread between University Secretary and General Counsel, lawyer at outside law firm, Chief Marketing Officer, Vice-President Academic, and outside counsel
52(48)	14-Apr-09	Email thread between University Secretary and General Counsel and lawyer at outside law firm
52(49)	undated	Handwritten notes of University Secretary and General Counsel
52(50)	undated	Draft Q&A re an affected person Appointment <i>Privileged and Confidential</i> with input from University Secretary and General Counsel
52(51)	undated	List of Decanal Search Committee Particulars - provided in confidence to University Secretary and General Counsel
52(52)	undated	Curriculum Vitae of an affected person - provided in confidence to University Secretary and General Counsel

DISCUSSION:

LABOUR RELATIONS AND EMPLOYMENT RECORDS

I will now determine whether section 65(6)3 excludes the documents in Record 52 from the *Act*. This section reads:

Subject to subsection (7), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:

Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest.

If section 65(6) applies to the records, and none of the exceptions found in section 65(7) applies, the records are excluded from the scope of the *Act*.

The term “employment of a person” refers to the relationship between an employer and an employee. The term “employment-related matters” refers to human resources or staff relations issues arising from the relationship between an employer and employees that do not arise out of a collective bargaining relationship [Order PO-2157].

If section 65(6) applied at the time the record was collected, prepared, maintained or used, it does not cease to apply at a later date [*Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 507].

The exclusion in section 65(6) does not exclude all records concerning the actions or inactions of an employee simply because this conduct may give rise to a civil action in which the Crown may be held vicariously liable for torts caused by its employees [*Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.)].

The type of records excluded from the *Act* by section 65(6) are documents related to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue. Employment-related matters are separate and distinct from matters related to employees’ actions [*Ministry of Correctional Services*, cited above].

Section 65(6)3: matters in which the institution has an interest

Introduction

For section 65(6)3 to apply, the institution must establish that:

1. the records were collected, prepared, maintained or used by an institution or on its behalf;
2. this collection, preparation, maintenance or usage was in relation to meetings, consultations, discussions or communications; and
3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest.

The University submits that this record is substantially connected to meetings, consultations, discussions or communications about labour relations or employment matters in which the University has an interest. It submits that Record 52 concerns a job competition and a hiring process which is an employment-related matter that falls within the scope of the exclusion in section 65(6)3. It states that:

Record 52 is a legal file opened by the Office of the Counsel pertaining to the YFCFYU [York faculty concerned about the future of York University] press release, which purported to be issued by York University faculty members The legal file contains the court filings that were made to determine the identity of the person or persons who registered and used the YFCFYU email address from which the press release was sent. This file was opened by the Counsel's office in order to determine which York University employees were involved and to consider what potential remedies the University, as employer, would have in respect of the defamatory allegations.

Analysis/Findings

Part 1: collected, prepared, maintained or used

Based upon my review of the records at issue for which section 65(6)3 has been claimed, I find that they were all prepared, maintained or used by the University, therefore, part 1 of the test has been met.

Part 2: meetings, consultations, discussions or communications

Based upon my review of the records, I find that they are all related to discussions, consultations and communications of various sorts which took place with respect to the contents of the records. Consequently, I find that the preparation, maintenance or use of the records by the University were in relation to meetings, consultations, discussions or communications.

Therefore, I am satisfied that the University has met part 2 of the section 65(6)3 test.

Part 3: labour relations or employment-related matters in which the institution has an interest

The phrase "labour relations or employment-related matters" has been found to apply in the context of:

- a job competition [Orders M-830 and PO-2123]
- an employee's dismissal [Order MO-1654-I]
- a grievance under a collective agreement [Orders M-832 and PO-1769]
- disciplinary proceedings under the *Police Services Act* [Order MO-1433-F]
- a "voluntary exit program" [Order M-1074]
- a review of "workload and working relationships" [Order PO-2057]
- the work of an advisory committee regarding the relationship between the government and physicians represented under the *Health Care Accessibility Act*

[Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner), [2003] O.J. No. 4123 (C.A.)].

The phrase “labour relations or employment-related matters” has been found *not* to apply in the context of:

- an organizational or operational review [Orders M-941 and P-1369]
- litigation in which the institution may be found vicariously liable for the actions of its employee [Orders PO-1722 and PO-1905].

The phrase “in which the institution has an interest” means more than a “mere curiosity or concern,” and refers to matters involving the institution’s own workforce [*Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)*, cited above].

The records collected, prepared maintained or used by an institution are excluded only if the meetings, consultations, discussions or communications are about labour relations or “employment-related” matters in which the institution has an interest. Employment-related matters are separate and distinct from matters related to employees’ actions [*Ministry of Correctional Services*, cited above].

Concerning the remaining documents that comprise Record 52, I agree with the University that these documents are contained in a legal file opened by the Office of the Counsel in response to a press release issued by the YFCFYU.

Based upon my review of the documents that comprise Record 52, I agree with the University that documents 52(25), 52(26), 52(30), 52(36) and 52(51) were prepared and maintained in the context of the hiring of the Dean of the Faculty of Liberal Arts and Professional Studies. These documents are emails between the University and the Executive Search Consultant contracted by the University to arrange for the hiring of the new Dean.

The meetings, consultations, discussions or communications in the records are about employment-related matters involving the hiring of the new Dean who is a member of the University’s workforce. The University’s interest in this employment related-matter extends beyond a “mere curiosity or concern.” Therefore, I find that part 3 of the test has been met with respect to these documents and that they are excluded from the application of the *Act*. As the exception in section 65(7) does not apply to documents 52(25), 52(26), 52(30), 52(36) and 52(51), they are excluded from the application of the *Act* under section 65(6)3.

In the University Secretary and General Counsel’s affidavit that was provided to this office, she identifies documents 52(12) to 52(44), 52(46) and (47) and 52(49) to (52) as being prepared by or for her use in giving legal advice to the University. She identifies documents 52(8), 52(24), 52(31), 52(35), 52(38), 52(40), 52(45) to 52(48) as being prepared by or for her, or by external legal counsel retained by the University, in contemplation of litigation or for use in litigation, in particular, the litigation that resulted in the decision reported as *York University v. Bell Canada Enterprises*, 2009 CANLII 46447 (S.C.J.).

I disagree with the University that the documents in Record 52 relating to the litigation, other than documents 52(25), 52(26), 52(30), 52(36) and 52(51), concern employment-related matters in which the University has an interest.

The remaining documents at issue in Record 52 are primarily emails. I find that these documents were collected, prepared, maintained or used as a result of communications with the Office of Counsel about the initiation of the litigation that resulted in the decision reported in *York University v. Bell Canada Enterprises*, (cited above). Mr. Justice Strathy, in paragraphs 2 to 4 of this decision, summarizes the background and outcome of this court case, as follows:

In this application, York University (“York”) seeks an Norwich order (from *Norwich Pharmacal Co. v. Commissioners of Customs & Excise*, [1974] A.C. 133 (H.L.)), requiring Bell Canada Enterprises (“Bell”) and Rogers Communications Inc. (“Rogers”) to disclose information necessary to obtain the identity of the anonymous author(s) of allegedly defamatory e-mails and a web site posting. This information is necessary for York to identify the proper defendant(s) in an action for libel and York states that it will only be used for this limited purpose.

York had already obtained a Norwich order compelling Google Inc. (“Google”) to disclose information to aid in the identification of the author(s) of the communications. On May 14, 2009, Mr. Justice Pitt made an Order that Google disclose the internet protocol addresses associated with the e-mail address “yfcfyu@gmail.com” to York University. This information led to the identification of Bell and Rogers as the relevant sources of the identity of the source of the e-mails and web posting.

On August 4, 2009, I granted a Norwich order, which was not opposed by Bell and Rogers, requiring the disclosure of the contact information of the customer(s) associated with IP addresses disclosed by Google as a result of the order of Pitt J.

I find that the remaining documents at issue in Record 52 are not documents related to a matter in which the institution is acting as an employer, and where terms and conditions of employment or human resources questions are at issue. Instead, these documents concern the University’s activities in seeking to ascertain the author of a potentially defamatory email in order to pursue an action for libel.

Therefore, I find that part 3 of the test has not been met for the documents in Record 52, other than 52(25), 52(26), 52(30), 52(36) and 52(51), and that the remaining documents are subject to the *Act*.

I will consider below whether the documents in Record 52 that are subject to the *Act*, which are all of the documents at issue other than 52(25), 52(26), 52(30), 52(36) and 52(51), are exempt under one of the enumerated exemptions in the *Act*.

PERSONAL INFORMATION

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains “personal information” and, if so, to whom it relates. That term is defined in section 2(1) as follows:

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual’s name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

Sections 2(2), (3) and (4) also relate to the definition of personal information. These sections state:

(2) Personal information does not include information about an individual who has been dead for more than thirty years.

(3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225 and MO-2344].

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

Only the University provided representations on whether the records contain personal information, submitting:

The original request received by the University was for "all records ... that name me or relate or pertain to me in any way". Accordingly, all of the records deemed responsive to this request mention the appellant's name or pertain to him. While some of the records mention the appellant, many are not in respect to him as they deal with the University's response to the allegations of fraud contained in the press release. Furthermore, many of the records contain other individuals' personal information, and are not about the appellant, but rather mention his name only incidentally.

... Other individuals' personal information - consisting of their personal opinions or views on the press release and on the hiring process and the qualifications of the new Dean himself, on their employment history, and their educational history - fall within the definition of "personal information" in section 2(1) of the *Act*. The records containing other individuals' personal information is correspondence sent to an institution by an individual that is implicitly or explicitly of a private or confidential nature.

Analysis/Findings

I found above that all of the documents at issue, except 52(25), 52(26), 52(30), 52(36) and 52(51), are subject to the *Act* as the exclusionary provision in section 65(6)3 did not apply. These documents concern the appellant and his alleged actions. Therefore, I find that the information in the records concerns the appellant in his personal capacity as the information does not pertain to him in a professional capacity (see Orders P-165, P-170, P-448, P-1180 and PO-2525).

I find that some of the documents at issue also contain the personal information of individuals other than the appellant in their personal capacity rather than information about them in their professional capacity. Based upon my review of the documents at issue, I find that they contain the personal information of the appellant and other identifiable individuals, including the affected persons, in their personal capacity. This personal information includes these individuals' employment and educational history, the views or opinions of another individual about these individuals, correspondence sent to the University by these individuals that is implicitly or explicitly of a private or confidential nature, along with their names which appear with other personal information (paragraphs (b), (f) to (h) of the definition of "personal information" in section 2(1)).

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/ SOLICITOR-CLIENT PRIVILEGE

Section 47(1) gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right.

Section 49(a) reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

where section 12, 13, 14, 14.1, 14.2, 15, 16, 17, 18, **19**, 20 or 22 would apply to the disclosure of that personal information.

Section 49(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information [Order M-352].

Where access is denied under section 49(a), the institution must demonstrate that, in exercising its discretion, it considered whether a record should be released to the requester because the record contains his or her personal information. In this case, the institution relies on section 49(a) in conjunction with section 19.

Section 19(a) and (c) of the *Act* states as follows:

A head may refuse to disclose a record,

- (a) that is subject to solicitor-client privilege;
- ...
- (c) that was prepared by or for counsel employed or retained by an educational institution for use in giving legal advice or in contemplation of or for use in litigation.

Section 19 contains two branches as described below. Branch 1 arises from the common law and section 19(a). Branch 2 is a statutory privilege and arises from section 19(b), or in the case of an educational institution, from section 19(c). The institution must establish that at least one branch applies.

It appears that the University is relying on the solicitor-client communication privilege in both Branch 1 and Branch 2. It submits that:

... the appellant has no right to access [the records at issue] as they reflect the advice of the University's General Counsel to other senior management, and also privileged advice with external counsel, and are therefore protected by solicitor-client privilege. Order PO-2746 establishes that records consisting of direct communications of a confidential nature between the University's lawyers and its staff made for the purpose of obtaining or giving professional legal advice are exempt pursuant to section 19(a). Order PO-2626 establishes that legal advice being sought from or given by counsel employed or retained by the University is exempt from disclosure under section 19(c).

The appellant did not provide direct representations on whether the records at issue are subject to the section 19 exemption. Instead, he states that:

York University has also sweepingly claimed the solicitor-client privilege exemption and the labour relations and employment exclusion for the same purpose, far beyond the intentions of the *Act*. The widely acknowledged historic significance of these events for the future of Internet privacy throughout North America establishes without question an overriding public interest in the full disclosure of these records.

Branch 1: common law privilege

Branch 1 of the section 19 exemption encompasses two heads of privilege, as derived from the common law: (i) solicitor-client communication privilege; and (ii) litigation privilege. In order for branch 1 of section 19 to apply, the institution must establish that one or the other, or both, of these heads of privilege apply to the records at issue [Order PO-2538-R; *Blank v. Canada*

(*Minister of Justice*) (2006), 270 D.L.R. (4th) 257 (S.C.C.) (also reported at [2006] S.C.J. No. 39)].

Solicitor-client communication privilege

Solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining or giving professional legal advice [*Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.)].

The rationale for this privilege is to ensure that a client may confide in his or her lawyer on a legal matter without reservation [Orders PO-2441, MO-2166 and MO-1925].

The privilege applies to “a continuum of communications” between a solicitor and client:

. . . Where information is passed by the solicitor or client to the other as part of the continuum aimed at keeping both informed so that advice may be sought and given as required, privilege will attach [*Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.)].

The privilege may also apply to the legal advisor’s working papers directly related to seeking, formulating or giving legal advice [*Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27].

Confidentiality is an essential component of the privilege. Therefore, the institution must demonstrate that the communication was made in confidence, either expressly or by implication [*General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.)].

Branch 2: statutory privileges

Branch 2 is a statutory exemption that is available in the context of Crown counsel giving legal advice or conducting litigation. The statutory exemption and common law privileges, although not necessarily identical, exist for similar reasons.

Statutory solicitor-client communication privilege

Branch 2 applies to a record that was prepared by or for Crown counsel, or counsel for an educational institution, “for use in giving legal advice.”

Analysis/Findings

The University has claimed that sections 19(a) and (c) apply to all of the documents at issue in Record 52.

The records primarily consist of email chains. I have reviewed the documents in Record 52, as well as the parties’ representations, and I have included my findings about these documents in

the following chart. For ease of reference, I have underlined my findings concerning the portions of the documents in Record 52 which I have found to be subject to sections 19(a) or (c).

#	Description	Findings regarding section 19
52(8)	Email thread between University Secretary and General Counsel and outside counsel [overlaps in part with Record 22]	This document is a 7 email chain. <u>I find that only emails 4, 5 and 6 contain information that is subject to 19(c).</u> The information in emails 1, 2 and 3 has already been disclosed to the appellant by the University. The information in email 7 is not information that would come within section 19(a) or (c).
52(12)	Email thread between Chief Marketing Officer; President; University Secretary and General Counsel; Vice-President, Finance and Administration; Director, Media Relations; and Vice-President Academic [overlaps in part with Record 13]	This document is a 4 email chain. Emails 1, 2 and 3 are also contained in Record 13, which was ordered disclosed in Order PO-2924-I. <u>The information in email 4 is part of the continuum of communication in section 19(c).</u>
52(13)	Email thread between Chief Marketing Officer, University Secretary and General Counsel, Vice-President Academic, President	This document is a 5 email chain. The first 2 emails were disclosed to the appellant in Record 13. <u>The information in emails 3 to 5 is part of the continuum of communication in section 19(c).</u>
52(14)	Email and attachment from Communications, Office of the President, to University Secretary and General Counsel re priv. and confidential	This document is a 2 email chain with an attachment. The attachment is a letter from the President that was circulated to numerous faculty members. <u>The information in emails 1 and 2 is part of the continuum of communication in section 19(c).</u>
52(15)	Email thread between University Secretary and General Counsel and Executive Director, Department of Faculty Relations	This is a 5 email chain. <u>Email 4 and 5 contain legal advice and come within section 19(c).</u> <u>The remaining emails, Emails 1 to 3, are part of the continuum of communication and are also subject to section 19(c).</u>

52(16)	Email thread between Executive Director, Department of Faculty Relations and University Secretary and General Counsel	This document is a 4 email chain and is duplicated in document 52(15). <u>Email 4 contains legal advice and falls within the ambit of section 19(c).</u> <u>The remaining emails, Emails 1 to 3, are part of the continuum of communication and are also subject to section 19(c).</u>
52(17)	Email from University Secretary and General Counsel to Manager, Communications re priv. and confidential	This document is a 2 email chain with an attachment. The attachment is the same as in document 52(14) and is a letter from the President that was circulated to numerous faculty members. <u>Email 2 contains legal advice and falls within the ambit of section 19(c).</u> Email 1 and the attachment were sent to 8 people and do not contain information that falls within the ambit of section 19(a) or (c).
52(19)	Email thread between Executive Search Consultant; Manager, Communications, and University Secretary and General Counsel re priv. and confidential	This document is a 2 email chain with an attachment. The attachment is the same as in documents 52(14) and (17), namely, a letter from the President that was circulated to numerous faculty members. The two emails in this document were sent to numerous people and do not contain information that would bring them or the attachment to document 52(14) within section 19(a) or (c).
52(20)	Email from Executive Assistant to the President, to President, University Secretary and General Counsel, Vice-President Academic and Manager, Communications [overlaps in part with Record 20]	This document is a 3 email chain. None of the emails contain information that would bring them within section 19(a) or (c). The purpose of these emails is to circulate an external email.
52(21)	Email thread from University Secretary and General Counsel to Chair, Board of Governors, and Chair, Academic Resources Committee, Board of Governors re priv. and confidential	This document is a 2 email chain with an attachment. The attachment and email 1 are the same attachment and email as that found in documents 52(14) and 52(17). <u>Email 2 is subject to section 19(c).</u>

52(22)	Email thread between Executive Search Consultant, University Secretary and General Counsel, Executive Search Consultant, President, Vice-President Academic and Vice-President, Finance and Administration	This document is a 2 email chain. <u>Emails 1 and 2 are part of a continuum of communication and are subject to section 19(c).</u>
52(23)	Email thread between Vice-President Academic, University Secretary and General Counsel, Executive Search Consultant and President	This document is a 4 email chain. Email 1 is from the YFCFYU to the President with a copy sent to 6 other recipients. Email 2 does not contain a message and does not reveal privileged information. <u>Emails 3 and 4 concern the seeking of legal advice and are subject to section 19(c).</u>
52(24)	Email thread between named lawyer at outside (law firm); University Secretary and General Counsel; Executive Search Consultant; President; and Vice-President Academic	This document is a 4 email chain. Emails 1 to 3 are the same as emails 1 to 3 in document 52(23). <u>Emails 3 and 4 concern the seeking of legal advice and are subject to section 19(c).</u>
52(27)	Handwritten note of University Secretary and General Counsel re priv. & conf	<u>This is a single email and is subject to section 19(c).</u>
52(28)	Email thread from Manager, Communications to University Secretary and General Counsel	This document is a 2 email chain. Email 1 is from the YFCFYU and is addressed to several recipients. <u>Email 2 contains legal advice and is subject to section 19(c).</u>
52(29)	Email thread from Manager, Communications to University Secretary and General Counsel	This document is a 2 email chain. Email 1 is from the YFCFYU and is addressed to several recipients. Email 2 forwards email 1. Neither email is subject to sections 19(a) or (c).

52(31)	Email thread between Executive Director, Department of Faculty Relations, lawyer at outside law firm, University Secretary and General Counsel and outside counsel [overlaps in part with Records 28, 29 and 30]	This document contains 8 emails. <u>The entire document is subject to section 19(c) as being part of the continuum of communications.</u>
52(33)	Email and attachment from University Secretary and General Counsel to Manager, Communications	This document contains one email with an attachment. <u>The entire document is subject to section 19(c) as being part of the continuum of communications.</u>
52(34)	Email and attachment from Dean, Faculty of Arts to University Secretary and General Counsel [overlaps in part with Record 31]	This document contains 5 emails and one attachment. Emails 1 to 3 were sent to the YFCFYU along with other recipients. The attachment is a letter that was publicly circulated. <u>Only email 4 is subject to section 19(c) as containing legal advice.</u>
52(35)	Email thread between lawyer at outside law firm, University Secretary and General Counsel, outside counsel and Chair, Community Affairs Committee, Board of Governors	This document contains 5 emails and one attachment. The attachment is a public statement made by the President. Email 1 was sent by the YFCFYU to six recipients and has already been disclosed to the appellant, for example in Record 13. <u>Emails 2 to 4 are subject to section 19(c) as being part of the continuum of communications.</u> Email 5 contains no message and does not reveal privileged information.
52(37)	Email from Executive Search Consultant to University Secretary and General Counsel re an affected person	This document contains one email. This email does not contain information that would bring it within section 19(a) or (c). However it appears to contain information that would bring it within the mandatory personal privacy exemption at section 21(1), which I will consider below.
52(38)	Email thread between Executive Director, Department of Faculty Relations, University Secretary and General Counsel and outside counsel [overlaps in part with Record 12]	This document contains 3 emails and an attachment. <u>This document, including the attachment, contains a continuum of communication about privileged matters and is subject to section 19(c).</u>

52(39)	Handwritten note of Coordinator, Administrative Support Services, Office of the Counsel	This is a note to file and does not contain information that would bring it within section 19(a) or (c).
52(40)	Email from University Secretary and General Counsel to lawyer at outside law firm, outside counsel and Executive Director, Department of Faculty Relations	This document contains one email. <u>This document is part of a continuum of communication about privileged matters and is subject to section 19(c).</u>
52(41)	Email thread between University Secretary and General Counsel and Coordinator, Administrative Support Services	This document contains two emails and does not contain information that would bring it within section 19(a) or (c).
52(42)	Handwritten note of Coordinator, Administrative Support Services, Office of the Counsel	This is a note to file and does not contain information that would bring it within section 19(a) or (c).
52(43)	Email thread between Coordinator, Administrative Support Services and University Secretary and General Counsel	This document contains five emails and does not contain information that would bring it within section 19(a) or (c).
52(44)	Handwritten note of Coordinator, Administrative Support Services, Office of the Counsel	This is a note to file and does not contain information that would bring it within section 19(a) or (c).
52(45)	Email thread between Coordinator, Administrative Support Services, named lawyer at outside law firm, University Secretary and General Counsel, and lawyer at outside law firm	This document contains five emails. <u>This document is part of a continuum of communication about privileged matters and is subject to section 19(c).</u>

52(46)	Email thread between Chief Marketing Officer, Vice-President Academic, lawyer at outside law firm, University Secretary and General Counsel and outside counsel	This document contains six emails. <u>This document is part of a continuum of communication about privileged matters and is subject to section 19(c).</u>
52(47)	Email thread between University Secretary and General Counsel, lawyer at outside law firm, Chief Marketing Officer, Vice-President Academic, and outside counsel	This document contains six emails. <u>This document is part of a continuum of communication about privileged matters and is subject to section 19(c).</u>
52(48)	Email thread between University Secretary and General Counsel and lawyer at outside law firm	This document contains three emails. <u>This document is part of a continuum of communication about privileged matters and is subject to section 19(c).</u>
52(49)	Handwritten notes of University Secretary and General Counsel	<u>This note contains information that would bring it within section 19(c).</u>
52(50)	Draft Q&A re an affected person Appointment <i>Privileged and Confidential</i> with input from University Secretary and General Counsel	<u>This document contains information that would bring it within section 19(c).</u>
52(52)	Curriculum Vitae of an affected person - provided in confidence to University Secretary and General Counsel	This document does not contain information that would bring it within section 19(a) or (c). However it appears to contain information that would bring it within the mandatory personal privacy exemption at section 21(1), which I will consider below.

Therefore, I find that section 19(c) applies to the information at issue in:

- emails 4 to 6 in document 52(8),
- email 4 in document 52(12),
- emails 3 to 5 in document 52(13),
- emails 1 and 2 in document 52(14),
- document 52(15),
- document 52(16),

- email 2 in document 52(17),
- email 2 in document 52(21),
- document 52(22),
- emails 3 and 4 in document 52(23),
- emails 3 and 4 in document 52(24),
- document 52(27),
- email 2 in document 52(28),
- documents 52(31) and 52(33),
- email 4 in document 52(34),
- emails 2 to 4 in document 52(35), and
- documents 52(38), 52(40), 52(45) to 52(50).

I have not been provided with any evidence to support a finding that the privilege in these documents or portions of documents has been waived.

Documents 52(13), 52(14), 52(22), 52(23), 52(28), 52(35) and 52(50) do not contain the personal information of the appellant. Section 49(a) does not apply to the portions of these documents for which I have found section 19(c) applies and, accordingly, these portions are exempt from disclosure.

Documents 52(8), 52(12), 52(15) to 52(17), 52(21), 52(22), 52(27), 52(31), 52(33), 52(34), 52(38), 52(40) and 52(45) to 52(49) contain the personal information of the appellant. I will review below whether the University properly exercised its discretion under section 49(a) with respect to these remaining documents or portions of these documents which I have found are subject to section 19(c).

PERSONAL PRIVACY

The University has not claimed the application of the personal privacy exemption in section 21(1) to Record 52. However, as stated above, documents 52(37) and 52(52) contain the personal information of an affected person. These two documents do not contain the personal information of the appellant. I will now determine whether the mandatory exemption at section 21(1) applies to the personal information at issue in these two documents.

Under section 21, where a record contains personal information only of an individual other than the requester, the institution must refuse to disclose that information unless disclosure would not constitute an “unjustified invasion of personal privacy.”

Sections 21(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold is met.

If the information fits within any of paragraphs (a) to (f) of section 21(1), it is not exempt from disclosure under section 21(1).

In the circumstances, it appears that the only exception that could apply is paragraph (f). This section reads:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

If any of paragraphs (a) to (d) of section 21(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under sections 21(1) or 49(b). If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 21.

If no section 21(3) presumption applies, section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy [Order P-239].

The list of factors under section 21(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 21(2) [Order P-99].

The University relied on the factor favouring privacy in section 21(2)(i) with respect to the records it identified as containing personal information (see Order PO-2924-I). This section reads:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

the disclosure may unfairly damage the reputation of any person referred to in the record.

As stated in Order PO-2924-I, the appellant's representations appear to only address the factor in section 21(2)(a) favouring disclosure of the personal information in the records. This section reads:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;

The appellant's entire submission concerning the personal privacy exemption states as follows:

The personal information records sought in this case pertain to the extraordinary and precedent-setting efforts undertaken by York University to identify, in order to initiate reprisal against, anonymous members of the York faculty who, in February 2009, dared to expose academic fraud on the part of the university president. These retaliatory efforts, and the academic fraud itself, have received considerable attention in the media, especially because York's legal actions have established a landmark and disturbing legal precedent with regard to the matter of Internet privacy.

It is ironic in the extreme that York University is invoking the exemption of personal privacy in its response to this appeal, in an attempt to shield from public scrutiny its own unprecedented efforts to invade the privacy of its faculty members, and, by extension, the privacy of all Internet users.

Analysis/Findings

Document 52(37) is an email containing the personal information of an affected person. Document 52(52) consists of the curriculum vitae (CV) of the same affected person. These documents contain this individual's personal information only and relate to him in his personal, as opposed to his professional, capacity. This affected person did not consent to disclosure of these documents. As stated above, Documents 52(37) and 52(52) do not contain the appellant's personal information, nor do they concern the issue of the disclosure of personal information related to the protection of internet privacy, as identified by the appellant.

I find that the factor which weighs against disclosure raised by the University in section 21(2)(i) applies. The applicability of this section is not dependent on whether the damage or harm envisioned by the clauses is present or foreseeable, but whether this damage or harm would be "unfair" to the individual involved [Order P-256]. I also find that the factor in section 21(2)(a) raised by the appellant does not apply. As no factors favouring disclosure apply, I find that disclosure of documents 52(37) and 52(52) would give rise to an unjustified invasion of the personal privacy of the affected person referred to in them. Therefore, documents 52(37) and 52(52) are exempt by reason of the mandatory exemption in section 21(1).

EXERCISE OF DISCRETION

I will now determine whether the University properly exercised its discretion under section 49(a) in conjunction with section 19 with respect to emails 4 to 6 in document 52(8), email 4 in documents 52(12), documents 52(15) and 52(16), email 2 in document 52(17), email 2 in document 52(21), document 52(27), document 52(31), document 52(33), email 4 in document 52(34) and documents 52(38), 52(40), 52(45) to 52(49). The section 49(a) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 54(2)].

Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant [Orders P-344, MO-1573]:

- the purposes of the *Act*, including the principles that
 - information should be available to the public
 - individuals should have a right of access to their own personal information
 - exemptions from the right of access should be limited and specific
 - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information

- the historic practice of the institution with respect to similar information.

The University submits that:

The primary factor considered by York University in exercising its discretion not to disclose these records to the appellant is that they are employment-related matters in which the University has an interest. ... [M]ost of the records that contain the personal information of the appellant fall within the labour relations and employment exclusion. Similarly, the ... press release [referred to in the records] was purportedly issued by York University faculty members who are employees of the University and thus comprise employment-related matters in which the institution has an interest. The press release was generated in response to the hiring of a new Dean ... which is also an employment-related matter in which the University has an interest.

Another primary factor considered by the University in exercising its discretion not to disclose these records to the appellant is that many of the records are subject to solicitor client privilege pursuant to section 19(a) and (e) of the *Act*.

The University also considered the personal privacy of other York University faculty members, a student, and the individual who was hired as the new Dean. In exercising its discretion not to disclose these records to the appellant, the University considered the personal privacy of these individuals and the fact that disclosing their opinions about matters not concerning the appellant would constitute an unjustified invasion of their personal privacy.

As an additional factor, the University considered the ongoing adversarial stance taken by the appellant towards York University and other of its employees.

The appellant did not provide representations on this issue.

Analysis/Findings

The information at issue in this appeal is significant to the University. The documents or portions of documents at issue in Record 52 are subject to solicitor-client privilege and are exempt under section 19(c) of the *Act*.

I find that the University exercised its discretion in a proper manner, taking into account relevant factors and not taking into account irrelevant factors, in denying the appellant access to the information in the records for which it has claimed sections 49(a) in conjunction with 19(c).

Accordingly, I uphold the University's exercise of discretion and find that emails 4 to 6 in document 52(8), email 4 in document 52(12), documents 52(15) and 52(16), email 2 in document 52(17), email 2 in document 52(21), documents 52(27), 52(31), 52(33), email 4 in document 52(34) and documents 52(38), 52(40), 52(45) to 52(49) are properly exempt under section 49(a), taken in conjunction with section 19(c) .

ORDER:

1. I uphold the University's decision that documents 52(25), 52(26), 52(30), 52(36) and 52(51) in Record 52 are excluded from the application of the *Act*.
2. I uphold the University's decision that the following documents in Record 52 are exempt from disclosure:
 - emails 4 to 6 in document 52(8),
 - email 4 in document 52(12),
 - emails 3 to 5 in document 52(13),
 - emails 1 and 2 in document 52(14),
 - document 52(15),
 - document 52(16),
 - email 2 in document 52(17),
 - email 2 in document 52(21),
 - document 52(22),
 - emails 3 and 4 in document 52(23),
 - emails 3 and 4 in document 52(24),
 - document 52(27),
 - email 2 in document 52(28),
 - documents 52(31) and 52(33),
 - email 4 in document 52(34),
 - emails 2 to 4 in document 52(35), and
 - documents 52(37), 52(38), 52(40), 52(45) to 52(50) and 52(52).
3. I order the remaining documents or portions of documents in Record 52 to be disclosed to the appellant **by January 26, 2011 but not before January 21, 2011.**
4. In order to verify compliance with provision 3 of this order, I reserve the right to require the University to provide me with a copy of the documents disclosed to the appellant.

Original signed by: _____
Diane Smith
Adjudicator

December 22, 2010 _____