Information and Privacy Commissioner,
Ontario, Canada

Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER PO-3139

Appeal PA08-159-2

University of Ottawa

November 27, 2012

Summary: The appellant sought access to all records held by the University of Ottawa relating to him that were sent or received by the President of the university since November 30, 2006. The university granted partial access to 480 pages of records and denied access to a significant number of other records, pursuant to the exclusionary provision in section 65(6) (labour relations), and the discretionary exemptions in section 49(a), read in conjunction with section 19 (solicitor-client privilege) and 49(b) (personal privacy). The reasonableness of the university's search was also at issue, as well as the responsiveness of some of the records. Finally, the fee charged by the university for the records disclosed to the appellant was in dispute. This order upholds the university's search and access decision. This order does not uphold the university's decision to charge for search and preparation time of the responsive records and orders it to refund the appellant any search and preparation fees already paid.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 2(1) (personal information), 19, 24, 49(a), 49(b), 65(6).

Orders and Investigation Reports Considered: Order M-909.

Cases Considered: *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457 (Div Ct.).

OVERVIEW:

[1] The appellant is a former professor with the University of Ottawa (the university). He has submitted numerous requests to the university under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) for records relating to him or initiatives that he organized during the time that he was employed by the university. For the most part, in his requests the appellant identifies either a specific initiative or university employee or official who may have created, received, or sent records referring to him or his activities. To date, this office has processed almost two dozen appeals related to his requests. The present order is being processed with five related appeals: PA08-97-2, PA08-122-2, PA08-156-2, PA08-157-2, and PA08-158-2. Although the issues in these appeals are similar, given that many of these requests have generated voluminous records, to ensure clarity I have decided to issue separate orders for each appeal. As many of the responsive records amount to emails or other documents on which numerous people were copied, there is some overlap of records throughout these appeals. Again, given the voluminous nature of the records, to ensure consistency these duplicates have not been removed from the scope of the appeals.

[2] In the current appeal, the appellant submitted a request to the university under the *Act* for access to all records about himself that were sent by or received by the President of the university since November 30, 2006.

[3] The university issued a decision letter granting partial access to approximately 480 pages of responsive records for a fee of $510.00. It denied access to other records, in whole or in part, claiming the application of the exclusion at section 65(6) (labour relations), and the exemptions at sections 14 (law enforcement), 17(1) (third party information), 19 (solicitor-client privilege), 21(1) (personal privacy), and 22 (information published or available) of the *Act*.

[4] The appellant appealed the university's decision.

[5] During mediation, the appellant advised the mediator that he is pursuing access to all of the withheld records and is of the view that additional records exist. The appellant also takes issue with the amount of the fee of $510.00 for processing the request.

[6] During mediation, the university advised that it is no longer relying on section 17(1) of the *Act* to withhold some of the records. Accordingly, section 17(1) is no longer at issue in this appeal. The university also provided the appellant with an index of the records that were withheld.

[7] As the records appear to contain the personal information of the appellant, the mediator raised the possible application of section 49(a) (discretion to refuse a requester's own information) and section 49(b) (personal privacy) of the *Act*.

[8] The mediator advised the university that copies of records 217 to 272 identified on the index of undisclosed records were not provided to this office. The university responded that it did not have copies of records 217 to 272. The university also indicated that it did not appear to have retained a copy of the records that were disclosed to the appellant.

[9] The appellant took the position that the university should conduct a new search in order to locate all responsive records including those that were disclosed to him, in full or in part, records 217 to 272 listed in the index of undisclosed records, as well as additional responsive records that are located. The appellant further clarified that he is of the view that the university's original search for responsive records was incomplete as the university only searched for email records. The appellant also claimed that the university did not explain in its final decision letter how the emails were searched and what keywords were used to locate responsive records. The university advised the mediator that it was not prepared to conduct an additional search for records. Accordingly, the reasonableness of the university's search is at issue in this appeal.

[10] Finally, the university advised that it would not reconsider the fee of $510.00 for the processing of the request. Accordingly, the fee remains at issue in this appeal.

[11] Further mediation was not possible and the file was transferred to the adjudication stage of the appeal process. During the inquiry into this appeal I sought representations from the university and the appellant. Prior to receiving representations from the university, the appellant wrote to this office expressing concern that I was beginning the inquiry prior to securing copies of records 217 to 272. I advised the appellant that because the university was taking the position that the records could not be located the issue of the missing records was to be addressed as part of my inquiry into the issue of reasonable search. However, at the same time I sent a letter to the university specifically requesting a sworn affidavit detailing why records 217 to 272 could not be produced. In response, the university conducted a further search for Records 217 to 272 and found them (with the exceptions of records 248, 270 and 271 which could not be located) in a file related to another of the appellant's access to information requests. The university provided copies of those records to me. At that time, the university also provided me with copies of the records that were disclosed to the appellant with the access decision and fee, as well as copies of Records 1 to 216, which also had not previously been disclosed to the appellant or provided to this office.

[12] Subsequently, the university submitted representations in which it advised that upon review of the records during the preparation of its submissions, it determined that only records 218, 219, 244, 245, 257, 260, 261, 300, 301, and 345 are responsive to the appellant's request. Accordingly, responsiveness has been added as an issue in this appeal, as the appellant takes issue with this determination.

[13] Additionally, in its representations the university no longer claims that the

exemptions at sections 14(1), 17(1) and 22 apply to any of the records. As a result, these exemption claims have been removed from the scope of the appeal. The ministry also advised that none of the records remaining at issue contain the personal information of individuals other than the appellant. Accordingly, neither section 21(1) nor section 49(b) is applicable. However, I note that all of severances made to the records that have been disclosed to the appellant in part, contain what appears to be the personal information of other identifiable individuals. As the appellant seeks access to all of the information that was withheld from him, including that contained in the records that were partially disclosed to him, this information is at issue accordingly, I will address the issue of personal privacy under either section 21(1) or 49(b).

[14] The appellant chose not to submit representations on this appeal. However, as it is one of a number of closely related appeals, where appropriate, I will refer to the appellant's general arguments relating to why he should be granted access to information that pertains to him.

RECORDS:

[15] The undisclosed records that remain at issue in this appeal are identified as records 1 to 348. When the request was initially processed, records 248, 270 and 271 were identified as responsive and listed on the index, however when the university conducted an additional search, those records could not be located. They remain at issue but the university was unable to provide copies to this office.

ISSUES:

A. Did the university conduct a reasonable search for responsive records?

B. Is some of the information not responsive to the appellant's request?

C. Does the labour relations exclusion at section 65(6) exclude the records from the scope of the *Act*?

D. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

E. Does the discretionary exemption at section 49(a), read in conjunction with the solicitor-client privilege exemption at section 19, apply to the records?

F. Does the discretionary exemption at section 49(b), or the mandatory exemption at section 21(1), apply to the records?

G. Should the university's exercise of discretion under section 49(a) and 49(b) be upheld?

H. Should the university's fee be upheld?

DISCUSSION:

A. Did the university conduct a reasonable search for responsive records?

[16] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24.[1] If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[17] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.[2] To be responsive, a record must be "reasonably related" to the request.[3]

[18] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.[4]

[19] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[5]

[20] Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response, the appellant must, nevertheless, provide a reasonable basis for concluding that such records exist.

Representations

[21] The university provided this office with copies of records 273 to 348 as well as an index identifying undisclosed records numbered chronologically from 217 to 348. At the outset of the appeal, the university advised the mediator that it could not locate copies of any additional records related to this appeal, including records 218 to 272 identified on the index, any records that may have been identified as 1 to 216 (no corresponding index could be located), and the approximately 480 pages of records that were disclosed to the appellant in full or in part together with the decision letter

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[1] Orders P-85, P-221, and PO-1954-I.
[2] Orders P-624 and PO-2559.
[3] Order P-2554.
[4] Orders M-909, PO-2469, and PO-2592.
[5] Order MO-2185.

[22] During mediation, the appellant took the position that the university should conduct a new search to locate all responsive records including those that were disclosed to him in full or in part, records 217 to 272 identified on the index of undisclosed records, records 1 to 216 not identified on the index of undisclosed records, as well as additional records.

[23] The appellant further clarified that he is of the view that the university's original search for responsive records was incomplete as the university only searched for email records. The appellant also claimed that the university did not explain in its final decision letter how the emails were searched and what keywords were used to locate responsive records.

[24] In its representations, the university states that the former President of the university conducted an electronic search for records responsive to the appellant's request. In an affidavit sworn by the current Freedom of Information Coordinator (FOIC), the FOIC explains that she was not involved in the initial handling of or the issuance of the decision letters related to the appellant's request. She states that she only became familiar of the status of the file and the records associated with it when it became active at the appeal stage and describes her subsequent actions:

> At the mediation stage of the appeal, I indicated to the mediator that I had only located a copy of records 273 to 348 of the undisclosed records and that I did not have a copy of the remaining records. I came to this conclusion because upon reviewing the file, a copy of the records that would have been disclosed to the appellant pursuant to the university's decision letter of August 11, 2008, and the associated indices were not contained in the file kept in the Access to Information and Privacy Office. Those university staff members who would have been involved in the processing of the file had long since left the university and there was no means of knowing where the records may have been filed. The only circumstance that I could think of that could reasonably explain why the records were not in the file was that those involved in processing of the file did not keep a copy of the index of the records that were fully, or partially disclosed to the appellant and did not keep a copy of all of the remaining undisclosed records.

[25] During the preparation of the university's representations on this appeal, the FOIC states that "it occurred to [her] that the records associated with the file may have been placed inadvertently in other access to information request that the appellant has made and appealed over the last several years." She states that given that all of the other access requests involved voluminous records and some of the requests were made around the same time as the request at issue in the current appeal, it was possible that the records associated with this file may have been misfiled in another file involving the appellant.

[26] In her affidavit, the FOIC states that she undertook a three-day, exhaustive search of five of the appellant's other access to information request files and located:

- the set of disclosed records that were provided to the appellant,
- the set of partially disclosed records that were provided to the appellant,
- a substantially complete set of the undisclosed records 1 through 216 (although a corresponding index could not be located),
- records 217 to 272 (with the exception of records 248, 270 and 271) to correspond with the undisclosed index of records that was provided to this office.

[27] As the appellant did not submit representations, he did not make any submissions on why he takes the position that additional records responsive to his request should exist.

Analysis and finding

[28] I have carefully reviewed and considered all of the evidence presented to me in the parties' representations on the reasonable search issue. While I acknowledge that during mediation the appellant indicated that he takes issue with some of the techniques and approaches used in the university's searches, I am satisfied that the university has provided me with sufficient evidence to demonstrate that it has discharged its responsibilities under the *Act* and has made a reasonable effort to identify and locate records responsive to the appellant's request.

[29] As noted above, the issue for me to determine is whether the university has taken *reasonable* steps to search for records responsive to the appellant's request. A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a *reasonable* effort to locate records which are reasonably related to the request. An institution is not required to go to extraordinary lengths to search for records responsive to a request.

[30] In Order M-909, Adjudicator Laurel Cropley made the following finding with respect to the obligation of an institution to conduct a reasonable search for records. She found that:

> In my view, an institution has met its obligations under the *Act* by providing experienced employees to expend a reasonable effort to conduct the search, in areas where the responsive records are likely to be located. In the final analysis, the identification of responsive records must rely on the experience and judgment of the individual conducting the search.

[31] I adopt the approach taken in the above order for the purposes of the present appeal. I also note that, in order to make a finding that a reasonable search was conducted, it is not necessary that every individual named in a request or identified during an appeal be contacted.[6]

[32] In the current appeal, due to the fact that all of the individuals involved in the processing of this particular request are no longer employed by the university, it is particularly difficult to determine the exact circumstances surrounding the searches that were conducted. This situation is further confounded by what can only be described as poor records management by the university staff who initially processed the request, which made it difficult for the present FOIC to determine exactly what occurred.

[33] However, during the inquiry stage, the FOIC expended a considerable amount of time and energy to locate all of the missing records with the exception of 3 records. Specifically, the university located records 1 to 217, 217 to 272 (with the exception of records 248, 270, 271), the set of records that were disclosed in their entirety to the appellant and the set of records that were disclosed in part to the appellant. The great majority of the responsive records that could not be located during the mediation stage have been found. I note that three records, previously identified as responsive, could not be located. However, the university is not required to locate *every* responsive record it is simply required to demonstrate that its search was *reasonable.*[7]

[34] In this case, based on the evidence presented, the university has established that the search was conducted by the former President of the university himself in his Outlook mailbox. I acknowledge that the appellant believes that searches should have been conducted in his paper records as well, however, I accept that the former President was sufficiently knowledgeable about his records and the subject matter of the request to appropriately determine the best way in which to conduct a reasonable search for responsive records. Additionally, given that the search yielded a significant number of records (almost 500 pages), I conclude that the university expended a reasonable effort to identify and locate all of the records that were produced, sent by, or received by the former President of the university as requested by the appellant**.**

[35] As previously stated, although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response, an appellant must, nevertheless, provide a reasonable basis for concluding that such records exist. Despite the appellant's general claim that additional records responsive to his request, must exist, I find that he has not provided me with sufficient evidence to establish a reasonable basis for concluding that they do.

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[6] Order MO-2143-F.

[7] Moreover, given the exemptions claimed for the three missing records and the nature of those records as described in the index and considered against other similar records, I would invariably have found that records 248, 270 and 271 were excluded from the scope of the *Act* by virtue of the application of section 65(6).

[36] As noted above, the *Act* does not require an institution to prove with absolute certainty that additional records do not exist. An institution is only required to provide sufficient evidence to show that it has made a *reasonable* effort to identify and locate records responsive to the request.

[37] I find that in the circumstances the university has provided a sufficiently detailed explanation of the reasonable efforts to identify and locate any records responsive to the appellant's request. Therefore, I am satisfied that the university's searches were reasonable.

B. Is some of the information not responsive to the appellant's request?

[38] In this appeal, approximately 480 records were disclosed, in full or in part, in response to the appellant's request. Additionally, 348 records were withheld from him. On review of these records during the preparation of its representations, the university advised that of the 348 records that were identified and withheld pursuant to the exclusion and exemption claims, it takes the position that only records 218, 219, 244, 245, 257, 260, 261, 300, 301, and 345 are actually responsive to the appellant's request in this appeal.

[39] Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. That section states that the requester must "provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record." If the request "does not sufficiently described the record sought", that section provides that the institution "shall inform the applicant of the effect and shall offer assistance in reformulating the request."

[40] Institutions should adopt a liberal interpretation of a request and generally, ambiguity in the request should be resolved in the requester's favour.[8] To be considered responsive to the request, records must "reasonably relate" to the request.[9]

[41] The appellant's request was for information sent and received by the President of the university between November 20, 2006 and the date of the request. The university submits that of the records that have not been disclosed, only records 218, 219, 244, 245, 257, 260, 261, 300, 301, and 345 are actually responsive to the appellant's request because they address the subject matter sought by the appellant in this request, specifically, records sent or received by the President of the university.

[42] I accept that the request was clear and that it was not necessary for the university to have clarified its scope with the appellant. I have reviewed records 1 to 348 carefully and agree with the university that other than the approximately 480 pages

[8] Order P-134.
[9] Order PO-2661.

of records that were disclosed in full or in part to the appellant together with a decision letter, of the records that were identified at mediation as remaining at issue only records 218 219, 244, 245, 257, 260, 261, 300, 301, and 345 are indeed responsive to the appellant's request. In my view, it cannot be said that the other records reasonably relate to the appellant's request for information in this appeal. None of the remaining records were either sent or received by the President of the university.

[43] I acknowledge that it is very unusual for such a significant number of records to be located in a search, identified as being related to a particular request, and then included as being at issue in a particular appeal, only to be subsequently identified as not responsive to the original request. However, as discussed above in the context of the university's search, the circumstances of the original processing of the request which are difficult to ascertain, and, given that the university was concurrently processing multiple requests from the appellant requesting records relating to him, created by or sent by and from a variety of different individuals in a variety of different contexts, I find it plausible that the university was over-inclusive in its search for responsive records in relation to this request. When the request was initially processed these records were identified as well. These records, while not specifically responsive to the appellant's request for records sent and received by the President of the university, do, in most circumstances, relate to him and the majority of them, if not all of them, are responsive to other requests that he has made for information related to himself and have been at issue and addressed in related appeals.

[44] As noted above, in my careful examination of the content of records 1 to 348, I find that the information contained in the majority of them is not specifically responsive to the appellant's request in this appeal. Therefore, I find that the only records responsive to the appellant's request that remain at issue are records 218, 219, 244, 245, 257, 260, 261, 300, 301, and 345. Additionally, as the appellant has indicated that he wishes to pursue access to all of the records responsive to his request, I also find the records that were partially disclosed to him and re-located during the inquiry process by the FOIC are at issue in this appeal.

[45] As a result, the remainder of this order will only address this limited number of records.

C. Does the labour relations exclusion at section 65(6) exclude the records from the scope of the *Act*?

[46] The university takes the position that the *Act* does not apply to records 218, 219, 244, 245, 257, 260, 261, 300 and 301 because they fall within one or both of the exclusions listed at sections 65(6) 1 or 3. Those sections state:

> 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:
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> 1. Proceedings or anticipated proceedings before a court, tribunal or other entity relating to labour relations or to the employment of a person by the institution.
>
> …
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> 3. Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest.

[47] In its representations, the university submits generally that the records for which it claims the exclusions at section 65(6), were collected and prepared by employees and/or agents on behalf of the university in relation to anticipated proceedings before a tribunal relating to labour relations and the employment of the appellant (section 65(6)1), as well as meetings, consultations, discussions, or communications about labour relations or employment related matters in which the university has an interest (section 65(6)3).

[48] In this appeal, the appellant does not make any specific representations on the possible application of the exclusion at section 65(6) to the records at issue in this appeal. However, in previous appeals he has stated that he requires access to similar records for the purpose of participating in several labour arbitrations related to his employment with the university as well as an application before the Ontario Labour Relations Board.

Section 65(6): general principles

[49] 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*.

[50] For the collection, preparation, maintenance or use of a record to be "in relation to" the subjects mentioned in paragraph 1, 2, or 3 of this section, it must be reasonable to conclude that there is "some connection" between them.[10]

[51] The term "labour relations" refers to the collective bargaining relationship between an institution and its employees, as governed by collective bargaining

[10] Order MO-2589, *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner,* 2010 ONSC 991 (Div. Ct.).

legislation, or to analogous relationships. The meaning of "labour relations" is not restricted to employer-employee relationships.[11]

[52] 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.[12]

[53] 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.[13]

[54] Section 65(6) may apply where the institution that received the request is not the same institution that originally "collected, prepared, maintained or used" the records, even where the original institution is an institution under the *Municipal Freedom of Information and Protection of Privacy Act*.[14]

[55] 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.[15]

[56] 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.[16]

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

[57] 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

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[11] *Ontario (Minister of Health and Long Term Care) v. Ontario (Assistant Information and Privacy Commissioner),* [2003] O.J. No. 4123 (C.A.), Order PO-2157.
[12] Order PO-2157.
[13] *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.
[14] Orders P-1560, PO-2106.
[15] *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.).
[16] *Ibid.*

3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest.

Requirement 1: were the records collected, prepared, maintained or used by the university or on its behalf?

[58] The university submits that all of the records that it has identified as being excluded from the application of the *Act* pursuant to section 65(6) "were prepared by employees of the university and were maintained by the university" for subsequent use in matters related to the employment of the appellant.

[59] Having reviewed the records carefully, they consist primarily of emails and other communications between university employees and officials including university legal counsel (both internal and external), the former President, former Secretary of the university, former Vice-President Academic and Provost, former Vice-President Human Resources, former interim Vice-President University Relations and former Dean of the Faculty of Science. I accept that all of the records for which the exclusion at section 65(6)3 was claimed were collected, prepared, maintained or used by the university as contemplated by the first requirement of the exclusion.

Requirement 2: were the records collected, prepared, maintained and/or used in relation to meetings, consultations, discussions or communications?

[60] The university submits that all of the records for which section 65(6) was claimed were collected, prepared, maintained and/or used in relation to meetings, consultations, discussions or communications that were had amongst various university staff regarding labour relation and employment-related matters involving the appellant.

[61] On my review of the content of the records, I accept that they were collected, prepared, maintained and/or used in relation to meetings, consultations, discussions or communications. As previously mentioned, the records consist primarily of emails and other communications between employees of the university and, in my view, it is clear that they represent discussions, consultations, or communications between those employees and the university's legal counsel. Some of the other records relate to meetings and discussions between university staff, including legal counsel and still others relate to communications prepared by the university. Accordingly, I accept that the second requirement of the test for the exclusion at section 65(6)3 has been met.

Requirement 3: were the meetings, consultations, discussions or communications about labour relations or employment related matters in which the university has an interest?

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

- a job competition[17]
- an employee's dismissal[18]
- a grievance under a collective agreement[19]

[63] The phrase "labour relations or employment-related matters" has been found *not* to apply in the context of:

- an organizational or operational review[20]
- litigation in which the institution may be found vicariously liable for the actions of its employee[21]

[64] 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.[22]

[65] 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.[23]

[66] The university takes the position that the meetings, consultations, discussions or communications in which the records were used were about labour relations or employment-related matters in which the university has an interest. It submits that at the time that the records were created and at the time that the request for information that was the origin of this appeal was filed, the appellant was a full time professor at the university and member of the Association of Professors of the University of Ottawa (APUO). It submits that the university and the appellant were engaged in several labour-relations or employment-related matters, such as disciplinary proceedings against the appellant and grievances filed by the appellant, under the collective agreement. It submits that in the collection, preparation, maintenance, and use of the

[17] Orders M-830, PO-2123.
[18] Order MO-1654-I.
[19] Orders M-832, PO-1769.
[20] Orders M-941, P-1369.
[21] Orders PO-1722, PO-1905.
[22] *Solicitor General, supra,* note 9.
[23] *Ministry of Correctional Services, supra,* note 11.

records, the university was acting as an employer and conditions of employment were at issue.

[67] The university further submits that it has an interest in matters involving its own workforce and, in particular, matters pursuant to the collective agreement, which it strives to abide by. It submits that the records were prepared and maintained in connection with consultations discussions and communications between, *inter alia,* the university's legal counsel, the university's human resources employee and the Dean of the Faculty of Science, in relation to labour and employment-related matters (more specifically, disciplinary matters) involving the appellant. It submits that for the university, "as for any employer, disciplinary actions and grievances filed under the Collective Agreement are serious matters which must be solved as efficiently as possible as they affect the working environment which is a matter in which the university has an interest."

[68] Previous orders of this office, including the decision in *Solicitor General*[24] have found that disciplinary actions involving an employee are employment-related matters. In addition, a number of previous orders have established that grievances initiated pursuant to the procedures contained in the collective agreement are, by their very nature, about labour relations matters.

[69] With respect to the scope of the exclusionary provision, Swinton J., for a unanimous Court, wrote in *Ontario (Ministry of Correctional Services) v. Goodis* (2008)[25] that:

> In *Reynolds v. Ontario (Information and Privacy Commissioner),* [2006] O.J. No. 4356, this Court applied the equivalent to s. 65(6) found in municipal freedom of information legislation to documents compiled by the Honourable Coulter Osborne while inquiring into the conduct of the City of Toronto in selecting a proposal to develop Union Station. The records he compiled in interviewing Ms. Reynolds, a former employee, were excluded from the *Act*, as Ms. Osborne was carrying out a kind of performance review, which was an employment-related exercise that led to her dismissal (at para. 66). At para 60, Lane J. stated,
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> > It seems probable that the intention of the amendment was to protect the interests of institutions by removing public right of access to certain records relating to their relations with their own workforce.

[70] Cautioning that there is no general proposition that all records pertaining to employee conduct are excluded from the *Act*, even if they are in files pertaining to civil

[24] *Supra,* note 9.
[25] *Supra,* note 14.

litigation or complaints by a third party, Swinton J. also pointed out that "[w]hether or not a particular record is 'employment related' will turn on an examination of the particular document."

[71] I agree with the analysis set out above and adopt it for the purpose of making my determinations in this appeal.

[72] Having reviewed the substance of the records for which section 65(6)3 has been claimed, I accept that they were collected, prepared, maintained or used in relation to meetings, consultations, discussions or communications about labour relations or employment related matters in which the university has an interest. Specifically, the records address existing and anticipated disciplinary proceedings initiated by the university in relation to the appellant's conduct and existing and anticipated grievances initiated by the appellant in relation to the university's actions, filed under the collective agreement. In keeping with previous orders identified above, I find that these types of matters clearly amount to labour relations or employment related matters in which the university has an interest, as contemplated by the third requirement of the test for the exclusion at section 65(6)3 of the *Act*. Accordingly, I find that the third requirement has been met.

[73] As I have found that all requirements of the test for the exclusion at section 65(6)3 has been met for all of the records for which it has been claimed, I find that they are therefore excluded from the scope of the *Act*. Accordingly, it is not necessary for me to determine whether the exclusion at section 65(6)1 applies in the circumstances of this appeal.

[74] Once the records for which the exclusion at section 65(6)3 has been found to apply are removed from the scope of the appeal, only record 345 remains at issue.

D. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[75] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the records contain "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;

[76] 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.[26]

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

> (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

[26] Order 11.

> dwelling and the contact information for the individual relates to that dwelling.

[78] 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.[27]

[79] 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.[28]

[80] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[29]

Representations

[81] The university submits that the records contain the appellant's "personal information" as defined in the definition of that term in section 2(1) of the *Act*. The university submits that none of the responsive records contain the personal information of identifiable individuals other than the appellant.

[82] In some of the other related appeals, the appellant takes the position that all of the responsive records contain his own personal information.

Analysis and findings

[83] As a result of the application of the exclusion at section 65(6), only record 345 and the records that were partially disclosed to the appellant together with the university's decision letter remain at issue.

[84] I have reviewed these records and find that all of them contain the personal information of the appellant. Although this information is about the appellant in a professional capacity, I find that because the subject matter relates to grievances and disciplinary hearings, the information reveals something of a personal nature about him.[30]

[85] The university submits that none of the records at issue contain the personal information of individuals other than the appellant. Based on my review, I agree that

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[27] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[28] Orders P-1409, R-980015, PO-2225 and MO-2344.
[29] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).
[30] Orders PO-2524, PO-2633, PO-3045.

record 345 does not contain anyone else's personal information. The records that were partially disclosed to the appellant are also at issue in this appeal, however, I have reviewed the records identified as having been partially disclosed to the appellant and find that, in addition to containing the personal information of the appellant, these records also contain the personal information of other identifiable individuals, such as their names together with other personal information about them, as contemplated by paragraph (h) of the definition of "personal information" in section 2(1). This information also includes personal information such as email addresses [paragraph (c)], educational history [paragraph (b)], and identifying numbers assigned to some of the individuals [paragraph (c)].

E. Does the discretionary exemption at section 49(a), read in conjunction with the solicitor-client privilege exemption at section 19, apply to the records?

[86] While 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.

[87] 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. [emphasis added]

[88] 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 an institution the power to grant requesters access to their personal information.[31]

[89] The university submits that section 19 of the *Act* applies to exempt record 345 from disclosure. As noted above, record 345 contains the personal information of the appellant.

Solicitor-client privilege

[90] Section 19 of the *Act* reads as follows:

> A head may refuse to disclose a record,

[31] Order M-352.

> (a) that is subject to solicitor-client privilege;
>
> (b) that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation; or
>
> (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.

[91] Section 19 contains two branches as described below. The university must establish that one or the other (or both) branches apply.

Branch 1: common law privilege

[92] Branch 1 of the section 19 exemption appears in section 19(a) and 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.[32]

Solicitor-client communication privilege

[93] 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.[33]

[94] The rationale for this privilege is to ensure that a client may confide in his or her lawyer on a legal matter without reservation.[34]

[95] 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.[35]

[96] The privilege may also apply to the legal advisor's working papers directly related to seeking, formulating or giving legal advice.[36]

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[32] Order PO-2538-R; *Blank v. Canada (Minister of Justice)* (2006), 270 D.L.R. (4th) 257 (S.C.C.).
[33] *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).
[34] Orders PO-2441, MO-2166 and MO-1925.
[35] *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.).
[36] *Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27.

[97] 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.[37]

Branch 2: statutory privilege

[98] Branch 2 of section 19 arises from sections 19(b) and (c). The university claims section 19(c) is applicable in this appeal as it applies to a records prepared by or for counsel for an educational institution for use in giving legal advice. The statutory exemption and common law privileges, although not necessarily identical, exist for similar reasons.

Representations

[99] The university submits that record 345 contains information that amounts to legal advice provided by the university's legal counsel. It submits that the record is privileged and confidential communications between its legal counsel and officers of the university that was prepared for the purpose of obtaining or giving professional legal advice. The university submits:

> The solicitor-client privilege is crucial to individuals within the university, as it allows them to freely make requests for and obtain legal advice, knowing it will remain confidential. In order to protect the integrity of the office of the legal counsel, including the continuum of communications between the legal counsel and the university officers and personnel, the records must be exempt from disclosure.

[100] The university concludes with the submission that it did not take any action that constitutes a waiver of its common law and statutory solicitor-client privilege either implicitly or explicitly.

[101] In related appeals, the appellant makes the following general submissions that relate to the possible application of the solicitor-client privilege exemption:

> [A] university staff lawyer that is routinely involved in all aspects of the labour relations involving the appellant and that is effectively performing investigations … in the place of the dean as foreseen by the workplace Collective Agreement (CA) cannot be considered an independent legal counsel free to fully exercise her professional independence responsibilities and therefore cannot be considered a solicitor for the purposes of defining solicitor-client privilege used as an exemption regarding access. This makes a farce of solicitor-client privilege.

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[37] *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.).

[102] The appellant also submits:

> The university waived its solicitor-client privilege for many matters when it showed sensitive records to student volunteer and later employed [named individual] and when [named individual] conveyed this to a friend and roommate.

Analysis and findings

[103] I have carefully reviewed record 345 for which the exemption at section 19 has been claimed. I find that it is an email with a related attachment that was sent, in confidence, to university staff by the university's internal legal counsel providing legal advice. Therefore, I accept that it represents a written communication of a confidential nature, between the university's legal counsel and its officers and/or agents for use in giving legal advice with respect to the university's approach regarding disciplinary and grievance proceedings. Accordingly, I find that the statutory privilege at section 19(c) applies to record 345.

[104] The application of statutory privilege has been limited on the following common law grounds as stated or upheld by the Ontario courts:

- waiver of privilege by the *head of an institution,*[38] and
- the lack of a "zone of privacy" in connection with records prepared for use in or in contemplation of litigation.[39]

[105] In prior, related appeals, the appellant takes the position that the university has waived its solicitor-client privilege by disclosing records to certain individuals. However, aside from his statement, he does not provide any evidence that the privilege attached to any of the specific records at issue has been waived, either explicitly or implicitly by the head of university or any other individuals. The university asserts that privilege has not been waived. From my review of the content of the records themselves it appears that they are confidential communications to and from the university's own counsel, both external and internal. Given that I have not been provided with sufficient evidence to conclude that the university waived its privilege with respect to the information contained in the specific records at issue, I find that waiver does not apply and the records are subject to the statutory solicitor-client privilege exemption at section 19(c).

[106] The appellant also submits that because the university's internal counsel is involved in investigating labour relations matters related to him, she is not independent and cannot be considered a solicitor for the purposes of the solicitor-client privilege exemption. I do not accept that this submission is relevant in the determination of

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[38] *Ontario (Attorney General) v. Big Canoe*, [2006] O.J. No. 1812 (Div. Ct.).
[39] *Ibid.*

whether section 19(c) applies. The information for which the solicitor-client privilege is claimed was clearly prepared by or for the university counsel, who is counsel employed or retained by an educational institution for use in giving legal advice as contemplated by section 19(c). Accordingly, I find that the privilege applies.

[107] As I have found that record 345 is subject to the statutory solicitor-client privilege outlined in section 19(c), and that the university has not waived that privilege, subject to my review of the university's exercise of discretion below, I find that record 345 qualifies for exemption under section 19(c).

F. Does the discretionary exemption at section 49(b), or the mandatory exemption at section 21(1), apply to the records?

[108] Although the university makes no submission on this issue, I note that the severed portions of records that were disclosed to the appellant contain both the personal information of the appellant, as well as that of other identifiable individuals. As I have found that these records also contain the personal information of the appellant, the more appropriate exemption is the discretionary exemption at section 49(b), which is informed by section 21(1).

[109] As noted above, section 49 provides a number of exemptions from an individual's general right of access to their personal information held by an institution described in section 47(1) of the *Act*.

[110] Under section 49(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would constitute an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester.

[111] If the information falls within the scope of section 49(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the requester's right of access to his or her own personal information against the other individual's right to protection of their privacy.

[112] For section 49(b) to apply, I must be satisfied that disclosure of the information would constitute an unjustified invasion of another individual's personal privacy.

[113] Sections 21(2) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold under section 49(b) is met. Section 21(2) provides some criteria to be considered in making this determination; section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

Representations

[114] As the partially disclosed records were only located by the university during the inquiry stage, the university made no representations on the possible application of the exemption at section 49(b). In my view, as this information involves the possible disclosure of information related to other individuals it must be addressed in this order. The severed information is of a similar nature to that found in other related appeals. In those appeals, the university claims that the information that has been severed from the partially disclosed records is subject to the discretionary personal privacy exemption at section 49(b) because it amounts to the personal information of other individuals and its disclosure would constitute an unjustified invasion of those other individuals' personal privacy.

[115] In these other, related appeals, the appellant states that he has a compelling need to receive his own personal information for a number of reasons. He states generally that "he has a natural right to know what was being said about him in the university's improper campaign against the appellant." He also states that he needs to receive his personal information for the purpose of matters in which he is involved, including labour arbitrations, an Ontario Labour Relations Board application, and a civil lawsuit.

[116] He submits that "disclosure, which he undertakes to make public, will increase public confidence in the operation of the institution because the university will be seen to be accountable via this transparency."

Analysis and finding

[117] Having considered the severed portions of the records that were partially disclosed to the appellant closely, I find that the university has properly severed this information as it is subject to the discretionary exemption at section 49(b).

[118] All of the records amount to emails sent by identifiable individuals to university staff, including the former President. The emails have been partially disclosed except for the names, personal email addresses and other personal information about the individuals.

[119] Having reviewed the severed information, I find that none of the presumptions at section 21(3) apply to the information at issue. I also find that section 21(4) is not applicable to the information at issue.

[120] Turning to the considerations listed in section 21(2), I find that none of the factors favouring disclosure apply. Specifically, I am not satisfied that the personal information at issue is relevant to the fair determination of the appellant's rights [section 21(2)(d)], nor do I accept that its disclosure is desirable for the purpose of

subjecting the activities of the university to public scrutiny [section 21(2)(a)]. Rather, I accept that one of the listed factors favouring severance applies. Specifically, I find that the personal information has been supplied in confidence [section 21(2)(h)] and that from the context of these records, the individuals to whom this information relates would not expect the university to disclose their names, personal email addresses, and other personal information about themselves, to the appellant, for his own private purposes.

[121] Accordingly, I find that disclosure of the personal information belonging to individuals other than the appellant that is found in the severed portions of the records that were partially disclosed to the appellant would amount to an unjustified invasion of their personal privacy and find that the discretionary exemption at section 49(b) applies to this personal information.

G. Should the university's exercise of discretion under sections 49(a) and 49(b) be upheld?

[122] The exemptions at section 49(a) and (b) are discretionary, and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, this office may determine whether the institution failed to do so.

[123] In this order, I have found that record 345 qualifies for exemption under section 49(a), read in conjunction with section 19(c), and the severed portions of the records that were partially disclosed to the appellant qualify for exemption under the discretionary exemption at section 49(b). Consequently, I will assess whether the university exercised its discretion properly in applying this exemption to record 345 and the portions of records that have been withheld.

[124] This office 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, or
- it fails to take into account relevant considerations.

[125] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[40] This office may not, however, substitute its own discretion for that of the institution. [41]

[40] Order MO-1573.
[41] Section 43(2) of the *Act*.

[126] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:

- 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 of 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.[42]

Representations

[127] The university submits that it exercised its discretion appropriately in withholding record 345 pursuant to the discretionary exemptions at section 19(c). In similar appeals, the university has submitted that it has appropriately withheld the portions of

[42] Orders P-344 and MO-1573.

records that are substantially similar to those partially disclosed to the appellant pursuant to section 49(b).

[128] In its representations, the university states that in exercising its discretion it did not act in bad faith or for improper purposes and identifies the considerations it took into account when it chose to exercise its discretion not to disclose the records remaining at issue. Specifically, it took into consideration:

- whether the requester was seeking his own personal information,
- whether the requester had a sympathetic or compelling need to receive the information, and
- whether disclosure would increase public confidence in the operation of the university.

[129] The university submits:

> In examining [record 345] … [it] represent[s] … a communication of a confidential nature between a solicitor and client for the purpose of providing advice. In this regard, the exchange of confidential communications between University of Ottawa legal counsel and officers of the University of Ottawa represent a continuum of communications regarding, amongst others, the development of the strategies to be implemented in dealing with labour-relation matters and the various steps that the University of Ottawa needs to follow in dealing with such matters in accordance with the disciplinary and grievance process set out under the collective agreement.
>
> The [record] at issue contain[s] information about the appellant as [it] relate[s] to labour-relations matters.
>
> There is no sympathetic or compelling need for the requestor to receive the information. The protection of the confidentiality of the advice is important to the university as it provides the university with confidence that it is able to seek legal advice or exchange information and communications with university legal counsel in the furtherance of such advice at present and in the future.
>
> Historically, the university has never disclosed solicitor-client communications as such communications are regarded as privileged, thereby increasing public confidence in the operation of the University of Ottawa.

[130] In previous related appeals, addressing the severances made to emails removing the personal information of individuals other than the appellant, the university has stated:

> It is important that personal information of other individuals, for the disclosure will constitute an unjustified invasion of personal privacy in accordance with *FIPPA,* remain undisclosed. This university is not in the practice of disclosing personal information about an individual to someone other than the individual to whom the personal information relates without consent.
>
> Hence, in an attempt to protect the integrity of the office of the legal counsel and the privacy of individuals the university sought to exercise its discretion and not disclose the relevant records.

[131] In related appeals, on the issue of the university's exercise of discretion, the appellant submits that:

- the university's exercise of discretion should not be upheld, and
- that the university exercised its discretion in bad faith, for an improper purpose and in a manner that is inconsistent with the *Act*.

Analysis and finding

[132] I have reviewed record 345 and the records that were partially disclosed to the appellant. I accept that the university's exercise of discretion not to disclose record 345 pursuant to section 49(a), read in conjunction with section 19(c), and the severed portions of records of the records partially disclosed to the appellant pursuant to section 49(b) was proper and made in good faith. Accordingly, I uphold the university's decision to deny access to the records that I have found qualify for exemption under sections 49(a) and (b) of the *Act*.

H. Should the university's fee be upheld?

[133] An institution must advise the requester of the applicable fee where the fee is $25 or less. Where the fee exceeds $25, an institution must provide the requester with a fee estimate.[43] Where the fee is $100 or more, the fee estimate may be based on either

- the actual work done by the institution to respond to the request, or

[43] Section 57(3) of the *Act*.

- a review of a representative sample of the records and/or the advice of an individual who is familiar with the type and content of the records.[44]

[134] The purpose of a fee estimate is to give the requester sufficient information to make an informed decision on whether or not to pay the fee and pursue access.[45] The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fee.[46]

[135] In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated.[47]

[136] This office may review an institution's fee and determine whether it complies with the fee provisions in the *Act* and Regulation 460, as set out below.

[137] Section 57(1) requires an institution to charge fees for requests under the *Act*. That section reads:

> A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,
>
> (a) the costs of every hour of manual search required to locate a record;
>
> (b) the costs of preparing the record for disclosure;
>
> (c) computer and other costs incurred in locating, retrieving, processing and copying a record;
>
> (d) shipping costs; and
>
> (e) any other costs incurred in responding to a request for access to a record.

[138] More specific provisions regarding fees are found in sections 6, 6.1, 7 and 9 of Regulation 460. The relevant portions of those provisions state:

> 6. The following are the fees that shall be charged for the purposes of subsection 57(1) of the *Act* for access to a record:

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[44] Order MO-1699.
[45] Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.
[46] Order MO-1520-I.
[47] Orders P-81 and MO-1614.

1. For photocopies and computer printouts, 20 cents per page.

…

3. For manually searching a record, $7.50 for each 15 minutes spent by any person.

4. For preparing a record for disclosure, including severing a part of the record, $7.50 for each 15 minutes spent by any person.

6.1 The following are the fees that shall be charged for the purposes of subsection 57(1) of the Act for access to personal information about the individual making the request for access:

1. For photocopies and computer printouts, 20 cents per page.

7. (1) If a head gives a person an estimate of an amount payable under the Act and the estimate is $100 or more, the head may require the person to pay a deposit equal to 50 per cent of the estimate before the head takes any further steps to respond to the request.

(2) A head shall refund any amount paid under subsection (1) that is subsequently waived.

9. If a person is required to pay a fee for access to a record, the head may require the person to do so before giving the person access to the record.

Calculation of fee

[139] In its decision letter, the university disclosed to the appellant 172 emails totalling 480 pages and advised that it took the President of the university 12 hours to perform the search. The university also provided the appellant with a fee estimate with an explanation of the fee as follows:

Search time:	12 hours x $30 = $360
Preparation time:	1.8 hours x $30 = $54 (54 pages with severances x 2 mins = 108 minutes)
Photocopying:	480 x $0.20 = $96
TOTAL:	**$510**

[140] In determining whether to uphold a fee estimate, my responsibility under section 57(5) is to ensure that the estimated amount is reasonable. The burden of establishing the reasonableness of the fee estimate rests with the university. To discharge this burden, the university must provide me with detailed information as to how the fee estimate has been calculated in accordance with the provisions of the *Act*, and produce sufficient evidence to support its claim.

Representations

[141] In its decision letter, the university advised the appellant that the total actual search time taken to identify the records responsive to his request amounted to 12 hours. In its representations, the university chose not to make submissions providing details about the breakdown of its fee, identifying the steps taken in its search. Instead, the university simply stated that it maintains its fee as provided in its decision letter.

Analysis and finding

[142] Section 57(1) of the *Act* requires the institution to charge fees in the amount prescribed by the regulations. Section 6.1 of Regulation 460 (not section 6) is the section that governs the fees that shall be charged for access to personal information about the individual making the request. Unlike section 6, which governs fees for access to general records, section 6.1 does not permit an institution to charge fees for searching or preparing records for disclosure if those records contain the requester's own personal information.

[143] I have found that given the nature of the request, all of the responsive information contains the appellant's own personal information. Accordingly, I disallow the portions of the fee related to the search and preparation of the records relating to the appellant's request. I do, however, uphold the university's charge for photocopying the records disclosed to the appellant at the prescribed rate of $0.20 per page.

ORDER:

1. I uphold the university's search for responsive records.

2. I uphold the university's access decision.

3. I do not uphold the portions of the university's fee related to the search and preparation of the responsive records and order the university to refund the appellant $414.00.

Original Signed by: November 27, 2012
Catherine Corban
Adjudicator