

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-3168

Appeal PA11-185

Ryerson University

February 26, 2013

**Summary:** This is an appeal by an objecting affected party of the university's decision to disclose information pertaining to him. In its decision letter the university withheld certain information under section 49(b) of the *Act* (personal privacy) but decided to disclose other information on the basis that it was provided in a professional, business or official capacity and did not qualify as personal information. The university's decision is upheld.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 2(1), 2(3), 2(4), 49(b).

**Orders Considered:** Orders P-710, P-787, PO-2225 and PO-2834.

### OVERVIEW:

[1] Ryerson University (the university) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act* or *FIPPA*) for access to certain information. The requester subsequently revised the initial request and confirmed that access was being sought to copies of records in the university's Security and Emergency Services (Security Services) containing the requester's name, for the period between April 1, 2010 and November 1, 2010. The requester further indicated that access was not being sought to the "identities or private information" relating to four specific individuals that may appear in the records.

[2] The university then notified a number of persons whose interests may be affected by disclosure under section 28(1) of the *Act* to obtain their position on access. One of the affected parties (the objecting affected party) objected to the disclosure of any information pertaining to them in the responsive records. The university then issued its decision letter.

[3] In its decision letter, the university confirmed that the requester was not seeking access to any personal information relating to other individuals contained in the records and granted partial access to the records it identified as responsive to the request, upon payment of a fee. The university relied on section 49(b) of the *Act* (personal privacy) to deny access to the portion of the records it withheld. In accordance with the requester's direction the information that the university withheld included the identities and personal information of the four specific individuals he identified in the revised request. The objecting affected party (now the appellant) appealed the university's decision to provide information that pertained to him. The requester did not appeal the university's access decision. Accordingly, in this appeal I am only addressing information that the university decided to disclose and will not be addressing information, including information pertaining to the appellant, that the university decided to withhold.

[4] At mediation, the appellant confirmed that he is only appealing the university's access decision regarding Records 6, 8 and 9. The Mediator's Report indicated that the following information in Records 6, 8 and 9 that the university decided to disclose remained at issue:

Record 6 - General Incident Report  
emails of specific dates and times and corresponding email string

Record 8 - Email String  
emails of specific dates and times and corresponding email string

Record 9 - Email String  
emails of specific dates and times and corresponding email string

[5] The appeal could not be resolved at mediation and it was moved to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*.

[6] I commenced the inquiry by seeking representations from the university and the appellant on the facts and issues set out in a Notice of Inquiry. Only the university provided responding representations. I then sent a Notice of Inquiry to the original requester, along with a copy of the non-confidential representations of the university. The original requester did not provide any representations in response to the Notice of Inquiry. In the meantime, the appellant expressed a desire to provide representations in the appeal and requested and received a copy of the materials that had been sent to

him previously. The appellant then provided representations. The appellant's representations raised issues to which I decided the university should have an opportunity to reply. Accordingly, I sent a letter to the university, along with a copy of the appellant's representations inviting representations in reply. The university provided reply representations.

## **ISSUES:**

### **Preliminary matter**

[7] Although submissions were made with respect to the severing of personal information of other identifiable individuals, in this order I will only be addressing the information pertaining to the appellant that the university decided to disclose.

### **Application of the *Act***

[8] In his representations the appellant takes issue with the application of the *Act* in the circumstances of this appeal.

[9] The university is identified as an institution under the *Act*, and is, thereby, subject to its provisions.<sup>1</sup> Records arising out of communications with the university's Security Services that are in the university's custody or control<sup>2</sup> are subject to the *Act*. The records that the university identified as responsive to the request were the responsive records that were in its custody or control. Accordingly, the access provisions in the *Act*, as set out below, are applicable in the circumstances of this appeal.

### **Personal information**

[10] Under *FIPPA*, different exemptions may apply depending on whether a record at issue contains or does not contain the personal information of the requester.<sup>3</sup> Where records contain the requester's own personal information, either alone or together with the personal information of other individuals, access to the records is addressed under Part III of *FIPPA* and the exemptions at section 49 may apply. In order to determine which sections of *FIPPA* apply, it is therefore necessary to decide whether the record contains "personal information" as defined in section 2(1) of *FIPPA* and, if so, to whom it relates.

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<sup>1</sup> See the list of institutions in R.R.O. 1990, Regulation 460.

<sup>2</sup> Section 10(1) of the *Act* reads, in part, "every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless . . .".

<sup>3</sup> Order M-352.

***The university's representations***

[11] The university takes the position that it has severed all personal information pertaining to individuals other than the requester in accordance with section 49(b) of the *Act*. The university submits that the remaining portions of the records include information about individuals in an official capacity which should be released to the requester "in accordance with section 47 (right of access to one's own personal information) supported by section 2(3) (individual in an official capacity) of the *Act*."

[12] The university explains that it:

... has severed portions of the records that contain personal information. In particular the university has severed the information that would reveal the appellant's personal email address, personal telephone number, gender, Ryerson status, personal opinion and physical description.

In addition, the university has severed personal information of individuals other than the appellant and the requester in the records. This information would reveal these individuals' names, personal contact information, gender, age, date of birth, Ryerson status, relationship, family status, employment history, type of identification, personal view, and physical description. The university submits that disclosure of this information about individuals other than the appellant and the requester would result in an unjustified invasion of these other individual's personal privacy.

[13] The university submits, however, that the records also contain information pertaining to the appellant that does not qualify as "personal information" under the *Act*. Relying on Orders P-710, PO-2225 and PO-2834, the university submits that a name does not constitute personal information when it refers to individuals acting in a business or official capacity or where the individual acts as a spokesperson for a group.

[14] The university takes the position that the source and substance of the communications at issue demonstrate that the appellant was acting as a spokesperson for the community radio station. It submits that the information that it has decided to disclose is information relating to the community radio station, which was provided in an official and/or business capacity.

[15] Accordingly, the university submits that the portions of the records at issue "do not reveal information about the appellant in a personal capacity." As a result, the university says, that information should be disclosed to the requester.

### ***The appellant's submissions***

[16] The appellant requested that his representations remain confidential. Without revealing the specific details of his submissions, he explains the nature of his role at the community radio station and asserts that all communications were made in confidence. He objects to the disclosure of any information, including email addresses pertaining to him, which could lead to his identification.

### ***Analysis and findings***

[17] To satisfy the requirements of the definition in section 2(1) of *FIPPA*, the information must be "recorded information about an identifiable individual," and it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>4</sup> The definition of personal information in section 2(1) contemplates inclusion of the following types of information:

- (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 where 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 content of the original correspondence,
- (g) the views or opinions of another individual about the individual, and

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<sup>4</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

- (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.

[18] 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) of the definition of the term in section 2(1) may still qualify as personal information.<sup>5</sup>

[19] Sections 2(3) and (4) of the *Act* 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 dwelling and the contact information for the individual relates to that dwelling.

[20] 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.<sup>6</sup>

[21] However, previous orders have also found that 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.<sup>7</sup>

[22] In Order PO-2225, former Assistant Commissioner Tom Mitchinson, set out the following two-step process applicable to a determination of whether information is "about" an individual in a business, professional or official rather than a personal capacity, and therefore does not constitute personal information:

...the first question to ask in a case such as this is: "*in what context [does the information] of the individuals appear?*" Is it a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere?

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<sup>5</sup> Order P-11.

<sup>6</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>7</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

The analysis does not end here. I must go on to ask: *"is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual?"* Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature? [emphasis in original]

[23] Turning to the test set out in Order PO-2225, I find that the information in the emails remaining at issue in this appeal was generated in relation to the radio station's concerns about the requester's conduct. In my view, whether the sender's role was paid or unpaid does not affect the context in which the communications took place.<sup>8</sup> In my view, the information the university decided to disclose does not appear in a context that is inherently personal, but rather relates to a business, professional or official context that is removed from the personal sphere.

[24] Furthermore, I am of the view that the disclosure of the portions of the records at issue pertaining to the appellant that the university decided to disclose would not reveal something inherently personal in nature. There is no evidence before me that the appellant was the focus of an investigation into whether his conduct was appropriate. In my view, any opinions set out in the information at issue that the university decided to disclose were not provided in a personal capacity.

[25] Accordingly, I find that the contents of the records remaining at issue pertaining to the appellant that the university decided to disclose, does not qualify as personal information.

[26] As discussed by the university in its submissions, section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49(b) provides an exemption to this general right of access.

[27] Section 49(b) reads:

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

Where the disclosure would constitute an unjustified invasion of another individual's personal privacy.

[28] As set out above, this order only addresses information pertaining to the appellant that the university decided to disclose which does not qualify as personal information. Because section 49(b) only applies to personal information, the information that pertains to the appellant that the university decided to disclose is not exempt under that section.

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<sup>8</sup> See Order P-787.

**ORDER:**

1. This order only addresses the information pertaining to the appellant in the records at issue that the university decided to disclose. In all other respects, the university's decision to withhold or disclose information was not before me in this appeal.
2. I uphold the university's decision with respect to the information pertaining to the appellant that the university decided to disclose. In that regard I do not uphold the appellant's appeal with respect to the information pertaining to him that the university decided to disclose.
3. I reserve the right to require the university to provide me with a copy of the records that it discloses to the requester in accordance with the terms of this order. The university should not release any information to the requester pursuant to this order before **March 28, 2013**.

Original signed by: \_\_\_\_\_  
Steven Faughnan  
Adjudicator

\_\_\_\_\_ February 26, 2013