Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3193

Appeal PA12-271

Carleton University

April 29, 2013

Summary: An association of postdoctoral fellows sought access to the names and university email addresses for all postdoctoral fellows at the university. The adjudicator finds that the names and email addresses are "personal information" within the meaning of the *Freedom of Information and Protection of Privacy Act*, and the requester has not established that its disclosure would not be an unjustified invasion of personal privacy. The public interest override does not apply.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1), 21(1) and 23.

Cases Considered: *Canadian Union of Public Employees v Governing Council of the University of Toronto*, 2012 CanLII 1673, *Carleton University Postdoctoral Association v Carleton University*, 2013 CanLII 3527.

OVERVIEW:

[1] Carleton University (the university) received the following request under the *Act* from a representative of the Carleton University Postdoctoral Association (CUPA):

> On behalf of the Carleton University Postdoctoral Association, I am requesting for all postdoctoral fellows registered at Carleton University: (i) the Carleton University email addresses, (ii) the contact telephone

> numbers, and (iii) the department in which the [postdoctoral fellow] is registered.

[2] The record produced by the university in response to the request is a list of postdoctoral fellows (PDFs) and contains the following information: the PDF's first and last name, email address, start and end date, faculty and unit.

[3] In response to the request, the university issued a decision to the requester, denying access to the requested information. The university advised the requester:

> … we are of the opinion that the information requested is personal information, and thus cannot be disclosed under [the Act]'s mandatory exemptions. In addition, we believe that that the Postdoctoral Fellows (PDF's) are not acting in a business, professional or official capacity, removing them from the scope of sec 2(3) of [the Act].

[4] The university further advised the requester that staff at the Faculty of Graduate and Postdoctoral Affairs agreed to assist the requester "by sending out an email to all Post Doctorate Fellows, indicating that if they would like to receive communication from CUPA they can do so by sending their information to you or another Executive."

[5] The requester (now the appellant) appealed the university's decision to this office. Mediation of the appeal through this office did not result in resolution and it was transferred to the adjudication stage of the appeals process, where a written inquiry is conducted.

[6] During the inquiry, I sought and received representations from the university and the appellant. In addition, I sought and received further representations from the university in response to those submitted by the appellant.

[7] The appellant was represented in this appeal by a member of its executive. For ease of communication, I will refer interchangeably to this individual and the association as the "appellant".

[8] In the discussion that follows, I find that the names and email addresses at issue are "personal information" within the meaning of section 2(1) of the *Act* and find that their disclosure would constitute an unjustified invasion of the identified individuals' privacy under section 21(1).

RECORD:

[9] The record consists of a list of the postdoctoral fellows (PDFs) and contains the following information: the PDF's first and last name, email address, start and end date, faculty and unit. There are approximately 70 names on the list. Every name is

associated with an email address, and five individuals have more than one email address. Twenty-nine of the email addresses are on a Carleton University account, and 41 are not. The list of email addresses includes those issued by other educational institutions, internet service providers or commercial enterprises.

[10] In the appellant's submissions, he indicated that he wishes to clarify the scope of the request. He states that the records requested consist of:

> The names and Carleton University email addresses for all postdoctoral fellows registered at Carleton University.

[11] The appellant states he is not requesting any other email addresses.

[12] Given the appellant's clarification, non-Carleton University email addresses and other information contained in the record, such as the start and end date of fellowships and the faculty and unit a PDF is associated with, are not at issue in this appeal.

ISSUES:

Issue A: Does the record contain "personal information" as defined in section 2(1)?

[13] The university relies on the mandatory exemption in section 21(1) to withhold the entire record at issue. Before I can determine whether the personal privacy exemption may apply to the record, it is necessary to decide whether it contains "personal information" and, if so, to whom it relates.

[14] The term "personal information" is defined in section 2(1) of the *Act* 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 view 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 contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name if 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;

[15] 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.[1]

[16] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[2]

[17] Section 2(3) also relates to the definition of personal information. That section states:

> (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.

[18] 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.[3]

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[1] Order 11.
[2] Order PO-1880, upheld.
[3] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225

[19] 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.[4]

Representations

[20] In its representations, the university submits that the record contains personal information of Carleton University PDF's, referring to section 2(1)(h) of the *Act*. It states that the email addresses of the PDF's are their personal information. Further, the university submits that the PDF's are not acting in a business, professional or official capacity and any university-issued email addresses are not covered by section 2(3) of the *Act*.

[21] To support its position, the university refers to its *Postdoctoral Fellowship Policy*, which states:

> All PDFs must be registered with the faculty of Graduate and Postdoctoral Affairs (FPGA). PDFs are individuals who are designated as such by external funding agencies and the university. They are independent researchers that meet the specific eligibility criteria of the funding source and Carleton University, and are neither students nor faculty or staff.

[22] The university submits that it recognizes PDFs as independent researchers and not employees or contractors. Further, the university submits that the role of the PDF is viewed as a transition period between academia and employment, providing an opportunity to perform research with a Carleton faculty member or research unit. In addition to performing research with a faculty member or unit, the university submits that the PDF searches for opportunities to gain meaningful employment where their extensive educational background may be constructively utilized and that it is a "very common" occurrence for a PDF to leave the university prior to the completion of their fellowship.

[23] In response, the appellant submits that the PDFs are employees of the university. The appellant submits that a PDF must be working at a specific university and they are paid from the grants of their faculty supervisor, who is an employee of the university. Further, the appellant submits that PDFs are required to identify themselves as Carleton University postdoctoral fellows in their publications, when participating in conferences and in interviews with the media. The appellant submits that the contact information PDFs are expected to use in published journal articles are their physical and email addresses at the university. As such, the appellant submits that the PDFs are acting at a minimum in a business or professional capacity while performing their

[4] Orders P-1409, R-980015, PO-2225 and MO-2344

research at the university and that their university-issued email addresses are not their personal information.

[24] In reply, the university states that PDFs are all provided with a university-issued email address, but they are not obliged to use this address to communicate. The university states that while it is best practice that students and employees communicate through the university email system, this practice does not apply to the PDFs, as they are outside the scope of students and employees. As such, the university submits that it is the PDFs' choice to use whichever address they prefer through the course of their time at the university.

[25] Both parties were aware of a decision of the Ontario Labour Relations Board (OLRB) in *Canadian Union of Public Employees v Governing Council of the University of Toronto*, 2012 CanLII 1673, in which the OLRB found a group of postdoctoral fellows at the University of Toronto to be "employees" within the meaning of the *Labour Relations Act, 1995*[5] (*Labour Relations Act*). The university submitted that the PDF's at the University of Toronto are fundamentally different from those at Carleton. The appellant submits that, as it currently has an Application for Certification before the OLRB with respect to the Carleton University PDF's, the university is debating issues that are within the exclusive jurisdiction of the OLRB to determine.[6]

Analysis

[26] The materials provided by both parties provide some useful background context for my determinations on this issue. From the OLRB decisions, it appears that whether at the University of Toronto or at Carleton University, the term "postdoctoral fellow" refers to an individual who has recently received a Ph.D. or equivalent and who is engaged in research in collaboration with university faculty. At both institutions, PDF's may have applied for and received their own funding from a source external to the university, or may be paid from the grant of their faculty supervisor.

[27] The PDF's found to be "employees" of the University of Toronto by the OLRB were those paid from the research grants of a faculty member. There was no determination about the employee status of PDF's who receive their own external funding. As of January 18, 2013, the date of certification with respect to the PDF's at Carleton University, there was still an unresolved issue about whether it should include PDF's who applied for and were awarded funding from a source outside the university.[7] There has therefore been no determination about the employee status of this group, for the purpose of collective bargaining.

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[5] SO 1995, c 1, Sch A

[6] Subsequent to these submissions, the OLRB granted a bargaining certificate to the appellant (*Carleton University Postdoctoral Association v Carleton University*, 2013 CanLII 3527), although the ultimate composition of the bargaining unit remained to be determined or resolved.

[7] *Carleton University Postdoctoral Association*, above.

[28] The list of PDF's in this appeal does not distinguish between PDF's who are paid from faculty research grants and those who have obtained their own funding. It evidently includes some PDF's who are covered by the bargaining unit description for which the appellant was granted bargaining rights, but it also includes PDF's who may not ultimately be in the bargaining unit.

[29] As a preliminary matter, while there may be PDF's amongst the group who are "employees" for the purposes of labour relations, and whose names and contact information may therefore be covered by this exclusion to the definition of personal information, I cannot determine which individuals this may comprise. I also note that there does not appear to be a direct correlation between the PDF's whom the OLRB has found to be "employees", and those who have chosen to adopt a Carleton University email address. In these circumstances, my analysis will address all of the names and email addresses at issue without regard to whether specific PDFs could be considered "employees."

[30] In the university's "Postdoctoral Fellow Handbook", as well as the "Postdoctoral Fellowship Policies" (the PDF Policy), it states that a PDF is "neither a student nor a faculty or staff member, but an independent researcher." The Handbook describes other aspects of the relationship between the university and a PDF, such as use of athletic facilities, the library and health services. It also states that PDF's are entitled to a Carleton email account.

[31] The PDF Policy, therefore, does not require PDF's to use a Carleton email account. An account is offered, but PDF's are not required to take one. Consistent with this, it is evident from the record that many PDF's choose not to obtain a Carleton email account. Of some 70 individuals, only 29 are shown as using a Carleton email account. The others, as described above, have email addresses associated with other universities, internet service providers, commercial entities, or whose association is unclear. Evidently, some individuals have opted to retain email addresses they adopted previous to their association with Carleton. It is also reasonable to conclude that, whichever email address these individuals choose, it is used for communications which may or may not be related to their activities with the university.

[32] Although the appellant asserts that PDFs are expected to use their Carleton University email addresses when participating in conferences or interviews with the media, there is nothing in the PDF Policy that addresses this, and the fact that only a minority of the PDF's on the list have a Carleton University email address suggests otherwise.

[33] Turning to the *Act*, I conclude that the names and email addresses of the PDF's, regardless of whether the email addresses were issued by Carleton University or another provider, are their "personal information". Applying section 2(1), it is "recorded

information about an identifiable individual", including information relating to their education or whose disclosure would reveal other personal information about the individual. The names reveal that these individuals have obtained a Ph.D and are associated with the university as a PDF performing research for a limited term, within the meaning of sections 2(1)(b) and (h). In addition, I find that the email addresses are either an "identifying number, symbol or other particular" assigned to the individual within the meaning of section 2(1)(c), or an "address" within the meaning of section 2(1)(d). My conclusion is consistent with previous orders from this office that have found email addresses to be "personal information" within the meaning of section 2(1) of the *Act*[8].

[34] Further, and having regard to the material and submissions before me, I am unable to conclude that the names and email addresses of the PDF's identifies them "in a business, professional or official capacity", within the meaning of section 2(3) of the *Act*.

[35] This office has previously found that the identification of an individual as a student reveals personal information[9] and has not treated the status of a student as a "business, professional or official" capacity. In some respects, the PDF's are similar to graduate students in that they are engaged in research endeavours with a high degree of independence, while supervised by a faculty member. In other respects, they are different from graduate students in that they do not engage in the research with the prospect of obtaining a degree from the university. Post-doctorate fellows may participate in activities that can broadly be considered "professional" (assuming that a person engaged in academic pursuits is included in the concept of a "professional"), such as publishing papers or presenting research at conferences. But graduate students also participate in these sorts of activities and in any event, my findings here are not intended to capture every context in which similar information may appear.

[36] As indicated, the OLRB has determined that certain PDF's are employees for the purpose of collective bargaining. The OLRB did not determine that all PDF's at this university are employees under the *Labour Relations Act*, but only those funded by the university. It may well be that even for the group of PDF's who are not "employees" for the purpose of collective bargaining, there are aspects of their association with the university that resemble an employee-employer relationship. I do not need to come to a firm conclusion on whether all members of this group of PDF's are "employees", just as I do not need to come to a firm conclusion on whether they are "students". As I have stated, PDF's generally have characteristics of both and in this respect can be reasonably viewed as a hybrid of extended graduate students and paid researchers.

[8] See for instance, Orders PO-3139, PO-3119.
[9] See Order PO-2992, Privacy Complaint Report PC06-85.

[37] The question for me to determine is whether the evidence before me establishes that the individuals on the list are associated with the university in a "business, professional or official" capacity. On balance, having regard to the differences within the group of PDF's, and the characteristics I have described above, I find the evidence insufficient to convince me that the names of the PDF's on the list identifies them in a "business, professional or official" capacity in their relationship with the university. I conclude, therefore, that the names and email addresses of the PDF's on the list are their personal information within the meaning of the *Act*. I will now consider whether this personal information can be disclosed to the appellant.

Issue B: Does the mandatory exemption at section 21(1) apply to the information at issue?

[38] Where a requester seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies. In the circumstances, it appears that the only exception that could apply is section 21(1)(f), which states:

> 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. [emphasis added]

[39] Under the above provision, where a requester seeks the personal information of another individual, and all things being equal, the privacy interest prevails.

[40] The factors and presumptions in sections 21(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 21(1)(f). In this appeal, both parties devoted their submissions to the question of whether the information at issue is personal information. The appellant did not explore the applicability of the factors and presumptions in section 21. The university only referred to section 21(2)(h), stating that the list of PDF's changes from week to week.

[41] I do not find section 21(2)(h) relevant to the issues before me. The fact that the list changes, does not support either the privacy interests in non-disclosure or the appellant's interest in disclosure.

[42] Where no party has identified any factors suggesting that disclosure of the information would not be an unjustified invasion of personal privacy, the personal privacy exemption applies. In this case, it has not been established that disclosure would *not* be an unjustified invasion of personal privacy and it follows that the

information is, therefore, exempt from disclosure under the mandatory section 21(1) exemption.

Issue C: Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 21(1) exemption?

[43] Section 23 states:

> An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[44] For section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

[45] In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government[10]. Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices[11].

[46] A public interest does not exist where the interests being advanced are essentially private in nature[12]. Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist[13].

[47] The appellant did not address the application of the public interest override in his representations. The university submits it does not apply. It states that the information would serve no value to the public and would be a breach of the privacy of the PDF's at the university.

[48] I find no compelling public interest in disclosure of the records. The appellant has an interest in contacting the PDF's, and also believes that such contact would benefit the PDF's. The appellant does not seek the information for the purpose of informing or enlightening the public about the activities of the government, but seeks it for its own purposes or, on a broader view, for the benefit of the PDF's. I find this

[10] Orders P-984, PO-2607.
[11] Orders P-984, PO-2556
[12] Orders P-12, P-347 and P-1439
[13] Order MO-1564

more of a private than a public interest. Further, as indicated above, the university has offered to contact the PDF's advising them that they may forward their contact information to the appellant if they wished to receive communications from it. The material before me establishes that the university has co-operated with the association in forwarding information about the association's meetings to the PDF's in the past.

[49] Finally, as the appellant has been certified as the bargaining agent for certain PDF's at the university, it will likely be able to obtain contact information for at least the individuals whom it represents, through the process of collective bargaining.

[50] In these circumstances it cannot be said that there is a compelling public interest in disclosure of the information that clearly outweighs the purpose of the personal privacy exemption in the *Act*, and section 23 does not apply.

ORDER:

1. I uphold the decision by the university to withhold the information at issue in this appeal.

Original signed by: April 29, 2013
Sherry Liang
Senior Adjudicator