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-3294

Appeal PA12-369

University of Ottawa

January 16, 2014

**Summary:** The appellant sought access to records exchanged between the university and an identified organization (the affected party). The university located responsive records and granted partial access to them. It relied on the discretionary exemptions in sections 49(a), read with sections 17(1) (third party information) and 18(1) (economic interests), and 49(b) (personal privacy) of the *Act* to deny access to some records. The appellant appealed the university's decision. The appellant confirmed that she does not seek access to the personal information of other individuals; accordingly, this information is not at issue in this appeal. This order does not uphold the university's decision, and orders the university to disclose the records to the appellant.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1), 17(1), 18(1)(c) and 18(1)(h)

**Orders and Investigation Reports Considered:** MO-1215

## BACKGROUND:

[1] The University of Ottawa (the university) received an access request, under the *Freedom of Information and Protection of Privacy Act* (the *Act*), for the following information:

> … all documents and/or records exchanged between [an identified organization], particularly to and from [three identified individuals] as well

> as anyone else who communicated with the University of Ottawa from the organization.
>
> The communication would be in the offices of the following University staff:
>
> [three identified individuals]
>
> I would also like to request all documents/records of communications by [the university] staff named above in which they mention either [the identified organization or two identified individuals].
>
> Please limit the scope of the search to the period between February 2010 and May 2010.

[2] The university located records responsive to the request and issued a decision to the requester, granting partial access to the records. The university advised the requester that it withheld portions of the records under the discretionary exemptions in section 49(a), read with sections 17 (third party information), 18 (economic and other interests) and 19 (solicitor-client privilege), and section 49(b) (unjustified invasion of personal privacy). In addition, the university advised that one record was identified as not responsive to the request. The university enclosed a copy of an index of records (the index) with its decision letter and advised that it would be charging a $10.00 fee to process the request.

[3] The requester, now the appellant, appealed the university's decision.

[4] During mediation, the university confirmed that section 19 was incorrectly applied to record 129. The university advised that the index should instead state that section 49(a), read with section 18, of the *Act* applies to record 129. As a result, section 19 is not at issue in this appeal.

[5] The appellant confirmed that she does not take issue with the reasonableness of the university's search and the $10.00 fee. In addition, the appellant advised the mediator that she does not seek access to the information identified as not responsive to the request, or to records where only section 21(1) of the *Act* was applied to deny access. Therefore, the following records identified in the university's index are no longer at issue in this appeal: 7, 34, 37, 42, 113, 114, 117, 118, 119 and 120.

[6] The appellant also clarified that she does not seek access to the personal information that relates exclusively to other affected parties which is found in records 59-62, 64, 82, 83, 87-89, 91, 123 and 124.

[7] The appellant confirmed that she seeks access to the remaining records, in whole or in part.

[8] The parties were unable to resolve the appeal through mediation and the file was transferred to the adjudication stage of the appeals process for a written inquiry.

[9] The adjudicator assigned to conduct the inquiry invited the university and the organization referred to in the request (the affected party) to submit representations in response to a Notice of Inquiry, and they did so. The appellant was then invited to make submissions in response to those of the university and she also submitted representations on the issues in the appeal.

[10] Following the completion of the inquiry, the appeal was transferred to me to complete the order. In the discussion that follows, I do not uphold the university's decision. I find that the records are not exempt under section 49(a), in conjunction with sections 17(1) and 18(1) of the *Act*. I order the university to disclose all the records to the appellant, with the exception of the personal information of individuals other than the appellant, which the appellant confirms that she does not seek access to.

**RECORDS:**

[11] The records at issue consist of email correspondence as described in the university's index with the exception of records 7, 34, 37, 42, 113, 114 and 117-120, which are no longer at issue.

**ISSUES:**

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

B. Does the discretionary exemption at section 49(a) in conjunction with the section 17(1) exemption apply to records 22, 23, 25-33, 38-41, 43-49, 52, 56-64, 70-74, 76-84, 87-89, 91, 93, 95, 97, 104-105, 108-110, 112, 121-127, 130-132 and 135-136?

C. Does the discretionary exemption at section 49(a) in conjunction with the section 18(1) exemption apply records 23-33, 36, 38-41, 43-45, 47-49, 56-64, 66, 68-77, 79-84, 86-89, 91, 95, 97, 105, 108-110, 112, 121-125, 127, 129-130, 132 and 134-136?

## DISCUSSION:

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

[12] Although this issue was not originally included in the inquiry, in order to determine which sections of the *Act* may apply, it is necessary for me to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

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

> where the disclosure of the name would reveal other personal information about the individual;

[13] 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]

[14] 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 dwelling and the contact information for the individual relates to that dwelling.

[15] 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.[2]

[16] 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.[3]

[17] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[4]

[18] In their representations, both the university and the appellant submit that the records contain the appellant's personal information.

[19] Based on my review of the records, I find that all of the records contain recorded information about the appellant which qualifies as her personal information for the purposes of section 2(1). In particular, I find the records contain information relating to her education and employment history (paragraph (b) of the "personal information" definition), the views or opinions of another individual about her (paragraph (g)) and

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[1] Order 11.
[2] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[3] Orders P-1409, R-980015, PO-2225 and MO-2344.
[4] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

her name where it appears with other personal information relating to her or where the disclosure of her name would reveal other personal information about her (paragraph (h)).

[20] In addition, I find that the records at issue contain information that meets the requirements for personal information relating to other individuals, including the university's Internship/Clinical Experience Co-ordinator. In its representations, university submits that records 59-64, 75-77, 79, 82-83, 87-89, 91 and 123-124 contain the personal information of individuals other than the appellant.

[21] The university submits that records 59-62 and 64 are exchanges of emails that contain the personal views or opinions of an individual other than the appellant, as well as a private phone number. I have reviewed these records and agree that portions of these records, specifically portions of a single email that is repeated in the email exchanges, contain the private phone number of an identifiable individual (paragraph (b) of the "personal information" definition), as well as the personal views or opinions of an individual other than the appellant (paragraph (e)). However, I do not agree with the university's submission that the personal opinion in the second sentence of the first paragraph of the email at the top of page 59 (and reproduced in records 60, 61, 62 and 64) does not contain the personal information of the individual expressing that opinion. Reviewing this sentence, I find that contains the appellant's personal information as it is an opinion about her (paragraph (g)).

[22] The university submits that records 75-77 and 79 are an exchange of emails containing the personal information of another individual, specifically another student, containing information relating to their educational and employment performance/history. I agree with the university. The portions identified by the university contain a description of another individual's educational and employment history (paragraph (b)) and is therefore this individuals "personal information", as defined in section 2(1).

[23] As well, the university submits that records 82 and 83 contain information about an identified individual's medical history. The university refers to a specific part of the records that relates to this individual's medical history and I agree that it contains the personal information of this individual, as contemplated by paragraph (b) of section 2(1).

[24] The university also submits that the email exchanges in records 87-89 and 91 contain the personal information of individuals other than the appellant. The university describes the specific portions of the single email that is reproduced in the four records. The university takes the position that these portions contain the personal information of identified individuals. Reviewing these materials, I agree. The portions of the records identified by the university contain "personal information" as defined by the *Act*,

relating to other individuals' medical history (paragraph (b)), personal phone numbers (paragraph (d)) and their personal views or opinions (paragraph (e)).

[25] The university submits that records 123 and 124 consist of exchanges of emails that contain the personal information of parties other than the appellant. The university submits that every email, with the exception of the last email, in record 123 contains personal information that does not relate to either the requester or her request and should therefore be severed. With regard to the last email in record 123, the university submits that the first paragraph contains personal information belonging to individuals other than the affected party. The university states that the information identified as personal information in record 123 is reproduced in record 124. Based on my review of the records, I agree with the university and find that records 123 and 124 contain the personal information of other individuals relating to their educational or employment history (paragraph (b)) and their personal opinions and views (paragraph (e)). However, I note that the second and third paragraphs of the last email in record 123 (reproduced in record 124) and the first two paragraphs of the last email in record 124 contain the appellant's personal information.

[26] I note that during the appeal process and in her representations, the appellant confirmed that she does not seek access to the personal information of other individuals. The appellant states that she only seeks access to her own personal information. As a result, the information that I have found to contain the personal information of individuals other than the appellant is not at issue in this appeal. Further, since the personal privacy exemption in section 49(b) was applied to only the personal information of individuals other than the appellant, I do not need to consider whether section 49(b) applies to the records.

[27] As all of the information in the records remaining at issue relates only to the appellant, I will consider the application of the discretionary exemption in section 49(a).

### B. Does the discretionary exemption at section 49(a), in conjunction with the section 17(1) exemption, apply to records 22, 23, 25-33, 38-41, 43-49, 52, 56-64, 70-74, 76-84, 87-89, 91, 93, 95, 97, 104-105, 108-110, 112, 121-127, 130-132 and 135-136?

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

Section 49(a) reads:

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

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

[29] Section 49(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information.[5]

[30] Where access is denied under section 49(a), the institution must demonstrate that, in exercising its discretion, it considered whether a record should be released to the requester because the record contains his or her personal information.

[31] The institution withheld records 22, 23, 25-33, 38-41, 43-49, 52, 56-64, 70-74, 76-84, 87-89, 91, 93, 95, 97, 104-105, 108-110, 112, 121-127, 130-132 and 135-13, claiming the application of the exemption in section 49(a) in conjunction with section 17(1), which states:

> A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,
>
> (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
>
> (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
>
> (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
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> (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

[5] Order M-352.

[32] Section 17(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions.[6] Although one of the central purposes of the *Act* is to shed light on the operations of government, section 17(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace.[7]

[33] For section 17(1) to apply, the institution and/or the affected party must satisfy each part of the following three part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and

2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and

3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 17(1) will occur.

### ***Part 1: Type of Information***

[34] In their representations, the university and the affected party submit that the information in records 22, 23, 25-33, 38-41, 43-49, 52, 56-64, 70-74, 76-84, 87-89, 91, 93, 95, 97, 104-105, 108-110, 112, 121-127, 130-132 and 135-136 contain "labour relations information".

[35] The affected party submits that the information contained in these records is properly characterized as labour relations information. The affected party states that the appellant was enrolled in an internship with it as part of her program of study at the university. The affected party states that the appellant's internship was for a period of two months and required her to work on a variety of projects. Had she successfully completed her internship, the appellant would have achieved credits toward her program of study.

[36] The affected party states that the records listed above are emails between it and the university discussing the appellant's performance during her internship. The affected party also states that the emails contain discussions regarding the measures to be taken to address the appellant's performance issues and the reason for the decision to terminate her internship. The affected party submits that the information can properly be said to constitute labour relations information as it relates to its

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[6] *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.), leave to appeal dismissed, Doc. M32858 (C.A.).
[7] Orders PO-1805, PO-2018, PO-2184 and MO-1706.

management and discipline of individuals working for the company, specifically the appellant.

[37] The term "labour relations information" in section 17(1) has been discussed in prior orders:

> *Labour relations information* has been found to include:
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> - discussions regarding an agency's approach to dealing with the management of their employees during a labour dispute[8]
> - information compiled in the course of the negotiation of pay equity plans between a hospital and bargaining agents representing its employees[9]
>
> but **not** to include:
>
> - names and duties and qualifications of individual employees[10]
> - **an analysis of the performance of two employees on a project**[11]
> - an account of an alleged incident at a child care centre[12]
> - the names and addresses of employers who were the subject of levies or fines under workers' compensation legislation[13] [Emphasis added]

[38] In Order MO-1215, former Assistant Commissioner Tom Mitchinson considered whether a copy of reports prepared by two individuals and an audit completed in relation to a project qualified as labour relations information within the meaning of section 10(1) of the municipal *Act*, the equivalent provision to section 17(1). In their representations, the institution in that appeal claimed that the information in the records contained labour relations information as the records consisted of an analysis of information concerning two of its employees and their performance in the project. The

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[8] Order P-1540.
[9] Order P-653.
[10] Order MO-2164.
[11] Order MO-1215.
[12] Order P-121.
[13] Order P-373, upheld in *Ontario (Workers' Compensation Board) v. Ontario (Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).

former Assistant Commissioner did not agree with the institution's submissions, finding that:

> "Labour relations information" has been defined as the collective relationship between an employer and its employees (Order P-653).
>
> While I agree that the record contains some information relating to employee performance, the record in no way concerns the "collective relationship between the employer and employees", and I find that the record does not contain nor would it reveal labour relations information.

[39] I adopt this finding for the purposes of this analysis.

[40] The records at issue in the present appeal consist of email discussions between the affected party and the university regarding the measures to be taken to address the appellant's performance issues and the reason for the decision to terminate her internship. Reviewing these records, I find that the records do not contain information relating to the collective relationship between an employer and its employees. Rather, the records relate solely to the performance and termination of a single intern, the appellant, with the affected party. Accordingly, I find that the term "labour relations information" does not include records relating to the discussion of the performance and termination of the appellant's internship.

[41] Additionally, I do not find that records 22, 23, 25-33, 38-41, 43-49, 52, 56-64, 70-74, 76-84, 87-89, 91, 93, 95, 97, 104-105, 108-110, 112, 121-127, 130-132 and 135-136 contain information that is a trade secret or scientific, technical, commercial or financial information as those terms have been defined in previous orders.

[42] Therefore, I find that the affected party and university have failed to satisfy part one of the section 17(1) test. As all three parts of the section 17(1) test must be satisfied for the exemption to apply, I do not need to consider whether the other two parts of the test apply. I find that section 17(1) does not apply to exempt records 22, 23, 25-33, 38-41, 43-49, 52, 56-64, 70-74, 76-84, 87-89, 91, 93, 95, 97, 104-105, 108-110, 112, 121-127, 130-132 and 135-136 from disclosure.

### C. Does the discretionary exemption at section 49(a), in conjunction with the section 18(1) exemption, apply to records 23-33, 36, 38-41, 43-45, 47-49, 56-64, 66, 68-77, 79-84, 86-89, 91, 95, 97, 105, 108-110, 112, 121-125, 127, 129-130, 132 and 134-136?

[43] The university has claimed the application of the discretionary exemption at section 49(a) in conjunction with section 18(1) to withhold records 23-33, 36, 38-41, 43-45, 47-49, 56-64, 66, 68-77, 79-84, 86-89, 91, 95, 97, 105, 108-110, 112, 121-125, 127, 129-130, 132 and 134-136.

[44] Specifically, the university refers to the exemptions in sections 18(1)(c) and (h) to withhold the records listed above. These sections state:

> A head may refuse to disclose a record that contains,
>
> (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
>
> (h) information relating to specific tests or testing procedures or techniques that are to be used for an educational purposes, if disclosure could reasonably be expected to prejudice the use or results of the tests or testing procedures or techniques

[45] The purpose of section 18 is to protect certain economic rights of institutions. The report titled *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*[14] explains the rationale for including a "valuable government information" exemption in the *Act*:

> In our view, the commercially valuable information of institutions such as this should be exempt from the general rule of public access to the same extent that similar information of non-governmental organizations is protected under the statute…. Government sponsored research is sometimes undertaken with the intention of developing expertise or scientific innovations which can be exploited.

[46] For sections 18(1)(c) or (h) to apply, the university must demonstrate that disclosure of the records "could reasonably be expected to" lead to the specified result. To meet this test, the university must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient.[15]

[47] The need for public accountability in the expenditure of public funds is an important reason behind the need for "detailed and convincing" evidence to support the harms outlined in section 18.[16]

[48] Parties should not assume that harms under section 18 are self-evident or can be substantiated by submissions that repeat the words of the *Act*.[17]

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[14] Vol. 2 (Toronto: Queen's Printer, 1980). (the Williams Commission Report)

[15] *Ontario (Workers' Compensation Board) v. Ontario (Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).

[16] Orders MO-1947 and MO-2363.

[49] The fact that individuals or corporations doing business with an institution may be subject to a more competitive bidding process as a result of the disclosure of their contractual arrangements does not prejudice the institution's economic interest, competitive position or financial interests.[18]

### *Section 18(1)(c)*

[50] The purpose of section 18(1)(c) is to protect the ability of institutions to earn money in the marketplace. This exemption recognizes that institutions sometimes have economic interests and compete for business with other public or private sector entities, and it provides discretion to refuse disclosure of information on the basis of a reasonable expectation of prejudice to these economic interests or competitive positions.[19]

[51] Referring to the purpose of section 18(1)(c), the university states that it expends much energy and many resources to compete with other universities each year to attract the best students. It explains that it must create quality programs and provide excellent employment opportunities to attract the best students. The university submits that, in order to maintain a good relationship with the organizations that provide internship opportunities, the university must maintain open channels of communications with these organizations.

[52] The university states that records 23-33, 36, 38-41, 43-45, 47-49, 56-64, 66, 68-77, 79-84, 86-89, 91, 95, 97, 105, 108-110, 112, 121-125, 127, 129-130, 132 and 134-136 contain email discussions between the university and the affected party relating to the management and evaluation of the appellant, who was an intern with the affected party. The university states that the communications between itself and the organization were implicitly confidential and were made with the objective of evaluating the performance of the appellant, finding solutions to improve her experience and the satisfaction of the organization.

[53] The university submits that the disclosure of the information could reasonably be expected to result in prejudice to its competitive position. Specifically, the university submits that the disclosure of these records could result in damage to the confidence in the communications between itself and the training organizations that provide internships to students, thereby potentially causing a loss of actual and potential training partners for the university's internship programs. The university submits that this could result in a reduction of quality internship opportunities for students and also reduce students' chances of finding appropriate employment opportunities. The university submits that it is essential for it to maintain good relations with organizations

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[17] Order MO-2363.
[18] See Orders MO-2363 and PO-2758.
[19] Orders P-1190 and MO-2233.

such as the affected party and to provide quality internship opportunities to its students, in order to maintain its competitive position.

[54] I do not agree with the university's position that records 23-33, 36, 38-41, 43-45, 47-49, 56-64, 66, 68-77, 79-84, 86-89, 91, 95, 97, 105, 108-110, 112, 121-125, 127, 129-130, 132 and 134-136 are exempt under section 18(1)(c). The university has not convinced me that the disclosure of emails between itself and the affected party could reasonably be expected to result in prejudice to the university's economic interests or competitive position.

[55] The records at issue consist of email discussions between a university representative and a representative with the affected party concerning the appellant's performance and subsequent termination as an intern with the affected party.

[56] The university's main concern is that the disclosure of these records would negatively impact the relationship between the university and the affected party, resulting in the loss of internship opportunities and negatively impacting the university's competitive position. In its representations, the university emphasizes the importance of maintaining a good relationship with the affected party and encouraging frank and confidential discussions regarding interns.

[57] After reviewing the records and the university's representations, I am not satisfied that the harms identified by the university could reasonably be expected to result from the disclosure of the record. The records at issue relate exclusively to the appellant's performance as an intern with the affected party and her subsequent termination. Based on my review of the university's representations and the records, I am not satisfied that the university has provided sufficiently detailed and convincing evidence to establish that disclosure of discussions relating to the performance and termination of one intern could reasonably result in significant harm to the working relationship between the university and the affected party.

[58] Furthermore, I am not convinced that the disclosure of this information would harm the university and affected party's relationship in such a way as to harm the university's ability to enter partnerships with organizations to provide internship opportunities to its students and then result in prejudice to the economic interests of the university or its competitive position. The harms that the university submits could reasonably be expected to result from the disclosure of these records are not reasonably related to the disclosure of the records and the university has not provided me with sufficient evidence to reasonably connect the disclosure of these records with the harms described. Therefore, I am not satisfied that the university has provided me with sufficiently detailed and convincing evidence to demonstrate that the disclosure would result in prejudice to its economic interests or competitive position as contemplated by section 18(1)(c).

[59] Accordingly, I find that records 23-33, 36, 38-41, 43-45, 47-49, 56-64, 66, 68-77, 79-84, 86-89, 91, 95, 97, 105, 108-110, 112, 121-125, 127, 129-130, 132 and 134-136 are not exempt under section 49(a), read with section 18(1)(c) of the *Act*.

### *Section 18(1)(h)*

[60] In order for the exemption in section 18(1)(h) to apply, the university must establish that:

1. The record contains information relating to

    a. specific tests, or

    b. testing products, or

    c. techniques

    that are to be used for an educational purpose, and

2. The disclosure could reasonably be expected to prejudice the use or results of the tests or testing procedures or techniques.

[61] The term "educational purpose" has been defined to include an evaluation of the quality and effectiveness of elementary and secondary education, and the development, administration and marking of testing materials completed by elementary and secondary students.[20]

[62] In its representations, the university refers to the French version of section 18(1)(h). The university makes the following submissions on the application of section 18(1)(h) to withhold records 23-33, 36, 38-41, 43-45, 47-49, 56-64, 66, 68-77, 79-84, 86-89, 91, 95, 97, 105, 108-110, 112, 121-125, 127, 129-130, 132 and 134-136:

> Reading the French version can help for the interpretation of this subsection as it referring to evaluation techniques or methods. This section could also apply to the records at issue.

[63] The university does not provide any other submissions regarding the application of section 18(1)(h) to the records.

[64] As previously indicated, for section 18(1)(h) to apply, the university must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm".

[20] Orders PO-2179 and PO-2593.

Evidence amounting to speculation of possible harm is not sufficient.[21] Reviewing the university's submissions, I am not satisfied that it has provided me with sufficiently detailed and convincing evidence to establish a reasonable expectation that the harm in section 18(1)(h) would result from the disclosure of the records. In fact, the university has simply reproduced the words of the *Act* and appears to argue that the harms are self-evident.

[65] Based on my review of the records, I find that section 18(1)(h) does not apply to exempt them from disclosure. The records do not contain information relating to specific tests, testing products or techniques to be used for an educational purpose. Rather, the records contain discussions regarding the performance and termination of the appellant in her internship with the affected party. Accordingly, I find that records 23-33, 36, 38-41, 43-45, 47-49, 56-64, 66, 68-77, 79-84, 86-89, 91, 95, 97, 105, 108-110, 112, 121-125, 127, 129-130, 132 and 134-136 are not exempt under section 49(a), read with section 18(1)(h) of the *Act*.

[66] In conclusion, I find that the records are not exempt under section 49(a), read with section 18(1) of the *Act*. As no other exemptions have been claimed for these records and no mandatory exemptions apply, I will order that the remaining information be disclosed to the appellant.

## ORDER:

I order the university to disclose all of the information at issue, with the exception of the information I have found to be the personal information of other individuals, by **February 21, 2014**, but not before **February 14, 2014**. I have included a highlighted copy of the information that should not be disclosed. Please note that I have only highlighted a single copy of an email, but that these emails are reproduced in other records. All copies of the emails should be severed in the same manner.

Original signed by: January 16, 2014
Justine Wai
Adjudicator

[21] *Ontario (Workers' Compensation Board) v. Ontario (Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).