

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3298

Appeal PA11-175

University of Ottawa

January 29, 2014

Summary: The appellant made a request to the university for records relating to himself at the university while he was a medical resident. The university granted partial access to the records denying information on the basis of the discretionary exemptions in section 49(a), with reference to section 19 (solicitor-client privilege), and 49(b) (personal privacy). The university also claimed that some of the information was not subject to the *Act* pursuant to the labour relations and employment exclusion in section 65(6). The university identified some of the information was not responsive to the appellant's request. Lastly, the university indicated that it had not conducted a search for records in one of the offices specified by the appellant as it did not have custody or control of records in this office. The adjudicator upholds the university's decision to deny access under sections 49(a) and (b) and finds that some of the records are excluded under section 65(6). The adjudicator find that the information withheld as not responsive does not reasonably relate to the appellant's request. Lastly, the order requires the university to request that a named doctor to search his records for responsive information relating to the appellant and issue a decision.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 2(1) (definition of "personal information"); 49(a), 19, 49(b), 21(2)(h), 21(3)(d), (g) and (h), 65(6)3.

Orders and Investigation Reports Considered: Orders PO-3009-F, PO-3216.

OVERVIEW:

[1] The appellant made the following request to the University of Ottawa (the university) under the *Freedom of Information and Protection of Privacy Act* (the *Act*):

Please provide copies of all correspondence memoranda associates (including emails) with respect to me generally and my academic performance at the [university] from [specified date] to date.

I expect the majority of my materials will be found in the offices of Legal [Counsel], the Dean of the Faculty of Medicine, the Association Dean PGME [named doctor], the Division of Cardiac Surgery, the Program Director of Cardiac Surgery [named doctor], the Human Resources, the President, the [VP] Governance, and other offices.

[2] The university located 837 records and issued a decision granting partial access to them, denying records in full and in part, with reference to the discretionary exemption in section 49(a), in conjunction with section 19 (solicitor-client privilege) of the *Act*. It denied access to other information under the discretionary exemption in section 49(b) (personal privacy), the mandatory exemption in section 21(1)(personal privacy), the discretionary exemption in section 18.1 (information with respect to closed meetings), and the exclusion in section 65(6) (labour relations and employment records). In addition, it withheld some information as not responsive to the appellant's request.

[3] The university's decision also indicated that it had conducted a paper and electronic search for records in the offices of the Legal Services, Dean of the Faculty of Medicine, Associate Dean, Postgraduate Medical Education, Human Resources, and President and Vice-President, Governance. The university stated that it was unable to conduct a search in the office of the Director of Cardiac Surgery as it did not have custody or control over his record holdings.

[4] The appellant appealed the university's decision. During mediation, the university issued a revised decision and provided the appellant with additional access to records. In addition, a number of records were removed from the scope of the appeal. These records are identified in the index of records attached to this order. The appellant also indicated the following:

- He is pursuing access to the remaining withheld records and parts of records, including information identified as not responsive.
- He disputes the university's claim that it does not have custody or control of the records in the office of the Director of Cardiac Surgery.

- He believes that the university should have additional responsive records.

[5] During my inquiry into this appeal, I sought and received representations from the appellant and the university. In its representations, the university withdrew its claim of section 18.1 for Record 144 and agreed to disclose it.

[6] In this order, I uphold the university's decision to withhold information as not responsive, as well as its decision to apply the exemptions in sections 49(a) and (b). I further find that the exclusion in section 65(6) applies to some of the records at issue. Finally, I order the university to conduct a search for responsive records as set out below.

RECORDS:

[7] The records at issue are set out in the index of records which is in the attached appendix to this order.

ISSUES:

- A. Are some of the records not responsive to the appellant's request?
- B. Are some of the records "in the custody" or "under the control" of the institution under section 10(1)?
- C. Are some of the records excluded from the scope of the *Act* under section 65(6)?
- D. Do the records contain "personal information", and if so, to whom does it relate?
- E. Does the discretionary exemption at section 49(b) apply to the personal information at issue?
- F. Does the discretionary exemption at section 49(a), in conjunction with section 19, apply to the information at issue?
- G. Was the university's exercise of discretion under sections 49(a) and (b) proper in the circumstances?
- H. Did the university conduct a reasonable search for records?

DISCUSSION:

A. Are some of the records not responsive to the appellant's request?

[8] Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;
 - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;

. . .

- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[9] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.¹

[10] To be considered responsive to the request, records must "reasonably relate" to the request.²

[11] The university submits that portions of Records #373, 471 and 686 are not responsive to the appellant's request. It states:

The withheld portions of Record #373 consist of a private comment between the Associate Dean and the Program Director of Cardiac Surgery.

The non-responsive portions of Record #471 consist of a list of mandatory on-line series for the medical residents that do not relate to the appellant's request.

¹ Orders P-134 and P-880.

² Orders P-880 and PO-2661.

The withheld portions of Record #686 are not responsive to the request and relate to another resident's appeal.

[12] The appellant submits that I carefully consider the university's claim that the information identified is actually not responsive information.

[13] Having reviewed the information, I find that the portions of the records identified as not responsive by the university do not reasonably relate to the appellant's request. I find this information is not responsive and I uphold the university's decision regarding this information.

B. Are some of the records "in the custody" or "under the control" of the institution under section 10(1)?

[14] The university submits that it does not have control of the records generated by physicians about medical residents. 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 . . .

[15] Under section 10(1), the *Act* applies only to records that are in the custody or under the control of an institution.

[16] A record will be subject to the *Act* if it is in the custody OR under the control of an institution; it need not be both.³

[17] A finding that a record is in the custody or under the control of an institution does not necessarily mean that a requester will be provided access to it.⁴ A record within an institution's custody or control may be excluded from the application of the *Act* under one of the provisions in section 65, or may be subject to a mandatory or discretionary exemption (found at sections 12 through 22 and section 49).

[18] The courts and this office have applied a broad and liberal approach to the custody or control question.⁵

³ Order P-239, *Ministry of the Attorney General v. Information and Privacy Commissioner*, 2011 ONSC 172 (Div. Ct.).

⁴ Order PO-2836.

⁵ *Ontario (Criminal Code Review Board) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 4072 *Canada Post Corp. v. Canada (Minister of Public Works)* (1995), 30 Admin. L.R. (2d) 242 (Fed. C.A.), and Order MO-1251.

[19] The university submits the following reasons in support of its position that it does not have control of the Director of Cardiac Surgery:

- Physicians in teaching hospitals have a dual status. They are physicians with medical privileges carrying out clinical duties at the hospital while holding an academic appointment carrying out academic duties to supervise and evaluate medical residents registered in the university program.
- The university is not in physical possession and does not have the authority to regulate the content or systems of the hospital's paper records or the hospital's servers housing electronic records.
- Communications between physicians and hospital employees about medical residents are often created, received or disseminated in the exercise of their professional and clinical duties and hospital responsibilities and not necessarily in purely the exercise of their academic duties.
- The content of the communications would contain information about the clinical duties and the clinical setting (for example, personal health information of the hospital's patients or other personal information in connection with the hospital's activities) in which case, this kind of information is unrelated to the university's mandate and it is also not accessible to it by custom or practice.

[20] The appellant submits that the university has custody or control over the records generated by the program director of the Cardiac Surgery program and cites Order PO-3009-F in support of his position.

[21] Recently, in Order PO-3257, I found that the university had control over the record holdings of two doctors who held both clinical positions at a teaching hospital and faculty positions with the university. In finding the university had control over the records of the two doctors, I cited Orders PO-3216 and PO-3009-F issued by Adjudicator Diane Smith. In Order PO-3009-F, Adjudicator Smith discussed whether the following types of records may be in the custody of university professors and also within the control of the university:

1. records or portions of records in the possession of an APUO [Association of Professors of the University of Ottawa] that relate to the personal matters or activities that are wholly unrelated to the university's mandate, are not in the university's custody or control;

2. records relating to teaching or research are likely to be impacted by academic freedom, and would only be in the university's custody and/or control if they would be accessible to it by custom or practice, taking academic freedom into account;
3. administrative records are prima facie in the university's custody and control, but would not be if they are unavailable to the university by custom or practice, taking academic freedom into account.

[22] In Order PO-3216, Adjudicator Smith stated the following in finding that the university had control over records held by university professors, who were also employees of Algonquin College:

The appellant identifies several university staff by name, including professors in her request. Based on the short time frame of the request and its wording, I find the appellant is primarily seeking records relating to herself concerning an issue that was brought before one of the university's committees. The records that the appellant is seeking do not relate to the named professor's own personal matters, nor are these records relating to teaching or research that are likely to be impacted by academic freedom.

It appears to me that the records the appellant is seeking are primarily administrative records, which are prima facie in the university's custody and control.

[23] I adopt the approach taken by Adjudicator Smith in those appeals.

[24] In the current appeal, the doctor identified by the appellant in his appeal holds both a faculty position with the university and is a physician at the hospital. Although many of his records may not be in the university's custody or control, some of his records may relate to academic matters in which the university has an interest.

[25] I find the following factors should be given some weight in my consideration of whether the university exercises control of the physician's records, insofar as he is a faculty member of the university:

- The doctor identified by the appellant in his request has a faculty appointment to carry out academic duties in supervising and evaluating medical residents enrolled in postgraduate medical training programs.
- Some of the records relating to the appellant could therefore relate to the appellant's academic performance during his residency.

- The university would have the right to request records relating to the appellant's academic performance during his medical residency and regulate its use and disposal.
- The university could rely on these records in its determination of whether the appellant had successfully completed his postgraduate medical training.

[26] The university submits that its custom and practice is not to access information relating to either the physician's clinical duties or the clinical setting. I find the university would not have control over records containing this type of information. However, as faculty members, these physicians are involved in evaluating the appellant's performance as a resident for the purpose of his postgraduate medical training. I find this factor is indicative of the university's control over this type of information.

[27] Accordingly, I find that the physician's records relating to the appellant's performance in postgraduate medical training at the hospital is within the university's control. I will order the university to request that the physician conduct a search for and provide it with any records relating to the appellant's academic performance in the university's postgraduate medical program. I will also order the university to issue a decision letter to the appellant regarding the results of the search.

C. Are some records excluded from the scope of the *Act* under section 65(6)?

[28] The university submits that Records 483, 484, 504, 507, 512, 513, 514, 515, 539, 546 – 554, 569, 608 – 611, 613, 615 – 627, 642 and 644 are excluded from the *Act* pursuant to section 65(6)3 as they relate to the appellant's grievance filed under the Professional Association of Interns and Residents of Ontario (formerly "PAIRO" now "PARO") and the Council of Academic Hospitals of Ontario (CAHO) collective agreement.

[29] Section 65(6)3 states:

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:

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

[30] 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*.

[31] 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.⁶

[32] The term “labour relations” refers to the collective bargaining relationship between an institution and its employees, as governed by collective bargaining legislation, or to analogous relationships. The meaning of “labour relations” is not restricted to employer-employee relationships.⁷

[33] 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.⁸

[34] 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.⁹

[35] 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*.¹⁰

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

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

⁶ Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).

⁷ *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.). See also Order PO-2157.

⁸ Order PO-2157.

⁹ *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.

¹⁰ Orders P-1560 and PO-2106.

Part 1: collected, prepared, maintained or used

[37] The university's submissions do not address this issue; however, it is evident that the records for which the exclusion has been claimed were collected, prepared, maintained or used by the university. As the university states, the records relate to the appellant's grievance with the hospital and are copies of emails and documents sent to and from university personnel, the hospital and counsel for PARO, the union representing the appellant. These records were also collected, prepared, maintained or used by the hospital, in itself an institution under the *Act*. I find that part 1 of the test has been established.

Part 2: meetings, consultations, discussions or communications

[38] Similarly, I find that the university's collection and usage of the records relates to the meetings, discussions and communications held between the university, the hospital and counsel for PARO relating to the appellant's grievance. Accordingly, I find that part 2 of the test has been established.

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

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

- a job competition¹¹
- an employee's dismissal¹²
- a grievance under a collective agreement¹³
- disciplinary proceedings under the *Police Services Act*¹⁴
- a "voluntary exit program"¹⁵
- a review of "workload and working relationships"¹⁶

¹¹ Orders M-830 and PO-2123.

¹² Order MO-1654-I.

¹³ Orders M-832 and PO-1769.

¹⁴ Order MO-1433-F.

¹⁵ Order M-1074.

¹⁶ Order PO-2057.

- the work of an advisory committee regarding the relationship between the government and physicians represented under the *Health Care Accessibility Act*.¹⁷

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

- an organizational or operational review¹⁸
- litigation in which the institution may be found vicariously liable for the actions of its employee¹⁹

[41] 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.²⁰

[42] 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.²¹

[43] In support of its claim that the records are excluded from the *Act*, the university submits that as a medical resident of its Faculty of Medicine Cardiac Surgery Program, the appellant has a dual status:

[the medical residents] are at the same time (1) trainees registered in an approved program at a university for eventual accreditation as specialists and (2) employees of the teaching hospitals where they undertake their clinical training. The employment conditions of a medical resident at the hospital are governed by a collective agreement...

[44] The university submits that it is an “institution having an interest” given this dual status of medical residents as both trainees and physicians employed by the hospital. This dual status is set out in the PARO – CAHO collective agreement. The university states:

¹⁷ *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.).

¹⁸ Orders M-941 and P-1369.

¹⁹ Orders PO-1722, PO-1905 and *Ontario (Ministry of Correctional Services) v. Goodis*, cited above.

²⁰ *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)*, cited above.

²¹ *Ministry of Correctional Services*, cited above.

[The records] relate to the appellant's grievance filed under the [PARO-CAHO collective agreement] against [named doctor] relating to his treatment in the Program. Therefore, it is clear that the records relate to labour relations matters in which the university is an institution 'having an interest' within the meaning of section 65(6)3 and that the exclusion would apply.

[45] As set out above, the phrase "in which the institution has an interest" has been interpreted to refer to matters involving an institution's own workforce. It is not apparent from the material before me that there is an employment or labour relations relationship between the university and the appellant. In Order PO-3257, an appeal with similar facts and similar records at issue, I found that a medical resident enrolled in a post-graduate medical program at the university was an employee of the hospital where he did his training. My finding in that order was based on similar submissions made by the university and also submissions made by PARO which emphasized that there is an employment relationship between a medical resident and the hospital. In the circumstances, I find that a similar determination can be made here. I find that the appellant is an employee of the hospital for the purposes of section 65(6).

[46] I found, in my discussion above, that both the university and the hospital "collected, prepared, maintained or used" the records. As stated above, 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.²² In this case, the university may claim the exclusion on behalf of the hospital where I find the hospital has an interest in the records. The materials before me establish that medical resident are employed by the teaching hospitals and this employment relationship is subject to the collective agreement between PARO and the hospitals. The appellant is an employee of the hospital for the purposes of section 65(6)3 and the grievance between the hospital and the appellant is a matter involving the hospital's own workforce. In the circumstances of this appeal, I find that the appellant's grievance is a labour-relations matter in which the hospital has an interest. Accordingly, the university can claim the exclusion on behalf of the hospital, and the records listed above are excluded from the application of the *Act* under section 65(6)3.

[47] At the same time, I find the university has not established that there is an employment or labour relations relationship between itself and the appellant. The medical resident's "dual status" as both a student in the university's post-graduate program and employee of the teaching hospital results in a complex relationship between the three parties. While I accept that a medical resident's employment with the hospital is contingent upon his or her enrollment in the university's program, I am still left with the fact that the medical resident's status with the university is that of a student and not employee. Moreover, the university has not established that its

²² See Order PO-2106.

relationship with the medical resident is akin to a labour-relations or an employee-employer relationship. Instead, it is clear that a medical resident is a student. As such, I find that the university is not an institution with "an interest" for the purposes of section 65(6)3 and thus not able to claim the exclusion, in its own right, for the records.

D. Do the records contain "personal information", and if so, to whom does it relate?

[48] 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;

[49] 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.²³

[50] 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.

[51] 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.²⁴

[52] 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.²⁵

[53] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.²⁶

[54] The university submits that Records 29, 30, 39, 87, 92, 167, 220, 253, 261-263, 276, 305, 330, 414, 418, 461, 462, 464, 465, 474, 480, 545, 573, 637-640, 643, 646, 655, 686, 776, 805 and 883 contain the "personal information" of the appellant and other individuals within the meaning of section 2(1) of the *Act*. I also found additional

²³ Order 11.

²⁴ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

²⁵ Orders P-1409, R-980015, PO-2225 and MO-2344.

²⁶ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

records which contain the personal information of the appellant and other individuals and I have identified these records in the index.

[55] In particular, the university submits that information in the records relates to other medical residents, hospital and university employees and includes:

- Personal email addresses
- Employment history and/or information
- Personal views or opinions of individuals relating to the appellant and/or other individuals
- Other information whose disclosure would reveal personal information of the individual.

[56] Based on my review of the records, I find that the records contain information which meets the requirements for personal information relating to other individuals as identified by the university above.

[57] I also find that all of the records contain recorded information of the appellant which qualifies as his personal information for the purposes of section 2(1). In particular, I find that the records contain information relating to the appellant's education and employment history (paragraph (b) of the definition of "personal information").

[58] Accordingly, as all of the records at issue relate to the appellant and contain his personal information and some of the records contain the personal information of the appellant and other individuals, I will consider the application of the discretionary exemptions in sections 49(a) and (b).

E. Does the discretionary exemption at section 49(b) apply to the personal information at issue?

[59] 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.

[60] Under section 49(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester. Since the section 49(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.

[61] The university submits that section 49(b) applies to exempt the withheld personal information of other individuals in Records 167, 220, 346, 347, 414, 465, 480, 545, 573, 637 – 640, 643, 655, 686 and 818. I have also identified in the index other records containing the personal information of individuals other than the appellant and will consider the application of section 49(b) to them.

[62] I note that the university, for some of the above referenced records, noted the application of section 21(1) only on the index.²⁷ While the records consist of email chains, I find that all of the emails refer to the appellant. The correct approach is to review the entire record, not only the portions remaining at issue, to determine whether it contains the requester's personal information. The record-by-record analysis is significant because it determines that the records as a whole (rather than only certain portions of it) must be reviewed under section 49(b).²⁸ Accordingly, I have considered whether section 49(b) applies to these records, in conjunction with section 21(1).

[63] Sections 21(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold under section 49(b) is met:

- if the information fits within any of paragraphs (a) to (e) of section 21(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 49(b);
- section 21(2) lists "relevant circumstances" or factors that must be considered;
- section 21(3) lists circumstances in which the disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy; and
- section 21(4) lists circumstances in which the disclosure of personal information does not constitute an unjustified invasion of personal privacy, despite section 21(3).

[64] Neither the university nor the appellant submit that paragraphs (a) to (e) of section 21(1) or the circumstances in section 21(4) apply to the withheld personal information in the records. In the circumstances, I find that these sections are not relevant and only the exception in section 21(1)(f) might apply as it permits a head to disclose personal information if disclosure does not constitute an unjustified invasion of personal privacy.

²⁷ The university's representations appear to indicate that section 49(b) was being claimed but that section 21(1) applied to exempt the personal information of other individuals from disclosure.

²⁸ Order M-352.

[65] Neither university nor the appellant addressed the presumptions in section 21(3) or the factors in section 21(2). The appellant has received the portions of the records which contain only his own personal information. Based on my review of the personal information remaining at issue, I find that it relates solely to other individuals or contains the personal information of both the appellant and other individuals which is inextricably linked and that the presumptions in sections 21(3)(d), (g) and (h), as well as the factor in section 21(2)(h) are relevant to my determination of whether disclosure of this information would be an unjustified invasion of personal privacy. These sections state:

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

(h) the personal information has been supplied by the individual to whom the information relates in confidence; and

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

(d) relates to employment or educational history;

(g) consists of personal recommendations or evaluations, character references or personnel evaluations; or

(h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

[66] Some of the personal information withheld relates to the employment and educational history of university and hospital employees as well as other medical residents enrolled in the same program at the university, and as such, I find that the presumption in section 21(3)(d) applies to it. Furthermore, the presumption in sections 21(3)(g) and (h) are also relevant as the records contain the personal evaluations of other medical residents and refers to their ethnic origin.

[67] I also find the factor favouring non-disclosure in section 21(2)(h) to apply. Some of the information withheld consists of the personal cell, home phone numbers and email addresses for university or hospital employees. There are also comments made by university and hospital employees about personal details of their lives that do not relate to the appellant. I find that this information was given in the context of emails between colleagues and these individuals had an expectation that this information would be kept confidential. As stated above, the appellant did not provide

representations, and I have not been referred to any factors in section 21(2) in favour of disclosure. Accordingly, I find that disclosure of the personal information relating to other individuals would constitute an unjustified invasion of their personal privacy and as such section 49(b) applies to exempt them from disclosure, subject to my finding on the university's exercise of discretion.

F. Does the discretionary exemption at section 49(a), in conjunction with section 19, apply to the information at issue?

[68] As stated above, section 47(1) gives individuals a general right of access to their own personal information held by an institution, while section 49 provides a number of exemptions from this right. Section 49(a) states:

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.

[69] 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.²⁹

[70] 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.

[71] In this case, the university relies on section 49(a) in conjunction with section 19 which states:

A head may refuse to disclose a record,

- (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 or a hospital for use in giving legal advice or in contemplation of or for use in litigation.

²⁹ Order M-352.

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

Branch 1: common law privilege

[73] Branch 1 of the section 19 exemption encompasses two heads of privilege, as derived from the common law: (i) solicitor-client communication privilege; and (ii) litigation privilege. In order for branch 1 of section 19 to apply, the institution must establish that one or the other, or both, of these heads of privilege apply to the records at issue.³⁰

Solicitor-client communication privilege

[74] 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.³¹

[75] The rationale for this privilege is to ensure that a client may confide in his or her lawyer on a legal matter without reservation.³²

[76] 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.³³

[77] The privilege may also apply to the legal advisor’s working papers directly related to seeking, formulating or giving legal advice.³⁴

[78] 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.³⁵

³⁰ Order PO-2538-R; *Blank v. Canada (Minister of Justice)* (2006), 270 D.L.R. (4th) 257 (S.C.C.) (also reported at [2006] S.C.J. No. 39).

³¹ *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).

³² Orders PO-2441, MO-2166 and MO-1925.

³³ *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.).

³⁴ *Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27.

³⁵ *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.).

Litigation privilege

[79] Litigation privilege protects records created for the dominant purpose of litigation, actual or reasonably contemplated.³⁶

[80] In *Solicitor-Client Privilege in Canadian Law* by Ronald D. Manes and Michael P. Silver, (Butterworth's: Toronto, 1993), pages 93-94, the authors offer some assistance in applying the dominant purpose test, as follows:

The "dominant purpose" test was enunciated [in *Waugh v. British Railways Board*, [1979] 2 All E.R. 1169] as follows:

A document which was produced or brought into existence either with the dominant purpose of its author, or of the person or authority under whose direction, whether particular or general, it was produced or brought into existence, of using it or its contents in order to obtain legal advice or to conduct or aid in the conduct of litigation, at the time of its production in reasonable prospect, should be privileged and excluded from inspection.

It is crucial to note that the "dominant purpose" can exist in the mind of either the author or the person ordering the document's production, but it does not have to be both.

.

[For this privilege to apply], there must be more than a vague or general apprehension of litigation.

Branch 2: statutory privileges

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

Statutory solicitor-client communication privilege

[82] Branch 2 applies to a record that was prepared by or for Crown counsel, or counsel for an educational institution or hospital, "for use in giving legal advice."

³⁶ Order MO-1337-I; *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); see also *Blank v. Canada (Minister of Justice)* (cited above).

Statutory litigation privilege

[83] Branch 2 applies to a record that was prepared by or for Crown counsel, or counsel for an educational institution or hospital, "in contemplation of or for use in litigation."

[84] Termination of litigation does not affect the application of statutory litigation privilege under branch 2.³⁷

[85] Branch 2 includes records prepared for use in the mediation or settlement of actual or contemplated litigation.³⁸

[86] The university submits that both the branch 1 and 2 privileges of section 19 apply to the records for which this exemption has been claimed, as the records relate to advice being sought from and given by counsel for the university and external counsel in relation to the various stages of the appellant's academic appeal of his status in the medical residency program and other litigation involving the appellant. The university submits that many of the records are marked as confidential and privileged as explicit evidence that the senders and recipients intended to keep the communications confidential.

[87] The university identified its internal and external counsel and submits that the records fall into four categories:

1. Records 114 – 116, 278, 337, 391, 404 – 406, 454 – 455, 463 – 466, 469, 617 – 621, 667, 669, 672 – 674, 687 – 688, 694 and 696 – 701 consist of emails and other communications between or among counsel for the university, university employees and physicians who hold an academic appointment granted by the university ... and their administrative staff for the purpose of legal advice being sought from and/or given by counsel.
2. Records #107, 110, 111, 113, 336, 354 – 355, 371, 399 – 400, 708, 710 and 817 – 818 consist of drafts and other related records drafted by counsel for the university.

³⁷ *Ontario (Attorney General) v. Ontario (Information and Privacy Commission, Inquiry Officer)*, (cited above).

³⁸ *Liquor Control Board of Ontario v. Magnotta Winery Corporation*, 2010 ONCA 681.

3. Records 155 -158, 212, 350, 356, 359 – 362, 377 – 378, 387 – 388, 468, 674 – 676, 678 – 683, 703, 705, 719 – 722, 724 – 731, 733, 745 and 747 consist of emails or other communications including drafts prepared by university employees and/or physicians who hold an academic appointment granted by the university and their administrative staff, with regard to which legal advice is sought from counsel for the university.

4. Records 105, 117 – 126, 128, 132 – 134, 136 – 137, 139 – 1414, 146, 150, 152, 154, 157, 160 – 161, 163 – 164, 167 – 168, 173 – 175, 177 – 178, 183 – 186, 189 – 192, 194, 197, 200 – 205, 215, 217 – 221, 226, 228, 231, 233, 235 – 241, 243, 246, 250 – 251, 280 – 281, 283 – 284, 323 – 324, 326, 328, 332 – 333, 335, 338, 341 – 349, 351 – 353, 365, 367, 370, 372, 376, 380 – 382, 386, 390, 395 – 398, 414 – 415, 427 – 429, 431 – 444, 446 – 448, 450 – 453, 458 – 461, 467, 480, 483 – 484, 494, 497, 501 – 502, 507 – 508, 511 – 574, 578, 580 – 582, 584 – 586, 589 – 590, 593 – 594, 596 – 601, 604 – 606, 608 – 611, 613, 615 – 616, 622 – 634, 637 – 640, 643, 645 – 654, 659 – 666, 668, 670 – 671, 685 – 686, 691, 707, 714, 735, 737 – 744, 748, 750 – 753, 760 – 774, 778 – 782, 784 – 795, 802, 804, 806 – 816, 819 – 823 and 825 consist of emails or other communications that form part of the “continuum of communications” and that were exchanged for the purpose of keeping counsel for the university employees and physicians who hold an academic appointment granted by the university and their administrative staff informed so that advice may be sought or given as required.

[88] The university further submits that litigation privilege also applies to all of the records for which section 49(a) is claimed as the appellant retained his own legal counsel during his academic appeal of his status in the medical residency program. The university states:

When counsel for the university appears on the records [for which section 19 is claimed], the dominant purpose is that litigation was reasonable contemplated for the following reasons:

- (a) A final decision on an academic appeal can lead to the filing of an application with the Ontario Superior Court of Justice for a judicial review of the university’s final decision. The appellant [had] hired his own legal counsel at early stages of the academic appeal process and has, as of the date of these representations, appealed at every stage of the process,

therefore, litigation (an application for judicial review once a final decision is made) is reasonably contemplated;

- (b) In 2009, the appellant filed a labour grievance against the teaching hospital under the [PARO] – CAHO Collective Agreement. While the university is not a party to [this agreement] or to the appellant's grievance, the grievance had legal implications for the university and the Program given the dual status of the appellant as explained in these representations. The appellant's grievance, if not resolved, would lead to an arbitration proceeding and therefore litigation was reasonably contemplated.

[89] The university goes onto to submit that litigation in fact did occur involving the appellant, the university, and the doctors holding academic appointments because the appellant filed an application against the university and others with the Ontario Human Rights Tribunal. In addition, the appellant and other plaintiffs filed a Statement of Claim making claims against the university, its academic staff and physicians holding an academic appointment in connection with the university's medical residency program.

[90] Lastly, the university submits that it did not take any action that would constitute waiver of its solicitor-client privilege either explicitly or implicitly. The records have not been disclosed to outsiders by either counsel or university staff.

[91] The appellant did not make submissions on this issue.

[92] Based on my review of the records for which section 49(a) has been claimed, I find that section 19 applies. The records at issue predominantly consist of email chains between staff at the university, hospital, and university counsel and/or outside counsel hired by the university. These emails relate to the appellant's status as a resident at the hospital and student in the medical program at the university and the various issues and proceedings that arose during his residency. I find these email exchanges were confidential communications between the client (the university) and the solicitors for the purpose of obtaining or providing legal advice and as such qualify as Branch 1 and 2 solicitor-client privilege. I further find that the university has not waived this privilege.

[93] I also find that some of the records were created for the dominant purpose of actual and reasonably contemplated litigation including the appellant's OHRT hearing and the appellant's court proceeding relating to his status as a resident. I find that these records are exempt as litigation privileged under section 19.

[94] Accordingly, as I have found that section 19 applies, I uphold the university's decision to withhold the records pursuant to section 49(a), subject to my findings on its exercise of discretion.

G. Was the university's exercise of discretion under sections 49(a) and (b) proper in the circumstances?

[95] The sections 49(a) and (b) exemptions 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, the Commissioner may determine whether the institution failed to do so.

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

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

[97] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.³⁹ This office may not, however, substitute its own discretion for that of the institution.⁴⁰

[98] The university submits that it considered the following when exercising its discretion to withhold the records under sections 49(a) and (b):

- the purpose of the *Act*
- whether the requester was seeking his own personal information
- whether the requester had a sympathetic or compelling need for the information
- whether disclosure would increase public confidence in the operation of the university.

[99] The university notes that it considered that all of the records represent communications of a confidential nature between a solicitor and client for the purpose of providing or receiving legal advice.

³⁹ Order MO-1573.

⁴⁰ Section 54(2).

[100] The university submits that the records also contain the personal information of other individuals that was provided to the university on a confidential basis. The university does not, in practice, disclose personal information about an individual without the consent of that individual.

[101] Finally, the university submits that the appellant has not indicated a sympathetic or compelling need to receive the information. The university weighed this consideration against the need to protect the privacy of individuals whose personal information is contained in the records and the confidential solicitor-client communications that comprises the records at issue. The university notes that historically it has never disclosed solicitor-client communications.

[102] Based on my review of the university's representations and the information at issue, I find that the university properly exercised its discretion to withhold the records at issue. I find the university took into account relevant considerations including its historical practice dealing with similar records, and the rights to be protected by the section 49(a) and (b) exemptions. I uphold the university's exercise of discretion.

H. Did the university conduct a reasonable search for records?

[103] The appellant claims that the university should have additional records that are responsive to his request. Accordingly, the reasonableness of the university's search is an issue in this appeal.

[104] 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 24.⁴¹ 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.

[105] 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.⁴² To be responsive, a record must be "reasonably related" to the request.⁴³

[106] 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.⁴⁴

⁴¹ Orders P-85, P-221 and PO-1954-I.

⁴² Orders P-624 and PO-2559.

⁴³ Order PO-2554.

⁴⁴ Orders M-909, PO-2469, PO-2592.

[107] 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.⁴⁵

[108] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.⁴⁶

[109] The university was asked to provide a written summary of the steps taken in response to the request and to address whether clarification was sought from the appellant regarding his request.

[110] The university submits that the scope of the appellant's request was clear and there was no need to seek the appellant's clarification. Furthermore, the university's search for responsive records was conducted by the following individuals:

- Special Assistant to the President
- Coordinator, Academic Affairs and Academic Labour Relations, Human Resources
- Vice-President, Governance, Office of the President
- Administrative Assistant to Vice-President, Governance, Office of the President
- Dean of the Faculty of Medicine
- Manager, Postgraduate Medical Education, Faculty of Medicine
- Associate Dean, Postgraduate Medical, Faculty of Medicine
- Executive Legal Assistant of the Office of Legal Services

[111] The university provided the affidavit from the Administrative Assistant for the Access to Information Office. She attached to her affidavit the search forms completed by the various individuals listed above. The search forms indicate the subject matter of the search, locations searched, records and amount of search time.

⁴⁵ Order MO-2185.

⁴⁶ Order MO-2246.

[112] The appellant submits that the university did not provide adequate evidence of its search including the individuals conducting the searches, the locations searched and the records found. The appellant submits that he provided the mediator with two records which were not provided to him at the request stage which indicate that the university's search was not reasonable.

[113] Based on my review of the records at issue, the university's representations, affidavit and copy of the search forms, I find the university's search to have been reasonable in the circumstances, with the exception of my discussion above on the custody and control of some of the records. I find the appellant's request to be clear and it provided sufficient detail so that clarification by the university was unnecessary. As stated above, the institution does not have to prove with absolute certainty that further records do not exist. I find that in the circumstances, the university has provided me with sufficient evidence to show that it has made a reasonable effort to identify and locate the responsive records. Accordingly, I uphold the university's search for responsive records and find it to be reasonable.

ORDER:

1. I uphold the university's decision to withhold records under sections 49(a) and (b).
2. I uphold the university's search for records.
3. I order the university to request that the named physician search for and provide it with any records relating to the appellant's academic performance in the university's postgraduate medical training program. The university is to conduct this search within the time period specified in section 26 of the *Act*, treating the date of this order as the date of the request and without recourse to a time extension under section 27 of the *Act*.
4. I order the university to provide a decision letter to the appellant regarding the results of this search in accordance with the provisions of the *Act*.
5. I order the university to disclose Record 144 in accordance with its representations.

Original Signed by: _____
Stephanie Haly
Adjudicator

_____ January 29, 2014

APPENDIX

INDEX OF RECORDS APPEAL PA11-175

Number	Date	Description	Exemption/Exclusion Claimed	Finding
29	03/10/2006	Email	49(b), 21(1) – Partial disclosure	Uphold
30	03/10/2006	Email	49(b), 21(1) – Partial disclosure	Uphold
39	11/14/2006	Email	49(b), 21(1) – Partial disclosure	Uphold
87	05/16/2007	Email	49(b), 21(1) – Partial disclosure	Uphold
92	06/08/2007	Email	21(1) – Partial disclosure	Uphold
105	09/17/2007	Handwritten note	49(a), 19	Uphold
107	09/24/2007	Email	49(a), 19	Uphold
110	10/01/2007	Email	49(a), 19	Uphold
111	10/01/2007	Email	49(a), 19	Uphold
113	10/03/2007	Email	49(a), 19	Uphold
114	10/04/2007	Email	49(a), 19	Uphold
115	10/10/2007	Email	49(a), 19	Uphold
116	10/10/2007	Email	49(a), 19	Uphold
117	10/11/2007	Email and attachment	49(a), 19	Uphold
118	10/11/2007	Letter	49(a), 19	Uphold
119	10/25/2007	Email	49(a), 19	Uphold
120	10/25/2007	Email	49(a), 19	Uphold
121	10/25/2007	Email	49(a), 19	Uphold
122	10/30/2007	Email	49(a), 19	Uphold
123	10/30/2007	Email	49(a), 19	Uphold
124	10/30/2007	Email	49(a), 19	Uphold
125	10/31/2007	Email	49(a), 19	Uphold
126	10/31/2007	Handwritten note	49(a), 19	Uphold
128	11/01/2007	Email	49(a), 19	Uphold
132	11/06/2007	Email and attachment	49(a), 19	Uphold
133	11/06/2007	Email	49(a), 19	Uphold
134	11/06/2007	Email	49(a), 19	Uphold
136	11/07/2007	Email	49(a), 19	Uphold
137	11/07/2007	Email	49(a), 19	Uphold

139	11/07/2007	Email	49(a), 19	Uphold
140	11/07/2007	Email	49(a), 19	Uphold
141	11/07/2007	Email	49(a), 19	Uphold
144	11/08/2007	Handwritten note	18.1 (withdrew claim)	Disclose
146	11/12/2007	Email	49(a), 19	Uphold
150	11/13/2007	Email	49(a), 19	Uphold
152	11/16/2007	Email	49(a), 19	Uphold
154	11/16/2007	Email	49(a), 19	Uphold
155	11/22/2007	Email and attachment	49(a), 19	Uphold
156	11/23/2007	Email and attachment	49(a), 19	Uphold
157	11/23/2007	Email	49(a), 19	Uphold
158	11/23/2007	Email	49(a), 19	Uphold
160	11/26/2007	Email	49(a), 19	Uphold
161	11/26/2007	Email	49(a), 19	Uphold
163	11/26/2007	Email	49(a), 19	Uphold
164	11/27/2007	Email	49(a), 19	Uphold
167	11/28/2007	Email	49(b), 21(1), 49(a), 19	Uphold
168	11/28/2007	Fax	49(a), 19	Uphold
173	01/04/2008	Email and attachment	49(a), 19	Uphold
174	01/04/2008	Email	49(a), 19	Uphold
175	01/16/2008	Email	49(a), 19	Uphold
177	01/17/2008	Email	49(a), 19	Uphold
178	01/18/2008	Email	49(a), 19	Uphold
183	01/21/2008	Email	49(a), 19	Uphold
184	01/21/2008	Email	49(a), 19	Uphold
185	01/21/2008	Email	49(a), 19	Uphold
186	01/22/2008	Fax	49(a), 19	Uphold
189	01/24/2008	Email	49(a), 19	Uphold
190	01/24/2008	Email and attachment	49(a), 19	Uphold
191	01/24/2008	Email and attachment	49(a), 19	Uphold
192	01/25/2008	Email and attachment	49(a), 19	Uphold
194	01/29/2008	Email	49(a), 19	Uphold
197	02/12/2008	Email and attachment	49(a), 19	Uphold
200	02/13/2008	Email	49(a), 19	Uphold
201	02/13/2008	Email	49(a), 19	Uphold

202	02/13/2008	Email	49(a), 19	Uphold
203	02/13/2008	Email	49(a), 19	Uphold
204	02/19/2008	Email	49(a), 19	Uphold
205	02/25/2008	Email	49(a), 19	Uphold
212	03/04/2008	Email	49(a), 19	Uphold
215	03/13/2008	Email and attachment	49(a), 19	Uphold
217	03/14/2008	Email	49(a), 19	Uphold
218	03/14/2008	Email and attachment	49(a), 19	Uphold
219	03/27/2008	Email	49(a), 19	Uphold
220	03/27/2008	Email	49(b), 21(1), 49(a), 19	Uphold
221	03/27/2008	Email	49(a), 19	Uphold
226	04/10/2008	Email	49(a), 19	Uphold
228	04/10/2008	Email	49(a), 19	Uphold
231	04/14/2008	Handwritten note	49(a), 19	Uphold
233	04/15/2008	Email	49(a), 19	Uphold
235	04/18/2008	Email and attachment	49(a), 19	Uphold
236	04/18/2008	Email	49(a), 19	Uphold
237	04/18/2008	Email	49(a), 19	Uphold
238	04/18/2008	Email	49(a), 19	Uphold
239	04/18/2008	Email	49(a), 19	Uphold
240	04/21/2008	Email	49(a), 19	Uphold
241	04/21/2008	Email	49(a), 19	Uphold
243	04/24/2008	Email	49(a), 19	Uphold
246	04/30/2008		49(a), 19	Uphold
250	05/28/2008	Email	49(a), 19	Uphold
251	05/28/2008	Email	49(a), 19	Uphold
253	06/09/2008	Email	49(b), 21(1) – Partial disclosure	Uphold
261	06/25/2008	Email	49(b), 21(1) – Partial disclosure	Uphold
262	06/30/2008	Email	49(b), 21(1) – Partial disclosure	Uphold
263	07/02/2008	Email	49(b), 21(1) – Partial disclosure	Uphold
276	08/11/2008	Email	49(b), 21(1) – Partial disclosure	Uphold
278	08/13/2008	Email and attachment	49(a), 19	Uphold
280	08/14/2008	Email	49(a), 19	Uphold
281	08/14/2008	Email	49(a), 19	Uphold

283	08/19/2008	Email	49(a), 19	Uphold
284	08/20/2008	Email	49(a), 19	Uphold
305	10/14/2008	Email	21(1) – Partial disclosure	Uphold
323	12/01/2008	Email	49(a), 19	Uphold
324	12/01/2008	Email	49(a), 19	Uphold
326	12/01/2008	Email	49(a), 19	Uphold
328	12/01/2008	Handwritten note	49(a), 19	Uphold
330	12/05/2008	Email	21(1) – Partial disclosure	Uphold
332	12/11/2008	Email	49(a), 19	Uphold
333	12/11/2008	Email	49(a), 19	Uphold
335	12/15/2008	Email	49(a), 19	Uphold
336	12/15/2008	Email	49(a), 19	Uphold
337	12/16/2008	Email	49(a), 19	Uphold
338	12/16/2008	Email	49(a), 19	Uphold
341	01/12/2009	Email	49(a), 19	Uphold
342	01/13/2009	Email	49(a), 19	Uphold
343	01/13/2009	Email	49(a), 19	Uphold
344	01/15/2009	Email	49(a), 19	Uphold
345	01/15/2009	Email	49(a), 19	Uphold
346	01/21/2009	Handwritten note	49(b), 21(1), 49(a), 19	Uphold
347	01/21/2009	Handwritten note	49(b), 21(1), 49(a), 19	Uphold
348	01/26/2009	Email	49(a), 19	Uphold
349	01/27/2009	Email	49(a), 19	Uphold
350	01/27/2009	Email and attachment	49(a), 19	Uphold
351	01/27/2009	Email	49(a), 19	Uphold
352	01/29/2009	Email	49(a), 19	Uphold
353	01/29/2009	Email	49(a), 19	Uphold
354	01/29/2009	Email	49(a), 19	Uphold
355	01/29/2009	Email	49(a), 19	Uphold
356	02/05/2009	Email and attachment	49(a), 19	Uphold
359	02/05/2009	Email	49(a), 19	Uphold
360	02/05/2009	Email and attachment	49(a), 19	Uphold
361	02/05/2009	Email	49(a), 19	Uphold
362	02/05/2009	Email and attachment	49(a), 19	Uphold
365	02/10/2009	Email	49(a), 19	Uphold
367	02/10/2009	Letter	49(a), 19	Uphold
370	02/13/2009	Email	49(a), 19	Uphold
371	02/17/2009	Email	49(a), 19	Uphold

372	02/20/2009	Email	49(a), 19	Uphold
373	02/20/2009	Email and attachment	Not responsive – partial disclosure	Uphold
376	02/20/2009	Email	49(a), 19	Uphold
377	02/25/2009	Email	49(a), 19	Uphold
378	02/25/2009	Email	49(a), 19	Uphold
380	02/26/2009	Email and attachment	49(a), 19	Uphold
381	02/26/2009	Email	49(a), 19	Uphold
382	02/26/2009	Email	49(a), 19	Uphold
383	03/03/2009	Email	49(a), 19	Uphold
386	03/04/2009	Email	49(a), 19	Uphold
387	03/04/2009	Email and attachment	49(a), 19	Uphold
388	03/05/2009	Email	49(a), 19	Uphold
390	03/05/2009	Email	49(a), 19	Uphold
391	03/06/2009	Email	49(a), 19	Uphold
395	03/13/2009	Email	49(a), 19	Uphold
396	03/13/2009	Email and attachment	49(a), 19	Uphold
397	03/16/2009	Email	49(a), 19	Uphold
398	03/16/2009	Email	49(b), 21, 49(a), 19	Uphold
399	03/20/2009	Email and attachment	49(a), 19	Uphold
400	03/23/2009	Email	49(a), 19	Uphold
404	03/25/2009	Email	49(a), 19	Uphold
405	03/25/2009	Email	49(a), 19	Uphold
406	03/25/2009	Email	49(a), 19	Uphold
414	04/15/2009	Email	49(b), 21, 49(a), 19	Uphold
415	05/05/2009	Email and attachment	49(a), 19	Uphold
427	07/07/2009	Email and attachment	49(a), 19	Uphold
428	07/07/2009	Email and attachment	49(a), 19	Uphold
429	07/07/2009	Email and attachment	49(a), 19	Uphold
431	07/08/2009	Email	49(a), 19	Uphold
432	07/09/2009	Email	49(a), 19	Uphold
433	07/09/2009	Handwritten note	49(a), 19	Uphold
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437	07/15/2009	Email	49(a), 19	Uphold
438	07/20/2009	Email	49(a), 19	Uphold
439	07/21/2009	Email	49(a), 19	Uphold
440	07/21/2009	Email	49(a), 19	Uphold
441	07/21/2009	Email	49(a), 19	Uphold
442	07/24/2009	Email and attachment	49(a), 19	Uphold
443	07/24/2009	Email	49(a), 19	Uphold
444	07/24/2009	Handwritten letter	49(a), 19	Uphold
446	08/04/2009	Email	49(a), 19	Uphold
447	08/05/2009	Letter	49(a), 19	Uphold
448	08/24/2009	Email	49(a), 19	Uphold
450	08/26/2009	Email	49(a), 19	Uphold
451	09/08/2009	Email	49(a), 19	Uphold
452	09/12/2009	Email	49(a), 19	Uphold
453	09/12/2009	Email	49(b), 21, 49(a), 19	Uphold
454	09/15/2009	Email	49(a), 19	Uphold
455	09/16/2009	Email	49(a), 19	Uphold
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459	09/17/2009	Email	49(a), 19	Uphold
460	09/18/2009	Email	49(a), 19	Uphold
461	09/21/2009	Email	49(b), 21, 49(a), 19	Uphold
462	09/21/2009	Email	49(a), 19	Uphold
463	09/22/2009	Email	49(a), 19	Uphold
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465	09/22/2009	Email	49(b), 21, 49(a), 19	Uphold
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467	09/22/2009	Email	49(a), 19	Uphold
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469	09/22/2009	Email	49(a), 19	Uphold
471	09/29/2009	Email and attachment	Not responsive – Partial disclosure	Uphold
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480	10/27/2009	Email	49(b), 21, 49(a), 19	Uphold
483	11/05/2009	Email and attachment	65(6), 49(a), 19	Uphold
484	11/05/2009	Email and attachment	65(6), 49(a), 19	Uphold
494	01/28/2010	Email	49(a), 19	Uphold
497	02/10/2010	Email and attachment	49(a), 19	Uphold

501	03/04/2010	Email	49(a), 19	Uphold
502	03/05/2010	Email	49(a), 19	Uphold
504	03/24/2010	Email	65(6)	Uphold
507	03/24/2010	Email	65(6), 49(a), 19	Uphold
508	03/30/2010	Email	49(a), 19	Uphold
511	04/06/2010	Email and attachment	49(a), 19	Uphold
512	04/14/2010	Email and attachment	65(6), 49(a), 19	Uphold
513	04/14/2010	Email and attachment	65(6), 49(a), 19	Uphold
514	04/14/2010	Email	65(6), 49(a), 19	Uphold
515	04/14/2010	Email	65(6), 49(a), 19	Uphold
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539	04/29/2010	Email	65(6), 49(a), 19	Uphold
540	05/01/2010	Email	49(a), 19	Uphold
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550	05/06/2010	Email	65(6), 49(a), 19	Uphold
551	05/06/2010	Email	65(6), 49(a), 19	Uphold
552	05/06/2010	Email	65(6), 49(a), 19	Uphold
553	05/07/2010	Email	65(6), 49(a), 19	Uphold
554	05/07/2010	Email	65(6), 49(a), 19	Uphold
555	05/07/2010	Email	49(a), 19	Uphold
556	05/07/2010	Email	49(a), 19	Uphold
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558	05/07/2010	Email and attachment	49(a), 19	Uphold
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569	05/13/2010	Email	65(6), 49(a), 19	Uphold
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571	05/14/2010	Email	49(a), 19	Uphold
572	05/25/2010	Email	49(a), 19	Uphold
573	06/01/2010	Email	49(b), 21, 49(a), 19	Uphold
574	06/03/2010	Email	49(a), 19	Uphold
578	06/08/2010	Email	49(a), 19	Uphold
580	06/08/2010	Email	49(a), 19	Uphold
581	06/08/2010	Email	49(a), 19	Uphold
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596	07/06/2010	Email	49(a), 19	Uphold
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598	07/07/2010	Email	49(a), 19	Uphold
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606	07/09/2010	Email	49(a), 19	Uphold
608	07/15/2010	Email	65(6), 49(a), 19	Uphold
609	07/15/2010	Email	65(6), 49(a), 19	Uphold
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621	07/15/2010	Email	65(6), 49(a), 19	Uphold
622	07/16/2010	Email	65(6), 49(a), 19	Uphold
623	07/15/2010	Email	65(6), 49(a), 19	Uphold
624	07/16/2010	Email	65(6), 49(a), 19	Uphold
625	07/16/2010	Email	65(6), 49(a), 19	Uphold
626	07/16/2010	Email	65(6), 49(a), 19	Uphold
627	07/16/2010	Email	65(6), 49(a), 19	Uphold
628	07/20/2010	Email	49(a), 19	Uphold
629	07/20/2010	Fax	49(a), 19	Uphold
630	07/22/2010	Email	49(a), 19	Uphold
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633	07/23/2010	Email and attachment	49(a), 19	Uphold
634	07/23/2010	Email	49(a), 19	Uphold

637	08/03/2010	Email	49(b), 21, 49(a), 19	Uphold
638	08/04/2010	Email	49(b), 21, 49(a), 19	Uphold
639	08/04/2010	Email	49(b), 21, 49(a), 19	Uphold
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648	08/18/2010	Email	49(a), 19	Uphold
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652	08/19/2010	Email	49(a), 19	Uphold
653	08/19/2010	Email	49(a), 19	Uphold
654	08/22/2010	Email	49(a), 19	Uphold
655	08/24/2010	Letter	49(b), 21(1)	Uphold
659	08/27/2010	Email	49(a), 19	Uphold
660	08/27/2010	Email and attachment	49(a), 19	Uphold
661	08/27/2010	Email	49(a), 19	Uphold
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663	08/28/2010	Email	49(a), 19	Uphold
664	08/28/2010	Email	49(a), 19	Uphold
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682	09/01/2010	Email and attachment	49(a), 19	Uphold
683	09/01/2010	Email and attachment	49(a), 19	Uphold
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686	09/02/2010	Email	Partial disclosure – 49(b), 21, 49(a), 19, NR	Uphold
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726	09/21/2010	Email and	49(a), 19	Uphold

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767	11/04/2010	Email and	49(a), 19	Uphold

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774	11/11/2010	Email	49(a), 19	Uphold
776	11/11/2010	Email	Partial disclosure – 49(b), 21(1)	Uphold
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794	11/01/2010	Email	49(a), 19	Uphold
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822	12/06/2010	Email and attachment	49(a), 19	Uphold
823	12/06/2010	Email and attachment	49(a), 19	Uphold
825	No date	Handwritten note	49(a), 19	Uphold