Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3390

Appeal PA13-93-2

University of Ottawa

September 11, 2014

Summary: The appellant sought records relating to him held by two named professors at the university. The university granted partial access to the records, but withheld information under the personal privacy exemptions in sections 21(1) and 49(b). The university also claimed that some information was not responsive to the request and that certain records were excluded from the *Act* under section 65(6) (labour relations and employment records). The appellant appealed the access decision. In this order, the adjudicator finds that the university properly withheld information as non-responsive and that some records are excluded from the *Act*. However, the adjudicator does not uphold the university's exemption claims and orders the remaining records disclosed.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of "personal information), 24(1), 65(6)3.

OVERVIEW:

[1] This order addresses one of seven access requests submitted by the same individual to the University of Ottawa (the university) under the *Freedom of Information and Protection of Privacy Act* (the *Act*). In this request, the requester sought access to the following information:

> … all documents and/or records related to [me], University of Ottawa [specified student number], and, included to but not limited to, sent to/by

and/or received to/by and/or in possession physically and/or electronically of:

1. Faculty of Health Science, School of Human Kinetics, [named Full Professor], and
2. Faculty of Health Science, School of Human Kinetics, [Professor B].

[2] The time period specified was September 2007 to January 29, 2013, which was the date of the request. The university issued a time extension decision under section 27 of the *Act.* The appellant appealed that decision to this office and Appeal PA13-93 was opened to address the time extension issue. Appeal PA13-93 was resolved when the university agreed to issue an access decision.

[3] The university's April 19, 2013 access decision granted partial access to the requested records upon payment of a fee. The university provided the appellant with an index that described the responsive records and identified the exemptions claimed to deny access to portions of them. The university claims that section 65(6) applies to exclude some records from the operation of the *Act*. Access to other records is denied under the personal privacy exemptions in sections 21(1) and 49(b) of the *Act.* The university also asserted that part of record 15 is non-responsive to the appellant's request.

[4] The appellant appealed the university's access decision, and Appeal PA13-93-2 was opened. During mediation, the appellant removed a number of records from the scope of the appeal, but continued to pursue access to other records that he maintains should be disclosed because they contain his personal information. The appellant also challenged the removal of information from record 15 on the basis of non-responsiveness.

[5] Additionally, the mediator discussed the notification process with the university because the other individuals identified in the records had not been notified regarding their possible interest in disclosure of the records.[1] The appellant agreed to be identified as the requester. The mediator then contacted Professor B, since his interests may be affected by the disclosure of record 52. Professor B then reviewed a copy of the record and declined to consent to its disclosure to the appellant. Since the appellant maintained his position with respect to seeking access to the information withheld from

[1] Section 28(1) requires notification of affected parties prior to disclosure of information that might be subject to the mandatory third party information or personal privacy exemptions in sections 17(1) and 21(1) of the *Act*. In this way, affected parties are afforded an opportunity to provide submissions as to whether the requested records should be disclosed.

the records under sections 49(b) and/or 21(1) or as non-responsive[2], the appeal could not be resolved by mediation.

[6] As a mediated resolution was not possible, it was transferred to the adjudication stage of the appeal process for a written inquiry. I started my inquiry by sending a Notice of Inquiry to the university and to Professor B (the affected party) to seek their representations. I received representations from the university and a brief response from Professor B. I concluded that portions of the university's representations and the response from Professor B were confidential and did not provide them to the appellant, in accordance with section 7 of the IPC's *Code of Procedure* and *Practice Direction 7*. Next, I provided a copy of the non-confidential representations of the university to the appellant, inviting him to submit representations for my review. The appellant did not provide representations.

[7] In this order, I uphold the university's decision regarding the non-responsiveness of certain information in record 15. I find that records 65, 66, 68, 69, 70, 71, 73 and 74 are excluded from the *Act* pursuant to section 65(6)3. I also find that the undisclosed parts of records 15 and 52 contain only the personal information of the appellant because the information about other individuals fits within the exception in section 2(3) of the *Act.* Since the personal privacy exemption in section 49(b) cannot apply to that information, I order the withheld responsive portions of records 15 and 52 disclosed to the appellant.

RECORDS:

[8] There are 10 records at issue, in part or in their entirety, and these consist of chains of emails and their attachments, with some duplication.[3]

ISSUES:

A. Is some of the information in record 15 non-responsive to the request?
B. Does section 65(6) exclude records 65, 66, 68, 69, 70, 71, 73 and 74 from the *Act*?
C. Do the records contain "personal information" as defined in section 2(1) of the *Act*?

[2] The university initially withheld portions of record 51 as non-responsive, but issued a revised decision disclosing those portions. Following mediation, only portions of record 15 remain withheld on the basis of non-responsiveness.

[3] In the university's August 19, 2013 index of records, prepared at the end of mediation, the records at issue were numbered 15, 52, 65, 66, 68-71, 73 and 74.

DISCUSSION:

A. Is some of the information in record 15 non-responsive to the request?

[9] The university withheld portions of record 15 on the basis that it is not responsive to the appellant's request.

[10] Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. For example, section 24(1)(b) requires there to be "sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record."

[11] 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.[4] To be considered responsive to the request, records must "reasonably relate" to the request.[5]

[12] In seeking representations from the university on this issue, I noted that an explanation of why the information in record 15 was being withheld as non-responsive could remove this issue from the scope of the appeal if the explanation satisfied the appellant. In response, the university explains that most of the content of record 15 relates to a student matter that does not involve the appellant. In this context, there was no ambiguity to be resolved in the requester's favour because the content of the record relating to the other student was not "reasonably related" to the appellant's request.

[13] As stated, the appellant decided not to submit representations.

[14] Record 15 is a four-page email chain. The university withheld portions of the first page, as well as the remaining three pages, as non-responsive. I note that some of the withheld content consists of email header or signature footer information. Headers are essentially meaningless strings of computer code, routing information and/or email addresses that are devoid of content. The signature segments consist of professional contact information and a standard confidentiality disclaimer.[6] It can be presumed that the appellant does not seek access to content that is devoid of substance, such as the withheld email headers and footers on pages 2-4 of record 15. Further, on my review of the entire record, I accept the university's evidence that the (substantive) portions of the emails withheld as non-responsive relate to an individual other than the appellant. Accordingly, I find that the information withheld by the university on the basis of non-

[4] Orders P-134 and P-880.
[5] Orders P-880 and PO-2661.
[6] By "standard confidentiality disclaimer," I am referring to the paragraph automatically inserted at the conclusion of an email that starts with language along these lines: "This electronic mail is intended only for the recipient(s) to whom it is addressed…"

responsiveness is, in fact, not reasonably related to the appellant's request, and I uphold these severances. I will review the university's other severances on page 1 of record 15, below.

B. Does section 65(6) exclude records 65, 66, 68, 69, 70, 71, 73 and 74 from the *Act*?

[15] The university claims that records 65, 66, 68, 69, 70, 71, 73 and 74 are excluded from the *Act,* in their entirety, pursuant to sections 65(6)1 and 65(6)3, which state:

> Subject to subsection (7), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:
>
> 1. Proceedings or anticipated proceedings before a court, tribunal or other entity relating to labour relations or to the employment of a person by the institution.
> …
>
> 3. Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest.

[16] 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*. Section 65(6) is record-specific and fact-specific. If it applies to a specific record in the circumstances of a particular appeal, and none of the exceptions listed in section 65(7) are present, then the record is excluded from the scope of the *Act.*

[17] The type of records excluded from the *Act* by section 65(6) are documents related to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue. Employment-related matters are separate and distinct from matters related to employees' actions.[7]

[18] 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.[8]

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[7] *Ontario (Ministry of Correctional Services) v. Goodis*, (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.).

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

[19] 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.[9]

[20] 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.[10]

Representations

[21] Portions of the university's representations were withheld as confidential. In its non-confidential representations, the university indicates that the relationship between the University of Ottawa and its full-time professors is governed by the collective agreement between the university and the Association of Professors of the University of Ottawa (APUO). Further, all labour relations matters between the university and members of the APUO are dealt with in accordance with the collective agreement.

[22] The university submits that records 65, 66 and 68 consist of email communications between the named professor and his union, the APUO, while records 69, 70, 71, 73 and 74 are email communications between the professor and the Dean of the Faculty of Graduate Studies and Postdoctoral Studies, with the APUO copied on the emails. The university's representations linking the content of the records with the requirements of sections 65(6)1 and 65(6)3 are confidential; however, the university maintains that the records were prepared by employees of the university and maintained by the university. The university also submits that "without a doubt, [the university has] an interest in matters involving its own academic staff and, in particular, matters pursuant to the collective agreement…" The ministry concludes its submissions by asserting that none of the records fall within any of the exceptions to section 65(6) found in section 65(7).

Analysis and findings

[23] As stated, the university claims that records 65, 66, 68, 69, 70, 71, 73 and 74 are excluded from the *Act* under sections 65(6)1 and 65(6)3. I will begin my review with consideration of the exclusion in section 65(6)3, under which the university was required to establish that:

1. the records were collected, prepared, maintained or used by the university or on its behalf;

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[9] *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.
[10] Order PO-2157.

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 university has an interest.

[24] To begin, I am satisfied that all of the records, which are email chains and attachments, were collected, prepared, maintained or used by the university, and that this collection, preparation, maintenance or usage was in relation to consultations, discussions or communications between university faculty and staff, as well as the APUO, regarding the appellant's academic matter. I find that parts 1 and 2 of the test under section 65(6)3 have been met.

[25] To establish part 3 of the section 65(6)3 test, the university was required to provide evidence to demonstrate that the consultations, discussions or communications that took place were about labour relations or employment-related matters in which the university has an interest.

[26] The records that the university claims are excluded under section 65(6)3 of the *Act* consist of email communications from Professor B to the APUO and various university officials regarding concerns he had around about his involvement with the appellant in an academic context. As stated, 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. Given the confidential portions of the university's representations and the records themselves, I am satisfied that the discussions and communications that took place between Professor B, the APUO and university administration are about labour relations matters in which the university has an interest. I accept that the university has an interest in matters relating to its own workforce, which includes Professor B. Furthermore, the records themselves reveal matters that could reasonably engage the university's interests under the collective agreement. Importantly, 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.[11] Accordingly, I find that part 3 of the section 65(6)3 test is met.

[27] In reaching my conclusion that all three parts of the test under section 65(6)3 are met, I have considered that five of the eight records include the same attachment: a document authored by the appellant and several other individuals regarding the underlying academic matter. The appellant would already have this record in his possession. Importantly, however, I conclude that this attached document is inextricably connected to Professor B's decision to communicate with the APUO and

[11] *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.

with university officials about the labour relations matter. In this specific context, therefore, I find that the fact that this document has been collected, maintained and used in relation to the labour relations matter in which the university has an interest also brings it within the scope of the exclusion in section 65(6)3, notwithstanding its original provenance.[12]

[28] In sum, I find that records 65, 66, 68, 69, 70, 71, 73 and 74 are excluded from the *Act*, and they will not be addressed further in this order.

C. Do the records contain "personal information" as defined in section 2(1) of the *Act*?

[29] Given my conclusion above that records 65, 66, 68, 69, 70, 71, 73 and 74 are excluded from the *Act*, only the information withheld from records 15 and 52 under the personal privacy exemption remains at issue.

[30] Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution, but this right of access is qualified by section 49, which states, in part:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> (b) where the disclosure would constitute an unjustified invasion of another individual's personal privacy;

[31] The university has severed information from records 15 and 52 on the basis that its disclosure would constitute an unjustified invasion of another individual's personal privacy under section 21(1) (personal privacy) or section 49(b) (discretion to refuse requester's personal information). However, in order to determine if sections 21(1) or 49(b) apply, I must first decide whether the records contain "personal information" and, if so, to whom it relates.

[32] "Personal information" is defined in section 2(1) of the *Act* as "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,

[12] Order PO-3312. See also *Ontario (Correctional Services) v. Goodis*, 2008 CanLII 2603 (ON SCDC) and Orders MO-2131 and MO-2676.

> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except where they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the 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;

[33] The list of examples of personal information under section 2(1) is not exhaustive. Information that does not fall under paragraphs (a) to (h) may still qualify as personal information.

[34] Sections 2(3) and (4) also relate to the definition of personal information and 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.

[35] 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.[13] 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.[14]

[36] In brief representations, the university argues that record 15 "relates to a student matter" not involving the appellant. The university also submits that record 52 contains the professor's "personal opinions and views of the evaluation of the appellant's [academic matter]."

Analysis and findings

[37] Although the university's representations on this issue are brief, the records speak for themselves. Record 15 contains the appellant's name along with other personal information about him relating to his post-graduate studies, including an opinion about him. This information fits within paragraphs (b), (g) and (h) of the definition of personal information in section 2(1) of the *Act.* Record 52 contains the appellant's name, student number, educational information, the views or opinions of another individual about him and other personal information as described in paragraphs (b), (c), (g) and (h) of the definition. Accordingly, I find that both records contain the appellant's personal information.

[38] The university had only claimed section 21(1) to deny access to record 15, arguing that the matter discussed in the email relates to another student. It may be that the university concluded that it had disclosed all of the appellant's personal information to him and that the remaining portions of the records do not contain his personal information. However, in an analysis of whether the relevant personal privacy exemption is section 21(1) or section 49(b), this determination is made on a record-by-record basis. Since the record contains the appellant's personal information, the relevant personal privacy exemption would be section 49(b).

[39] Moreover, contrary to the university's submission, the professor's views and opinions about the appellant's academic endeavor qualify as the *appellant's* personal information, not the professor's personal information. This is the distinction highlighted by paragraphs (e) and (g) of the definition of personal information in section 2(1) of the *Act.*

[40] Next, I will consider the nature of the information in these records that belongs to individuals other than the appellant. The withheld information in record 15 consists of two individual's names, an email address and initials. Record 52 contains the names

[13] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[14] Orders P-1409, R-980015, PO-2225 and MO-2344.

of at least six individuals and email signature footers that include full university contact information for two of them. Much of this information has already been disclosed to the appellant in the two-page email chain that covers the main document. However, the question to be answered is whether the undisclosed information about other individuals is about them in a "business, professional or official" capacity or, as the university suggests, is somehow of a personal nature.

[41] According to section 2(3) of the *Act,* "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." Based on my consideration of the withheld content of the records, I conclude that the names and contact details of these other individuals arise solely in an employment context. I find that there is no information of a personal nature about these other individuals in these records that would render the information personal, notwithstanding the professional context.[15]

[42] Therefore, I find that the information fits within section 2(3)*,* meaning that it does not qualify as *personal* information under the *Act*. Since this information about these other individuals is not "personal information," it does not qualify for exemption under section 49(b). The disclosure of a record found to contain only the appellant's personal information cannot result in an unjustified invasion of the personal privacy of another individual.

[43] As the university claimed no other exemptions with respect to records 15 and 52, and no mandatory exemptions apply, I will order them disclosed. To be clear, the information to be disclosed consists of the brief responsive portions of record 15 remaining at issue and the rest of record 52.

[44] In light of this finding, it is not necessary for me to review the application of section 49(b) or the university's exercise of discretion.

ORDER:

1. I uphold the university's decision respecting the exclusion of records 65, 66, 68, 69, 70, 71, 73 and 74 pursuant to section 65(6)3 of the *Act*.

2. I order the university to disclose the withheld responsive portions of records 15 and 52 by sending them to the appellant by **October 17, 2014**, but not before **October 10, 2014**. For clarity, the information on page 1 of record 15 that is to be disclosed is highlighted in green on the copy of the records sent to the university with this order.

[15] Orders PO-3193 and PO-3259.

3. To verify compliance with order provision 2, I reserve the right to require the university to provide me with a copy of the records disclosed to the appellant.

Original signed by: September 11, 2014
Daphne Loukidelis
Adjudicator