

Information and Privacy Commissioner,
Ontario, Canada



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

INTERIM ORDER PO-3456-I

Appeal PA13-150

University of Ottawa

January 30, 2015

Summary: The appellant sought access to records relating to a named individual who may have been paid by the university, directly or indirectly, within a specified time period. The university granted partial access to 26 records. It denied access to some records in full, pursuant to the exclusion for labour relations and employment-related information at section 65(6), and some records in part, pursuant to the mandatory personal privacy exemption at section 21(1) of the *Act*. The appellant appealed the university's decision and also advised that the reasonableness of the university's search for responsive records should be added as an issue. This order upholds the university's search, in part, but orders it to conduct an additional search for records held in the office of the Vice-President, Resources, within a specific time period. This order also upholds the university's application of the exclusion at section 65(6) and the exemption at section 21(1) to the records and information for which they were claimed.

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"), 21(1)(f), 21(2), 21(3)(d) and (f), 24, and 65(6)3.

Orders and Investigation Reports Considered: Order MO-2134.

OVERVIEW:

[1] The appellant submitted a request to the University of Ottawa (the university) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to

records relating to a named individual who may have been paid by the university, directly or indirectly, within a specified time period.

[2] The university identified 26 records as responsive to the request and granted partial access to them. Specifically, it claimed that some records were excluded from the scope of the *Act* pursuant to the exclusion for labour relations and employment-related information at section 65(6)3 of the *Act*. For the remainder of the records, it claimed that portions of them were exempt from disclosure pursuant to the mandatory personal privacy exemption at section 21(1) of the *Act*. The appellant appealed the university's decision.

[3] During mediation, the appellant confirmed that he was not interested in pursuing access to the information that was severed from records 1, 8 and 10. Accordingly, records 1, 8 and 10 have been removed from the scope of the appeal.

[4] Also during mediation, the appellant advised that he was of the view that the university's search was incomplete and that additional records responsive to his request should exist. As a result, the issue of reasonable search was added to the appeal.

[5] As a mediated resolution could not be reached, the appeal was transferred to the adjudication stage of the appeal process for an adjudicator to conduct an inquiry. During my inquiry, I sent the parties a Notice of Inquiry setting out the facts and issues on appeal. The university first sent me representations that I shared with the appellant in accordance with this office's sharing criteria set out in *Practice Direction 7*. The appellant then provided me with representations in response. As the appellant's representations raised issues to which I believed that the university should be given the opportunity to reply, I shared the appellant's representations with the university, seeking reply representations.

[6] In reply, the university advised that it had issued a revised decision to the appellant granting access to a number of the records, in whole or in part, and provided me with a copy of that decision, as well as a revised index of records. The records or portions of records that were disclosed to the appellant as a result of that revised decision are no longer at issue in this appeal.

[7] The substantive portions of the university's reply representations are brief. They state simply that the university continues to rely on sections 21(1) and 65(6) to deny access to the severed information and that it would like to rely on its original representations regarding those issues. I deemed that it was not necessary to share the university's reply representations with the appellant.

[8] In the order that follows, I make the following findings:

- I partially uphold the university's search for responsive records and order it to conduct an additional search for records in the office of the Vice-President, Resources, for the period between October 2011 to September 2012;
- I uphold the university's decision that some of the records are excluded from the scope of the *Act* as a result of the application of the exclusion for records containing labour relations or employment-related information set out in section 65(6)3 of the *Act*; and,
- I uphold the university's decision that portions of some of the records are exempt from disclosure pursuant to the application of the mandatory personal privacy exemption at section 21(1) of the *Act*.

RECORDS:

[9] The records that remain at issue are as follows:

Record 2: Salary Statement dated 18/04/2008 (1 page)

Record 3: Salary Statement dated 07/07/2008 (1 page)

Record 4: HR Form dated 30/07/2008 (1 page)

Record 5: Request to Board of Governors dated 07/11/2008 (1 page)

Record 6: Letter from Office of President dated 27/11/2008 (7 pages)

Record 7: Request to Board of Governors dated 12/12/2008 (1 page)

Record 9: Email and documents relating to HR matters dated 22/05/2009 (9 pages)

Record 11: Fax to Financial Institution dated 12/07/2010 (4 pages)

Record 12: Letter from HR dated 16/07/2010 (13 pages)

Record 13: HR Form dated 20/07/2010 (2 pages)

Record 14: Fax to Financial Institution dated 28/07/2010 (4 pages)

Record 15: Fax to HR dated 30/07/2010 (4 pages)

Record 16: Memo for HR department to another HR department dated 06/08/2010 (2 pages)

Record 17: Memo for HR department to another HR department dated 06/08/2010 (8 pages)

Record 18: Contract Form dated 28/02/2010 (2 pages)

Record 19: Request to Board of Governors dated 24/05/2011 (1 page)

Record 20: Request to Board of Governors dated 10/06/2011 (1 page)

Record 26: Request to administrative committee dated 21/08/2012 (1 page)

ISSUES:

- A. Did the university conduct a reasonable search for records responsive to the request?
- B. Does section 65(6) exclude any of the records at issue from the scope of the *Act*?
- C. Do the records contain "personal information" as defined in section 2(1) of the *Act*, and if so, to whom does it relate?
- D. Does the mandatory personal privacy exemption at section 21(1) apply to any of the information at issue?

DISCUSSION:

A. Did the university conduct a reasonable search for records responsive to the request?

[10] 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 24.¹ 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.

[11] 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

¹ Orders P-85, P-221 and PO-1954-I.

to demonstrate that it has made a reasonable effort to identify and locate responsive records.² To be responsive, a record must be "reasonably related" to the request.³

[12] 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.⁴

[13] 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.⁵

[14] 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.⁶

Representations

[15] In support of its position that it has conducted a reasonable search for records responsive to the request, the university submitted an affidavit sworn by the Administrative Officer of its Information and Privacy Office.

[16] In her affidavit, the Administrative Officer describes the steps taken by the university to respond to the appellant's access request. She encloses an email that was sent to the Office of the President, the President's Chief of Staff, the Vice-President, Governance, the Vice-President, Academic and Provost, the Vice-President, External Relations and the Vice-President, Resources and Financial resources. The email describes the request and asks that they search for responsive records. She also encloses a separate email sent to the Executive Director of the Communications Directorate informing him of the request and asking him to conduct a search for responsive records. The Administrative Officer explains that all of the individuals requested by email to conduct a search for responsive records provided her with completed search forms describing in detail the search that they conducted. Those forms were attached to the university's representations.

[17] The appellant submits that the university's refusal to provide an affidavit stating that the individual named in the request was not paid directly or indirectly by the university while on leave creates an inference that additional records should exist. He believes that records relating to the work that the individual conducted while on leave

² Orders P-624 and PO-2559.

³ Order PO-2554.

⁴ Orders M-909, PO-2469 and PO-2592.

⁵ Order MO-2185.

⁶ Order MO-2246.

and specifically, records revealing direct or indirect payments made to her by the university ought to exist.

[18] The appellant argues that the section 65(6) exclusion would not apply to any records relating to the work that the individual conducted while on leave because that would not be a university labour relations matter. He submits that "it is likely that the university possesses additional records respondent to this request which contain information that is not excluded by section 65(6), and that an additional search should be done to find these records."

[19] Additionally, the appellant submits that there are several problems with the university's documentation regarding the searches conducted. Specifically, he enumerates the following:

- No key words are identified in the form completed with respect to the university's search of records held by the Vice-President, Governance, the position held by the individual named in the request immediately prior to her departure to take up the position that she held during her leave. The appellant submits that proper disclosure of the key words used in the search are crucial regarding an evaluation of the reasonableness of the university's search in response to the appellant's access request.
- In the search of records held by the university's external relations unit the key word identified is only a portion of the name of the individual named in the request. The appellant submits that the key word will not necessarily provide results for the individual.
- With respect to the university's search of records held by the Vice-President, Resources, the appellant notes that the comments indicate two separate time periods. He states that the first time period ends on October 1, 2011 and the second time period begins in September 2012. He submits that the period between October 1, 2011 and September 2012 was not searched.

Analysis and finding

[20] As pointed out by the appellant in his representations, it appears that the university did not conduct a search of records held in the office of the Vice-President, Resources, for the period between the retirement of one identified individual in October 2011 and the appointment of another identified individual as Vice-President, Resources in September 2012. In the absence of any explanation as to why a search of records in the office of the Vice-President, Resources, would not be required for the interim period of October 2011 to September 2012, I do not accept that a reasonable search was

conducted for responsive records held in that office. As a result, I do not uphold this portion of the university's search and will order it to conduct an additional search for records responsive to the appellant's request held by that office within that specific time period.

[21] With respect to the remainder of the searches conducted by various departments or offices within the university, other than the office of Vice-President, Resources, I accept that they were reasonable and uphold them.

[22] As set out above, the *Act* does not require the university to prove with absolute certainty that the records do not exist, but only to provide sufficient evidence to establish that it made a reasonable effort to locate any responsive records. 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. I accept that all of the employees who conducted the searches for responsive records were experienced employees, knowledgeable in the subject matter of the request and the records that they were required to search. I accept that the keywords and other methods that they employed were reasonable keywords and methods suitable to locate records responsive to request and that they expended a reasonable effort to locate any such records.

[23] Additionally, as previous stated, 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 additional records might exist. The appellant submits that the university has refused to provide an affidavit stating that the individual named in the request was not paid directly or indirectly by the university while on leave. On this basis, he argues that a reasonable search for records was not undertaken by the university. Without further explanation, I do not accept that the absence of such an affidavit has any bearing on the existence of additional records.

[24] The appellant also states that he believes that records relating to the work that the individual named in the request conducted while on leave should exist. Again, I have not been provided with sufficient information to support a conclusion that the university could reasonably be expected to hold records revealing any work or activities undertaken by an individual on administrative leave. In my view, I have been provided with insufficient evidence to conclude that it does.

[25] Finally, with respect to the appellant's position that any direct or indirect payments made to the named individual by the university while on leave should exist, I find that, with the exception of any additional records that may be found in the office of the Vice-President, Resources, I have not been provided with sufficient evidence to support a conclusion that additional records beyond those identified as responsive to the request, might exist.

[26] Accordingly, I find that the university has provided me with sufficient evidence to demonstrate that the majority of the university's searches for records responsive to the appellant's request were reasonable and in compliance with its obligations under the *Act*. However, as stated above, I do not uphold its search for records within the office of the Vice-President, Resources, as reasonable. I will order the university to conduct an additional search for responsive records in the office of the Vice-President, Resources, dated between October 2011 to September 2012.

B. Does section 65(6) exclude any of the records at issue from the scope of the *Act*?

[27] Section 65(6) of the *Act* removes any records containing information relating to labour relations and employment related matters from the scope of the *Act*. In its revised index issued during the inquiry stage, the university claims that section 65(6) applies to exclude records 6, 9, 11, 12, 14, 15, 16 and 17 from the scope of the *Act*. The application of section 65(6) to these specific records was also claimed on the index released to the appellant during the mediation stage of the inquiry.

[28] In its representations, the university only refers to the possible application of section 65(6)3. That section reads as follows:

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.

[29] If section 65(6)3 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*.

[30] 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.⁷

[31] IPC orders had previously found that the term "in relation to" in section 65(6) means "for the purpose of, as a result of, or substantially connected to."⁸ However, in

⁷ Order MO-2589; see also *Ontario (Attorney General) v. Toronto Star*, 2010 ONSC 991 (Div. Ct.).

⁸ For example, see Order P-1223.

the 2010 decision, *Ontario (Attorney General) v. Toronto Star*,⁹ the Divisional Court addressed the meaning of the term “relating to” in section 65(5.2) of the *Act* and found that it requires “some connection” between the records and the subject matter of that section. It rejected the imputation of a “substantial connection” requirement into the meaning of “relating to.”

[32] The IPC has concluded that the Divisional Court’s findings in *Toronto Star* also apply to the words, “in relation to” in section 65(6).¹⁰ Consequently, for section 65(6) to apply, an institution must show that there is “some connection” (not a “substantial connection”) between the records and the subjects mentioned in paragraph 1, 2 or 3 of this section.

[33] 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.¹¹

Section 65(6)3: matters in which the institution has an interest

[34] For section 65(6)3 to apply, the university 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.

[35] My analysis on how all three parts of the requisite test for section 65(6)3 apply to the records at issue follows.

Part 1: collected, prepared, maintained or used

[36] The university submits that the requested records relate to a university employee who has held a variety of positions with the university since 2004. It submits that the records were collected, prepared and/or maintained by a number of the university’s offices in its capacity as an employer to the named individual. The university identifies

⁹ *Supra*, note 7.

¹⁰ Order MO-2589.

¹¹ *Ontario (Ministry of Correctional Services) v. Goodis*, (2008), 89 O.R. (3d) 457 (Div Ct.).

the specific offices involved in the collection, preparation or maintenance of the records at issue and describes why they have the responsibility to do so, as follows:

- (a) Financial Resources oversees Payroll Services which is responsible for the administration of the compensation of employees.
- (b) Human Resources Services administers the employment of employees and keeps their personnel files as they relate to their compensation and benefits programs.
- (c) Office of the President confirms the terms of the appointment of Deans and of Vice-Presidents.
- (d) Office of the Vice-President, Governance (formerly known as the Office of the Secretary) oversees the operations of the Secretariat which provides secretarial services to the Board of Governors and its committees and the Senate and its committees.
- (e) Faculty of Law which keeps administrative records in connection with Deans' appointments.

[37] In his representations, the appellant does not specifically address whether the records at issue were collected, prepared, maintained or used by the university.

[38] Having reviewed the records for which the exclusion has been claimed, I accept that they were collected, prepared, maintained or used by the university. The records include letters, emails, handwritten notes, information generated by computer databases and completed administrative forms. The majority of them include the employee number of the individual named in the request, either in the document itself or handwritten at the top right-hand corner of the page, indicating that they may have been collected and filed together. All of them appear to have been generated by the university. Accordingly, I accept that all of the records for which the exclusion at section 65(6) has been claimed were collected, prepared, maintained or used by the university and meet the first requirement of the section 65(6)3 test.

Part 2: meetings, consultations, discussions or communications

[39] With respect to the second part of the test for the application of paragraph 3 of section 65(6), the university submits that the records were collected, prepared, maintained or used, in relation to meetings, discussions and communications relating to the terms of employment of the individual named in the request, including the terms of her leave from the university. The university explains that these meetings, consultations, discussions and communications were between the university's senior

management, its human resources personnel and/or forms part of the employee's personnel file.

[40] The appellant does not make any specific representations on whether the records at issue were collected, prepared, maintained or used by the university in relation to meetings, discussions and communications.

[41] As noted above, the divisional court in *Ontario (Attorney General) v. Toronto Star*,¹² instructs that for the collection, preparation, maintenance or use of a record to be considered to "in relation to" any of the circumstances identified in section 65(6), including the meetings, consultations, discussions or communications referred to in paragraph 3, that it must be reasonable to conclude that there is "some connection" between them.

[42] In my view, it is evident on the face of the records for which section 65(6)3 has been claimed that they were collected, prepared, maintained and/or used "in relation to meetings, consultations, discussions or communications" between employees of the university regarding matters relating to the individual named in the request. While some of the records clearly relate to meetings, consultations and discussions between university staff, others can be more accurately characterized as communications prepared by the university. I accept that it is reasonable to conclude that there is "some connection" between their collection, preparation, maintenance or use and meetings, consultations, discussions or communications held by the university. Accordingly, I find that the second requirement of the section 65(6)3 test has been met.

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

[43] I will first assess whether the records have some connection to meetings, consultations, discussions or communications about "labour relations or employment-related matters."

[44] The records collected, prepared, maintained or used by the 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.¹³

[45] The term "labour relations" refers to the collective bargaining relationship between an institution and its employees, as governed by collective bargaining

¹² *Supra*, note 7.

¹³ *Ontario (Ministry of Correctional Services) v. Goodis*, cited above, note 11.

legislation, or to analogous relationships. The meaning of "labour relations" is not restricted to employer-employee relationships.¹⁴

[46] 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.¹⁵

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

- a job competition¹⁶
- an employee's dismissal¹⁷
- a grievance under a collective agreement¹⁸
- disciplinary proceedings under the *Police Services Act*¹⁹
- a "voluntary exit program"²⁰
- a review of "workload and working relationships"²¹
- the work of an advisory committee regarding the relationship between the government and physicians represented under the *Health Care Accessibility Act*.²²

[48] 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.²³

¹⁴ *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.

¹⁵ Order PO-2157.

¹⁶ Orders M-830 and PO-2123.

¹⁷ Order MO-1654-I.

¹⁸ Orders M-832 and PO-1769.

¹⁹ Order MO-1433-F.

²⁰ Order M-1074.

²¹ Order PO-2057.

²² *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.).

²³ *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.

[49] In the circumstances of the current appeal, the university submits that the records at issue relate to human resource issues and that, at all times, it was acting as an employer.

[50] It submits that the records at issue relate to the named individual's human resources dossier which consists, in part of the terms of employment, the terms of academic and administrative appointments, salary, employee benefits and the leave from the named individual's employment during a specified period. The university also submits that the records relate to matters in which the university has an interest as they relate to matters involving its own workforce. It asserts that it is responsible for the management of all human resources matters for its employees.

[51] The university submits that for these reasons, the third requirement of paragraph 3 of section 65(6) has been met.

[52] The appellant does not make any specific representations on whether any meetings, consultations, discussions or communications had by the university about the records were about labour relations or employment-related matters in which the university has an interest.

[53] As stated, the terms "labour relations matters" and "employment-related matters" have different meanings. "Labour relations" specifically refers to matters arising from the collective bargaining relationship between an institution and its employees, as governed by collective bargaining legislation or analogous relationships.

[54] The content of the records at issue suggests that at the time of their creation the individual named in the request was an employee taking an administrative leave. While it is likely that her employment with the university was governed by a collective bargaining agreement, I have not been provided with specific evidence of this nature. However, even if it can be argued that the subject matter of these records does not arise out of a collective bargaining relationship and, therefore, cannot be said to relate to "labour relations," in my view, the information at issue would clearly be described as relating to "employment-related matters." The records address the terms and conditions of an administrative leave which is clearly a matter that arises from a relationship between an employer and an employee. Accordingly, I am satisfied that the type of information at issue can, depending on the context, be described as either "labour relations" or "employment-related" matters and therefore would fall squarely within one of the two terms contemplated in the exclusion at section 65(6)3.

[55] The final component for the third part of the section 65(6)3 test is whether the university "has an interest" in the labour relations or employment-related records. As stated above, that phrase requires the university to have more than a "mere curiosity or concern" in the information and has been held to apply to matters involving the university's own workforce.

[56] Given that the records address certain matters relating to an administrative leave taken by an employee, in my view, they clearly relate to the university's management of its own workforce. Therefore, I accept that it has more than a mere curiosity or concern with respect to these matters. I am satisfied that the university has an interest in these records as contemplated by the third requirement of the section 65(6)3 test.

[57] Having closely reviewed the records for which the exclusion at section 65(6)3 has been claimed, I find that they were collected, prepared, maintained or used by the university in relation to meetings, consultations, discussions, and communications, related to labour relations or employment-related matters in which the university has an interest, as contemplated by the exclusion at paragraph 3 of section 65(6) of the *Act*. Accordingly, subject to the possible application of any of the exceptions listed in section 65(7), I find that section 65(6)3 applies.

Section 65(7): exceptions to the section 65(6) exclusion

[58] Section 65(7) addresses exceptions to the section 65(6) exclusion by listing four specific types of records that *are* subject to the *Act*.

[59] The university submits that none of the exceptions in section 65(7) apply to the records at issue.

[60] The appellant submits that the exception at section 65(7)3 of the *Act* might apply to some of the records to bar the operation of section 65(6). Section 65(7)3 reads:

This Act applies to the following records:

An agreement between an institution and one or more employees resulting from negotiations about employment-related matters between the institution and the employee or employees.

[61] The appellant submits that any contracts between the individual named in the request and the university are not excluded pursuant to section 65(6), and submits that this information must be disclosed to him. Specifically, he points to record 18 which is described on the index as a "Contract form" as an example of a record that he believes should not be excluded from the scope of the *Act*. He submits that record 18 should fall under the exception listed in section 65(7)3. He further submits that other records identified in the index of records (as well as other records that he believes should be located in an additional search) are also likely to contain or amount to agreements between the university and the individual named in his request.

[62] From my review of the records for which section 65(6)3 has been claimed, I find that none of the exceptions to the 65(6)3 exclusion outlined in section 65(7) apply.

[63] I acknowledge that the appellant has specifically raised the possible application of the exception for agreements listed in section 65(7)3 to record 18, a signed teaching/research contract between the individual named in the request and the university. Based on the index provided by the university with its final revised decision on access, the university no longer claims that the exclusion at section 65(6)3 applies to record 18. It has disclosed the record to the appellant, in part, with a few severances made to information that it claims is subject to the mandatory exemption at section 21(1). I will be addressing the severances made to record 18 in my discussion on the possible application of that exemption below.

[64] In my view, none of the records for which section 65(6)3 has been claimed can properly be described as an agreement within the meaning of paragraph 3 of section 65(7). Additionally, I do not accept that any of them fall within any of the other exceptions listed in paragraphs 1, 2 and 4 of section 65(7). Accordingly, I find that none of the exceptions outlined in section 65(7) apply in the circumstances of this appeal.

Conclusion

[65] In summary, I find that all three requirements have been established to support the application of the exclusionary provision in section 65(6)3 of the *Act* to the records for which it has been claimed. It is clear that they were collected, prepared, maintained or used by the university in relation to meetings, consultations, discussions or communications about either labour relations or employment-related matters in which it has an interest. Additionally, I find that none of the exceptions outlined in section 65(7) apply to any of the records at issue in this appeal. Accordingly, I find that, as a result of the operation of the exclusion at section 65(6)3, records 6, 9, 11, 12, 14, 15, 16 and 17 fall outside of the scope of the *Act* and I have no jurisdiction to determine whether any exemptions apply to them.

[66] I note that in its final revised decision regarding the records at issue, the university has disclosed to the appellant portions of the records that it has claimed, and I have found, are excluded from the scope of the *Act* as a result of the application of section 65(6)3.

[67] Previous decisions from this office have held that section 65(6) is record-specific and fact-specific.²⁴ Accordingly, if this section applies to a specific record, in the circumstances of a particular appeal, and none of the exceptions in section 65(7) are present, then the entire record is excluded from the scope of the *Act*. Therefore, as a result of my determination of this issue, the exclusion applies to each record as a whole

²⁴ Order P-1242.

and the disclosure of the information contained in them falls outside of my jurisdiction to review. The university is, however, entitled to determine whether it is prepared to disclose portions of those records to the appellant outside the scope of the *Act*. It appears to have done so in this case.

C. Do the records contain “personal information” as defined in section 2(1) of the *Act*, and if so, to whom does it relate?

[68] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains “personal information” and, if so, to whom it relates. That term is defined in section 2(1) as follows:

“personal information” means recorded information about an identifiable individual, including,

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

- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

[69] 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.²⁵

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

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.

[71] 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.²⁶

[72] 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.²⁷

[73] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.²⁸

[74] The university claims that portions of records 2, 3, 4, 5, 7, 8, 10, 13, 18, 19, 20 and 26 are exempt pursuant to the mandatory exemption at section 21(1) of the *Act*. For section 21(1) of the *Act* to apply, those portions must contain the personal information of an identifiable individual. Although the university does not make representations on either whether the information contains personal information that falls within the definition of that term in section 2(1) or whether the mandatory personal privacy exemption at section 21(1) of the *Act* applies, given that it is a mandatory exemption, I will go on to determine whether it applies to the portions for which it has been claimed.

²⁵ Order 11.

²⁶ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

²⁷ Orders P-1409, R-980015, PO-2225 and MO-2344.

²⁸ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

[75] The appellant does not make any specific representations on whether the records contain personal information as that term has been defined in section 2(1) of the *Act*.

[76] Having reviewed the severed portions of records 2, 3, 4, 5, 7, 8, 10, 13, 18, 19, 20 and 26, I accept that they contain the personal information of an identifiable individual within the meaning of the definition in section 2(1) of the *Act*. The only information that has been severed from records 2, 3, 4, 5, 7, 8, 10, 13, 19, 20, and 26 is the employee number of the individual named in the request. That individual's employee number has also been severed from record 18, but record 18 also contains severances made to three dollar amounts which relate to details about her remuneration.

[77] Read together, the dollar amounts in record 18 can clearly be described as information relating to a financial transaction in which the individual has been involved (paragraph (b)). Therefore, I accept that they qualify as personal information within the definition in section 2(1) of the *Act*.

[78] On its face, the employee number of the individual named in the request appears as if it could be described as professional or business information. Section 2(3) of the *Act* identifies types of information that does *not* qualify as personal information including the name, title, contact information or designation of an individual that identifies them in a business or professional capacity. This information can be described the type of as information that would commonly appear on a business card or in a company's contact database or telephone listing and would be generally revealed to outside parties in the course of doing business with them.

[79] However, while an employee number can be described as information related to an individual in a professional context, is not information that would generally be divulged to individuals outside of the business. Additionally, an employee number is often not even known to other individuals other than the individual to whom it relates and a limited number of other employees who require that information for the purposes of their job, such as managers or human resources employees.

[80] Although previous orders have found that police officer badge numbers constitute their professional information²⁹, in Order MO-2134, Adjudicator Diane Smith found that employee numbers of firefighters qualified as their "personal information" as that term is defined in the *Act*. She stated:

I recognize that the information in the record was recorded in the course of the execution of the firefighter's professional, rather than their personal, responsibilities. However, I find that the disclosure of the

²⁹ Orders MO-2050, MO-2252 and MO-2326.

information remaining at issue in the record [the firefighters' employee numbers], particularly when taken with the firefighters' names (which have already been disclosed to the appellant) reveal something of a personal nature about the firefighters. I find that the undisclosed information represents an identifying number that has been assigned to each firefighter, who is also identified in the record by name. I also note that the number provides a link to other personal information of each firefighter, *i.e.* the information in their human resources file described by the city. Accordingly, I find that the employee numbers qualify as the firefighters' personal information within the meaning of paragraph (c) of the definition.

[81] I agree with Adjudicator's Smith's reasoning in Order MO-2134 and find it is relevant to the circumstances of this appeal.

[82] In my view, given the context in which the individual's employee number appears, the information that it is coupled with and the way the records demonstrate that it is consistently used by the university (namely for human resources matters relating to the individual's employment), in the particular circumstances of this appeal, it does not properly constitute professional or business information as those terms are intended to read. I accept that it reveals something of a personal nature about the individual, particularly given that it provides a link to other personal information about her and I find that it is best described as an identifying number assigned to that individual, as contemplated in paragraph (c) of the definition of "personal information." Therefore, I find that the employee number of the individual named in the request qualifies as her personal information within the definition of that term set out in the *Act*.

[83] Accordingly, I find that all of the information that remains at issue in records 2, 3, 4, 5, 7, 8, 10, 13, 18, 19, 20 and 26 consists of personal information within the meaning of that term as defined by section 2(1) of the *Act*.

D. Does the mandatory personal privacy exemption at section 21(1) apply to any of the information at issue?

[84] Having determined that the information severed from records 2, 3, 4, 5, 7, 8, 10, 13, 18, 19, 20 and 26 qualifies as the personal information of an identifiable individual, the mandatory exemption at section 21(1) requires the university to refuse to disclose the information unless one of the exceptions to the exemption at section 21(1)(a) through (f) applies. In my view, the only exception which could apply in the present appeal is set out in section 21(1)(f), which states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

[85] Sections 21(2), (3), and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy within the meaning of section 21(1)(f). Section 21(2) provides criteria to consider in making this determination, section (3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy and section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of privacy. Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the “public interest override” at section 23 applies.³⁰

Representations

[86] As mentioned above, the university has claimed section 21(1) applies to exempt severances made to portions of records 2, 3, 4, 5, 7, 8, 10, 13, 18, 19, 20 and 26 but has not made specific representations on how this information falls within the mandatory personal privacy exemption. Section 21(1) is a mandatory exemption and, in its index of records, the university does not claim that any other exemptions apply to the information at issue. Accordingly, it is necessary for me to determine whether the disclosure of that information falls within the scope of the exemption.

[87] In his representations the appellant states simply that he contests the university’s application of the section 21 exemption and submits that, “for example, [the records may contain] information regarding lump-sum payments, which do not fall within section 21(3)(f).” Section 21(3)(f) is a presumption against disclosure that relates to an individual’s financial information and will be discussed immediately below in the analysis and findings portion of the discussion of this issue.

Analysis and findings

[88] Having reviewed the information for which section 21(1) has been claimed, there are two presumptions against disclosure that might apply. Specifically, sections 21(3)(d) and (f) which read:

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;

...

³⁰ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

(f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.

21(3)(d): employment or educational history

[89] With respect to the employee number which has been severed from the records at issue, the only presumption against disclosure that might apply is section 21(3)(d). Section 2(3)(d) addresses, in part, personal information that amounts to an individual's employment history.

[90] Previous orders have established that information which reveals the dates on which former employees are eligible for early retirement, the start and end dates of employment, the number of years of service, the last day worked, the dates upon which the period of notice commenced and terminated, the date of earliest retirement, entitlement to and the number of sick leave and annual leave days used and restrictive covenants in which individuals agree not to engage in certain work for a specified duration has been found to fall within the section 21(3)(d) presumption.³¹

[91] Additionally, information contained in résumés³² and work histories³³ have been found to fall within the scope of section 21(3)(d). However, a person's name and professional title, without more, does not constitute "employment history".³⁴

[92] In the circumstances of this appeal, I have received no evidence to suggest, nor do I accept, that the employee number of the individual named in the request amounts to information that can be described as her "employment history." The employee number is not information that would be contained in her résumé, does not provide any descriptive information about the time that she has been employed with the university, and does not reveal any details about that employment, including her eligibility for retirement, years of service, or information about entitlement to various types of leave amongst other types of employment related information. As a result, I find that section 21(3)(d) does not apply to the employee number of the individual named in the request, and its disclosure is not presumed to amount to an unjustified invasion of her personal privacy.

[93] I find that none of the presumptions against disclosure listed in section 21(3) of the *Act* apply to the employee number of the individual named in the request. As none of the presumptions against disclosure apply, I must go on to determine whether any of

³¹ Orders M-173, P-1348, MO-1332, PO-1885 and PO-2050; see also Orders PO-2598, MO-2174 and MO-2344.

³² Orders M-7, M-319 and M-1084.

³³ Orders M-1084 and MO-1257.

³⁴ Order P-216.

the factors for or against disclosure listed in section 21(2) might apply to that personal information.

21(3)(f): finances

[94] The university has severed from record 18, three dollar figures that represent a calculation that breakdown the remuneration of the individual named in the request. As previously noted, to amount to a presumed invasion of personal privacy under this section, information about an asset must be specific and must reveal, for example, its dollar value or size.³⁵ I accept that the severed information in record 18 reveals a specific amount payable to that individual including the precise dollar value for services rendered and can be described as financial transactions in which the individual has been involved.

[95] The appellant points to the possible application of the exception for lump-sum payments that are separate from an individual's salary which have consistently been found not to fall within section 21(3)(f).³⁶ I do not accept that the information at issue qualifies under this exception. The payments described on record 18 amount to either part or all of the individual's salary for an identifiable period of time and, in my view, cannot accurately be described as lump-sum payments that are separate and distinct from the individual's salary.

[96] In my view, the personal information relating to the individual's remuneration that has been severed from record 18 describes the individual's financial history or financial activities in which she has been involved. Accordingly, I find that the presumption at section 21(3)(f) applies to this information.

21(2): factors for and against disclosure

[97] Section 21(2) provides some factors for the city to consider in making a determination on whether the disclosure of personal information would result in an unjustified invasion of the affected parties' personal privacy. The list of factors under section 21(2) is not exhaustive. The university must also consider any circumstances that are relevant, even if they are not listed under section 21(2).³⁷ Some of these criteria weigh in favour of disclosure, while others weigh in favour of privacy protection. Section 21(2) states:

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,

³⁵ Order PO-2011.

³⁶ Orders M-173, MO-1184, MO-1469, MO-2174 and MO-2318.

³⁷ Order P-99.

- (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

[98] In my view, none of the factors listed in section 21(2) either weighing in favour of or against disclosure of the employee number are applicable in the circumstances of this appeal. Additionally, I have not received any representations from either the university or the appellant that suggest that either of them rely on any factors for or against disclosure. For me to order disclosure of the employee number of the individual named in the request I must find that disclosure of the personal information would *not* constitute an unjustified invasion of her personal privacy. In the absence of evidence suggesting that there are any factors weighing in favour of the disclosure of the employee number, I find that its disclosure would constitute an unjustified invasion of personal privacy of the individual to whom it relates.

Conclusion

[99] I have found that the presumption against disclosure for information that describes an individual's financial history or activities at section 21(3)(f) applies to the three dollar figures that have been severed from record 18. As noted above, once

established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the "public interest override" at section 23 applies.³⁸ In the circumstances of this appeal, it does not appear that any of the exceptions listed in section 21(4) are relevant. Additionally, the possible application of the "public interest override" at section 23 has not been claimed and does not appear to apply. Accordingly, the presumption at section 21(3)(f) applies and I find that the three dollar amounts have been appropriately severed from record 18 pursuant to the mandatory exemption at section 21(1).

[100] I have found that none of the presumptions listed in section 21(3) apply to the employee number of the individual named in the request. I have also found that none of the factors identified in section 21(2) apply to that information. In the absence of any relevant factors in favour of disclosure of the individual's employee number, I conclude that disclosure of that personal information would constitute an unjustified invasion of her personal privacy. This number could be used to access highly sensitive and confidential personal information. As the requirements of the exception in section 21(1)(f) have not been established, I find that the employee number is exempt from disclosure under the mandatory exemption at section 21(1).

ORDER:

1. I order the university to conduct an additional search for responsive records held by the office of the Vice-President, Resources, for the period from October 2011 to September 2012.
2. With regard to order provision 1, I order the university to provide me, by **March 4, 2015**, with representations on the additional search that it carried out to locate responsive records, including:
 - (a) the name of the individual who held the Vice-President, Resources position for the period between October 2011 and September 2012;
 - (b) the names and positions of the individuals who conducted the searches;
 - (b) information about the types of files searched, the nature and location of the search, and the steps taken in conducting the search; and
 - (c) the results of the search.

³⁸ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

If no records are found, the university is ordered to include in its representations, an explanation as to why responsive records might not have been located in the office of the Vice-President, Resources for the period between October 2011 and September 2012.

3. The university's representations may be shared with the appellant, unless there is an overriding confidentiality concern. The procedure for submitting and sharing representations is set out in IPC *Practice Direction Number 7*, which is available on the IPC's website. The university should indicate whether it consents to the sharing of its representations with the appellant.
4. If the university locates responsive records after conducting the additional search referred to in order provision 1, I order it to provide the appellant with a decision letter in accordance with sections 26, 28, and 29 of the *Act*, treating the date of this order as the date of the request. The university is to provide this office with a copy of that decision letter, sent to my attention.
5. I uphold the university's decision that section 65(6) applies to exclude records 6, 9, 11, 12, 14, 15, 16 and 17 from the scope of the *Act*.
6. I uphold the university's decision to sever portions of records 2, 3, 4, 5, 7, 8, 10, 13, 18, 19, 20 and 26, pursuant to the mandatory personal privacy exemption at section 21(1) of the *Act*.
7. I remain seized of this appeal in order to deal with any outstanding issues arising from the university's additional search addressed in order provisions 1 to 4.

Original Signed By:
Catherine Corban
Adjudicator

January 30, 2015