

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3464-I

Appeal PA12-261-2

University of Ottawa

February 20, 2015

Summary: The appellant made a request to the university for records, held in a number of specified university offices, relating to a named professor in his role as the Goldcorp Chair. The university issued an access decision granting access to some records and withholding access to others on the basis of the research exclusion in section 65(8.1), the employment or labour relations exclusion in section 65(6), the discretionary exemption in section 18(1)(economic or other interests) and the mandatory third party information exemption in section 17(1). The appellant raised the issue of the reasonableness of the university's search for responsive records. The adjudicator finds that the records are not excluded from the *Act* under section 65(8.1) as the records do not refer to any "specific, identifiable research project" and remains seized to deal with any outstanding matters arising from this decision. The adjudicator finds that two records are excluded from the *Act* under section 65(6)3. The adjudicator partially upholds the university's claim of section 18(1). Finally, the adjudicator upholds the university's search as reasonable.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 65(8.1), 65(6), 17(1), 18(1)(a) and (c).

Orders and Investigation Reports Considered: Order PO-2694.

OVERVIEW:

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

...copies of all records related to:

[named Professor] in his role Goldcorp Chair in Economic Geology.

And sent to/by and/or received to/by and/or in the possession physically and/or electronically of

- The Office of the President
- The Office of the Vice-President, Governance, formerly known as the Office of the Secretary, including legal counsel
- The Office of the Vice-President Academic
- The Office of the Vice-President Resources
- The Communications Office
- The Office of the Dean of the Faculty of Graduate and Postdoctoral Studies
- The Office of the Assistant Dean and Secretary of the Faculty of Graduate and Postdoctoral Studies
- The Office of the Vice Dean of the Faculty of Graduate and Postdoctoral Studies
- The Office of the Dean of the Faculty of Science
- The Office of the Dean of Telfer School of Management
- The Office of the Administrative Services of Telfer School of Management
- The Office of the Department of Earth Sciences
- The Office of the Dean of the Faculty of Social Sciences
- The Office of the Department of Economics
- The Office of the School of Political Studies
- The Office of the School of International Development and Global Studies
- The Office of the Graduate School of Public and International Affairs

Between March 1, 2007 and present.

[2] This office initially dealt with this request as a deemed refusal and thus the appeal file PA12-261 was opened. This appeal was resolved when the university subsequently issued an access and fee decision, setting out the following:

- Partial access would be granted upon payment of a \$220 fee.
- Complete access granted to specified records.
- Partial access granted to records 1, 5, 47, 58 – 61 and 75. Information was withheld under the mandatory exemption in section 21(1) (personal privacy).
- Partial access granted to record 81, with information withheld under the mandatory third party information exemption in section 17 and the discretionary exemption in section 18 (economic and other interests).
- Partial access granted to records 4 and 12 with information withheld as not responsive to the request.
- Access denied in full to records 26, 45, 46 and 50 pursuant to section 18.
- Access denied in full to records 37 – 39, 51 – 52 and 54 – 55 pursuant to sections 17 and 18.

[3] Finally, the university claimed that the *Act* did not apply to records 2, 3, 5 – 9, 13 – 23, 25, 27 – 37, 40, 43 – 44, 53, 65 – 74, 76 – 77, 89 – 101, 104 – 111, 114 – 126 by virtue of the research exclusion in section 65(8.1). The university also claimed that the labour relations or employment-related exclusion in section 65(6) applies to records 2, 5 and 6. Moreover, the university claimed that the exemptions in sections 17, 18 and 21 applied to the records it claimed were excluded from the *Act* under 65(8.1).

[4] The appellant appealed the university's fee and access decision and the current appeal file was opened.

[5] During mediation, the university issued a detailed fee breakdown, describing 13 search locations and the time allotted to each location searched. In its breakdown, the university indicated a total search fee of \$482.50 but only charged a fee of \$220. The appellant reviewed the university's fee breakdown but maintains that the fee is still an issue and questioned the reasonableness of the university's search.

[6] After a teleconference with the parties and the mediator, the search and fee issues were resolved and were no longer at issue.

[7] Also in mediation, the university clarified that some of the information in record 1 was not responsive to the appellant's request and provided the appellant and this office with an updated index of records. The appellant advised the mediator that he did not take issue with the removal of the non-responsive information from records 1, 4 and 12.

[8] With regard to the photographs attached to record 47, the appellant sought information on the identity of the individuals whose photographs were withheld. The university advised the appellant that the identity of these individuals was withheld under section 21.

[9] The appellant subsequently advised that he does not seek access to the photographs and he is not pursuing access to the personal information severed from the records pursuant to section 21, with the exception of the information withheld in records 2 and 5.

[10] During my inquiry into this appeal, I sought representations from the university, an individual whose interests may be affected by the outcome of the appeal (the affected person) and the appellant. I received representations from the university and the affected person. While the appellant did not provide representations, he did provide a letter indicating that the university's search for responsive records was still within the scope of the appeal. Accordingly, the university provided submissions on its search during the inquiry.

[11] In this order, I partially uphold the university's decision. I find the exclusion in section 65(8.1) does not apply to the records for which it was claimed and I remain seized to deal with any outstanding matters arising from this decision. I uphold the university's claim of the exclusion in section 65(6) for the records for which it was claimed. The university is ordered to disclose some records to the appellant. Lastly, I uphold the university's search as reasonable.

RECORDS:

[12] The records at issue consist predominantly of emails and are described in the index of records found in the appendix to this order.

ISSUES:

- A. Does section 65(8.1) exclude some of the records from the *Act*?
- B. Does section 65(6) exclude some of the records from the *Act*?
- C. Does section 18(1) apply to the records?
- D. Did the university properly exercise its discretion in the circumstances?
- E. Does section 17(1) apply to the records?
- F. Did the university conduct a reasonable search for records?

DISCUSSION:

A. Does section 65(8.1) exclude some of the records from the Act?

[13] The university submits that section 65(8.1)(a) applies to exclude some of the

records from the application of the *Act*. That section states:

This Act does not apply,

to a record respecting or associated with research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution.

[14] Research is defined as “a systematic investigation designed to develop or establish principles, facts or generalizable knowledge, or any combination of them, and includes the development, testing and evaluation of research.” The research must be referable to specific, identifiable research projects that have been conceived by a specific faculty member, employee or associate of an educational institution.¹

[15] This section applies where it is reasonable to conclude that there is “some connection” between the record and the specific, identifiable “research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution.”²

[16] The university submits that all of the records for which it has claimed the exclusion are exchanges regarding the creation of the Institute for Canadian Shield Research, the creation of a new lab for research and other research project collaborations with potential partners. The university states:

These records contain specific information about research projects regarding strategies of development, potential partnerships, fundraising, research information, technical research information, Goldcorp Chair financial information, the management and the use of the Chair research funds.

[17] The university provided more detailed representations about each of the records, some of which was not shared with the appellant due to confidentiality concerns.

[18] The university submits that Order PO-2693 is relevant to records at issue, as, former Senior Adjudicator John Higgins concluded “that universities’ academic freedom and competitiveness is intended to be protected by the exclusion of certain records from the scope of the *Act*.” The university further cites Order PO-3084 where the former Commissioner, Ann Cavoukian, emphasized the importance of academic freedom and its need to be taken into account when considering the application of section 65(8.1)(a).

¹ Order PO-2693.

² Order PO-2942; see also *Ontario (Attorney General) v. Toronto Star*, 2010 ONSC 991 (Div. Ct.).

[19] Based on my review of the records and the university's representations, I find that the exclusion in section 65(8.1)(a) does not apply to the records, as the records are not "respecting or associated with research conducted or proposed". The university has not identified the particular research the records are respecting or associated with, instead, they have described potential partnerships and proposals. In Order PO-2694, former Senior Adjudicator John Higgins considered whether the exclusion in section 65(8.1)(a) applied to the University of Western Ontario's records relating to the design study, bid and installation of a bird wind tunnel. In finding that there was not a substantial connection between the records and any specific research project, the Senior Adjudicator stated:

In the affidavit provided by the University, the Assistant Professor who signed it argues that "an important aspect of the research process is to develop innovative ideas for equipment..." From my review of the records and other materials provided to me, it is clear that the records do disclose details of the design and capabilities of the tunnel. However, this in itself does not establish a substantial connection between the records and any specific research project, including research to be conducted by the Assistant Professor himself.

Later in the affidavit, the Assistant Professor indicates that the tunnel design is intended to provide "...the unique features required for my research and the research collaborators from Western and other academic institutions." This confirms the multi-purpose nature of the tunnel construction project. By way of analogy, records that relate to the construction and/or design of a laboratory, or a multi-purpose piece of laboratory equipment – which could be used for any number of research projects – are not for that reason alone records "respecting or associated with" the eventual research for which they are used.

...

I have reviewed the University's submissions, the affidavit and all of the records, in detail. I find that the records lack the substantial connection required for me to find that they are "respecting or associated with" research, within the meaning of section 65(8.1)(a). The records were not prepared for the purpose of conducting a specific research project, nor do they result from such a project. Significantly, as well, they do not disclose, either directly or by inference, the particulars or even the broad objectives of any specific proposed research project or projects. I have scoured the records for that kind of information and have not found it. At most, they disclose the design and capabilities of the tunnel, which might lead to speculation about the type of research that might be conducted. In my view, as outlined above, that is quite a different thing.

[20] I agree with the Senior Adjudicator's rationale and apply it here. Many of the records at issue relate to the creation of the Institute for Canadian Shield Research. I find that the records relating to the discussion of the Institute do not disclose the particulars of any specific proposed or conducted research project or projects and instead describe, in general, the type of research that might be conducted at the Institute when it is constructed. This is the same information that is found on the university's website relating to the Goldcorp Chair. Moreover, the other records also do not contain references to a specific proposed research project or projects. The university has not established that either its academic freedom or its competitiveness would be affected by the inclusion of these records under the *Act*. Accordingly, I find that the exclusion in section 65(8.1)(a) does not apply to the records and I will consider whether the exemptions claimed by the university apply.

B. Does section 65(6) exclude some of the records from the *Act*?

[21] The university submits that Records 2, 5 and 6 are excluded from the scope of the *Act* under section 65(6)3 which 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:

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

[22] 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*.

[23] 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.³

[24] 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.⁴

[25] If section 65(6) applied at the time the record was collected, prepared,

³ Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).

⁴ Order PO-2157.

maintained or used, it does not cease to apply at a later date.⁵

[26] 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.⁶

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

Introduction

[27] 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.

[28] The university submits that Records 2 and 5 are versions of the Curriculum Vitae for the professor of the Earth Sciences, Faculty of Science and contain his employee number. Accordingly, the university submits that these records were in the professor's employee file and should be excluded under section 65(6)3 as records collected by an institution in relation to discussions and/or communications about employment-related matters in which the institution has an interest.

[29] Record 6 is email between a named professor and another individual relating to that individual's departure. The university submits that this record should be excluded under section 65(6)3 as it is a communication containing information about an employment-related matter.

[30] Having reviewed Records 2, 5 and 6, I find that it is evident that they were collected by the university in relation to discussions and communications. I find that parts 1 and 2 of the test have been met.

⁵ *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.

⁶ *Ontario (Ministry of Correctional Services) v. Goodis*, cited above.

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

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

- a job competition⁷
- an employee’s dismissal⁸
- a grievance under a collective agreement⁹
- disciplinary proceedings under the *Police Services Act*¹⁰
- a “voluntary exit program”¹¹
- a review of “workload and working relationships”¹²
- the work of an advisory committee regarding the relationship between the government and physicians represented under the *Health Care Accessibility Act*.¹³

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

- an organizational or operational review¹⁴
- litigation in which the institution may be found vicariously liable for the actions of its employee.¹⁵

[33] 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.¹⁶

[34] The records collected, prepared maintained or used by an institution are

⁷ Orders M-830 and PO-2123.

⁸ Order MO-1654-I.

⁹ Orders M-832 and PO-1769.

¹⁰ Order MO-1433-F.

¹¹ Order M-1074.

¹² Order PO-2057.

¹³ *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.).

¹⁴ Orders M-941 and P-1369.

¹⁵ Orders PO-1722, PO-1905 and *Ontario (Ministry of Correctional Services) v. Goodis*, cited above.

¹⁶ *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)*, cited above.

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.¹⁷

[35] Records 2 and 5 were the copies of the Curriculum Vitae of the professor. I accept that these records relate to the university’s employment of the professor and as such, are about an employment-related matter in which the university has an interest. It is evident that these records were in the professor’s employment file. I find the university has established that these two records were collected for the purposes of communications and discussions about an employment-related matter in which the university has an interest. Accordingly, I find that these two records are excluded from the *Act*.

[36] On the other hand, it is unclear to me how the information in Record 6 is about an employment-related matter in which the university has an interest. Record 6 is an email from a professor to another individual about that individual’s departure. I find that the departure of an employee relates to employment, in general, but the university has not established that the employee’s departure is an employment-related matter in which it has an interest. I find that Record 6 is not excluded under section 65(6)3 of the *Act*.

[37] The university has claimed the application of section 21 to the “personal information” in Record 6. I have reviewed Record 6 and find that it contains recorded information about an identifiable individual which is considered her personal information within the meaning of that term as defined in section 2(1). As the university has claimed that this information is exempt under section 21 and the appellant has indicated he does not wish to pursue information claimed exempt under section 21, I will not be considering the application of that exemption to the record, and will order it withheld from the appellant.

C. Does section 18 apply to the records?

[38] The university submits that sections 18(1)(a) and (c) apply to exempt some of the records from disclosure. These sections state, as follows:

A head may refuse to disclose a record that contains,

- (a) trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Ontario or an institution and has monetary value or potential monetary value;

¹⁷ *Ontario (Ministry of Correctional Services) v. Goodis*, cited above.

- (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution.

[39] The purpose of section 18 is to protect certain economic interests of institutions. Generally, it is intended to exempt commercially valuable information of institutions to the same extent that similar information of non-governmental organizations is protected under the *Act*.¹⁸

[40] For section 18(1)(c) to apply, the institution must provide detailed and convincing evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.¹⁹

[41] The failure to provide detailed and convincing evidence will not necessarily defeat the institution's claim for exemption where harm can be inferred from the surrounding circumstances. However, parties should not assume that the harms under section 18 are self-evident or can be proven simply by repeating the description of harms in the *Act*.²⁰

Section 18(1)(a): information that belongs to government

[42] For section 18(1)(a) to apply, the university must show that the information:

1. is a trade secret, or financial, commercial, scientific or technical information,
2. belongs to the Government of Ontario or an institution, and
3. has monetary value or potential monetary value.

Part 1: type of information

[43] The university submits that the records, for which it has claimed section 18(1)(a), contain commercial and/or financial information. The definitions of these terms have been considered in past orders and are as follows:

Financial information refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples of this

¹⁸ Toronto: Queen's Printer, 1980.

¹⁹ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

²⁰ Order MO-2363.

type of information include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs.²¹

Commercial information is information that relates solely to the buying, selling or exchange of merchandise or services. This term can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises.²² The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.²³

[44] The university submits that Records 37 – 39, 41, 42, 51, 52, 54 and 55 are exempt under section 18(1)(a) and states that these records all relate to money and its use. In particular, the records relate to the discrepancy between the expected amount of money to finance the Chair activities and the real amount in the Chair fund, profit and loss data and operating costs.

[45] I accept the university's position that these records relate to money and in particular the funds available for the Goldcorp Chair and the expenses of administering the chair. As such, I find these records contain financial information for the purposes of section 18(1)(a).

Part 2: belongs to

[46] For information to "belong to" an institution, the institution must have some proprietary interest in it either in a traditional intellectual property sense – such as copyright, trade mark, patent or industrial design – or in the sense that the law would recognize a substantial interest in protecting the information from misappropriation by another party.

[47] Examples of information belonging to an institution are trade secrets, business-to-business mailing lists,²⁴ customer or supplier lists, price lists, or other types of confidential business information. In each of these examples, there is an inherent monetary value in the information to the organization resulting from the expenditure of money or the application of skill and effort to develop the information. If, in addition, the information is consistently treated in a confidential manner, and it derives its value to the organization from not being generally known, the confidential business information will be protected from misappropriation by others.²⁵

²¹ Order PO-2010.

²² Order PO-2010.

²³ Order P-1621.

²⁴ Order P-636.

²⁵ Order PO-1763, upheld on judicial review in *Ontario Lottery and Gaming Corporation v. Ontario (Information and Privacy Commissioner)*, [2001] O.J. No. 2552 (Div. Ct.); see also Orders PO-1805, PO-2226 and PO-2632.

[48] The university submits that the information relating to the administration of the Goldcorp Chair fund is "owned" by the university and belongs to the university and states:

The university established its Policy 111 for endowment funds. Money invested in that kind of fund is to be held by the university in perpetuity and the management of the Goldcorp Chair fund is under the responsibility of the Dean of the Faculty of Science or his/her delegate.

[49] The records for which the university has claimed section 18 relate to the amount of money in the fund and the various expenditures required in maintaining the Goldcorp Chair at the university. From the nature of the information, I find that it is confidential financial information of the university and is the type of information that would be treated consistently in a confidential manner. Accordingly, I find that the information "belongs to" the university.

Part 3: monetary value

[50] To have "monetary value", the information itself must have an intrinsic value. The purpose of this section is to permit an institution to refuse to disclose a record where disclosure would deprive the institution of the monetary value of the information.²⁶

[51] The mere fact that the institution incurred a cost to create the record does not mean it has monetary value for the purposes of this section.²⁷ Nor does the fact, on its own, that the information has been kept confidential.²⁸

[52] The university submits that the information has monetary value as it gives "important elements on the management's know-how of an university Chair fund".

[53] The records are all emails between various individuals at the university regarding the Goldcorp Chair fund. I find that the information about the fund, including its amount, and the various disbursements from it, does not have intrinsic value. I find that the university has not established that disclosure of this information would deprive it of the monetary value of the information. The amount of the fund is public knowledge and the information at issue does not relate to the way in which the fund is managed. Instead, the information relates to the various expenses incurred in maintaining the Goldcorp Chair for the university. This is not information which has intrinsic value.

[54] I find that section 18(1)(a) does not apply to these records.

²⁶ Orders M-654 and PO-2226.

²⁷ Orders P-1281 and PO-2166.

²⁸ Order PO-2724.

Section 18(1)(c): prejudice to economic interests

[55] The purpose of section 18(1)(c) is to protect the ability of institutions to earn money in the marketplace. This exemption recognizes that institutions sometimes have economic interests and compete for business with other public or private sector entities, and it provides discretion to refuse disclosure of information on the basis of a reasonable expectation of prejudice to these economic interests or competitive positions.²⁹

[56] This exemption is arguably broader than section 18(1)(a) in that it does not require the institution to establish that the information in the record belongs to the institution, that it falls within any particular category or type of information, or that it has intrinsic monetary value. The exemption requires only that disclosure of the information could reasonably be expected to prejudice the institution's economic interests or competitive position.³⁰

[57] The university submits that this exemption protects the ability of institutions to earn money in the marketplace and recognizes that institutions sometimes have economic interests and compete for business. The university further submits that the records, for which it claimed the application of section 18(1), are all exempt under subsection (c), and states:

Each year, the universities compete with each other to bring the best students [to] their institution and to do so; they much invest a lot of their energy on building their credibility and develop other attraction factors. Well-funded and interesting research projects attract not only students but also the highest minded professors in those specific fields of research and therefore, increase the level of teaching in that institution. It also creates more employment opportunities for students and raises the factor of placement of their *alma mater*.

[58] The university then makes specific arguments regarding the application of section 18(1)(c) to a number of the records including:

- Disclosure of Records 26, 45 – 46 and 50 would lead to a reasonable expectation of prejudice to the institution's economic interest and/or its competitive positions including the loss of grants and business partnership opportunities to a competitor and a breach of confidence with actual/and or potential partners.
- Disclosure of Records 37 – 39, 41, 42, 51, 52, 54 and 55 could prejudice the institution's economic interests and its competitive

²⁹ Orders P-1190 and MO-2233.

³⁰ Orders PO-2014-I, MO-2233, MO-2363, PO-2632 and PO-2758.

positions. The university made additional confidential representations about these records that were not shared with the appellant.

- Disclosure of Record 81, a communication between various university employees, referring to a verbal commitment of financial support of a third party could jeopardize this commitment and prejudice the university's economic interests.

[59] I accept the university's argument that it competes with other universities for students and to that end it competes for business partnerships, donations, and research opportunities.

[60] As stated above, the university must provide detailed and convincing evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm.

[61] Based on my review of the records for which section 18(1)(c) is claimed I find that the harm is only made out for Records 37 to 39, 41, 42, 51, 52, 54 and 55. It is evident to me on the basis of the content of the information in these records that disclosure of the information could potentially result in prejudice to the university's economic interests. I find that section 18(1)(c) applies to exempt these records from disclosure subject to my finding on the university's exercise of discretion.

[62] However, with respect to Records 26, 45 – 46, 50 and 81, I find that the university's representations are merely speculative and there is nothing on the face of these records to establish that disclosure will result in prejudice to the university's economic interests. These records are now over five years old and the university has not provided me with sufficient evidence that the partnerships or initiatives mentioned therein were successful or are still ongoing concerns. I find that section 18(1)(c) does not apply to exempt these records and will order Records 26, 45 – 46 and 50 disclosed to the appellant. The university also claimed the application of the mandatory section 17(1) exemption to Record 81, which I consider below.

[63] The university did not submit representations on the application of section 18(1)(a) and/or (c) to the remaining records even though on its index and in its decision it indicates that section 18(1) is claimed in the alternative for the records where the exclusion is claimed. As I have found that section 65(8.1) does not apply to the records and the university did not submit representations on the application of section 18(1), I will provide the university with an opportunity to do so, following the issuance of this order.

D. Did the university properly exercise its discretion in the circumstances?

[64] The section 18(1) exemption is discretionary, and permits 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.

[65] 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.

[66] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.³¹ This office may not, however, substitute its own discretion for that of the institution [section 54(2)].

[67] The university submits that in exercising its discretion it took into consideration the following:

- the purposes of the *Act*;
- whether the requester was seeking access to his own personal information;
- whether the requester had a sympathetic or compelling need to receive the information;
- whether disclosure would increase public confidence in the operation of the university;
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person;
- the historic practice of the university with respect to similar information.

³¹ Order MO-1573.

[68] The university notes that the requester is not seeking his own personal information and there is no sympathetic or compelling need to receive the information. Moreover, the university submits that protecting the confidentiality of communications about the management and financial information about the research Chair is of great importance to the university.

[69] I have reviewed the information that the university has withheld under section 18(1)(c) and find that it properly exercised its discretion in deciding to withhold the information from disclosure. The university properly considered the interests sought to be protected by the section 18(1)(c) exemption, the purposes of the *Act*, and whether public confidence would be increased as a result of disclosure. I find the university did not take into account irrelevant considerations and I uphold its exercise of discretion.

E. Does section 17(1) apply to the records?

[70] The university claimed that section 17(1) applied to a number of the records, of which only Record 81 remains at issue. Section 17(1) is designed to protect the confidential “informational assets” of businesses or other organizations that provide information to government institutions.³² Although one of the central purposes of the *Act* is to shed light on the operations of government, section 17(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace.³³

[71] The university made submissions on the application of section 17(1) to Record 81 but, did not provide representations on the application of section 17(1) to records where this exemption was claimed as an alternative to the exclusion in section 65(8.1). I further note that the university did not provide notice to the affected parties at the request stage and I did not give notice to the affected parties during my inquiry.

[72] Accordingly, I will be reserving my finding on the application of section 17(1) to Record 81 and the other records for which section 17(1) was claimed in the alternative, until the university has had an opportunity to review its claim of the section 17(1) exemption and the affected parties have had an opportunity to make submissions on the application of section 17(1) to the records.

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

[73] 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 24.³⁴ If I am satisfied that the

³² *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.), leave to appeal dismissed, Doc. M32858 (C.A.) (*Boeing Co.*).

³³ Orders PO-1805, PO-2018, PO-2184 and MO-1706.

³⁴ Orders P-85, P-221 and PO-1954-I.

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.

[74] 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.³⁵ To be responsive, a record must be "reasonably related" to the request.³⁶

[75] 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.³⁷

[76] 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.³⁸

[77] Prior to the start of my inquiry into this appeal, the appellant wrote to this office requesting that reasonable search be added as an issue in the appeal. While the appellant did not provide the basis for his conclusion that additional records should exist, he did request that the university provide an affidavit, affirming that a reasonable search had been conducted for responsive records.

[78] The university provided an affidavit from its Administrative Officer affirming that, in response to the request, the university initiated a search in the faculties and university departments specified in the request. A copy of the affidavit was provided to the appellant, who did not make representations in response.

[79] The Administrative Officer affirmed that she received the completed search forms from the following offices:

- Vice-President, Governance
- Office of the Legal Services
- Operations Coordinator of the Department of Economics
- Vice-Dean of Graduate and Postdoctoral Studies
- Chair and Associate Dean of the School of Political Studies
- Assistant to the Dean of the Faculty of Graduate and Postdoctoral Studies
- Dean of the Faculty of Graduate and Postdoctoral Studies
- Operations Coordinator of the Graduate School of Public and International Affairs

³⁵ Orders P-624 and PO-2559.

³⁶ Order PO-2554.

³⁷ Order MO-2185.

³⁸ Order MO-2246.

- Office of the Vice-President, Resources
- Office of the Vice-President, Academic and Provost
- Assistant Dean and Secretary General
- Dean of the Faculty of Sciences
- Office of the Chief Administrative Officer, Dean, Assistant Dean, External Relations of the Telfer School of Management
- Communications Directorate
- School of International Development and Global Studies
- Office of the President
- Dean of the Faculty of Social Sciences
- Professor of Department of Earth Sciences

[80] The search forms from all of the offices were attached as exhibits to the university's representations and set out the record-holdings searched and the results of the searches.

[81] I find that the university's affidavit and exhibits establish that it conducted a reasonable search for the records and I uphold the university's search as reasonable.

ORDER:

1. I order the university to disclose Records 26, 45 – 46, 50 by providing the appellant with a copy of the records by **March 20, 2015**.
2. I uphold the university's decision to withhold Records 2, 5, 6, 37 – 39, 41, 42, 51, 52, 54 and 55.
3. I find that the exclusion in section 65(8.1) does not apply to exclude the records, for which it was claimed, from the application of the *Act*.
4. I remain seized of this appeal in order to deal with any outstanding matters arising from my finding that the exclusion does not apply.
5. I uphold the university's search for records.

Original Signed By:
Stephanie Haly
Adjudicator

February 20, 2015

INDEX OF RECORDS

No.	Date	Description	Exemption/Exclusion applied	Finding
2	March 2007	CV	Withheld in full - 21, 65(6), 65(8.1)	Withhold
3	04/10/2007	Email	Withheld in full - 65(8.1), 18	Withhold
5	May 2007	CV	Withheld in full - 21, 65(6), 65(8.1)	Withhold
6	11/06/2007	Email	Withheld in full - 65(8.1), 65(6), 21, 18	Withhold
7	11/11/2007	Email	Withheld in full - 65(8.1), 18	65(8.1) does not apply
8	11/13/2007	Email	Withheld in full - 65(8.1), 18	65(8.1) does not apply
9	11/13/2007	Email	Withheld in full - 65(8.1), 18	65(8.1) does not apply
13	12/11/2007	Email	Withheld in full - 65(8.1), 17, 18	65(8.1) does not apply
14	01/23/2008	Email	Withheld in full - 65(8.1), 21, 18	65(8.1) does not apply
15	01/24/2008	Email	Withheld in full - 65(8.1), 21, 18	65(8.1) does not apply
16	01/24/2008	Email	Withheld in full - 65(8.1), 21, 18	65(8.1) does not apply
17	01/24/2008	Email	Withheld in full - 65(8.1), 21, 18	65(8.1) does not apply
18	03/27/2008	Email	Withheld in full - 65(8.1), 18	65(8.1) does not apply
19	03/31/2008	Email	Withheld in full - 65(8.1), 18	65(8.1) does not apply
20	06/30/2008	Email	Withheld in full - 65(8.1), 17, 18	65(8.1) does not apply
21	08/07/2008	Email	Withheld in full - 65(8.1), 17, 18	65(8.1) does not apply
22	01/24/2009	Email	Withheld in full - 65(8.1), 18	65(8.1) does not apply
23	02/09/2009	Email	Withheld in full - 65(8.1), 18	65(8.1) does not apply
25	02/23/2009	Email	Withheld in full - 65(8.1), 21, 18	65(8.1) does not apply

26	02/23/2009	Email	Withheld in full – 18	Disclose
27	02/26/2009	Email	Withheld in full – 65(8.1), 21, 18	65(8.1) does not apply
28	02/28/2009	Email	Withheld in full – 65(8.1), 17, 18	65(8.1) does not apply
29	03/03/2009	Email	Withheld in full – 65(8.1), 17, 18	65(8.1) does not apply
30	03/05/2009	Email	Withheld in full – 65(8.1), 18	65(8.1) does not apply
31	03/05/2009	Email	Withheld in full – 65(8.1), 17, 18	65(8.1) does not apply
32	03/06/2009	Email	Withheld in full – 65(8.1), 17, 18	65(8.1) does not apply
33	04/09/2009	Email	Withheld in full – 65(8.1), 17, 18	65(8.1) does not apply
34	05/15/2009	Document	Withheld in full – 65(8.1), 18	65(8.1) does not apply
35	05/27/2009	Email	Withheld in full – 65(8.1), 18	65(8.1) does not apply
36	05/27/2009	Email	Withheld in full – 65(8.1), 18	65(8.1) does not apply
37	06/26/2009	Email	Withheld in full – 17, 18	Withhold
38	07/03/2009	Email	Withheld in full – 17, 18	Withhold
39	07/08/2009	Email	Withheld in full – 17, 18	Withhold
40	07/09/2009	Email	Withheld in full – 65(8.1), 17, 18	65(8.1) does not apply
41	07/22/2009	Email	Withheld in full – 17, 18	Withhold
42	07/23/2009	Email	Withheld in full – 17, 18	Withhold
43	07/29/2009	Email	Withheld in full – 65(8.1), 17, 18	65(8.1) does not apply
44	07/30/2009	Email	Withheld in full – 65(8.1), 18	65(8.1) does not apply
45	07/31/2009	Email	Withheld in full – 18	Disclose
46	08/05/2009	Email	Withheld in full – 18	Disclose
50	09/16/2009	Email	Withheld in full – 18	Disclose
51	09/21/2009	Email	Withheld in full – 17, 18	Withhold
52	09/23/2009	Email	Withheld in full – 17, 18	Withhold
53	10/01/2009	Email	Withheld in full – 65(8.1), 18	65(8.1) does not apply
54	10/08/2009	Email	Withheld in full – 17, 18	Withhold
55	10/08/2009	Email	Withheld in full – 17, 18	Withhold
65	01/20/2010	Email	Withheld in full – 65(8.1), 18	65(8.1) does not apply

66	01/20/2010	Email	Withheld in full – 65(8.1), 18	65(8.1) does not apply
67	01/27/2010	Email	Withheld in full – 65(8.1), 17, 18	65(8.1) does not apply
68	02/03/2010	Email	Withheld in full – 65(8.1), 18	65(8.1) does not apply
69	03/03/2010	Email	Withheld in full – 65(8.1), 18	65(8.1) does not apply
70	04/09/2010	Email	Withheld in full – 65(8.1), 18	65(8.1) does not apply
71	04/12/2010	Email	Withheld in full – 65(8.1), 18	65(8.1) does not apply
72	04/14/2010	Email	Withheld in full – 65(8.1), 18	65(8.1) does not apply
73	04/13/2010	Email	Withheld in full – 65(8.1), 18	65(8.1) does not apply
74	05/11/2010	Email	Withheld in full – 65(8.1), 18	65(8.1) does not apply
76	08/05/2010	Email	Withheld in full – 65(8.1)	65(8.1) does not apply
77	08/10/2010	Email	Withheld in full – 65(8.1)	65(8.1) does not apply
81	09/16/2010	Email	Withheld in full – 17, 18	Withhold (pending notice)
89	12/15/2010	Email	Withheld in full – 65(8.1)	65(8.1) does not apply
90	01/21/2011	Email	Withheld in full – 65(8.1), 17, 18	65(8.1) does not apply
91	01/27/2011	Email	Withheld in full – 65(8.1), 17, 18	65(8.1) does not apply
92	02/01/2011	Email	Withheld in full – 65(8.1)	65(8.1) does not apply
93	02/01/2011	Email	Withheld in full – 65(8.1)	65(8.1) does not apply
94	02/01/2011	Email	Withheld in full – 65(8.1)	65(8.1) does not apply
95	02/01/2011	Email	Withheld in full – 65(8.1)	65(8.1) does not apply
96	02/02/2011	Email	Withheld in full – 65(8.1)	65(8.1) does not apply
97	02/18/2011	Email	Withheld in full – 65(8.1)	65(8.1) does not apply
98	02/18/2011	Email	Withheld in full –	65(8.1) does not

			65(8.1)	apply
99	02/18/2011	Email	Withheld in full – 65(8.1)	65(8.1) does not apply
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101	02/18/2011	Email	Withheld in full – 65(8.1)	65(8.1) does not apply
104	03/28/2011	Email	Withheld in full – 65(8.1), 18	65(8.1) does not apply
105	03/28/2011	Email	Withheld in full – 65(8.1), 18	65(8.1) does not apply
106	04/07/2011	Email	Withheld in full – 65(8.1), 17, 18	65(8.1) does not apply
107	05/20/2011	Email	Withheld in full – 65(8.1)	65(8.1) does not apply
108	05/20/2011	Email	Withheld in full – 65(8.1)	65(8.1) does not apply
109	05/25/2011	Email	Withheld in full – 65(8.1)	65(8.1) does not apply
110	05/25/2011	Email	Withheld in full – 65(8.1)	65(8.1) does not apply
111	05/31/2011	Email	Withheld in full – 65(8.1), 21	65(8.1) does not apply
114	06/14/2011	Email	Withheld in full – 65(8.1), 17, 18	65(8.1) does not apply
115	06/14/2011	Email	Withheld in full – 65(8.1), 17, 18	65(8.1) does not apply
116	06/15/2011	Email	Withheld in full – 65(8.1), 17, 18	65(8.1) does not apply
117	06/15/2011	Email	Withheld in full – 65(8.1), 18	65(8.1) does not apply
118	06/15/2011	Email	Withheld in full – 65(8.1), 17, 18	65(8.1) does not apply
119	06/15/2011	Email	Withheld in full – 65(8.1), 17, 18	65(8.1) does not apply
120	06/15/2011	Email	Withheld in full – 65(8.1), 17, 18	65(8.1) does not apply
121	06/15/2011	Email	Withheld in full – 65(8.1), 17, 18	65(8.1) does not apply
122	06/24/2011	Email	Withheld in full – 65(8.1), 18	65(8.1) does not apply
123	06/24/2011	Email	Withheld in full – 65(8.1), 18	65(8.1) does not apply

124	06/24/2011	Email	Withheld in full – 65(8.1), 18	65(8.1) does not apply
125	06/24/2011	Email	Withheld in full – 65(8.1), 18	65(8.1) does not apply
126	06/24/2011	Email	Withheld in full – 65(8.1), 18	65(8.1) does not apply