Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3226

Appeal MA14-21

Toronto District School Board

August 5, 2015

Summary: The board received a request for access to certain emails and Blackberry Messages (BBMs) passing between staff and trustees relating to the recruitment of a new Director of Education in 2013. The board denied access to the responsive records in its custody or control, arguing that some were excluded from the operation of the *Act* under section 52(3)3 while others were exempt under sections 11(c) and (d). It also took the position that some of the BBMs were not within its custody or control. The appellant appealed this decision and argued that additional records beyond those identified by the board ought to exist.

In this decision, the adjudicator upholds the board's decision to deny access to the majority of the records, with the exception of a four-page email chain dated June 26, 2013, another four-page email chain dated July 3, 2013 and a three page email chain dated October 9, 2013. He also finds that the board does not exercise the requisite degree of custody or control over trustee's pre-August 15, 2013 BBM records. In addition, the board's search for responsive records was determined to be reasonable.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 4(1), 11(c) and (d) and 52(3)3.

Orders and Investigation Reports Considered: MO-2381, PO-2212, PO-2106.

Cases Considered: *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25, [2011] 2 SCR 306.

OVERVIEW:

[1] The Toronto District School Board (the Board) received a request made under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

- All records of information, however recorded, whether in printed form or by electronic means or otherwise, of all communications regarding the Board's search for a new Director of Education, including emails and BBM's, made or received by any of the following Trustees of the Board from January 18, 2013 to and including October 18, 2013:

[6 named trustees]

- All records of information, however recorded, whether in printed form or by electronic means or otherwise, of all discussions and communications leading up to and regarding the direction by the Ministry of Education that a forensic audit of the Board's financial management practices be conducted, including emails and BBM's made or received by any of the following Trustees of the Board from January 18, 2013 to and including October 25, 2013:

[6 named trustees]

- The particulars of all expenses submitted for reimbursement during the period April 1, 2012 to October 25, 2013 by [2 named Trustees], including the details of the payee, purpose and amounts of all such expenses.

- The requested records include copies of all correspondence, whether in paper or electronic format, all telephone and cell phone communications, including text messages and BBM's, and including date and time of all such correspondence and phone calls, and all records prepared or received by any of the aforementioned Trustees that are maintained on computer hardware or software under the control of the Toronto District School Board.

[2] The board denied access to records responsive to parts 1 and 2 of the request pursuant to the discretionary exemptions in sections 6(1)(b) (closed meeting) and 11 (valuable government information), and the exclusion in section 52(3) (labour relations information) of the Act. The board also granted partial access to records responsive to part 3 of the request with severances made pursuant to the mandatory personal privacy exemption in section 14(1) of the Act. In the decision, the board advised that records

related to BBMs are outside its custody and control. The appellant appealed the board's decision.

[3] During the mediation of the appeal, the appellant advised the mediator that he was pursuing access to all of the withheld records, including records that the board claims are outside its custody or control. The board declined to change its decision with respect to the withheld records and clarified that BBMs from prior to July 2013 are not within its custody and control, unlike those from July 2013 onwards. The board also indicated that it conducted a search for BBMs for the period from July 2013 to October 2013 and that no responsive records exist. The appellant is of the view that BBMs should exist for the period from July 2013 to October 2013 and confirmed that he is not pursuing access to account, credit card and employee numbers that were withheld within the trustee expense records.

[4] Further mediation was not possible and the appeal was moved to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*. I sought and received the representations of the board, initially. A copy of the board's representations was provided to the appellant, along with a Notice of Inquiry, setting out the facts and issues in the appeal. Only a small portion of page 5 of the representations was withheld, due to confidentiality concerns. In its representations, the Board withdrew its reliance on section 6(1)(b) with respect to the records and agreed to the disclosure of pages 12-15, 17-20 and 33-35 of the Forensic Audit. I then sought representations from the appellant, but did not receive a response to the Notice of Inquiry which I provided to him.

[5] In this decision, I uphold the board's decision to deny access to the majority of the records, with the exception of a four-page email chain dated June 26, 2013, another four-page email chain dated July 3, 2013 and a three page email chain dated October 9, 2013. I also find that the board does not exercise the requisite degree of custody or control over trustee's pre-August 15, 2013 BBM records. In addition, I uphold the board's search for responsive records as reasonable.

RECORDS:

[6] The records at issue in this appeal consist of emails and the withheld portions of 202 pages of Trustee expenses. The records are listed in an index of records that was produced by the Board and shared with the appellant.

ISSUES:

A. Are the BBM records from prior to August 15, 2013 "in the custody of" or "under the control" of the board under section 4(1) of the *Act*?

B. Did the board conduct a reasonable search for BBM records which postdate August 15, 2013?

C. Are the records excluded from the operation of the *Act* by virtue of section 52(3)3 of the *Act*?

D. Do the three pages of email records dated October 9, 2013 qualify for exemption under section 11(c) or (d) of the *Act*?

DISCUSSION:

Issue A: Are the BBM records from prior to August 15, 2013 "in the custody of" or "under the control" of the board under section 4(1) of the *Act*?

[7] Section 4(1) reads, in part:

> Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless . . .

[8] Under section 4(1), the *Act* applies only to records that are in the custody or under the control of an institution. A record will be subject to the *Act* if it is in the custody OR under the control of an institution; it need not be both.[1]

[9] A finding that a record is in the custody or under the control of an institution does not necessarily mean that a requester will be provided access to it.[2] A record within an institution's custody or control may be excluded from the application of the *Act* under one of the provisions in section 52, or may be subject to a mandatory or discretionary exemption (found at sections 6 through 15 and section 38).

[10] The courts and this office have applied a broad and liberal approach to the custody or control question.[3]

Factors relevant to determining "custody or control"

[11] Based on the above approach, this office has developed a list of factors to consider in determining whether or not a record is in the custody or control of an

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[1] Order P-239 and *Ministry of the Attorney General v. Information and Privacy Commissioner*, 2011 ONSC 172 (Div. Ct.).
[2] Order PO-2836.
[3] *Ontario (Criminal Code Review Board) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 4072; *Canada Post Corp. v. Canada (Minister of Public Works)* (1995), 30 Admin. L.R. (2d) 242 (Fed. C.A.) and Order MO-1251.

institution, as follows.[4] The list is not intended to be exhaustive. Some of the listed factors may not apply in a specific case, while other unlisted factors may apply.

- Was the record created by an officer or employee of the institution?[5]
- What use did the creator intend to make of the record?[6]
- Does the institution have a statutory power or duty to carry out the activity that resulted in the creation of the record?[7]
- Is the activity in question a "core", "central" or "basic" function of the institution?[8]
- Does the content of the record relate to the institution's mandate and functions?[9]
- Does the institution have physical possession of the record, either because it has been voluntarily provided by the creator or pursuant to a mandatory statutory or employment requirement?[10]
- If the institution does have possession of the record, is it more than "bare possession"?[11]
- If the institution does not have possession of the record, is it being held by an officer or employee of the institution for the purposes of his or her duties as an officer or employee?[12]
- Does the institution have a right to possession of the record?[13]
- Does the institution have the authority to regulate the record's content, use and disposal?[14]

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[4] Orders 120, MO-1251, PO-2306 and PO-2683.
[5] Order 120.
[6] Orders 120 and P-239.
[7] Order P-912, upheld in *Ontario (Criminal Code Review Board) v. Ontario (Information and Privacy Commissioner)*, cited above.
[8] Order P-912.
[9] *Ministry of the Attorney General v. Information and Privacy Commissioner*, cited above; *City of Ottawa v. Ontario*, 2010 ONSC 6835 (Div. Ct.), leave to appeal refused (March 30, 2011), Doc. M39605 (C.A.) and Orders 120 and P-239.
[10] Orders 120 and P-239.
[11] Order P-239 and *Ministry of the Attorney General v. Information and Privacy Commissioner*, cited above.
[12] Orders 120 and P-239.
[13] Orders 120 and P-239.
[14] Orders 120 and P-239.

- Are there any limits on the use to which the institution may put the record, what are those limits, and why do they apply to the record?[15]

- To what extent has the institution relied upon the record?[16]

- How closely is the record integrated with other records held by the institution?[17]

- What is the customary practice of the institution and institutions similar to the institution in relation to possession or control of records of this nature, in similar circumstances?[18]

[12] The following factors may apply where an individual or organization other than the institution holds the record:

- If the record is not in the physical possession of the institution, who has possession of the record, and why?[19]

- Is the individual, agency or group who or which has physical possession of the record an "institution" for the purposes of the *Act*?

- Who owns the record?[20]

- Who paid for the creation of the record?[21]

- What are the circumstances surrounding the creation, use and retention of the record?[22]

- Are there any provisions in any contracts between the institution and the individual who created the record in relation to the activity that resulted in the creation of the record, which expressly or by implication give the institution the right to possess or otherwise control the record?[23]

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[15] *Ministry of the Attorney General v. Information and Privacy Commissioner*, cited above.
[16] *Ministry of the Attorney General v. Information and Privacy Commissioner*, cited above and Orders 120 and P-239.
[17] Orders 120 and P-239.
[18] Order MO-1251.
[19] Order PO-2683.
[20] Order M-315.
[21] Order M-506.
[22] Order PO-2386.
[23] *Greater Vancouver Mental Health Service Society v. British Columbia (Information and Privacy Commissioner)*, [1999] B.C.J. No. 198 (S.C.).

- Was there an understanding or agreement between the institution, the individual who created the record or any other party that the record was not to be disclosed to the institution?[24] If so, what were the precise undertakings of confidentiality given by the individual who created the record, to whom were they given, when, why and in what form?

- Is there any other contract, practice, procedure or circumstance that affects the control, retention or disposal of the record by the institution?

- Was the individual who created the record an agent of the institution for the purposes of the activity in question? If so, what was the scope of that agency, and did it carry with it a right of the institution to possess or otherwise control the records? Did the agent have the authority to bind the institution?[25]

- What is the customary practice of the individual who created the record and others in a similar trade, calling or profession in relation to possession or control of records of this nature, in similar circumstances?[26]

- To what extent, if any, should the fact that the individual or organization that created the record has refused to provide the institution with a copy of the record determine the control issue?[27]

[13] In determining whether records are in the "custody or control" of an institution, the above factors must be considered contextually in light of the purpose of the legislation.[28]

[14] In *Canada (Information Commissioner) v. Canada (Minister of National Defence)*,[29] the Supreme Court of Canada adopted the following two-part test on the question of whether an institution has control of records that are not in its physical possession:

(1) Do the contents of the document relate to a departmental matter?

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[24] Orders M-165 and MO-2586.
[25] *Walmsley v. Ontario (Attorney General)* (1997), 34 O.R. (3d) 611 (C.A.) and *David v Ontario (Information and Privacy Commissioner) et al* (2006), 217 O.A.C. 112 (Div. Ct.).
[26] Order MO-1251.
[27] Order MO-1251.
[28] *City of Ottawa v. Ontario,* cited above.
[29] 2011 SCC 25, [2011] 2 SCR 306.

(2) Could the government institution reasonably expect to obtain a copy of the document upon request?

Representations of the board

[15] The board submits that all but two of the individuals identified in the request were issued a Blackberry telephone by the board which permits them to send and receive text messages through Blackberry Messenger (BBM), "the proprietary instant messenger service operated by Blackberry Limited." It goes on to state that unlike email messages, prior to August 15, 2015, BBMs "were not sent through or captured by the board's own computer servers. Rather, such messages passed through the external servers not owned or operated by the board. At all material times the external telephone service provider was Telus." It concludes this portion of its representations by adding that "[T]here is nothing in the agreement between the TDSB and Telus which provide it with the contractual right to require the service provider to disclose copies of BBMs."

[16] The board relies on the decision in Order MO-2381 in which this office upheld its position that it did not exercise the requisite degree of control, or have custody of, notes prepared by an outside service provider who prepared a report for the board. Again, as was the case in that appeal, the board did not enjoy a contractual right to require the service provider to disclose text messages to it.

Analysis and findings

[17] I accept that the board does not exercise physical possession of the BBMs which form this part of the request. They have never been integrated into the board's record-keeping systems and passed through the external servers operated by Telus. I also accept that the board does not have a contractual right to require the service provider to disclose the text messages sought to it. The board included a copy of the service agreement with Telus and there is nothing in that contract which could be relied upon by the board to require Telus to disclose text messages which passed through its servers to it.

[18] Applying the test enunciated by the Supreme Court of Canada in *National Defence* to the facts in this appeal, I find that the subject matter of the text messages likely related to the business of the board, particularly since they were sent and received by board trustees. As a result, I find that the first part of the test has been satisfied.

[19] I cannot agree, however, that the evidence supports a finding that the second part of the test has been met. Based on the information provided by the board regarding its contractual relationship with Telus, the service provider, I am satisfied that it could not reasonably expect to obtain copies of the text messages sought by the

appellant. The evidence provided by the board respecting its contractual relationship with Telus, which was not refuted or challenged by the appellant, satisfies me that the board cannot obtain access to this information from the service provider. Accordingly, I find that the second part of the test set forth by the Court in *National Defence* has not been met.

[20] Therefore, I conclude that the board does not exercise the requisite degree of control over the requested records and I uphold this aspect of its decision respecting them.

Issue B: Did the board conduct a reasonable search for BBM records which postdate August 15, 2013?

[21] 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 17.[30] 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.

[22] 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.[31] To be responsive, a record must be "reasonably related" to the request.[32]

[23] 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.[33]

[24] 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.[34]

[25] 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.[35]

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[30] Orders P-85, P-221 and PO-1954-I.
[31] Orders P-624 and PO-2559.
[32] Order PO-2554.
[33] Orders M-909, PO-2469 and PO-2592.
[34] Order MO-2185.
[35] Order MO-2246.

Representations of the board

[26] The board provided me with an affidavit sworn by its Chief Technology Officer setting out the nature and extent of the search which he conducted for BBMs dated after August 15, 2013 that were sent or received by trustees who had been issued a Blackberry device by the board. He explained that prior to August 15, 2013, BBMs sent or received by board trustees "were routed through the servers external to the board." After that date, he deposed that "the board began using a board owned computer server to route and store BBM text messages." As a result, the searches conducted for responsive BBMs only examined text messages sent or received by those trustees identified in the request for the period after August 15, 2013.

[27] The product of that search was then forwarded to a staff person in the board's FOI Office, who has also provided me with an affidavit setting out her involvement in the processing of the request. This individual, the Administrative/FOI Liaison for the board, and the FOI Coordinator then reviewed the records produced by the original search to determine if any contained information that was responsive to the request. In her affidavit, the FOI Liaison confirms that no responsive information was found in any of the BBMs provided to her by the Chief Technology Officer.

[28] As noted above, the appellant did not provide me with any representations to substantiate his position that the board did not conduct a reasonable search for responsive records.

Analysis and findings

[29] The board has provided an explanation of the steps it has taken to locate responsive BBMs for the period since it assumed control over these text messages, August 15, 2013. Based on the information it has provided, and in the absence of any evidence whatsoever to the contrary, I am satisfied that the board's search for these records was reasonable. Accordingly, I dismiss this aspect of the appeal and find that the board has conducted a reasonable search that is in accordance with the requirements of the *Act*.

Issue C: Are the records excluded from the operation of the *Act* by virtue of section 52(3)3 of the *Act*?

[30] The board takes the position that the majority of the email correspondence which comprise a portion of the records that are related to its search for a new Director of Education are excluded from the operation of the *Act* by virtue of section 52(3)3. This section states:

> Subject to subsection (4), 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.

[31] If section 52(3) applies to the records, and none of the exceptions found in section 52(4) applies, the records are excluded from the scope of the *Act*.

[32] 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.[36]

[33] The term "labour relations" refers to the collective bargaining relationship between an institution and its employees, as governed by collective bargaining legislation, or to analogous relationships. The meaning of "labour relations" is not restricted to employer-employee relationships.[37]

[34] 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.[38]

[35] The type of records excluded from the *Act* by section 52(3) 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.[39]

[36] For section 52(3)3 to apply, the institution must establish that:

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

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[36] Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).
[37] *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.
[38] Order PO-2157.
[39] *Ministry of Correctional Services*, cited above.

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.

Parts 1 and 2: collected, prepared, maintained or used in relation to meetings, consultations, discussions or communications

[37] I have reviewed each of the emails which the board claims to be excluded under section 52(3)3 and find that they were all collected, prepared, maintained and used by the board, its staff or trustees in relation to various meetings, consultations, discussions and communications. The emails represent communications passing between board trustees and staff with respect to various issues that arose during the time that the board was engaged in a search for a new Director of Education in 2013.

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

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

- a job competition[40]
- an employee's dismissal[41]
- a grievance under a collective agreement[42]
- a "voluntary exit program"[43]
- the work of an advisory committee regarding the relationship between the government and physicians represented under the *Health Care Accessibility Act*.[44]

[40] Orders M-830 and PO-2123.
[41] Order MO-1654-I.
[42] Orders M-832 and PO-1769.
[43] Order M-1074.
[44] *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, cited above.

[39] 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.[45]

[40] The records collected, prepared maintained or used by the Ministry … 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.

[41] In the present appeal, the emails at issue relate directly to communications passing between board staff and trustees relating to the filling of the vacant Director of Education position in 2013. Records relating to a process which would result in the hiring of a Director of Education clearly relate to a job competition or to the filling of that position.

[42] In Order PO-2212, former Assistant Commissioner Tom Mitchinson referred to a number of earlier decisions which reflected on what constitutes "labour relations and employment-related matters" for the purposes of the provincial equivalent provision to section 52(3)3. He stated:

> In Order PO-2106, Adjudicator Bernard Morrow found that appointments, promotions, transfers and resignations were all employment-related matters because each of those events would engage the employer and the employee in transactions that are significant to their employment relationship. In addition, this office has consistently held that job competitions are "employment-related" matters for the purposes of section 65(6)3 or the municipal equivalent (Orders M-830, PO-1950, and PO-2123). Past orders have also established that the complete hiring process is considered to be an employment-related matter, and that records concerning recruitment, screening and interviewing satisfy the requirements of the term "employment-related" matter, regardless of the fact that a requester may not ultimately be the successful candidate and therefore "employed" (Orders P-1627, P-1685-F, PO-1760, MO-1291).

[43] Based on my review of the contents of the remaining email records, I conclude that they qualify for exclusion from the operation of the *Act* because they fall within the ambit of section 52(3)3. These records clearly relate to an employment-related matter, the hiring of a new Director of Education, and the board, as the employer, has an interest in this process, as contemplated by the section 52(3)3 exemption.

[44] I conclude that all three parts of the test under section 52(3)3 have been satisfied and these email records relating to the hiring of the Director of Education are excluded from the *Act*.

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

Issue D: Do the three pages of email records dated October 9, 2013 qualify for exemption under section 11(c) or (d) of the *Act*?

[45] The board takes the position that the three pages of emails dated October 9, 2013 qualify under the discretionary exemptions in sections 11(c) and (d). These sections state:

> A head may refuse to disclose a record that contains,
>
> (c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
>
> (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution.

[46] The purpose of section 11 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*.[46]

[47] For sections 11(b), (c), (d) or (g) 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.[47]

[48] 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 11 are self-evident or can be proven simply by repeating the description of harms in the *Act*.[48]

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

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[46] *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (the Williams Commission Report) Toronto: Queen's Printer, 1980.
[47] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.
[48] Order MO-2363.
[49] Orders MO-2363 and PO-2758.

Sections 11(c) and (d): prejudice to economic interests/ injury to financial interests

[50] The purpose of section 11(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.[50]

[51] This exemption is arguably broader than section 11(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, competitive position or result in injury to its financial interests.[51]

Analysis and findings

[52] The representations of the board with respect to this exemption are brief. It argues that sections 11(c) and (d) apply to the last three pages of emails, which are dated October 9, 2013. This exchange relates to the participation of a board trustee in a voluntary audit conducted by an outside accounting firm. The board submits that the disclosure of records relating to the audit process "can reasonably be expected to have a chilling effect on participants in such voluntary processes" and that this will "impact on the board's ability to conduct such audit processes in the future thereby having a potential effect on the institution's economic and financial interests."

[53] The section 11(c) and (d) exemptions are intended to protect information whose disclosure could reasonably be expected to give rise to certain identified prejudicial outcomes. In the present appeal, the board has failed to provide me with the kind of evidence required to establish that disclosure could reasonably result in one of the harms enumerated in sections 11(c) or (d). The evidence presented by the board does not explain with sufficient particularity how the harms alleged could reasonably be expected to follow the disclosure of this information. As a result, I find that the exemptions in sections 11(c) and (d) have no application to these records.

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[50] Orders P-1190 and MO-2233.
[51] Orders PO-2014-I, MO-2233, MO-2363, PO-2632 and PO-2758.

ORDER:

1. I order the board to disclose to the appellant the email correspondence dated June 26, 2013, July 3, 2013 and October 9, 2013 by providing him with a copy by no later than **September 4, 2015.**

2. I uphold the board's decision to deny access to the remaining records at issue.

3. I find that the board does not have custody of or exercise control over any responsive BBM records created prior to August 15, 2013.

4. I uphold the reasonableness of the board's search for BBMs which post-date August 15, 2013.

Original signed by: August 5, 2015
Donald Hale
Adjudicator