Information and Privacy Commissioner,
Ontario, Canada

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

INTERIM ORDER PO-3502-I

Appeal PA11-501-2

University of Ottawa

June 25, 2015

Summary: The University of Ottawa (the university) received a request for access to copies of all emails sent between the university's President and his Chief of Staff in a specified one-year period. The university granted partial access to the records. It found that some of the records are excluded from the *Act* pursuant to the labour relations exclusion at section 65(6). It withheld portions of the remaining information on the basis that it is subject to the discretionary exemptions in sections 13(1) (advice and recommendations), 18(1) (economic and other interests of Ontario) and 19 (solicitor-client privilege), and the mandatory exemptions in sections 17(1) (third party information) and 21(1) (personal privacy). The appellant appealed. In this order, the adjudicator upholds the university's decision that some records are excluded from the *Act* under section 65(6), and also upholds the application of section 19 to the record for which the university claimed it. Further, she partially upholds the application of sections 13(1) and 21(1) to the records for which those exemptions were claimed. She finds that section 18(1) does not apply, and defers consideration of section 17(1) pending notification of the third parties.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2 (definition of personal information), 13(1), 17(1), 18(1), 19, 21(1), 50(3) and 65(6).

OVERVIEW:

[1] This order disposes of the issues raised as a result of the University of Ottawa's (the university) decision in response to the appellant's access request under the

Freedom of Information and Protection of Privacy Act (the *Act*). The request was for all emails sent between the university's President and his Chief of Staff over a specified time period in 2010-2011.

[2] The university located 358 responsive records and issued a decision letter to the appellant that provided him with partial access to these records. It claimed that some records are excluded from the scope of the *Act* under section 65(6) (labour relations and employment records). It also denied access to some records and parts of other records on the basis that they are subject to the discretionary exemptions in sections 13(1) (advice and recommendations), 14 (law enforcement), 18(1) (economic and other interests of Ontario) and 19 (solicitor-client privilege), and the mandatory exemptions in sections 17(1) (third party information) and 21(1) (personal privacy).

[3] The appellant appealed the university's decision to the Information and Privacy Commissioner of Ontario (IPC). During mediation, the university provided the appellant with an index of records indicating the subject matter of each email. The mediator asked the appellant to identify which types of records he was most interested in, and the appellant responded that he wished to pursue access to all of the records at issue. This appeal was not resolved during mediation and was moved to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry. The adjudicator assigned to this appeal sought and received representations from the appellant and the university. Those representations were shared in accordance with this office's *Practice Direction 7*.

[4] In its representations, the university stated that it was no longer relying on the discretionary exemption in section 14 to deny access to one record.[1] Consequently, the application of the exemption in section 14 is no longer at issue. With respect to the discretionary exemption in section 18(1), the university's representations specify that it relies in particular on sections 18(1)(c), (e), (f) and (g). Also in its representations, the university claimed the application of section 13(1) to records for which it had not previously claimed this exemption. Consequently, the late raising of a discretionary exemption was added as an issue in this appeal.

[5] The appeal was then transferred to me for final disposition. In this order, I find that some of the records at issue are excluded from the operation of the *Act* by virtue of the exclusion for labour relations and employment records at section 65(6). Of the remaining records, I find that some are exempt or partially exempt from disclosure pursuant to the discretionary exemptions for advice and recommendations at section 13(1) and solicitor-client privilege at section 19. I find, further, that some records are exempt or partially exempt from disclosure pursuant to the mandatory personal privacy exemption at section 21(1). However, I do not uphold the university's application of 18(1) to the records. Finally, I defer consideration of the potential application of the

[1] Record 249.

mandatory third party exemption at section 17 to the records for which the university claimed that exemption, pending notification of third parties.

RECORDS:

[6] The approximately 230 records at issue in this appeal consist of email communications between the university's President and his Chief of Staff. Each of the emails was sent by one of these individuals to the other either as the primary recipient or as a person to whom the email was copied. The university prepared an index of the records and provided it to the appellant and to this office.

ISSUES:

A: Does the exclusion for labour relations records at section 65(6) of the *Act* exclude any of the records at issue from the *Act*?

B: Is the university permitted to raise the discretionary exemption for advice and recommendations at section 13(1), after the expiration of the 35-day period for raising discretionary exemptions?

C: Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

D: Does the discretionary exemption for economic and other interests of an institution at section 18(1) apply to the records or which it is claimed?

E: Does the discretionary exemption for advice and recommendations at section 13(1) apply to the records for which it is claimed?

F: Does the discretionary exemption for solicitor-client privilege at section 19 apply to the record for which it is claimed?

G: Did the university exercise its discretion under sections 13(1), 18(1) and/or 19? If so, should this office uphold the exercise of discretion?

H: Does the mandatory personal privacy exemption at section 21(1) apply to the records for which it is claimed?

I: Does the mandatory exemption for third party information at section 17 apply to the records for which is claimed?

DISCUSSION:

Issue A: Does the exclusion for labour relations records at section 65(6) exclude the records from the *Act*?

[7] The university claims that section 65(6) of the *Act* applies to exclude the following records from the application of the *Act*: records 10, 14, 17, 18, 22, 23, 29, 32,[2] 33, 37, 55, 70, 73, 76-79, 86, 101, 105, 117, 129, 130, 132, 134, 135, 148, 158, 179-182, 191, 195, 199, 201, 203, 223, 228, 255, 261-263, 266, 267, 277, 288-290, 293, 295, 296, 298, 299, and 349-352.

[8] Section 65(6) states, in part:

> 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.

[9] 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*.

[10] 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]

[11] 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.[4]

Representations

[12] The university submits that the records listed above are excluded under section 65(6) because they consist of communications with some connection to labour relations and/or employment-related matters in which the university has an interest. The university argues that the President is regularly called upon to make and/or take part in

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[2] The university's reference to record 31 in the chart appended to its representations appears to be an error, and ought to read record 32, which is the record that is listed in the index as being claimed to be excluded under section 65(6).

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

decisions with respect to the university's labour relations strategy, and with respect to issues regarding the employment of senior staff. It submits that the President's Chief of Staff is regularly involved in and assists the President with these issues. The university provided some examples of the types of labour relations and employment matters which are discussed in the records, including:

- The President's self-assessment as part of the university Board of Governors' evaluation of his performance;
- The management of an employee's leave of absence and measures to promote a safe return to work; and
- A matter related to a job posting.

[13] The appellant argues that section 65(6) of the *Act* was not intended to exclude records about heads of institutions, such as the President, and that to apply section 65(6) to exclude records about heads of institutions would be contrary to the spirit of the *Act*, which is to protect the public interest in access to information about publicly-funded institutions and the public officials who run them. The appellant argues that a "self-assessment" by the head of an institution does not qualify as a "labour relations matter" and should not be excluded from the application of the *Act*.

Analysis and findings

[14] I begin by addressing the appellant's argument that the section 65(6) exclusion does not apply where the employment or labour relations matter relates to the head of an institution.

[15] Section 65(6) contains no language excepting heads of institutions from its purview. The university submits that the President is an employee, and the appellant does not dispute this. I note that this office has previously held that the contract between a university president and the university establishes an employment relationship for the purposes of the *Act*.[5] For the purposes of section 65(6) the *Act*, therefore, I find that the relationship between the President and the university's Board of Governors is an employment relationship.

[16] 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;

[5] See, for example, Order PO-2641.

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.

[17] It does not appear to be in dispute, and I find, that all of the records for which the university has claimed the exclusion under section 65(6) meet the first two criteria. First, they were prepared by either the President or his Chief of Staff in their capacity as university employees, and as such were prepared by the university. Second, they were prepared in relation to meetings, consultations, discussions or communications about the information contained in the records.

[18] I turn now to the question of whether the records meet the third criterion; that is, whether the meetings, consultations, discussion or communications are about labour relations or employment-related matters in which the university has an interest.

[19] The term "labour relations" refers to the collective bargaining relationship between an institution and its employees, as governed by collective bargaining legislation, or to analogous relationships.[6]

[20] 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.[7] 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.[8]

[21] In previous orders of this office, the phrase "labour relations or employment-related matters" has been found to apply in the context of: a job competition;[9] an employee's dismissal;[10] a grievance under a collective agreement;[11] and a review of "workload and working relationships."[12] The phrase has been found *not* to apply,

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[6] *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.).
[7] Order PO-2157.
[8] *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.).
[9] Orders M-830 and PO-2123.
[10] Order MO-1654-I.
[11] Orders M-832 and PO-1769.
[12] Order PO-2057.

however, in the context of an organizational or operational review where the review touches in only a general way on employment or labour relations issues.[13]

[22] In addition to the parties' representations, I have reviewed the records themselves. For the reasons set out below, I find that the following records are excluded from the *Act* by virtue of section 65(6).

[23] Records 10, 14, 17, 18, 101, 191 and 228 are emails and drafts relating to the President's self-assessment of his performance in his position as university President. The self-assessment was to be provided to the Board of Governors to assist it in determining whether or not to renew the President's term. I find that this relates to a matter in which the institution is acting as employer and terms and conditions of employment or human resources questions are at issue.

[24] Records 22, 70, 79 and 105 discuss the management of an employee's leave of absence and the employee's safe return to work. I find that these are matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue.

[25] I am unable to describe the precise nature of the remaining records for which the university has claimed the section 65(6) exclusion, because to do so would disclose their substance. However, I will describe them in general terms. Records 23, 29, 32, 33, 37, 55, 171[14] all relate to developments surrounding the collective bargaining relationship between the university and its employees and, as such, are about labour relations matters.

[26] Record 73 relates to workload issues surrounding an employee's impending retirement from the university. Records 76-78, 82, 86, 117, 129, 130, 132, 134, 135, 148, 179, 180, 181, 182, 223, 233, 250, 251, 255, 261-264, 266, 267, 292, 293, 298, 299, 349, 350, 351 and 352 [15] all relate to the filling of various positions within the university. I find that these are all employment-related matters.

[27] Records 158, 195, 199, 201, 203, 277, 288, 289, 290, 295, 296, and 333-335 relate to the working conditions and/or terms of employment of university employees. These, too, are employment-related matters.

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[13] Orders M-941 and P-1369.

[14] While the university did not claim that record 171 is excluded from the *Act* under section 65(6), it is clear on the face of the record that it falls within this exclusion and is, therefore, outside of my jurisdiction.

[15] While the university did not claim that records 82, 233, 250, 251, 264, 292 or 333-335 are excluded from the *Act* under section 65(6), it is clear on the face of the records that they fall within this exclusion and are, therefore, outside of my jurisdiction.

[28] Finally, I find that all of the above emails relate to matters in which the university has an interest. They are about employment or labour relations matters that were ongoing when the records were prepared. The university, as an employer, clearly has an interest in the hiring and departing of its employees, the terms and conditions of employment of its employees as well as their performance. I conclude, therefore, that all three parts of the test articulated above are met. Further, none of the exceptions listed in section 65(7) apply.

[29] I conclude, therefore, that, pursuant to section 65(6), the *Act* does not apply to the following records: 10, 14, 17, 18, 22, 23, 29, 32,[16] 33, 37, 55, 70, 73, 76-79, 82, 86, 101, 105, 117, 129, 130, 132, 134, 135, 148, 158, 171, 179, 180, 181, 182, 191, 195, 199, 201, 203, 223, 228, 233, 250, 251, 255, 261-264, 266, 267, 277, 288, 289, 290, 292, 293, 295, 296, 298, 299, 333-335 and 349-352. In light of my conclusion, I will not consider any of the exemptions claimed by the university in respect of these records.

Issue B: Is the university permitted to raise the discretionary exemption for advice and recommendations at section 13(1), after the expiration of the relevant 35-day period?

[30] In the university's decision, it claimed the applicability of the exemption for advice and recommendations at section 13(1) to several records. In its representations, the university has claimed, for the first time, the application of the section 13(1) exemption to several additional records. The Information and Privacy Commissioner's *Code of Procedure* (the *Code*) provides basic procedural guidelines for parties involved in appeals before this office. Section 11 of the *Code* addresses circumstances where institutions seek to raise new discretionary exemption claims during an appeal. Section 11.01 states:

> In an appeal from an access decision an institution may make a new discretionary exemption claim within 35 days after the institution is notified of the appeal. A new discretionary exemption claim made within this period shall be contained in a new written decision sent to the parties and the IPC. If the appeal proceeds to the Adjudication stage, the Adjudicator may decide not to consider a new discretionary exemption claim made after the 35-day period.

[31] The purpose of the policy is to provide a window of opportunity for institutions to raise new discretionary exemptions without compromising the integrity of the appeal process. Where the institution had notice of the 35-day rule, no denial of natural

[16] The university's reference to record 31 in the index appears to be an error, and ought to read record 32, which is the record that was provided to this office and to which the university's representations appear to relate.

justice was found in not permitting an institution to raise a discretionary exemption outside the 35-day period.[17]

[32] In determining whether to allow an institution to claim a new discretionary exemption outside the 35-day period, the adjudicator must balance the relative prejudice to the institution and to the appellant.[18] The specific circumstances of each appeal must be considered individually in determining whether discretionary exemptions can be raised after the 35-day period.[19]

Representations

[33] The university submits that orders of this office have accepted that the 35-day rule set out in the *Code* is not inflexible and will be applied in a manner that responds to the facts and circumstances of each case. The university acknowledges that it is beyond the 35-day period for raising new discretionary exemptions, but requests that this office exercise its discretion to permit it to re-assess the application of the exemptions. The university goes on to argue that, in this case, there are numerous records and that, consequently, the application of exemptions to these records is much more complex.

[34] The university states that the section 18(1) exemption (economic interests) has also been claimed with respect to most of the records for which it is now claiming the section 13(1) exemption. It argues that the two exemptions belong in the same "conceptual category," as both protect a confidential space for the university to deliberate policy and make plans with respect to the operation of the institution. The university argues that because of the close link between sections 13 and 18, the extension of section 13(1) to additional records does not represent a radical shift in the analysis to be applied to the records.

[35] Further, the university argues that the application of section 13(1) to additional records does not constitute the raising of a new exemption, as section 13(1) has been applied to other records in this appeal. The university further submits that the appellant has not been prejudiced because he has had an opportunity to consider his position on section 13(1) generally, and he had no detailed information about the precise content of the records prior to receiving the university's representations, in any event. The university also argues that the inquiry process has not been prejudiced, as there is no need to delay the inquiry.

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[17] *Ontario (Ministry of Consumer and Commercial Relations v. Fineberg)*, Toronto Doc. 220/95 (Div. Ct.), leave to appeal dismissed [1996] O.J. No. 1838 (C.A.). See also *Ontario Hydro v. Ontario (Information and Privacy Commissioner)* [1996] O.J. No. 1669 (Div. Ct.), leave to appeal dismissed [1996] O.J. No. 3114 (C.A.).
[18] Order PO-1832.
[19] Orders PO-2113 and PO-2331.

[36] The appellant states that the university ought not to be permitted to raise a discretionary exemption late because it would compromise the integrity of the appeal process. The appellant states that the university made the request to raise section 13(1) in respect of fifty-two of the records at issue one year and five months following the date of this office's "Acknowledgement of Appeal." The appellant argues that the university has not provided an explanation for why it is raising a discretionary exemption at such a late stage.

[37] Further, the appellant submits that applying a new exemption to records for which the exemption was not previously applied is not an additional component of an existing exemption claim, but rather an entirely new exemption claim. The appellant disagrees with the university's argument that sections 18(1) and 13(1) are in the same conceptual category such that adding a claim of exemption under section 13(1) to records for which section 18(1) was claimed does not represent a radical shift in the analysis to be applied to the records. The appellant argues that the exemptions are distinct, with different evidentiary burdens and that if the Legislature had wanted to put sections 13(1) and 18(1) in the same "conceptual category," then it would have done so in the *Act*.

[38] The appellant also states that he has been prejudiced by not having an opportunity to mediate the many records now claimed to be exempt under section 13(1). The appellant states:

> The appellant also notes that the University's late request to apply s.13(1) to 52 additional records places this exemption at a higher level of importance in the appeal as a whole, such that the appellant is prejudiced having lost time he would have used to prepare to argue against this exemption in the many months since receiving the University's final decision letter, had he known it would have been applied to such a large number of records and to the particular records now identified by the University.

Analysis and findings

[39] This office has the power to control the manner in which the inquiry process is undertaken.[20] This includes the authority to set a limit on the time during which an institution can raise new discretionary exemptions not originally raised in the decision letter. The adoption and application of this policy was upheld by the Divisional Court in *Ontario (Ministry of Consumer and Commercial Relations) v. Fineberg.*[21] Nevertheless,

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[20] Orders P-345 and P-537.

[21] December 21, 1995, Toronto Doc. 220/95, leave to appeal to the Court of Appeal refused at [1996] O.J. No. 1838 (C.A.). See also *Duncanson v. Toronto (Metropolitan) Police Services Board*, [1999] O.J. No. 2464 (Div. Ct.).

this office will consider the circumstances of each case and may exercise its discretion to depart from the policy in appropriate cases.

[40] I am required to weigh and compare the overall prejudice to the parties. In doing so, I must consider any delay or unfairness that could harm the interests of the appellant, as against harm to the university's interests that may be caused if the exemption claim is not allowed to proceed. In order to assess possible prejudice, the importance of an exemption claim and the interests the exemption seeks to protect in the circumstances of the particular appeal can be important factors.

[41] For the following reasons, I will allow the university to raise the applicability of the section 13(1) exemption to the additional records.

[42] Although the university raised the applicability of section 13(1) to additional records well after the 35-day time period, it raised it early in the adjudication stage of the process and applied it to records which the university had previously already claimed to be exempt under other sections of the *Act*. Therefore, the appellant already knew that these records were in issue. The inclusion of the newly claimed exemption for these records has not resulted in any delays to the adjudication process and the appellant has been provided with an opportunity to respond to the university's representations and to provide full representations as to whether the information for which the new exemption was claimed qualifies for exemption under section 13(1).

[43] With respect to the appellant's concern that he did not have sufficient time to respond to the new section 13(1) claims, I note that he requested and was granted an extension of time in which to prepare his representations by the adjudicator previously assigned to this appeal. In the circumstances, I find that the late raising of the applicability of the section 13(1) exemption to additional records has not prejudiced the position of the appellant.

[44] I have also considered the potential prejudice to the university if I do not allow section 13(1) to be claimed with respect to the additional records. As will be seen below, I have found that many of the records for which the university claimed an exemption under section 13(1) are, in fact, exempt under section 13(1), but are not exempt under any of the other claimed exemptions. To disallow the university's late exemption claim would result in my ordering disclosure of records which fall within the section 13(1) exemption.

[45] Having weighed the comparative prejudice between the parties, I am satisfied that while the appellant will not be prejudiced and the integrity of the adjudication process will not be compromised if I allow the university to raise the application of the section 13(1) exemption beyond the 35-day time period, there would be some prejudice to the university if I do not allow it to raise it. Therefore, I will consider the application of the section 13(1) exemption to the additional records under Issue E below.

Issue C: Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[46] In order to determine which of the exemptions under the *Act* might apply to the records, it is necessary to decide whether the records contain "personal information" and, if so, to whom it relates.

[47] This is necessary for two reasons. First, section 47(1) gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right. Section 49(a) reads:

> A head may refuse to disclose to the individual to whom the information relates personal information,
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> > where section 12, 13, 14, 14.1, 14.2, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information.

[48] Section 49(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information.[22]

[49] Where, however, the records do not contain the requester's own personal information, section 49(a) does not apply.

[50] It is also necessary to decide whether the records contain "personal information" where, as here, the institution has withheld some information on the basis that it is exempt under the mandatory personal privacy exemption at section 21(1) of the *Act*.

[51] "Personal information" is defined in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,
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> > (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

[22] Order M-352.

> financial transactions in which the individual has been involved,
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> (c) any identifying number, symbol or other particular assigned to the individual,
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> (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,
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> (g) the views or opinions of another individual about the individual, and
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> (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;

[52] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.[23]

[53] Section 2(3) also relates to the definition of personal information and 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.

[54] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.[24] Even if information relates to an individual in a professional, official or

[23] Order 11.
[24] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.[25]

[55] The university submits that all of the records for which it claims the application of section 21(1) contain various types of personal information of individuals other than the appellant, including:

- The opinions of an individual about another individual;
- Information about the health of an individual; and
- Information about the educational and/or employment history of individuals.

[56] The appellant submits that if individuals' opinions of other individuals are the personal information of the latter, the individuals whose personal information appears in those records should be contacted and offered the opportunity to allow the appellant access to this information.

Analysis and findings

[57] The parties do not submit that the records remaining at issue contain any personal information of the appellant, and having reviewed the records, I find that they do not. Therefore, section 49(a) does not apply to any of the records remaining at issue.

[58] The university has claimed the section 21(1) personal privacy exemption for the following records or portions thereof: 5, 7, 8, 9, 15, 20, 49, 56, 61, 62, 71,[26] 95, 97, 106, 112, 113, 119, 121, 125, 126, 144, 147, 155, 157, 168, 169, 170, 173, 178, 184, 188, 189, 198, 204, 206, 207, 215, 217, 218, 232, 234, 235, 240, 256, 269,[27] 274, 281, 282, 284, 291, 310, 316, 317, 323, 325, 328, and 329. As will been seen below, I have found that records 95, 218 and 235 are exempt from disclosure under sections 19 and 13(1), respectively. Therefore, I do not need to consider the applicability of section 21(1) to them. In order to decide whether section 21(1) applies to exempt the remainder of these records from disclosure, I must first decide whether they contain the personal information of individuals other than the appellant.

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

[26] The chart appended to the university's representations indicates that it also claims the section 21(1) exemption for record 72. However, the index, which was filed separately, indicates that record 72 was released. It appears that the university meant to refer in its chart to record 73. As record 73 is excluded from the *Act* pursuant to section 65(6), I will not consider the application of Section 21(1) to it.

[27] The chart appended to the university's representations indicates that it claims the section 21(1) exemption for record 268. However, the university's index indicated that record 268 was released. It appears that the university meant to refer in its chart to record 269, which is noted in the index as having been withheld under section 21(1).

[59] The following records contain personal (as opposed to business) email and/or telephone contact information of individuals, which I find is their personal information under paragraph (d) and/or the introductory wording of the definition: 7, 61, 121, 125, 155, 189, 284, 317 and 323.

[60] The following records contain views and opinions about individuals, which is their personal information under paragraph (g): 9, 71, 97, 168, 217 and 232.

[61] The following records contain the medical, educational and/or employment history of individuals, which is their personal information under paragraph (b): 5, 8, 20, 49, 56, 62, 106, 112, 113, 126, 144, 147, 169, 170, 173, 178, 204, 232, 234, 282, 328 and 329.

[62] The following records contain individuals' views and opinions, which is their personal information under paragraph (e): 71 and 184.

[63] The following records contain other recorded information about identifiable individuals, which is their personal information under the introductory wording of the definition: 8, 15, 71, 157, 240, 256, 269, 274, 281, 284, 291, 310, 316, and 325.

[64] I find that records 119, 188, 198, 206, 207 and 215 do not contain "personal information", because the information in them pertains to individuals in their professional, not personal capacity, and disclosure would not reveal anything of a personal nature about an individual.

[65] To summarize, the records at issue do not contain any of the appellant's own personal information. Section 49(a), therefore, does not apply. The following records contain the personal information of individuals other than the appellant: 5, 7, 8, 9, 15, 20, 49, 56, 61, 62, 71, 97, 106, 112, 113, 121, 125, 126, 144, 147, 155, 157, 168, 169, 170, 173, 178, 184, 189, 204, 217, 232, 234, 240, 256, 269, 274, 281, 282, 284, 291, 310, 316, 317, 323, 325, 328, and 329. I will consider under Issue H whether section 21(1) applies to exempt these records from disclosure.

Issue D: Does the discretionary exemption for an institution's economic and other interests at section 18(1) apply to the records?

[66] The university claims the application of sections 18(1)(c), (e), (f) and (g) to a large number of the records at issue. I do not need to consider the application of section 18(e), however, because the records in respect of which the university claims the section 18(1)(e) exemption are all records that I have found are excluded from the operation of the *Act* by virtue of section 65(6).[28]

[28] In its representations, the university claimed the section 18(1)(e) exemption for records 23, 76-78, 86, 129, 130, 132, 134-135, 195, 199, 201, 203, 223, 261, 266, 288-290, and 293.

[67] Sections 18(c), (f) and (g) state:

> A head may refuse to disclose a record that contains,
>
> (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
>
> (f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;
>
> (g) information including the proposed plans, policies or projects of an institution where the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person;

[68] The purpose of section 18 is to protect certain economic interests of institutions. The report titled *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*[29] explains the rationale for including a "valuable government information" exemption in the *Act*:

> In our view, the commercially valuable information of institutions such as this should be exempt from the general rule of public access to the same extent that similar information of non-governmental organizations is protected under the statute . . . Government sponsored research is sometimes undertaken with the intention of developing expertise or scientific innovations which can be exploited.

Section 18(1)(c): representations, analysis and conclusions

[69] For section 18(1)(c) to apply, the institution must demonstrate that disclosure of the record "could reasonably be expected to" prejudice the economic interests of an institution or the competitive position of an institution. To meet this test, the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient.[30]

[70] The need for public accountability in the expenditure of public funds is an important reason behind the need for "detailed and convincing" evidence to support the

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[29] Vol. 2 (Toronto: Queen's Printer, 1980) (the Williams Commission Report).

[30] *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).

harms outlined in section 18.[31] Parties should not assume that harms under section 18 are self-evident or can be substantiated by submissions that repeat the words of the *Act*.[32]

[71] 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.[33]

[72] The university submits that it competes with other institutions and organizations for research profile and status, which drives investment and grant funding; for undergraduate and graduate students, who are the lifeblood of the university; and for donations and investments necessary to support the university's programs. It goes on to argue that because competition in the academic sector is becoming more fierce and because of government cutbacks, it has had to re-double its efforts to self-fund various programs and to seek creative means of competing in the educational marketplace.

[73] The university goes on to state:

> A key element in the University's ability to remain competitive is the confidential development of and experimentation with new policies, plans, and operational procedures. The University is constantly working to improve itself, in administration and operation. These improvements are key to its "edge," its ability to compete with other educational institutions, research organizations and other entities. The University's President, together with senior staff, has a key role in developing the University's operational strategy in this increasingly competitive environment.
>
> The records withheld under s. 18 are withheld as they all constitute records of deliberations and confidential preparation of policies, plans and procedures for the administration of the institution. If the records are required to be disclosed in this case, then any individual or organization will be able to obtain confidential information with respect to the operational strategies and initiatives of the University. Any third party will be able to obtain confidential information as to the multifarious possible directions and initiatives of the University. Any third party will be able to deprive the University of its competitive "edge" and seize its own advantage in the marketplace.

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[31] Orders MO-1947 and MO-2363.
[32] Order MO-2363.
[33] Orders P-1190 and MO-2233.

[74] The appellant submits that the university has provided no evidence to substantiate its expectation of harm should the records be disclosed. On the contrary, the appellant argues, the university simply makes broad assertions about competition in the academic sector without providing any specific evidence. The appellant further submits that, as a publicly-funded institution, the university is not in such a precarious position that any third party would be able to deprive it of its competitive edge and seize an advantage in the marketplace, should the records be disclosed.

[75] Having reviewed the parties' representations and the records at issue, I find that section 18(1)(c) does not apply. I agree with the appellant that the university has failed to provide the sort of detailed evidence that would enable me to conclude that disclosure can reasonably be expected to prejudice the university's economic interests or its competitive position. The records at issue relate to a wide variety of matters, but the university has provided only very general submissions, and no submissions specific to any of the 90 or so records for which the section 18(1) exemption is claimed. From my review of the records themselves, it is not self-evident that the harms described above are a reasonably expected result of disclosure. Many of the records are innocuous and contain very little or no information about the university's operational strategies and initiatives. Others do contain information about various plans or proposed initiatives. However, these are initiatives which date back to 2010 and 2011. Some of these initiatives may have been implemented, some may have been abandoned, and some may still be live issues. However, the university has not supplied me with any details in this regard. Without this kind of evidence, I cannot assess the potential harms that might result from disclosure. As a result, I cannot conclude that disclosing these records is reasonably expected to cause the harms specified in section 18(1)(c).

Section 18(1)(g): representations, analysis and conclusions

[76] For section 18(1)(g) to apply, the institution must demonstrate that disclosure of the record "could reasonably be expected to" result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person. As is the case with section 18(1)(c), discussed above, to meet this test, the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient.[34]

[77] In order for section 18(1)(g) to apply, the institution must show that:

1. the record contains information including proposed plans, policies or projects of an institution; and

2. disclosure of the record could reasonably be expected to result in:

[34] *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).

(i) premature disclosure of a pending policy decision, or
(ii) undue financial benefit or loss to a person.[35]

[78] For this section to apply, there must exist a policy decision that the institution has already made.[36]

[79] The university submits that disclosure of the plans, policies and procedures in the records at issue would have resulted in premature disclosure of the plans and policy decisions described in, for example, records 80, 96, 172 and 314. It goes on to argue that disclosure of some of these records could reasonably be expected to result in an undue financial benefit to a person.

[80] The appellant submits that many of the records withheld under this exemption would no longer relate to the premature disclosure of a pending policy decision, even if that was the case initially. In addition, the appellant states that the university has claimed section 18(1)(g) to record 314 for the first time and ought not to be permitted to do so at this time.

[81] For reasons similar to those set out above in my discussion of the application of section 18(1)(c), I am not satisfied that disclosure of the records could reasonably be expected to result in the harms contemplated by section 18(1)(g). Any policy decisions mentioned in the records may have been pending in 2010 or 2011, but I note that the university's representations submit that disclosure of the plans, policies and procedure "would have resulted" in premature disclosure. This suggests to me that disclosure at the time that the university prepared its representations would not be premature. It follows that disclosure now would not be premature. Without more detailed evidence on the current status of these initiatives, I cannot conclude that any policy decisions are "pending"; nor can I conclude that disclosure would be premature.

[82] Without more detailed evidence, I also cannot assess any potential undue financial benefit or loss that might result from disclosure. In the confidential portion of its representations, the university refers to the particular harm that it submits may result from the disclosure from a particular subset of these records, but those records are ones that I have found to be excluded from the *Act* pursuant to section 65(6). None of the harms contemplated by section 18(1)(g) are evident on the face of the other records. As a result, I cannot conclude that disclosing these plans, policies or projects is reasonably expected to cause the harms specified in section 18(1)(g).

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[35] Order PO-1709, upheld on judicial review in *Ontario (Minister of Health and Long-Term Care) v. Goodis*, [2000] O.J. No. 4944 (Div. Ct.).
[36] Order P-726.

Section 18(1)(f): representations, analysis and conclusions

[83] In order for section 18(1)(f) to apply, the institution must show that:

1. the record contains a plan or plans, and;

2. the plan or plans relate to:

   (i) the management of personnel, or
   (ii) the administration of an institution, and

3. the plan or plans have not yet been put into operation or made public.[37]

[84] Previous orders of this office have found that the terms "positions, plans, procedures, criteria or instructions" refer to pre-determined courses of action or ways of proceeding.[38] Previous orders have defined "plan" as ". . . a formulated and especially detailed method by which a thing is to be done; a design or scheme."[39] The section does not apply if the information at issue does not relate to a strategy or approach to the negotiations themselves but rather simply reflects mandatory steps to follow.[40]

[85] The university submits that this office's approach to the interpretation of the term "plan" in section 18(1)(f) does not reflect the reality of the operations of a major public institution in the deliberative context of planning and decision making within the university environment. The university further argues that this office's approach must be re-evaluated in light of the *John Doe* decision, in which the Ontario Court of Appeal rejected an interpretation of section 13(1) that had protected only the final recommendation made to the decision maker. It argues that if the only record which is excluded under section 18(1)(f) is the final record of a "formulated and especially detailed method by which a thing is to be done", then all of the drafts, all of the pieces of policy development and planning which go into the preparation of that "formulated and especially detailed method" will be exposed.

[86] In the alternative, the university argues, the records for which this exemption was claimed meet this office's traditional definition of "plan." It further submits that many of the plans in the records had not, at the time of the request, been put into operation or made public. In fact, the university states, some of the plans may never have been put into operation or made public. Instead, they represent initiatives and proposals considered, analyzed and drafted, but never implemented. The university

[37] Orders PO-2071 and PO-2536.
[38] Orders PO-2034 and PO-2598.
[39] Orders P-348 and PO-2536.
[40] Order PO-2034.

goes on to argue that disclosing every plan that is not carried out risks substantial harm to its interests, because in balancing competing interests, it has to make difficult decisions about which plans to implement. The university states:

> There will inevitably be people disappointed and concerned that plans which would have benefited them were not carried out. It is therefore in the University's interest to withhold details of such plans.

[87] The appellant submits that this office's definition of a "plan" is correct and should be applied in this appeal, and that the Court of Appeal's decision in *John Doe* cited by the university concerns the exemption in section 13(1) and has no relevance to the application of section 18. The appellant also argues that the potential disappointment and concern of affected groups referred to by the university is not a reason to deprive the public of access to information regarding the administration of a public institution. Furthermore, the appellant states, the university has not explained how the records contain plans relating to the management of personnel or the administration of the institution that have not yet been put into operation or made public.

[88] For the following reasons, I find that the university has not shown that the records contain a plan or plans that relate to the management of personnel or the administration of an institution, and which have not yet been put into operation or made public.

[89] It is not necessary for me to resolve the issue that the university has raised about the interpretation of the term "plan" for the purposes of section 18(1)(f). Even assuming that the records contain plans, in order for section 18(1)(f) to apply, I must be satisfied that the plans have not yet been put into operation or made public. The general submissions provided by the university do not provide enough detail to enable me to determine whether any plans contained in these 4-year old records have or have not yet been put into operation or made public. The university's representations speak to the circumstances as of the time of the request. However, given that language of section 18(1) and its prospective nature, I am to decide, not whether section 18(1) applied to the records then, but whether it applies now. I also note that, while the university submits that "many" of the plans in the records had not, at the time of the request, been put into operation or made public, it does not specify to which records this statement applies.

[90] I conclude that none of the exemptions at sections 18(1)(c), (f) or (g) apply to the records at issue.

Issue E: Does the discretionary exemption for advice and recommendations at section 13(1) apply to the records?

[91] The university claims the application of section 13(1) to records 2-4, 19, 24, 34, 54, 63, 67, 80, 81, 88, 89, 92-94, 96, 98, 99, 102-104, 114, 116, 123, 151, 154, 169, 170, 175, 176, 190, 210, 216, 218, 235, 238, 249, 280, 283, 285, 291, 304-306, 313-314, 318-322, 326, and 327.

[92] Section 13(1) states:

> A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

[93] The purpose of section 13 is to preserve an effective and neutral public service by ensuring that people employed or retained by institutions are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making.[41]

[94] "Advice" and "recommendations" have distinct meanings. "Recommendations" refers to material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised, and can be express or inferred.

[95] "Advice" has a broader meaning than "recommendations". It includes "policy options", which are lists of alternative courses of action to be accepted or rejected in relation to a decision that is to be made, and the public servant's identification and consideration of alternative decisions that could be made. "Advice" includes the views or opinions of a public servant as to the range of policy options to be considered by the decision maker even if they do not include a specific recommendation on which option to take. [42]

[96] "Advice" involves an evaluative analysis of information. Neither of the terms "advice" or "recommendations" extends to "objective information" or factual material.

[97] Advice or recommendations may be revealed in two ways:

- the information itself consists of advice or recommendations

[41] *John Doe v. Ontario (Finance)*, 2014 SCC 36, at para. 43.
[42] Ibid at paras. 26 and 47.

- the information, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations.[43]

[98] The application of section 13(1) is assessed as of the time the public servant or consultant prepared the advice or recommendations. Section 13(1) does not require the institution to prove that the advice or recommendation was subsequently communicated. Evidence of an intention to communicate is also not required for section 13(1) to apply as that intention is inherent to the job of policy development, whether by a public servant or consultant.[44]

[99] Examples of the types of information that have been found *not* to qualify as advice or recommendations include factual or background information;[45] a supervisor's direction to staff on how to conduct an investigation;[46] and information prepared for public dissemination.[47]

[100] Section 13(2) creates a list of mandatory exceptions to the section 13(1) exemption. If the information falls into one of these categories, it cannot be withheld under section 13. Having reviewed the records, I find that none of the exceptions has any application to the records in this appeal, with the exception of the possible application of section 13(2)(a), which states, in part:

> (2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,
>
> (a) factual material;

[101] This exception is an example of objective information which does not contain a public servant's opinion pertaining to a decision that is to be made, but rather provides information on matters that are largely factual in nature.

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[43] Orders PO-2084, PO-2028, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564; see also Order PO-1993, upheld on judicial review in *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563.
[44] See footnote 10 above at para. 51.
[45] Order PO-3315.
[46] Order P-363, upheld on judicial review in *Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner)* (March 25, 1994), Toronto Doc. 721/92 (Ont. Div. Ct.).
[47] Order PO-2677.

Representations

[102] The university submits as follows:

> Much of the communication between the head of an institution and his Chief of Staff, who in many ways is his most trusted advisor, consists of advice and recommendations. Moreover, there are few confidential relationships within an institution which are more worthy of protection. The head draws on his Chief of Staff on a daily basis for advice and recommendations on an appropriate and wise course of action in the dozens or hundreds of decisions which the Head may make in the course of a day. The head may not always follow the advice provided by the Chief of Staff. He may debate or discuss the advice, or ask for alternatives or other options. The advice is nonetheless critical to the Head's decision-making…
>
> Other senior staff of the institution provide similarly valuable advice. Many of the most important policies and strategic directions of an institution are developed through a deliberative process of decision making among the most senior executive staff of the institution…

[103] The university goes on to state that the records for which section 13(1) was claimed consist of emails in which various staff members provided advice and recommendations on a variety of issues, including references to recommendations or advice previously given. Some records, the university states, contain drafts prepared by the Chief of Staff for the President's review, confirmation or action, and these drafts themselves represent the recommended course of action. Other records contain advice or recommendations made by the President to the university's Board of Governors, to whom he reports. Lastly, the university submits that none of the exceptions in section 13(2) apply to the records at issue.

[104] In its representations, the university cites and relies on the Court of Appeal's decision in *Ontario (Ministry of Finance) v Ontario (Information and Privacy Commissioner)*.[48] The university's representations were prepared prior to the release of the Supreme Court of Canada's decision, cited above, which upheld the Court of Appeal's decision.

[105] The appellant submits that it is likely that some of the records for which this exemption was claimed do not relate to the giving of advice but rather to the seeking of advice and are, therefore, not exempt from disclosure. In addition, the appellant argues that it is likely that some of the records do not relate to a suggested course of

[48] 2012 ONCA 125.

action, but to the type of information that previous orders have found not to be exempt from disclosure.

Analysis and findings

[106] I agree with the university that providing advice and recommendations is an integral part of the relationship between the head of an institution and his or her Chief of Staff. Some of the emails at issue contain such advice and recommendations. Others, however, merely impart information, or ask for direction without providing advice or recommendations. From my overall review of the records, it appears that, while the President was the ultimate decision-maker on many issues, the Chief of Staff had a degree of autonomy with respect to some initiatives. It follows that in some cases, the Chief of Staff is simply informing the President of his activities, rather than presenting the President with a recommendation or a range of policy options. Having reviewed the records, therefore, I make the following findings.

[107] Records 2, 3, 4, 34, 63, 80, 81, 94, 96, 98, 99, 114, 116, 170, 210, 216, 218, 235, 285, 291, 314, 318, 320 and 327 contain emails from the Chief of Staff to the President setting out the Chief of Staff's recommendations on a wide variety of issues. Some of the recommendations take the form of draft documents prepared for the President's review. I agree with the university's submission that these drafts constitute the specific course of action recommended by the Chief of Staff. As such, they qualify for exemption from disclosure pursuant to section 13(1). In addition, a portions of record 319, while not containing the Chief of Staff's recommendations, would, if disclosed, reveal the substance of those recommendations. Accordingly, this information, too, qualifies for exemption under section 13(1).

[108] Records 19, 54, 67, 88, 89, 92, 93, 102, 103, 104, 190, 238, 283, 304, 305, 306 and 326 either contain recommendations of other university staff on a variety of issues, or (for example, in the case of records 88 and 93) contain information the disclosure of which would reveal the recommendations. Therefore, this information, too, qualifies for exemption from disclosure pursuant to section 13(1).

[109] In the case of record 92, the recommendation is that of the President, and was made to the Dean of a particular faculty. In making my finding that this constitutes a recommendation, I have considered the tone of the communication and the reply, and the university's submission, with which I agree, that not all advice and recommendations in the context of a university's administration follow a strictly hierarchical pattern. It would appear that Deans of faculties have considerable autonomy over the initiatives that they undertake on behalf of their respective faculties.

[110] I find that the remainder of the records for which the university has claimed an exemption under section 13(1) are not exempt under that section. Some of them convey factual information, such as feedback on completed university initiatives

(records 24, 123), updates on the Chief of Staff's progress vis-à-vis various initiatives (records 151, 175 and 176), or upcoming issues (record 249). In one case, the Chief of Staff is asking the President for direction on a particular matter (record 154). In other cases, the President is requesting advice (for example, records 169 and 313). Section 13(1) does not exempt a record containing a request for advice unless the information in the record, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations obtained in response. Finally, a record that merely contains the fact that advice was given is not exempt under section 13(1) unless disclosure would reveal the nature of the actual advice or recommendations given.[49] Records 321 and 322, for example, contain the fact that advice was sought and given, but do not contain the advice, nor would their disclosure reveal the nature of the advice or recommendations given.

[111] The university made submissions specifically with reference to record 280, an email from the President to the Chief of Staff setting out a draft letter to another party. The university submits that comparison of this draft letter along with the final version, if available, or even comparison of the draft with the university's subsequent actions, would reveal the nature of the advice provided by the Chief of Staff to the President. I do not accept this submission. First, the university has not confirmed whether the final version is in fact available. Second, even if it is available, it does not necessarily follow that the Chief of Staff's advice, if any, can be inferred from a comparison between them; as noted in the university's representations, the President may accept his Chief of Staff's advice, but may also reject it. Similarly, while the university's actions on the subject matter of the letter would be a matter of public record, it does not necessarily follow that the action taken by the university was the result of any advice from the Chief of Staff to the President.

[112] I have also determined that, pursuant to section 10(2) of the *Act*, some information in the records can be severed and disclosed, without disclosing information that is exempt. Portions of records 318, 319 and 320, for example, contain the fact that advice was sought and given, but do not contain the advice; nor would their disclosure reveal the nature of the advice or recommendations given.

[113] In other cases, I have determined that attempting to sever and disclose non-exempt information would either result in the disclosure of information which would reveal the advice or recommendations, or would result in the disclosure of information that is worthless, meaningless or misleading.[50] Examples of such records are records

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[49] Orders PO-2084, PO-2028, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564; see also Order PO-1993, upheld on judicial review in *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563.

[50] Order PO-2922.

34, 63, 80, 81, 96, 98, 99, 102, 103, 104, 114, 116, 158, 190, 218, 235, 283 and 326. In such cases, I have not severed the records.

[114] I conclude that, subject to my findings on the university's exercise of discretion, the following records qualify, in their entirety, for exemption from disclosure pursuant to section 13(1): 2, 3, 4, 34, 63, 80, 81, 88, 92, 93, 96, 98, 99, 102, 103, 104, 114, 116, 190, 218, 235, 283 and 326. Further, the following records qualify, in part, for an exemption from disclosure pursuant to section 13(1): 19, 54, 67, 89, 94, 118 (the portion that is a duplicate of record 116), 170, 210, 216, 238, 285, 291, 304, 305, 306, 314, 318, 319, 320 and 327.

[115] The remaining records for which the university claimed an exemption from disclosure pursuant to section 13(1) do not qualify for such an exemption.

Issue F: Does the discretionary exemption at section 19 apply to record 95?

[116] Record 95 is an email regarding a litigation matter. The university claims that this record is exempt from disclosure pursuant to sections 19(a) and (c) of the *Act*, which state:

> A head may refuse to disclose a record,
>
> (a) that is subject to solicitor-client privilege;
>
> (c) that was prepared by or for counsel employed or retained by an educational institution or a hospital for use in giving legal advice or in contemplation of or for use in litigation.

[117] Section 19 contains two branches. Branch 1 (subject to solicitor-client privilege) is based on the common law. Branch 2 (prepared by or for Crown counsel or counsel employed or retained by an educational institution or hospital) is a statutory privilege. The institution must establish that one or the other (or both) branches apply. In this appeal, the university argues that both branches apply.

Branch 1: common law privilege

[118] At common law, solicitor-client privilege encompasses two types of privilege: (i) solicitor-client communication privilege; and (ii) litigation privilege.

[119] Solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made

for the purpose of obtaining or giving professional legal advice.[51] Confidentiality is an essential component of the privilege. Therefore, the institution must demonstrate that the communication was made in confidence, either expressly or by implication.[52]

[120] Litigation privilege protects records created for the dominant purpose of litigation. It is based on the need to protect the adversarial process by ensuring that counsel for a party has a "zone of privacy" in which to investigate and prepare a case for trial.[53] Litigation privilege protects a lawyer's work product and covers material going beyond solicitor-client communications.[54] It does not apply to records created outside of the "zone of privacy" intended to be protected by the litigation privilege, such as communications between opposing counsel.[55] The litigation must be ongoing or reasonably contemplated.[56] Common law litigation privilege generally comes to an end with the termination of litigation.[57]

[121] Legal billing information is presumptively privileged unless the information is "neutral" and does not directly or indirectly reveal privileged communications.[58]

Branch 2: statutory privilege

[122] Branch 2 is a statutory privilege that applies where the records were prepared by or for counsel employed or retained by an educational institution "for use in giving legal advice or in contemplation of or for use in litigation." Like the common law litigation privilege, the statutory litigation privilege does not apply to records created outside of the "zone of privacy" intended to be protected by the litigation privilege, such as communications between opposing counsel.[59] In contrast to the common law litigation privilege, however, termination of litigation does not end the statutory litigation privilege in section 19.[60]

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[51] *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).
[52] *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.
[53] *Blank v. Canada (Minister of Justice)* (2006), 270 D.L.R. (4th) 257 (S.C.C.) (also reported at [2006] S.C.J. No. 39).
[54] *Ontario (Attorney General) v. Ontario (Information and Privacy Commission, Inquiry Officer)* (2002), 62 O.R. (3d) 167 (C.A.).
[55] *Ontario (Ministry of Correctional Service) v. Goodis*, 2008 CanLII 2603 (ON SCDC).
[56] Order MO-1337-I and *General Accident Assurance Co. v. Chrusz,* cited above; see also *Blank v. Canada (Minister of Justice)*, cited above.
[57] *Blank v. Canada (Minister of Justice)*, cited above.
[58] *Maranda v. Richer*, [2003] 3 S.C.R. 193; Order PO-2484, upheld on judicial review in *Ontario (Ministry of the Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2007] O.J. No. 2769 (Div. Ct.); see also *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 941 (C.A.).
[59] See *Ontario (Attorney General) v. Big Canoe*, [2006] O.J. No. 1812 (Div. Ct.); *Ontario (Ministry of Correctional Service) v. Goodis*, cited above.
[60] *Ontario (Attorney General) v. Ontario (Information and Privacy Commission, Inquiry Officer)*, cited above.

Representations

[123] The university submits that record 95 is subject to solicitor-client privilege because it reflects communications between a solicitor and client who were involved in giving and receiving legal advice. It submits that the record includes such details as the scope of a retainer and the applicable hourly rate. The university submits that the record is also protected by litigation privilege because at the time the email was sent, litigation was contemplated. It argues that the record was created for the dominant purpose of litigation, which remains ongoing.

[124] The appellant submits that simply copying legal counsel on an email does not mean that the email is subject to solicitor-client privilege.[61] The appellant goes on to argue that the exemption in section 19 can only apply if the record contains a communication between the university and its own legal counsel, but not to communications between the university and legal counsel for someone other than the university. The appellant further states:

> The appellant also submits that the Court of Appeal for Ontario has determined that the total dollar amount of an institution's expenses on legal fees is not exempt under s. 19 and should be disclosed to the requester.[62] This is to be done in the form of a composite record created by the institution containing dates and dollar amounts of legal invoices summed up in a grand total of expenses on a particular case.[63] The appellant requests, if the Adjudicator finds that it is appropriate to apply s.19 to record 95, that the university be ordered to create a composite record containing invoice dates and dollar amounts, if such information is contained in the record.

Analysis and findings

[125] Having reviewed the email in question, I find that it was prepared in contemplation of litigation, and therefore falls within the statutory litigation privilege in branch 2. The email pertains to litigation that was reasonably contemplated as of the time the email was written and which, according to the university's representations, is ongoing. Although I do not have updated information about the status of the litigation in question, this is immaterial since the statutory litigation privilege does not expire upon termination of the litigation in question.

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[61] Interim Order PO-2909-I.
[62] *Ontario (Ministry of the Attorney General) v. Ontario (Assistant Information and Privacy Commissioner)*, 2005 CanLII 6045 (Ont. C.A.).
[63] *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, 2007 CanLII 65615 (Div. Ct.).

[126] I also find that the communication took place within a "zone of privacy". I am unable to be more specific in this regard without revealing the content of the record.

[127] Given my finding, I do not need to consider whether this email is also a privileged solicitor-client communication; nor do I need to consider the parties' arguments with respect to billing information. In any event, the appellant's request that I order the university to create a composite record containing invoice dates and dollar amounts is moot, because such information is not contained in the record.

[128] I conclude that, subject to my findings on the university's exercise of discretion, record 95 is exempt from disclosure pursuant to the discretionary exemption at section 19 of the *Act.*

Issue G: Did the institution exercise its discretion under sections 13(1) and 19? If so, should this office uphold the exercise of discretion?

[129] The sections 13(1) and 19 exemptions are discretionary, and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[130] In addition, the Commissioner may find that the institution erred in exercising its discretion where it does so in bad faith or for an improper purpose, takes into account irrelevant considerations or fails to take into account relevant considerations.

[131] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[64] This office may not, however, substitute its own discretion for that of the institution.[65]

[132] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:[66]

- the purposes of the *Act*, including the principles that information should be available to the public, individuals should have a right of access to their own personal information, exemptions from the right of access should be limited and specific, and the privacy of individuals should be protected;

- the wording of the exemption and the interests it seeks to protect;

[64] Order MO-1573.
[65] Section 54(2) of the *Act*.
[66] Orders P-344, MO-1573.

- whether the requester is seeking his or her own personal information;
- whether the requester has a sympathetic or compelling need to receive the information;
- whether the requester is an individual or an organization;
- the relationship between the requester and any affected persons;
- whether disclosure will increase public confidence in the operation of the institution;
- 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 age of the information; and
- the historic practice of the institution with respect to similar information.

[133] The university submits that it properly exercised its discretion in good faith and that it considered all relevant considerations and did not consider irrelevant considerations. With respect to the discretionary exemption for advice and recommendations in section 13, the university submits that it withheld the records where it determined it was necessary to "preserve space" for the provision of confidential advice from senior staff. It submits that the information withheld was sensitive, consisting primarily of high-level strategic advice, planning and policy discussion. Regarding the application of section 19, the university submits that there is an important societal value in solicitor-client privilege and that any public interest in disclosure of the record is outweighed by the need for it to have access to confidential legal advice.

[134] The appellant submits that the university applied section 18(1) to many records for which the section 18(1) exemption is not available and in so doing, improperly exercised its discretion.

[135] I see nothing improper in the university's exercise of discretion. In deciding to withhold information under sections 13(1) and 19, it took into account the nature of the information and its sensitivity. It was also legitimate for it to consider the important societal value in solicitor-client privilege.

[136] I do not need to address the appellant's submission that the university improperly claimed section 18(1). I have found that section 18(1) does not apply to the records.

[137] There is also no evidence before me to suggest that the university exercised its discretion in bad faith or for an improper purpose. Accordingly, I uphold the university's exercise of discretion.

Issue H: Does the mandatory personal privacy exemption at section 21(1) apply to the records?

[138] I have found above that the following records contain personal information of individuals other than the appellant: 5, 7, 8, 9, 15, 20, 49, 56, 61, 62, 71, 97, 106, 112, 113, 121, 125, 126, 144, 147, 155, 157, 168, 169, 170, 173, 178, 184, 189, 204, 217, 232, 234, 240, 256, 269, 274, 281, 282, 284, 291, 310, 316, 317, 323, 325, 328, and 329. The university submits that the mandatory personal privacy exemption at section 21(1) applies to this information.

[139] Where a requester seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies. If the information fits within any of paragraphs (a) to (f) of section 21(1), it is not exempt from disclosure under section 21.

[140] The appellant relies on sections 21(1)(a) and (f), which read:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
>
> (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

[141] The appellant argues that disclosure would not be an unjustified invasion of privacy, and therefore the exception at section 21(1)(f) applies. In the alternative, he submits that, if disclosure would constitute an unjustified invasion of personal privacy, the individuals whose personal information appears in the records should be contacted and offered the opportunity to allow the appellant access to this information. In that case, the exception at section 21(1)(a) would apply.

[142] Determining whether disclosure would or would not constitute an unjustified invasion of personal privacy under section 21(1)(f) requires reference to other parts of section 21. If any of paragraphs (a) to (d) of section 21(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 21. As discussed later in this order, none of the circumstances set out in paragraphs 21(4)(a) to (d) apply in this appeal.

[143] The factors and presumptions in sections 21(2) and (3) also help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 21(1)(f). If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 21. 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.[67] It cannot be rebutted by one or more factors or circumstances under section 21(2).[68]

[144] Section 21(3) reads, in part, as follows:

> (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
>
> (d) relates to employment or educational history;

[145] If no section 21(3) presumption applies, section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.[69] Some of the factors listed in section 21(2) favour disclosure, while others favour non-disclosure. In order to find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances favouring disclosure in section 21(2) must be present. In the absence of such a finding, the exception in section 21(1)(f) is not established and the mandatory section 21(1) exemption applies.[70]

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[67] *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).
[68] *Ibid*.
[69] Order P-239.
[70] Orders PO-2267 and PO-2733.

[146] Section 21(2) provides:

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

Representations

[147] The university submits that disclosure of the withheld information would constitute an unjustified invasion of personal privacy of the individuals whose personal information appears in those records. Much of the personal information, the university argues, falls within the presumptions in section 21(3)(a) and (d). The university also submits that none of the factors favouring disclosure in section 21(2) apply.

[148] In addition, the university argues that it has severed and disclosed, in part, many of the records at issue, and goes on to state:

> Where the University has withheld the record, it is because of concern that severing the name of the individual in question would not be enough to protect the individual's identity. In some cases, the other information contained in a record could on its own disclose the identity of the individual and result in an unjustified invasion of privacy. The University submits that it has already severed the records withheld under section 21(1) to the extent possible while still protecting the privacy of individuals concerned.

[149] The appellant submits:

> Access to information about the opinions views, etc. of university officials about other individuals, in particular about individuals over whom university officials have some power or authority (e.g. students, professors, staff, etc.) communicated using university emails and other means of correspondence does not constitute an … "unjustified invasion of personal privacy" of the person expressing the views; and if this does constitute an invasion of the privacy of the person about whom the views are expressed, then the individual about whom the view is expressed should be contacted and offered the opportunity to allow the appellant access to this information.

Analysis and findings

[150] The types of personal information contained in the records are summarized above under Issue C, where I have found that records 8, 20, 49, 56, 62, 106, 112, 113, 126, 144, 147, 169, 170, 173, 178, 198, 204, 206, 207, 215, 232, 234, 282, 328, and 329 contain the medical, educational and/or employment history of individuals. I agree with the university that the presumptions at sections 21(3)(a) and (d) apply to this information. A presumption under section 21(3) can only be overcome if one of the circumstances in section 21(4) is present or if the public interest override applies. The appellant has not argued that the public interest override applies. Further, I have reviewed the information and I find that none of the circumstances listed in section 21(4) applies to it.

[151] I find, therefore, that disclosure of the information in these records would constitute an unjustified invasion of personal privacy. Therefore, the exception at section 21(1)(f) does not apply and these records are exempt from disclosure under section 21(1).

[152] The remaining records for which the university claims the section 21(1) exemption contain a variety of personal information, as described under Issue C. As none of the presumptions at section 21(3) apply to this information, I am require to examine, and weigh, the factors under section 21(2) in order to determine whether disclosure would constitute an unjustified invasion of personal privacy. If none of the factors or circumstances favouring disclosure is present, the exception in section 21(1)(f) is not established and the mandatory section 21(1) exemption applies.

[153] Having reviewed the records, I find that none of the factors favouring disclosure at section 21(2) apply. The personal information appears in email communications between the university's President and his Chief of Staff over the course of a little more than a year. As might be expected, the subject matter of these communications varies widely. While the appellant submits that disclosure of the records would not be an unjustified invasion of personal privacy, he puts forth no argument that any of the factors favouring disclosure at section 21(2) apply, and I find that none of them do. Specifically, I am not satisfied that the disclosure is desirable for the purpose of subjecting the activities of the university to public scrutiny; that access to the personal information may promote public health and safety; that access to the personal information will promote informed choice in the purchase of goods and services; or that the personal information is relevant to a fair determination of the appellant's rights. As none of the factors favouring disclosure are present, the exception in section 21(1)(f) is not established.

[154] I now turn to section 21(1)(a), which provides that personal information is not exempt from disclosure where the individual to whom it relates consents in writing to its disclosure. For those records that contain views or opinions about an individual, the appellant submits that this office ought to contact these individuals about whom these opinions are expressed in order to seek their consent to disclosure of this information to him.

Should I notify the affected parties for the purpose of obtaining consent?

[155] Section 50(3) of the *Act* confers upon the Commissioner discretion to notify, or not notify, a party with an interest in the appeal. This discretion must be properly exercised, bearing in mind relevant factors and not taking irrelevant ones into account. Common law principles of natural justice may also require that notice be provided before ordering disclosure of a record where an individual's interests would be affected by such disclosure.

[156] In the present appeal, however, I have found that the personal information at issue is otherwise exempt from disclosure. Therefore, the only purpose to be served by notification, and the only purpose for which the appellant wishes to have the affected parties notified, is to explore the possibility of consent.

[157] The appellant has not articulated any particular reason for requesting access to the personal information of others. I also consider it relevant that the records date back to 2010 and 2011, and it is not clear whether current contact information is available for the individuals in question.

[158] Taking the above factors into account, I have decided to exercise my discretion under section 50(3) not to notify the individuals whose personal information appears in the records.

Severances

[159] I have also determined that, pursuant to section 10(2) of the *Act*, some information in the records can be severed and disclosed, without disclosing information that is exempt. For example, in some cases, the individuals whose personal information appears in the records are rendered unidentifiable by the removal of their names and other identifying information. In other cases, I have determined that attempting to sever and disclose non-exempt information would either result in the disclosure of information which would reveal the personal information, or would result in the disclosure of information that is worthless, meaningless or misleading.[71] In those cases, I have not severed the record.

[160] I conclude that each of the following records is exempt, in its entirety, from disclosure pursuant to the mandatory personal privacy exemption at section 21(1) of the *Act*: 8, 9, 15, 20, 49, 56, 62, 71, 97, 106, 112, 113, 126, 144, 147, 168, 169, 173, 178, 204, 232, 234, 240, 256, 269, 274, 282, 310, 316 and 325.

[161] Each of the following records is exempt, in part, from disclosure pursuant to the mandatory personal privacy exemption at section 21(1) of the *Act*: 5, 7, 61, 121, 125, 155, 157, 170, 184, 189, 217, 281, 284, 291, 317, 323, 328 and 329.

Issue I: Does the mandatory exemption at section 17(1) apply to records 143, 164, 209, 219, 270, 271 and 272?

[162] The university argues that these records contain commercial information supplied to the university by third parties and are exempt pursuant to the mandatory third party information exemption at section 17(1), which states in part:

> A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

[71] Order PO-2922.

> (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;

[163] Section 17(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions.[72] 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.[73]

[164] For section 17(1) to apply, the institution and/or the third party must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and

2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and

3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 17(1) will occur.

Part 1: type of information

[165] The types of information listed in section 17(1) have been discussed in prior orders:

> *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.[74] The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.[75]

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[72] *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.).
[73] Orders PO-1805, PO-2018, PO-2184 and MO-1706.
[74] Order PO-2010.
[75] Order P-1621.

Part 2: supplied in confidence

[166] The requirement that it be shown that the information was "supplied" to the institution reflects the purpose in section 17(1) of protecting the informational assets of third parties.[76] Information may qualify as "supplied" if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party.[77]

[167] In order to satisfy the "in confidence" component of part two, the parties resisting disclosure must establish that the supplier had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided. This expectation must have an objective basis.[78]

[168] In determining whether an expectation of confidentiality is based on reasonable and objective grounds, it is necessary to consider all the circumstances of the case, including whether the information was:

- communicated to the institution on the basis that it was confidential and that it was to be kept confidential;
- treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the government organization;
- not otherwise disclosed or available from sources to which the public has access; and
- prepared for a purpose that would not entail disclosure.[79]

Part 3: harms

[169] To meet this part of the test, the institution and/or the third party must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient.[80] The failure of a party resisting disclosure to provide detailed and convincing evidence will not necessarily defeat the claim for exemption where harm can be inferred from other circumstances. However, only in exceptional circumstances would such a determination

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[76] Order MO-1706.
[77] Orders PO-2020 and PO-2043.
[78] Order PO-2020.
[79] Orders PO-2043, PO-2371 and PO-2497.
[80] *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).

be made on the basis of anything other than the records at issue and the evidence provided by a party in discharging its onus.[81]

[170] The need for public accountability in the expenditure of public funds is an important reason behind the need for "detailed and convincing" evidence to support the harms outlined in section 17(1).[82] Parties should not assume that harms under section 17(1) are self-evident or can be substantiated by submissions that repeat the words of the *Act*.[83]

Representations

[171] The university submits that the records contain commercial information relating to the exchange of services between the university and third parties. It submits that the discussions set out in the withheld correspondence all took place at a senior level, between the President and others within the university and beyond, and that these discussions were confidential. Further, the university submits that the records reveal information that was supplied by third parties to the university.

[172] The university submits that disclosure would result in such information not being provided to the university again. It submits that, at the commencement of or during the relationship between the university and a third party, high level exchanges of communications will often take place between the third party and senior executives of the university, including the President. The university submits that it is important to these discussions that third parties be able to share information freely, and that if they learn that information which they provide may be disclosed, they may not be willing to engage in similar high-level strategic discussions. As a result, the university will be prejudiced in its ability to negotiate new projects and undertakings with third parties.

[173] The appellant submits that these records do not relate to "informational assets". He points out that the subject of record 164 is "visit to country", and the subject of record 209 is "country". He submits that there is likely to be at least some information contained in those records that is not exempt pursuant to section 17(1). He also points out that records 143 and 219 appear to relate to internal matters at the university, and at least some content in these records does not related to a third party.

[174] The third parties were not notified of this appeal and so did not provide representations.

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[81] Order PO-2020.
[82] Order PO-2435.
[83] *Ibid*.

Findings

[175] Although the appellant and the university have provided representations, I do not have the benefit of representations from the third parties whose information is at issue. Since their interests could be affected by disclosure, I find that the third parties to whom these records relate should be given notice and an opportunity to provide representations before I make any finding about the potential disclosure of these records.

[176] Consideration of the application of section 17(1) to these records is deferred on the terms set out in the order provision below.

ORDER:

1. I uphold the university's decision in part.

2. Each of the following records is excluded, in its entirety, from the operation of the *Act* pursuant to section 65(6): 10, 14, 17, 18, 22, 23, 29, 32, 33, 37, 55, 70, 73, 76-79, 82, 86, 101, 105, 117, 129, 130, 132, 134, 135, 148, 158, 171, 179, 180, 181, 182, 191, 195, 199, 201, 203, 223, 228, 233, 250, 251, 255, 261-264, 266, 267, 277, 288, 289, 290, 292, 293, 295, 296, 298, 299, 333-335 and 349-352.

3. Each of the following records is exempt from disclosure, in its entirety, pursuant to section 13(1) of the *Act*: 2, 3, 4, 34, 63, 80, 81, 88, 92, 93, 96, 98, 99, 102, 103, 104, 114, 116, 190, 218, 235, 283 and 326.

4. Each of the following records is exempt, in part, from disclosure pursuant to section 13(1) of the *Act*: 19, 54, 67, 89, 94, 118, 210, 216, 238, 285, 304, 305, 306, 314, 318, 319, 320 and 327. The portions that are exempt from disclosure are highlighted in yellow on the copies of these records attached to the university's copy of this order.

5. Records 170 and 291 are each partially exempt under section 13(1), with the remainder of each record exempt under section 21(1). As a result, both records are exempt from disclosure in their entirety.

6. Record 95 is exempt from disclosure, in its entirety, pursuant to section 19 of the *Act*.

7. Each of the following records is exempt, in its entirety, from disclosure pursuant to section 21(1) of the *Act*: 8, 9, 15, 20, 49, 56, 62, 71, 97, 106, 112, 113, 126, 144, 147, 168, 169, 173, 178, 204, 232, 234, 240, 256, 269, 274, 282, 310, 316 and 325.

8. Each of the following records is exempt, in part, from disclosure pursuant to section 21(1) of the *Act*: 5, 7, 61, 121, 125, 155, 157, 184, 189, 217, 281, 284, 317, 323, 328 and 329. The portions that are exempt from disclosure are highlighted in yellow on the copies of these records attached to the university's copy of this order.

9. My consideration of the applicability of section 17 of the *Act* to records 143, 164, 209, 219, 270, 271 and 272 is deferred. If the appellant wishes to pursue his appeal in respect of these records, he is to notify this office, in writing, by **August 20, 2015** or such later time as this office may allow.

10. I order the university to disclose the remainder of the information at issue to the appellant by **July 30, 2015**.

11. In order to verify compliance with order provision 10 above, I reserve the right to require the university to provide this office with copies of the information disclosed to the appellant.

Original Signed By: June 25, 2015
Gillian Shaw
Adjudicator