Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3626

Appeal PA14-184

Queens University

June 29, 2016

Summary: At issue in this appeal is a request for access to tables listing the number of animals (by species) subjected to experiments at the university in each category of invasiveness as specified by the guidelines of the Canadian Council on Animal Care. The university relied on sections 14(1)(e) (endanger life or safety), 14(1)(i) (endanger security) and 20 (danger to safety or health) to deny access to 6 pages of Animal Use Data for the years 2009 to 2013. In this order the adjudicator finds that the responsive information qualifies for exemption under sections 14(1)(e) and 14(1)(i) of the *Act*, and determines that it was not necessary to also determine whether section 20 applies to the responsive information. The university's decision denying access to the information at issue is upheld.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 14(1)(e), 14(1)(i) and 23.

Orders Considered: P-169, P-252, P-557, P-1392 and P-1537.

Cases Considered: *Ontario (Public Safety and Security) v. Criminal Lawyers' Association* [2010] 1 SCR 815, 2010 SCC 23 and *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31.

BACKGROUND[1]:

[1] Much of this background information is sourced from two affidavits that accompanied the university's representations in the appeal.

[1] Queens University (Queens or the university) is one of the few institutions in Canada that uses high-profile animals, such as non-human primates, for research. The university's animal care facilities are spread across the university campus and include off-site research at remote biological stations. The campus itself is open to the public and accessible to faculty and students of the university as well as the larger Kingston, Ontario community.

[2] In Ontario, all facilities that house animals for more than 30 days, which include the university, need to be registered as a research facility with the Ontario Ministry of Agriculture and Rural Affairs and comply with the regulatory requirements of the *Animals for Research Act*[2], and its regulations[3].

[3] The other oversight body for the use of animals in research, teaching and testing is the Canadian Council on Animal Care (CCAC) which is responsible for setting policies and guidelines on the use of animals in research. The authority of the CCAC is provided through the "Agreement on the Administration of Agency Grants and Awards by Research Institutions" (the Agreement), which is an agreement between the university and the Tri-Council being comprised of the Natural Sciences and Engineering Research Council (NSERC), the Canadian Institute for Health Research (CIHR) and the Social Sciences and Humanities Research Council (SSHRC).

[4] The Agreement states that the university shall maintain a Certificate of Good Animal Practice from the CCAC and ensure that research complies fully with CCAC standards. The Certificate of Good Animal Practice is issued following an onsite peer-review process of the institution's Animal Care and Use Program. The university is a party to the agreement.

[5] The university also has its own internal oversight body, being the University Animal Care Committee (UACC), which is responsible for ensuring that the institution implements the guidelines and policies of the CCAC. All research and teaching involving the use of animals performed at Queens or carried out by Queens personnel (even at another institution such as during a sabbatical) requires prior approval of the UACC. The responsibilities of the UACC include: maintaining the standards of the facilities; ensuring proper care of the animals; establishing policies regarding the use of animals; and reviewing Animal Use Protocols. In addition, any use of animals in research, teaching or testing must be in accordance with a specific Animal Use Protocol.

[6] A Queens researcher who wishes to carry out animal-based work must first submit an Animal Use Protocol to the UACC for approval. All individuals listed on the

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[2] R.S.O. 1990, Chapter A.22.

[3] Notably, R.S.O. 1990, Regulation 22, General and Regulation 24, Research Facilities and Supply Facilities.

Animal Use Protocol and who will be working with animals are required to undergo training prior to commencing the study. They must complete an online didactic course on the ethics of the use of animals in research, teaching and testing. In addition, depending on the species involved, hands-on training is required on research bio methodology. To ensure that animal use protocols are conducted as approved, a Quality Assurance Program is also in place at the university.

[7] On an annual basis, all institutions that are a part of the CCAC program are required to submit an Animal Use Data form ("AUDF") to the CCAC. The information contained in the AUDF includes: protocol number; project description or keywords; Purpose of Animal Use ("PAU"); the Category of Invasiveness; species; and the total number of animals used in the calendar year.

[8] For the purposes of this appeal PAU levels 4 and 5 are the most significant. In the affidavit that accompanied the university's representations in the appeal, the affiant explains that the PAU levels are as follows:

> PAU 0 Breeding Colony/Stock
>
> PAU 1 Studies of a fundamental nature in sciences relating to essential structure or function.
>
> PAU 2 Studies for medical purposes, including veterinary medicine, that relate to human or animal diseases or disorders.
>
> PAU 3 Studies for regulatory testing of products for the protection of humans, animals, or the environment.
>
> PAU 4 Studies for the development of products or appliances for human or veterinary medicine, being studies carried out to investigate potential therapies (as determined following studies of PAU 2) for humans or animals, before regulatory testing (PAU 3) is carried out on the most promising therapies.
>
> PAU 5 Education and training of individuals teaching or training programs in post-secondary institutions or facilities, being teaching or training programs wherein animals are used to introduce students to scientific work and teach manual skills and techniques.

[9] The affiant explains that Category of Invasiveness is, similarly, a description of the level of intrusion to which the animals are subjected. The affiant explains that the Categories of Invasiveness are:

> Category A procedures are those that are conducted, for example, on tissue cultures or eggs or single-celled organisms.

> Category B procedures are those that cause little or no discomfort or stress. Possible examples include: blood sampling; short periods of food and/or water deprivation equivalent to periods of abstinence in nature.
>
> Category C procedures are those that cause minor stress or pain of short duration. Possible examples include: minor surgical procedures under anesthesia; short period of restraint beyond that for simple observation or examination, but consistent with minimal distress.
>
> Category D procedures are those which cause moderate to severe distress or discomfort. Possible examples include: major surgical procedures conducted under general anesthesia, with subsequent recovery; prolonged (several hours or more) periods of physical restraint; induction of behavioral stresses such as maternal deprivation, aggression, predator-prey interactions; procedures which cause severe, persistent or irreversible disruption of sensorimotor organization.
>
> Category E procedures are those which cause severe pain near, at or above the pain tolerance threshold of unanaesthetized conscious animals. Possible examples include: exposure to noxious stimuli or agents whose effects are unknown; exposure to things or chemicals at levels that (may) markedly impair physiological systems and which cause death, severe pain, or extreme distress; completely new biomedical experiments which have a high degree of invasiveness; behavioral studies about which the effects of the degree of distress are not known; burn or trauma infliction on unanaesthetized animals; any procedures (e.g., the injection of noxious agents or the induction of severe stress or shock) that will result in pain which approaches the pain tolerance threshold and cannot be relieved by analgesia (e.g., when toxicity testing and experimentally-induced infectious disease studies have death as the endpoint).

[10] On an annual basis, the CCAC analyses the data submitted and publishes a summary report which aggregates the data for the whole country. The completed aggregated data set is also provided as an excel spreadsheet.

[11] The CCAC also mandates that all animal research must have regard to the Three R's[4] being Replacement, Reduction and Refinement alternatives of animal use, as mandated by the CCAC in its Terms of Reference for Animal Care Committees. These provide that:

> 3. Responsibility

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[4] Also referred to as the 3Rs.

> It is the responsibility of the [Animal Care Committee] to:
>
> …
>
> c) Require all animal users to complete an animal use protocol form and ensure that the information therein includes …
>
> > xii) information with regard to the Three R's (replacement, reduction and refinement alternatives) of animal use, to include:
> >
> > > xii.1 a description of why sentient animals must be used for the project, of how the applicant arrived at this conclusion (e.g., searches of databases on alternatives), and of possible replacement alternatives (non-animal methods, cellitis tissue culture, computer simulations, audio-visual teaching methods, the replacement of sentient animals with animals of lower sentiency, etc.) and justification if these are not to be employed;
> >
> > > xii.2 justification of the species and numbers of animals to be used over the course of the year, to emphasize reduction of animal use within an appropriate experimental design, while ensuring that sufficient numbers of animals will be used to fulfill requirements for statistical significance/scientific validity in the case of research projects, or for acceptance of regulatory tests;
> >
> > > xii.3 a description of all of the refinements to be employed to protect and enhance animal health and welfare…

[12] If inadequate information is provided or if the UACC feels that alternatives are available and have not been addressed, then the protocol will be "returned for modification" and not approved until these sections have been addressed to the full satisfaction of the UACC.

THE REQUEST

[13] Queens University (the university or Queens) received a request under the *Freedom of Information and Protection of Privacy Act* (*Act* or *FIPPA*) for access to information and records pertaining to the use of animals for research and testing at the university for a period of five years, from January 1, 2009 to January 1, 2014. Specifically, the requester sought information pertaining to the following four items:

1. List of titles of approved animal research protocols at the university;
2. Tables listing the number of animals (by species) subjected to experiments in each category of invasiveness as specified by the CCAC guidelines;

3. Titles of experiments involving Category D and E procedures; and

4. Copies of the "Animal Use Data Form" submitted by Queens to the CCAC.

[14] The university identified records responsive to the request and issued an access decision. The university's decision can be summarized as follows:

- Item 1 - The university located five records responsive to this item of the request and relied on the exclusion at section 65(8.1) of the *Act* (records respecting or associated with research) to deny access to them, in full;

- Item 2 - The university advised that records responsive to this item of the request could be generated from its electronic database; however, it would be relying on sections 14(1)(e) (endanger life or safety), 14(1)(i) (endanger security) and 20 (danger to safety or health) of the *Act* to deny access to them, in full;

- Item 3 - The university advised that a record responsive to this item of the request could be generated from its electronic database; however, it would be relying on sections 65(8.1), 14(1)(e), 14(1)(i) and 20 of the *Act* to deny access to it, in full; and

- Item 4 - The university located four records responsive to this item of the request and relied on sections 65(8.1), 14(1)(e), 14(1)(i), 20 and 21 (invasion of privacy) of the *Act*, to deny access to them, in full.

[15] The requester (now the appellant) appealed the university's decision denying access to information that was responsive to item 2 of the request. The appellant's appeal letter contained extensive submissions on why the requested information should be disclosed. These included:

- The public has a right to know what kinds of research their tax dollars are funding so that they can make informed decisions about whether or not to support that research.

- Many other countries as well as other universities in Canada have disclosed the requested information, including titles of approved research protocols and categories of invasiveness (including by York University in response to a prior *FIPPA* request)

- Other countries, including the United States, have determined that it is in the public interest for information regarding violations of standards of animal care to be publicly accessible.

- This information is needed if citizens are to exercise their democratic right and responsibility to collectively deliberate and decide in an informed manner on the appropriate treatment of animals in our society, including in research.

- The university has a duty to protect the safety of its employees, but the university provides no evidence that there is such a threat, or that disclosing the information would in any way materially affect that risk.

- The essential question is not whether any risk exists but how the disclosure of the requested information affects that risk.

- The universities that have disclosed similar information (such as the University of British Columbia) have not faced violent attack.

- There is no evidence that disclosing similar information in other countries has led to violence and it makes no sense to think that violent activists would target those universities that disclose information.

- It is important to know whether the Three Rs are being implemented in practice at the university and one relevant piece of evidence in this regard is the number of animals used in research by species over time.

[16] At mediation, the appellant confirmed with the mediator that they are not appealing the university's decision with respect to access to information responsive to items 1, 3 or 4 of the request. Accordingly, that information is not at issue in this appeal. The appellant also reiterated their belief that records responsive to item 2 of the request should be available as a matter of public interest. The university maintained its position denying access to information responsive to item 2 of the request.

[17] As mediation did not resolve the appeal it was moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*.

[18] During the inquiry into the appeal, I sought and received representations from the university and the appellant. Representations were shared in accordance with section 7 of the IPC's *Code of Procedure* and *Practice Direction 7*. Portions of the university's representations and accompanying affidavits were withheld due to confidentiality concerns. In making my determinations in this appeal, I considered the non-confidential and confidential materials provided by the university.

[19] In this order I find that the responsive information qualifies for exemption under sections 14(1)(e) and 14(1)(i) of the *Act*, and uphold the university's decision denying access to the information at issue.

RECORDS:

[20] The records at issue consist of 6 pages of CCAC Animal Use Data for the years

2009 to 2013. The pages set out the species of animal and the Category of Invasiveness.

ISSUES:

A. Do the discretionary exemptions at sections 14(1)(e) and/or 14(1)(i) apply to the records?

B. Did the institution exercise its discretion under sections 14(1)(e) and (l)? If so, should this office uphold the exercise of discretion?

DISCUSSION:

Issue A: Do the discretionary exemptions at sections 14(1)(e) and/or 14(1)(i) apply to the records?

[21] Sections 14(1)(e) and (i) read:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> > (e) endanger the life or physical safety of a law enforcement officer or any other person;
> >
> > (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;

[22] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[5]

[23] It is not enough for an institution to take the position that the harms under section 14 are self-evident from the record or that the exemption applies simply because of the existence of a continuing law enforcement matter.[6] The institution must provide detailed and convincing evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness

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[5] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

[6] Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

of the consequences. [7]

The university's representations

[24] The university submits that requests for information similar to that at issue in this appeal have "already been the subject of considerable deliberation by the IPC" in Orders P-169, P-252, P-557, P-1392 and P-1537. The university submits that although not binding, these decisions "strongly suggest" that the appellant's appeal should be dismissed.

[25] The university submits that the requested records which led to those orders "contained information pertaining to the number and species of animals involved in animal research and, in certain cases, the facility where that research was taking place."

[26] The university submits:

> Four of the five decisions upheld the institution's decision to not disclose the requested information in accordance with the exemptions at sections 14(i)(e), 14(1)(i), and 20 of *FIPPA*. The one decision that did, Order P-1392, did so on the basis of a fundamental misunderstanding about whether such information was already being disclosed to the public. This error was addressed, and corrected, in the subsequent decision, Order P-1537. Assistant Commissioner Tom Mitchinson, in writing Order P-1537, stated: "I put little weight on the precedential value of Order P-1392, and feel that the approach taken in Orders 169, P-252 and P-557 (all of which denied the disclosure of the requested animal research records) is more useful in resolving the issues in this appeal."
>
> Common to these decisions is the acknowledgment and acceptance of the fact that disclosure to an individual through the *FIPPA* appeal process is, in effect, disclosure to the public generally. As a result, acts of violence, vandalism, and terrorism conducted by extreme animal rights activist groups against animal research facilities and researchers, while not necessarily endorsed or supported by the specific individual requesting access to the information, must be considered in determining whether disclosure would endanger life, security, or safety.

[27] The university further submits that the records requested in this appeal contain information that goes well beyond the information discussed in those previous five decisions. The university submits that the appellant has requested:

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

> … not only the number and species of animals involved in animal research (what) and the institution at which the research is taking place, but also the category of invasiveness to which the animals are subjected. Put another way, not only is [the appellant] asking about the animals used by our specific institution (the what and the where), [the appellant] is also asking for disclosure of details as to the way in which they are used (the how).

[28] The university submits that the IPC "has been clear that, where animal research is concerned, the what and the where do not need to be disclosed, never mind the addition of how."

[29] The university submits that in previous decisions, the IPC has determined that merely the disclosure of the number and species of animals used in research could reasonably be expected to endanger the security of those research facilities. The university submits that the same rationale applies in this appeal for the following reasons:

- Past Conduct of Animal Activists: Past and recent attacks on animal researchers and their facilities by animal rights activists suggest that there is a reasonable expectation that the safety of people and/or buildings at the university will be endangered. There is a clear and direct connection between the information being requested and the risk of violence.

- Disclosure to the Public: The disclosure of the records to the appellant, if it were to occur, must necessarily be viewed as disclosure to the public at large.

- Location of Research Disclosed: If the public were to learn that research of a certain nature was being conducted on a particular species, and at the location of the university, then the risk of anticipated harm would increase.

- Sensitivity of the Information Requested: The information being requested by the appellant goes well beyond the information requested, and denied by the IPC, in the past. It is of a much greater sensitivity.

[30] The university then divides its representations to address each subheading.

Past Conduct of Animal Activists

[31] The university provided two separate affidavits from two different individuals in support of its position. Portions of the affidavits, including the individuals' identities were withheld due to confidentiality concerns.

[32] The university submits that one of affidavits:

> … describes the many acts of violence and intimidation committed by animal rights activists both in Canada and abroad. Of the several examples that [the affiant] provides, we will focus first on an incident that was recent and close, geographically, to the university.
>
> On July 14, 2014, the Canadian Association for Laboratory Animal Science ("CALAS") in Toronto was the subject of a butyric acid attack by an animal rights activist group. Butyric acid is a toxic substance that can cause pain, blistering, and burns when exposed to skin. It has a nauseating aroma, and is the main (and very distinctive) smell in human vomit.
>
> CALAS is a national association that is dedicated to providing high quality training and educational resources to animal care professionals in Canada. CALAS training and certification programs are recommended by the Canadian Council on Animal Care ("CCAC").
>
> The day after the butyric acid attack on CALAS, the Animal Liberation Front ("ALF") took responsibility. The following was posted on the ALF website:
>
> > On July 14, 2014, in Toronto, the Animal Liberation Front injected butyric acid into the office of the Canadian Association for Laboratory Animal Science. CALAS is an organization made up of vivisectors that promotes animal research. The butyric acid will soak through the carpet and into the floorboards of their offices, and major repairs will be needed to get rid of the stench. Any building managers considering taking in CALAS as a tenant should be aware that unless you want something similar to happen in your offices, then think twice before doing business with these murderers. - ALF

[33] The university submits that as explained in the affidavit, the ALF is an international, underground leaderless group whose website states that it "carries out direct action against animal abuse in the form of rescuing animals and causing financial loss to animal exploiters usually through the damage and destruction of property".

[34] The university states that in addition to the July 2014 butyric acid attack in Toronto, the ALF has taken responsibility for or endorsed many recent attacks on a variety of animal research facilities and other operations that house or make use of animals including the following attacks (as also described in the affidavit):

- January 7, 2015, the National University of La Plata in Argentina: the animal testing facilities at the university were broken into and set on fire. All animals housed in the facility were released.

- November 2014, Toronto Royal Agricultural Winter Fair: The tires of a dozen vehicles at the fair were slashed and the vehicles were spray painted.

- September 24, 2014, Buenos Aires, Argentina: explosives were placed in the bathrooms of the building where the 2nd Congress II of the International Federation of Sudamerican Societies of Animal Laboratory Sciences was taking place with a note that read: "For each lab animal center a bomb - for each congress an attack - FREE ANIMALS!".

- October 9, 2014, Würzburg, Germany: an animal research facility in Würzburg, Germany was vandalized with red paint.

- July 26-27, 2014, Berlin, Germany: several Molotov cocktails were thrown at cars on the property of the Bayer pharmaceutical/chemical company in Berlin.

[35] The university submits that there is no reason to suspect that the ALF's actions will be any less violent or frightening here in Canada as compared to other areas of the world, as illustrated by the very recent attacks in the Toronto CALAS offices.

[36] The university adds that other animal rights activists have similarly attacked other universities and researchers in North America. These include the following:

- In March 2009, the vehicle of a UCLA neuroscientist was fire-bombed. The neuroscientist used animals for research into treatments for schizophrenia, drug addiction, and other disorders and the fire-bombing was reported to be just one in a series of aggressive acts aimed at university researchers who utilized animals in medical studies.

- In a spring 2012 issue of the Intelligence Report from the Southern Poverty Law Center, it was reported that the UCLA professor who was the victim of the March 2009 firebombing attack had been identified on the website of an anti-animal research group called "Negotiation is Over" as a "high-priority enemy". The researcher's home address was also publicized. He had just relocated his family as a result of the previous threats and harassment, only to find that his new home, now revealed, was also vulnerable.

- In June 2006, the Animal Liberation Front took responsibility for attempting to firebomb the home of [an identified individual], who conducts research on non-human primates.

[37] The university submits that it is clear, from reviewing the websites of the ALF, Negotiation is Over, and other animal rights activist groups, that their focus is on facilities where animals are euthanized or are subject to pain in the course of research. The more invasive the research, the more attention the facility and the researcher receive.

[38] The university adds that it is also clear, from these reports as well as from the personal experience of the deponent of the first affidavit, that certain species (such as cats, dogs and non-human primates) attract more attention.

[39] The university submits that the requested records would reveal which species of animals are subjected to which categories of invasiveness at the university and that this is the type of information that ALF and other animal rights activists use to justify the harm they inflict on the people and places involved in animal research.

[40] The university submits that in addition to concerns about the risk of harm from organizations such as the ALF, concerns have also been raised about the appellant's membership in an advocacy group commenting that its "posters and other publications are inflammatory, emotive and manipulative. They demonstrate the type of rhetoric that attracts attention and can lead to violence."

[41] The university submits that while the appellant is not known to have engaged in any violent attacks, and neither had it ever meant to suggest that the appellant would, the appellant is a member of a group that has made public inflammatory statements about the use of research animals at the university.

[42] The university submits that it is reasonable to expect that these types of statements would attract the attention of extreme animal rights activists who might use the requested information, either in its raw form or as interpreted through the lens of the organization or the appellant, to justify a violent attack against the university's researchers, lab staff or facilities.

[43] The university further submits that in the appeal letter, the appellant takes the position that only information that has a specific connection to an identifiable threat should be exempt from disclosure. The university submits that this is not the test to be applied under section 14(1)(e) and (i) of *FIPPA*:

> Rather, the test is whether the disclosure could reasonably be expected to endanger the life or physical safety of a person or endanger the security of a building, vehicle, or system/procedure for the protection of items.
>
> The past actions taken by animal activist groups demonstrate that there is a clear link between their violent and destructive actions and their knowledge of the activities of animal research facilities. The risk of such harm increases where certain species (cats, dogs and non-human primates) are known to be subjected to certain levels of invasiveness in the research being conducted. There is a strong foundation for the university's belief that disclosure of the information could realistically lead to harm.

Disclosure of records to the appellant is disclosure to the world

[44] Relying on Orders P-169, P-252, P-557 and P-1537, the university further submits that this office has consistently held that, once disclosed, the information contained in records of this nature is considered to be in the public domain, submitting that:

> As such, the IPC must consider not only the actions of [the appellant] but also the actions of other members of the public who may gain access to the requested information if disclosed to the public.
>
> The past actions of the ALF and other animal rights organizations suggest that the disclosure of this information could reasonably be expected to endanger certain people and places at the institution.

Where the location of the research is known, the anticipated harms can reasonably be expected to occur

[45] Relying on Order P-1537, the university submits that the reasonable expectation of harm is particularly elevated in the context of this appeal because the requested records disclose not only sensitive information regarding animal testing, but the information is particularly attached to the university. The university further submitted that:

> The issue of the disclosure of animal research data attributable to a specific institution was considered in Orders P-1392 and P-1537. In Order P-1392, information pertaining to the species of animals used and number of animals used in a particular research facility was disclosed. However, that decision was premised on the (incorrect) understanding of the Inquiry Officer that the CCAC already disclosed that information to the public.
>
> In Order P-1537, released the following year, the CCAC intervened for the purposes of clarifying the misinterpretation of its policies from the previous year's decision. The CCAC clarified that it does not disclose the species of animals or the number of animals used in animal research together with the location at which that research is taking place.
>
> Based on the CCAC's submissions, Assistant Commissioner Tom Mitchinson wrote in Order P-1537: "I am convinced that the statistics publicly reported by the CCAC do not contain information which would identify individual facilities with the type and number of animals used for research purposes. Given this finding, I put little weight on the precedential value of Order P-1392."

[46] The university submits that because this appeal is concerned with records pertaining only to a single institution, the facility to which the information pertains will necessarily be known and this can reasonably be expected to endanger the people and

places involved in animal research at the institution.

Sensitivity of the information requested

[47] The university submits that the information being requested in the present appeal is more sensitive and has the potential to be more provocative than any of the information requested and denied in the five previous IPC decisions. The university submits:

> In the previous decisions, the information requested was limited to the species of animals and the number of species of animals used in animal research at several facilities. On its own, this information is sensitive because there is a greater emotional attachment to certain types of animals, like dogs, cats and other commonly domesticated pets, and non-human primates. Even the simple disclosure of this type of information, without including any information pertaining to the level of invasiveness of the research, has the potential to incite extreme responses from animal activists. This has been recognized by the IPC and is also described in [the affidavits].
>
> This appeal, however, involves a request for not only the species of animals and the number of each species, but also the category of invasiveness to which each animal is subjected.
>
> In Order P-1392 (in which records of numbers of species attributable to specific locations were released on the mistaken understanding that the information was already publicly disclosed by the CCAC), Inquiry Officer Anita Fineberg distinguished records that disclosed category of invasiveness, and refused to disclose them:
>
> > My conclusion is different with respect to the information relating to the nature of the research performed... Both the Ministry and the affected parties have provided extensive information on the relationship between certain procedures, such as the euthanasia of animals, and the anticipated harms set out in sections 14(1)(e) and (i). Much of the material from the web sites of various animal rights groups, included in these submissions, focuses on the targeting of facilities where animals are sacrificed during the experimental process.... I find that disclosure of the nature of the research performed could reasonably be expected to result in the harms set out in sections 14(1)(e) and (i) of the *Act*.
>
> The concerns expressed in that decision are just as pressing today.

[48] The university then turns to certain statements made by the appellant in the appeal letter asserting that they "are not accurate and should be corrected":

> First, [the appellant] suggests that the University of British Columbia has disclosed the number of species of animals used in research and the category of invasiveness for each animal.
>
> This is not true.
>
> As explained [in the first affidavit that accompanied the university's representations], the University of British Columbia has released animal numbers by animal type (i.e. small mammals, large mammals, marine mammals), not by species. This information is disclosed independent of any information pertaining to the category of invasiveness. That is, the University of British Columbia does not associate a particular category of invasiveness with an individual species or even a type of mammal.
>
> Second, [the appellant] states that York University has disclosed the requested information in response to a *FIPPA* request.
>
> Again, this is not true.
>
> We have been provided with a copy of the letter to [the appellant] from York University. … .
>
> In response to a *FIPPA* request in 2012, York University did disclose a list of research protocols approved by the Animal Care Committee. The information contained in the list includes the date of approval, the protocol number, a descriptive title and the category of invasiveness. The information does not, however, include the species (other than in the few titles that include the type of animal). The information also does not include the number of animals used in each particular research project or more broadly at the university.
>
> It is also worth noting that the descriptive titles appear to be correlated with the grant titles. If the grants were from Tri-Council agencies, then the information in the titles would already be publically-available.

[49] The university submits that in any event, the decision to release records by one institution does not require another institution to act in a similar manner, "especially where the IPC has not been asked to determine the appropriateness of that decision".

The affidavits provided by the university

[50] As set out above, the university provided separate affidavits from two individuals in support of its position that the information should be withheld. Portions of these affidavits, and the identity of the affiants, were not shared with the appellant due to confidentiality concerns.

The first affidavit

[51] In the first affidavit, amongst other things, the affiant states that no data is made public by the CCAC that identifies an institution or gives specific information related to that institution and sets out the factual foundation in support of the university's discussion of animal rights activism, including the activities of the advocacy group of which the appellant is a member. In addition to the examples provided by the university in its representations, the affiant adds:

> Recently in Germany, an animal rights group placed an advertisement in two national German newspapers as well as regional newspapers. The ad personally targeted a non-human primate researcher, but also called on "all citizens" to treat every animal experimenter "with contempt and to denounce their work publicly". Due to the activity of the activists this researcher and his family have been under police-protection since the early 1990's. …

[52] The affiant further states:

> The Federation of American Societies for Experimental Biology (FASEB) released a report in 2014 titled "The Threat of Extremism to Medical Research". The Report indicates that "[Animal Research] extremism is not limited to a single nation. Evidence indicates extremists travel between countries to train in tactics, increasing the global threat of animal rights extremism." …
>
> Based on the report from the FASEB and the evidence of past attacks on research facilities, it is fair to assume that the release of the kind of data being requested could result in Queens University coming to the attention of and being targeted by animal rights extremists from within and outside of Canada.
>
> The FASEB Report also notes that the nature of attacks has changed over the last 15 years, with 220 illegal incidents within the United States between 1990 and 2012. Since 2000, 46% of attacks were on individuals involved in animal based research, emphasising the need for institutions to protect the security of employees - both the researchers and those employed to care for the research animals.
>
> It is of note that currently in the US, one of the FBI's most wanted domestic terrorism suspects, [identified individual] of San Diego, is suspected to be an animal rights activist. …

[53] The affiant states that they have spoken with several of the researchers who have been targeted by a campaign initiated by the advocacy group of which the appellant is a member and they told the affiant that they felt intimidated by it, and that

it was an attack on their research and themselves personally.

[54] The affiant also discusses the basis for the university's assertion that certain statements made by the appellant in the appeal letter "are not accurate and should be corrected". The affiant adds:

> The use of species that have a higher sentience, (ie. cats, dogs and non-human primates) are, in my personal experience, the species in respect of which there is the highest level of emotional and/or hostile reaction.

[55] The affiant deposes that in their experience, many people in the general public have a strong, negative reaction to the procedures that fall within categories D and (especially) E, commenting that "[t]hese species have a highly emotive power and are frequently targeted by animal rights activists" and "I am not aware of any institution in Canada that releases the type of information (i.e., species tied to category of invasiveness) that the appellant is requesting".

[56] The affiant adds:

> If the information requested by the appellant were to be released, this would significantly increase the personal fear and anxiety that I already experience as a result of the actions taken by extremist animal activists.
>
> Queens is one of few institutions that conduct research on high profile animal species. These are the types of animals and research that elicit significant emotive forces, particularly when the work is taken out of context.
>
> …
>
> In my opinion, the release of the information requested by the appellant, which ties animal numbers, species and categories of invasiveness together, could easily generate this response. The information that is being requested is unprecedented and, as far as I am concerned, could endanger the security of our facilities and the personal physical and psychological safety of [individuals] and others involved in animal research at Queens.

The second affidavit

[57] In the second affidavit, the affiant states that there is a profound increase in concerns about the safety and security of the Animal Care Facility at the university (the Facility). The affiant states:

> … In 1982, the Facility had a key for the main entrance which a decade later was replaced with a computerized security system using card reader

> technology and in the following decade a sophisticated twenty-four hour camera monitoring system was added at every entrance door and most hallways within the Facility.
>
> Sadly, these measures were an essential response to the media reports of incidents related to protests and activism against animal research, which heightened our concerns about the potential for unwanted intrusion into the Animal Care Facility. A breach in security of the nature that I have heard about at other facilities would pose a significant danger to the animals in our care and to the staff who provide this care.

[58] The affiant further deposes that from news stories about violent acts against animal research facilities and animal researchers by animal-rights extremists, they are acutely aware that the issue of animal research is an emotionally charged issue. The affiant states that the affiant is "terrified to speak about my work in any public forum because I have no idea how any particular person will react towards me." The affiant further discusses the recent increase in attention that has been brought to animal research on the university campus by an advocacy group of which the appellant is a member, and adds:

> Should the disclosure of the information being requested in this case lead to a threatening situation at the university, the Animal Care Service staff is particularly vulnerable …
>
> … [the] nature of the information - the species of animals and the different categories of invasiveness each species is subjected to - is information that would exacerbate an already emotional and divisive issue. This is especially true considering the definitions of the categories of invasiveness. It is one thing for people to be able to go to the website of the Canadian Council on Animal Care to read the definitions of the categories of invasiveness in animal research. It is quite another thing to have those categories also tied to and identified with specific numbers of animals and specific species of animals, particularly those species that the general public most commonly thinks of as domestic pets, like cats, dogs, rabbits, guinea pigs, etc.

[59] The affiant acknowledges that the only on campus incident they are aware of occurred several years ago when the loading docks of one of the medical school buildings were vandalized. The affiant deposes that they are genuinely afraid that the publication of such information about the Queens Animal Care Facility could bring the university to the attention of animal-rights extremists and could lead to confrontations or other actions. They depose that should the information be released, they fear a negative response from the appellant or from others who may be more extreme in their views and tactics.

The appellant's representations

[60] The appellant submits that the information should be disclosed for two main reasons:

1. There is a significant public interest in this information;

2. There is no evidence that disclosure would pose a threat to life or safety, or security, and therefore the university is not justified in claiming that the information qualifies for exemption under the *Act*.

[61] The appellant submits that the university's opposing arguments "are very weak, and indeed in many cases actually confirm the validity of [the appellant's] position." The appellant submits that the fundamental issue is not the existence of a background risk, but the impact of the disclosure of the requested information on that risk. They submit that the university's representations give no evidence whatsoever that disclosure would increase the risk. The appellant submits that, on the contrary, the appellant has "growing evidence that this information can be safely released".

[62] The appellant acknowledges that previous *FIPPA* requests for similar information have been denied on the basis of concerns about threats to life and safety, and security, but states:

> … However, this is a field in which major developments have taken place in the last few years which are relevant for assessing both the public interest and safety concerns.
>
> …
>
> Equally significant changes have emerged with respect to our knowledge of the safety and security risks of disclosing information. As we discuss below, many jurisdictions have been releasing this information without incident. Even within Canada, UBC and McGill have been releasing information about their numbers and types of animals used, kinds of research, CCAC assessment reports, etc. without incident. We now have growing evidence that, whatever the background level of safety risks, the disclosure of information about numbers, species, and nature of research does not increase that risk.
>
> The combined effect of these developments is to increase the urgency of public interest, and to diminish the credibility of safety and security concerns. …

[63] The appellant submits that the university has not provided any credible evidence that disclosing the requested information would pose a risk:

> … The university's representations include a lot of material about the past actions of extremists, but none of this material addresses the central issue - namely, does the disclosure of the requested information materially affect the risk of extremist acts? The university's representations provide evidence that there are background risks of extremism, but does not address whether or how the disclosure of the requested information would trigger or exacerbate that risk.
>
> As UK Information Commissioner Richard Thomas indicated in a recent British adjudication[8], of a request for information about the numbers of primates used in research at five specific institutions the issue is not background risk, but how the disclosure of information would affect that risk.

[64] The appellant submits that the case before the UK Information Commissioner is applicable because it concerns the same type of information, the same concerns of security and safety, and the same concern about the sensitivity of information regarding primates. The appellant submits that as Commissioner Thomas indicates, the issue at stake is not background risk, but the impact of disclosure on that risk. The appellant submits that the university fails entirely to make the case that release of the information requested affects the background threat posed by extremists:

> For example, in its representations, the university lists a series of violent or destructive actions. But, remarkably, in not a single one of these cases does the university provide evidence that the disclosure of information about numbers/species/invasiveness played a role in creating this risk. Indeed, the only two examples from the Canadian context contradict this connection: the two cases from Toronto occurred in contexts where there was no disclosure of this information.
>
> Similarly, the university's representations includes a series of documents from the ALF or police reports about the ALF. Yet here again, not a single one of these documents provides any evidence that disclosure of the requested information generated the risk.

[65] The appellant submits that this information can be released safely:

> Indeed … we now have ample evidence that this information can be released safely. By the university's own evidence, the risk of violent extremism is higher in the US and UK than in Canada, yet both countries now regularly disclose the requested information. Many UK universities

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[8] Reference**:** FS50160903. *Freedom of Information Act 2000* (Section 50). Decision Notice. Dated 31 March 2009. Public Authority: University of Cambridge, Information Commissioner's Office, UK.

> (signees to the Concordat) now provide this information pro-actively, or in response to [Freedom of Information] orders. For example, when the British Union for Abolition of Vivisection submitted FOI requests to 71 universities for animal use statistics for 2013, all but 3 universities voluntarily disclosed the information.[9] And as noted earlier, US universities are required by law to report this information, and these reports are readily available to the public, and indicate, by institution, the number of animals of particular species (e.g. dogs, cats, non-human primates) used according to categories of pain or invasiveness.
>
> This information has also voluntarily been released by some Canadian universities, such as UBC. Not only do they now publish annual reports on the numbers and types of animals used, and invasiveness of research; they also publish the assessment reports issued by the CCAC, and provide virtual video tours of their facilities … . Far from expressing anxiety about the risks this might create, the CCAC has warmly "commended" UBC for this openness in its 2013 Assessment Report.
>
> Similarly, McGill University has adopted a policy of disclosing this information on request. We attach their report on animal use in 2013 … . This report was disclosed on request to a graduate student in philosophy (at another university) working on animal rights who, like us, requested the information specifically in order to inform public debate on campus. As you will see, the McGill data includes precisely the information we are requesting: numbers of animals by species and category of invasiveness. Notice also that McGill's numbers include nonhuman primates, and that it is broken down by species (not just larger categories, as at UBC).

[66] The appellant submits that contrary to the university's representations there is nothing "unprecedented" in the type of information the appellant is requesting - disclosure is now common practice in many jurisdictions. The appellant adds:

> Moreover, it is important to note that, in all of these contexts, the decision to disclose has been successful. In no case has a country or institution reversed a decision to disclose due to increased risks. So there is simply no evidence to support the claim that disclosure increases risks, and ever-growing evidence to contradict that claim. Queens representations provide no evidence to support the claim that the results of disclosure at Queens

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[9] In support of this submission the appellant references: Steve Connor, "Millions of animals subjected to 'disturbing' scientific research at UK universities", The Independent, March 9, 2015 http://www.independent.co.uk/news/uk/home-news/millions-of-animals-being-subjected-to-disturbing-scientific-research-at-uk-universities-10094599.html.

> would differ from those at UBC or McGill, or at 68 British universities or at all American universities.

[67] The appellant submits that instead of offering evidence that disclosure would threaten security and safety, the university's representations contain several paragraphs discussing the "sensitivity" of the information. The appellant submits that this part of the university's representations "is systematically (and perhaps deliberatively) ambiguous":

> "Sensitivity" could mean two things. On the one hand, it could mean "likely to provoke violence", but if so, then as we've just indicated the university offers no evidence to indicate that disclosing the information increases the risk of violence. But sensitivity could be used in the more everyday sense to refer to things that are a matter of profound public concern. Information about research on animals, including cats, dogs and primates, is indeed "sensitive" in this everyday sense. But that is precisely why disclosure of information is in the public interest. It is precisely because the public has profound concerns about this research that they have an interest in scrutinizing it. We would suggest that the reason the university wants to avoid disclosing this "sensitive" information is not fear of violence, but to avoid searching questions and public scrutiny about the experimental use of these animals.

[68] The appellant adds that they also note a certain hypocrisy in the university's professed worry about publicizing the fact that they experiment on monkeys:

> … After all, Queens has engaged in very high-profile campaigns about this research. Two years ago Queens, alone amongst Canadian universities, chose to challenge Air Canada's ban on the shipment of primates - a ban that was put in place in response to public concerns about the treatment of animals. News of this legal challenge was splashed across Canadian newspapers and magazines, alerting the general public to the fact that Queens does research on primates shipped from abroad, and interviewing and quoting Queens primate researchers by name.[10] Queens clearly assumed that this high-profile disclosure of their primate research in the national media would not risk the security of their buildings, or the life and safety of their employees, and of course this assumption was correct - publicity did not lead to any acts or threats of violence. But you cannot

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[10] In support of this submission the appellant references: http://www.universityaffairs.ca/news/news-article/air-canada-bans-research-primates-from-its-flights/; http://www.macleans.ca/education/uniandcollege/air-canada-wont-be-forced-to-carry-research-primates/.

> have it both ways: if that disclosure posed no threat to security and safety, then our requested disclosure also poses no threat.

[69] With respect to the university's representations on the advocacy group of which the appellant is a member, the appellant submits that:

> In many respects, the representations' discussion of [the advocacy group of which the appellant is a member] is a red herring, because the university's policy of refusing to disclose this information predates, and is unrelated to, [the advocacy group of which the appellant is a member]. Prior to the formal *FIPPA* request from [the appellant], [a named individual] had requested information in September 2013 about the use of animals at Queens to help inform an international conference of academic researchers on the ethics and governance of animal research which was held at Queens last year … . As you will see, that initial request included the offer to let Queens provide the context of the requested information. Yet that request was denied in December 2013, before [the advocacy group of which the appellant is a member] began its campaigns … . So while Queens representations are full of innuendo about [the advocacy group of which the appellant is a member], the university made clear prior to this that they would not release the information, even for the purposes of a scholarly conference, and even if they had the opportunity to present the information within their preferred context.
>
> Moreover, in denying this information, the university said that:
>
> > we will not be releasing any information on the use of animals in research at Queens. We believe that the information on the use of animals in research is protected under the *Freedom of Information and Protection of Privacy Act*.

[70] The appellant argues that the above statement is another indication that Queens has misunderstood the logic of *FIPPA*, which clearly states that "necessary exemptions from the right of access should be limited and specific". The appellant submits that far from judging the validity of specific requests for information, Queens has been operating on the assumption that it can refuse to release "any information on the use of animals in research". The appellant submits that the university was invoking this blanket claim to exemption, at odds with the letter and spirit of *FIPPA*, before the advocacy group of which the appellant is a member emerged and that the university's representations repeats this pattern.

[71] The appellant continues by providing substantial representations explaining the appellant's role in the advocacy group, its various campaigns, its mandate and purpose its bona fides, how it never engaged in any improper conduct or acts of intimidation, how the university incorrectly characterizes its actions and its role and how it poses no

threat whatsoever. The appellant's representations are accompanied by two statements from two separate individuals with respect to the work of the advocacy group, its mandate and its purpose, how it communicates its messaging, its campaigns and its membership, how it was formed and that there is no connection between the violent actions of the ALF and the advocacy group.

[72] The appellant further submits that with respect to the university's characterization of the data provided by NSERC and SSHRC about the animal research:

> This raises a more general point: Queens' representations contradict itself repeatedly about the appropriate sort of information that should be publicly available. The university says that the information provided by NSERC and SSHRC about the animal research it funds is useful and in the public interest and not a threat to security. The university even includes an example of this NSERC disclosure which it views as in the public interest … .
>
> …
>
> Note that the NSERC entry fails entirely to provide any of the information needed for members of the public to make an informed judgement about whether this research complies with public values, including the 3Rs. It provides no information about either the costs of the research - the numbers of animals involved, the invasiveness of the procedures - or about the benefits of the research. If we compare this with the results of the British public consultation mentioned earlier, the NSERC entry fails completely to respond to the public's interests and concerns. Yet notice that the NSERC entry provide individual names and institutional affiliations, which Queens elsewhere says is dangerous. …
>
> …
>
> … In short, Queens' representations endorse a form of disclosure (lists of NSERC grants) that names individuals but provides no useful information in the public interest; …. The university's position makes no sense as a response to safety concerns, but it does make sense if the university's real concern is to avoid disclosure that enables the public to raise and discuss serious ethical concerns.

[73] In conclusion, the appellant submits:

> Queens university wants to associate us with extremists who engage in violence. In fact, we are part of a network of scientists, ethicists, journalists and artists from all walks of life who wish to encourage an informed and civil debate about society's use of animals, to help guide our "sea change" in attitudes towards animals. We hope the adjudicator will

> confirm the strong public interest in the disclosure of the requested information, and will only restrict disclosure if there is credible evidence showing that disclosure increases risks of violence and extremism. We see no such evidence in Queens' representations, and on the contrary, growing evidence to the contrary both in Canada, and abroad.

The university's reply representations

[74] The university submits that the appellant states that the central issue is whether the disclosure of the requested information "materially affect[s] the risk of extremist acts", but that is not the test to be applied under section 14(1)(e) and (i) of *FIPPA*. Rather, the university submits, the test is whether the disclosure could reasonably be expected to endanger the life or physical safety of a person or endanger the security of a building, vehicle, or system/procedure for the protection of items.

[75] The university further states that it cited numerous examples of extremist violence in its initial representations but that the appellant suggests that these examples should be disregarded because none of them was the direct result of the disclosure of animal research information. The university submits that the source of the information doesn't matter. The university submits that if the requested information is disclosed:

> … the university would be singled out among all universities and research facilities in Canada as the only institution required to disclose the species, the number of species used in animal research, and the category of invasiveness experienced by each of those species.
>
> In this respect, it could reasonably be expected that the university could become a target for animal rights extremism.

[76] The university also takes issue with the appellant citing the U.K. and U.S. as examples of jurisdictions where disclosure of animal use data is required by statute even though the risk of violent extremism is higher than in Canada. The university submits:

> We do not believe that these are fair or correct statements. In the U.K., institutions disclose to a central location (called "the Home Office"), which then publishes annual aggregate data very similar to what is published by the CCAC. In the U.S., the process is similar in that institutions disclose to a central agency.
>
> …
>
> In the U.K., the University of Edinburgh was recently singled out by its response to a request for information from 71 universities about the annual number of mortalities of animals used in research. This disclosure

> then led to an animal rights group offering cash in exchange for the names, addresses, phone numbers, email addresses and pictures of any students who had experimented on animals as part of their university degree. In an open letter to these "student vivisectors", the group threatened that those who continue to experiment on animals during their degree "will be subject to continual protest from the animal rights activists throughout their life, and will not get a moment's peace from the ongoing aggressive but lawful pressure exerted by the animal rights movement."
>
> …
>
> Just as the University of Edinburgh and its students were singled out, so will the university be singled out by the appellant's request as the only university in Canada required to publicly disclose this information.

[77] The university continues:

> The campaign of intimidation by animal activists at the University of Edinburgh is not an isolated incident.
>
> At the UBC, animal rights groups have specifically targeted UBC professor of Medicine and Neurology, [named individual], with a misleading public campaign about her research into Parkinson's disease, using animal models … .
>
> [Named individual] has not been so intimidated by such campaigns to cease her important research. Other researchers, however, have made the decision to walk away from their research because of the intimidation they feel as a result of actions of animal welfare activists.
>
> As an example, [named individual], a neurobiology professor at UCLA ceased all primate research as a result of the intimidation he felt from animal welfare activists and concerns about his safety …. [Named individual] sent an email to the Press Office for the Animal Liberation Front in 2006, which was posted on their web site. It read: "You win. Effective immediately, I am no longer doing animal research."
>
> The accounts of those targeted by animal rights activists are harrowing. Their personal lives are intruded upon, their safety and those of their families are put at risk, and their ability to pursue their vocation and lead a full and engaged professional life is undermined.

[78] The university submits that the affiants make it clear that the concerns of [named individuals], and of faculty members and students at the University of Edinburgh are shared by those who work at the Animal Care Facility at the university.

[79] The university submits that the confidentiality of animal use data that is protected by statute and by the CCAC offers university employees some protection from the tactics of intimidation used by animal welfare activists. The university takes the position, however, that if it is singled out by the appellant's request, then the affiants are rightfully and reasonably fearful that the intimidation and negative reaction experienced at UBC, UCLA, and the University of Edinburgh will also be experienced at the university. The university submits that:

> Individuals have the right to make their own moral (and at all times legal) decisions regarding their participation in animal research. The undue influence, intimidation and scare tactics experienced at other universities after animal use data was disclosed prevented individuals like [named individual] and countless other students, staff, and faculty members from exercising their right to act in accordance with their own moral (and legal) judgment.

[80] With respect to the decision of the UK Information Commissioner, the university submits:

> This decision, being from a different jurisdiction, being decided under a different statute, and applying a different legal test, is not helpful here. The circumstances were also quite factually different.
>
> There, the information being requested was less sensitive than the information being requested. In addition, the public institution led evidence that demonstrated that it was already the target of animal rights extremists. It was in this context that the Information Commissioner determined that the disclosure would not materially affect the risk of such extremism.
>
> Contrast this to the circumstances at the university. Other than some graffiti, the university has not, to date, been the target of any animal extremism.
>
> The concerns expressed by the university's affiants are based on their real and evidence-based concerns about harm to their physical safety and the physical safety of their workplace.

[81] The university concludes by submitting that a decision to deny this appeal would be consistent with the previous decisions of the IPC concerning information of this nature, especially as the information now requested is more sensitive than what the IPC has already determined should not be disclosed. The university submits that it is more sensitive not only in the content of the data but also with respect to identifying the institution to which that data is attributed.

Analysis and findings

[82] A person's subjective fear, while relevant, may not be enough to justify the section 14(1)(e) exemption.[11] The term "person" is not necessarily limited to a particular identified individual, and may include the members of an identifiable group or organization.[12] Although section 14(1)(i) is found in a section of the *Act* dealing specifically with law enforcement matters, it is not restricted to law enforcement situations and can cover any building, vehicle or system which requires protection.[13]

[83] Furthermore, to find these exemptions apply, the institution must provide detailed and convincing evidence about the potential for harm. As set out by the Supreme Court of Canada in *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*[14] , the university must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences. [15]

[84] This office has addressed requests for information pertaining to animal experimentation and abortion services. Although they are in different contexts, the cases are similar to the extent that they both involve concerns that upon disclosure of information, members of extremist groups could reasonably be expected to threaten the health or safety of individuals or commit acts of violence against individuals or facilities.

[85] In both the animal experimentation and abortion cases, information associated with individuals or facilities has been found to meet the harm threshold in section 14, while more generalized information which cannot be linked to specific individuals or facilities, or which would not reveal new or additional identifying information, has been considered accessible under the *Act.*[16]

[86] Specifically with respect to requests for information concerning animal

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[11] Order PO-2003.

[12] Order PO-1817-R.

[13] Orders P-900 and PO-2461.

[14] 2014 SCC 31 (CanLII)

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

[16] See for example the discussion in Order PO-1747.

experiments taking place in registered research facilities where information was withheld[17], the records at issue in those cases can generally be described as statistical reports identifying the numbers and species of animals used by each identified facility. In those cases, the Ministry of Agriculture and Food (and, in some cases, affected persons) claimed that sections 14(1)(e) and (i) applied, based on serious concerns that disclosure of the records could reasonably be expected to result in employees and facilities being targeted for threats and acts of violence by extremists in the animal rights movement. In each case, this office upheld the application of one or both of sections 14(1)(e) or 14(1)(i). Order P-1392, which may have been an anomaly, was subsequently distinguished in Order P-1537. But even in Order P-1392 the adjudicator was sensitive to the risk of the release of animal testing information and withheld information relating to the nature of the research performed.

[87] The appellant submits that there is a trend towards more disclosure of the type of information at issue and there is no indication that this has led to a particular attack. Adjudicator Asfaw Seife ably addressed a similar argument in Order P-557, as follows:

> In her representations, the appellant seems to argue that because the disclosure of similar records in the past did not materialize in harms to the facilities concerned, there can be no reasonable expectation that the disclosure of the records at issue in this appeal could result in the harm alleged by the [Ministry of Agriculture and Food]. While I am not able to comment on the factual content of the appellant's claim, in my view, the fact that disclosure of similar records in the past did not materialize in the alleged harm is a relevant consideration but not determinative of the issue under section 14(1)(i). As indicated previously, the issue to be decided is whether in the circumstances of this appeal, the disclosure of the records can reasonably be expected to endanger the security of a building or the security of a vehicle carrying items, for which protection is reasonably required. In my view, the [Ministry of Agriculture and Food] is not required to prove that disclosure of the records will actually result in the alleged harm.

[88] I agree with Adjudicator Seife's approach to this submission.

[89] I have reviewed the records and considered the arguments advanced by the parties. Having carefully considered all the representations, bearing in mind the difficulty of predicting future events and the test outlined by the Supreme Court of Canada in *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, I find that Queens has provided sufficiently detailed and convincing evidence about the potential for harm, that goes well beyond

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[17] See Orders 169, P-252, P-557, P-1537.

the merely possible or speculative, to establish that disclosure of the records could reasonably be expected to endanger the life or physical safety of individuals associated with animal testing at the university as well as the security of the university facilities. My decision is not based on the identity of the appellant or the advocacy group of which she is a member or its activities, but rather on the principle that disclosure of the record must be viewed as disclosure to the public generally. The evidence before me indicates that the concerns of potential violent action being taken by extremist groups have not diminished in the last several years. If disclosed, the information in the records would be potentially available to all individuals and groups involved in the animal rights movement, including those who may elect to use acts of harassment and violence to promote their cause. I also accept Queens' position that the more of this type of information that is made available, such as the type of species, numbers and category of invasiveness associated with animal research conducted at Queens, the more likely specific individuals and facilities will be targeted for harassment, violence and harm.

[90] Furthermore, while it may be the case that, as a general proposition, more information about the use of animals in research is available than before, and the appellant has provided information pertaining to disclosure by UBC, McGill and US institutions as well as pointing to the decision of the UK Information Commissioner, Queens has provided me with sufficiently clear and convincing evidence that disclosing the information at issue could reasonably be expected to be used to target particular facilities and/or individuals. It is this argument that was found persuasive in earlier appeals and what I have found persuasive here. While on this point, I note that the information that is disclosed by the UBC does not appear to me to be linked clearly to a specific species. Furthermore, while I may consider the decision of adjudicative bodies in other jurisdictions, those decisions are not binding on me.

[91] Accordingly, for the reasons set out above, I find that disclosure of the information in the records at issue could reasonably be expected to endanger the life or physical safety of an individual and threaten the security of a building. I therefore find that this information qualifies for exemption under sections 14(1)(e) and 14(1)(i) of the *Act*.

[92] As I have found that the information at issue qualifies for exemption under sections 14(1)(e) and 14(1)(i) of the *Act*, it is not necessary for me to determine whether it also qualifies for exemption under section 20.

[93] Finally, relying on section 23 of the *Act*, the appellant took the position that there is a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 14(1)(e) and 14(1)(i) exemptions.

[94] Section 23 states:

> An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[95] Section 14 does not appear as one of the sections to which section 23 applies. Furthermore, in *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*[18] the Supreme Court of Canada held that the legislature's decision not to make documents found to be exempt under section 14 of the *Act* subject to the section 23 public interest override does not violate the right to free expression guaranteed by s. 2(b) of the *Canadian Charter of Rights and Freedoms*[19] .

Issue B: Did the institution exercise its discretion under sections 14(1)(e) and (i)? If so, should this office uphold the exercise of discretion?

General principles

[96] The sections 14(1)(e) and (i) 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.

[97] In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

[98] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[20] This office may not, however, substitute its own discretion for that of the institution.[21]

Relevant considerations

[99] Relevant considerations may include those listed below. However, not all those

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[18] [2010] 1 SCR 815, 2010 SCC 23.

[19] Part 1 of *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11

[20] Order MO-1573.

[21] Section 54(2).

listed will necessarily be relevant, and additional unlisted considerations may be relevant:[22]

- 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
    - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- 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
- the historic practice of the institution with respect to similar information.

[100] In *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, the Supreme Court of Canada wrote that the public interest in disclosure is also a relevant consideration in the exercise of discretion under section 14.[23]

The university's representations

[101] The university submits that it exercised its discretion appropriately and reasonably under sections 14(1)(e) and 14(1)(i) of *FIPPA* and that irrelevant factors

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[22] Orders P-344 and MO-1573.

[23] Supra, at paragraph 66.

were not considered.

[102] The university submits that it considered only whether the disclosure of the requested records could reasonably be expected to endanger the life or physical safety of an individual, the security of a building, or the security or health of an individual. It further submits that the decision to refuse to disclose the information was supported by previous decisions of the IPC, accounts of violent attacks against animal research facilities, and the subjective concerns of those who do this type of work at the university.

[103] In its representations on the potential application of the public interest override (which, as set out above, does not apply to override the exemption, but remains a relevant consideration in the exercise of discretion), the university submitted with respect to the expressed concerns of the appellant, that:

> Existing Regulations and Reporting Requirements: There are significant regulations and reporting requirements in place for animal research. The disclosure of the requested information will not contribute to the public interest in regulating the use of animals in research and in fact, has the potential to detract from the public's interest because it will be provided without context and be misleading.
>
> Public Funding: The information being requested is funded from multiple sources, not just public funding. Furthermore, the two sources of public funding for animal research release their funding decisions for each grant competition. This information includes a more complete picture of how public funds are used to fund animal research.
>
> No Violations: [the appellant] states that it is in the public interest for information regarding violations of standards of animal care to be accessible to the public. This statement is indicative of the bias and presupposition that is common in the rhetoric in animal rights activists. That aside, the requested information will not shed light on that issue.

[104] The university further submitted that:

> The data released by the CCAC reveal a significant amount of information about animal testing in Canada without revealing the location or the specific facility where that research is taking place, and without tying particular species to particular categories of invasiveness.

[105] With respect to the appellant's position in the appeal letter that public accessibility to the requested information is necessary in order for citizens to exercise their democratic right and responsibility "to collectively deliberate and decide in an informed manner on the appropriate treatment of animals in our society, including research", the university also submits that:

> …, the release of the requested records has the potential to detract from the public interest, not only by jeopardizing the lives of faculty, staff and students at the university, but also by [being] misleading to the public. The requested records would disclose the categories of invasiveness without any reference to the context of the research project. The public would therefore be unable to weigh the positive effects of the research with any negative effects. Being able to assess the information in the appropriate context is a critical precondition to being able to engage in an informed examination of these issues.

[106] In response to a statement in the appellant's appeal letter that the "public has a right to know what kinds of research their tax dollars are funding so that they can make informed decisions about whether or not to support that research", the university submits:

> … research at the university involving animals is funded by both public and private entities. A search of the university's electronic Animal Use Protocol system indicates that, of the currently 158 approved protocols, only 79 (50%) are publicly-funded. These may be wholly funded by the public, or partially funded by the public and partially by private individuals or organizations.

[107] The university submits that all of this information, which is already publicly available, provides a much more complete accounting of how public funds are being used to support animal research without imposing the risks of harm that come with disclosing the requested information. The university submits that the disclosure of the requested records is not in the public's interest and does not clearly outweigh the purpose of the exemption and, in fact, the disclosure of the requested records has the potential to mislead the public with regards to funding information.

[108] The university further submits that in the appeal letter, the appellant also:

- confounds the information [the appellant] has requested with "reports about violations of animal welfare standards".
- suggests that the university is resisting the disclosure because of "potentially embarrassing information about research involving animals".
- suggests that the university's motive is to "avoid releasing information" that would lead to public questioning of Queen's "lack of compliance with the 3R principles".
- describes reporting of "violations of standards of animal care", and says that Ontarians have a public interest in such disclosure.

[109] The university submits that:

> Much of this is rhetoric. It is the type of rhetoric that is common in discussions around animal research, but is nevertheless harmful and hurtful, to both the university and those who work there and are engaged in animal research.
>
> Perhaps more importantly, the information that is the focus of this appeal does not in any way relate to whether in fact there have been any such violations.

[110] With respect to the appellant's assertion that it is important to know whether the Three Rs are being implemented in practice and that the information requested would provide evidence in this regard, as it would reveal the number of animals used over time, the affiant of the first affidavit provided by the university opines that the number of animals used over time is not an indicator of the implementation of the 3Rs and states:

> To fully appreciate the implementation of the 3Rs and reduction in particular, the number of animals used on an annual basis would need to be considered with the funding base for biomedical research. The number of animals that are used in research are, to a certain extent, driven by the funding base at the institution. Logically, over time, if funding dollars for biomedical research increases, one would expect that animal numbers per dollar would also increase. If, however, the 3Rs and in particular reduction is fully implemented one would expect that animal numbers used would not increase at the same rate as the funding. This is clearly demonstrated in the United Kingdom, where aggregate numbers on the number of animal procedures conducted are released on an annual basis. In the UK, the number of animal procedures increased by over one third in the 12 years to 2009. In the same period, the expenditure on biomedical research more than doubled. If the number of animal procedures were analysed in a vacuum the conclusion that could be drawn is that the 3R, reduction, is not being implemented, but when put in context of the funding base, this is far from the truth and the data indicate that animal use per dollar spent on biomedical research is on the decline.

The appellant's representations

[111] In the appellant's representations on the potential application of the public interest override at section 23 of the *Act*, the appellant submits that public concern about the treatment of animals, including in research, has been growing steadily and refers in that regard to an article in the *Journal of the American Association of*

Laboratory Animal Science[24] and submits that the public is expressing more concern about the use of animals in research, and seeking more information about it.

[112] The appellant submits that disclosure of the information is required in order for members of the public to judge whether animal research at the university is being governed in ways that comply with public values, and in particular with the Three Rs. The appellant submits:

> … [The university] has not only made a public commitment to comply with the 3Rs, but also a contractual commitment. For example, the memorandum of understanding that all universities must sign with NSSERC, CIHR and SSHRC to be eligible for funding includes a specific commitment to comply with CCAC standards, including the 3Rs.
>
> This is one of the conditions said to be necessary to "help ensure that the activities supported are conducted in accordance with the highest ethical and financial standards", and "to account to the Canadian people" for the use of public funds. Yet at the moment, the public has no way of evaluating whether Queens is in fact living up to its commitment to replacement, reduction and refinement without year by year statistics about the numbers of animals being used, and categories of invasiveness. This information should therefore be disclosed if this can be done consistent with security and safety.

[113] The appellant submits that insofar as context is needed to make sense of the numbers, the obvious remedy is for the university to provide the context:

> … this indeed is how UBC proceeds, including disclosure of numbers as part of a broader report on developments in animal research. We have no objection to [Queens] disclosing this information as part of a larger document that includes additional information about the way animal research is governed at [Queens]. On the contrary, we would welcome that additional disclosure of context.

[114] With respect to the university's position that the Canadian Council on Animal Care (CCAC) has already judged the university to be compliant with the Three Rs, and so members of the public don't need to judge for themselves if the university is

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[24] In support of this submission the appellant references: "Recent public-opinion polls indicate that Americans have shown a decline in support for animal experimentation" (M. Metzger, "Knowledge of the Animal Welfare Act and Animal Welfare Regulations Influences Attitudes toward Animal Research*", J Am Assoc Lab Anim Sci.* 2015; 54(l):70-5.

complying with the Three Rs, the appellant submits:

> … This, again, is a fundamental misunderstanding of the purpose of freedom of information laws. The process by which the CCAC evaluates Queens compliance is entirely closed-door. There is no public disclosure by the CCAC of the evidence they relied upon to make their determination, and no public disclosure of their deliberations in making that determination. So the closed-door decision-making process within Queens is evaluated by a closed-door decision-making process within the CCAC. This is precisely the sort of situation where freedom of information is essential. The premise of *FIPPA* is that the public should have access to information that would enable them to evaluate the actions and decisions of public institutions made behind closed doors. And that citizens should not be asked to accept on blind trust that institutions and public authorities are doing what they say.
>
> This is particularly important in the case of animal research in Canada, since there is growing scholarly evidence that the existing system of governing animal research through the CCAC and its affiliated university animal care committees (UACCs) is out of touch with public values, and is "biased in favour of institutional or research interests and against the interests of research subjects and the community"[25]. … In short, both scholarly research and the CCAC's own internal review suggest that the CCAC's certification of Queen's compliance with CCAC guidelines is not in fact reliable evidence of its compliance with public values including the 3Rs.

[115] The appellant submits that the attempts by the university to withhold the information stands in stark contrast with developments elsewhere, where the disclosure of numbers is widely seen as essential to evaluating compliance with the Three Rs.

[116] The appellant further submits that recent legislative and regulatory changes in other Western democracies have imposed a duty to disclose the sort of information requested:

> For example, universities in the United States are required to report statistics regarding species, number of animals, and category of use to the USDA Animal and Plant Health Inspection Service. These reports are readily available to the public, and indicate, by institution, the number of

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[25] In support of this submission the appellant references: Catherine Schuppli and David Fraser. 2007. "Factors Influencing the Effectiveness of Research Ethics Committees," *Journal of Medical Ethics* 33: 294-301.

> animals of particular species (e.g. dogs, cats, non-human primates) used according to categories of pain or invasiveness … .

[117] In conclusion, the appellant states:

> … Public funding for research at the university comes not only in the form of grants from NSERC, CIHR or SSHRC - although this is indeed the major source of funding - but also from the tax dollars and tuition fees that pay for the university infrastructure in which the research is conducted, and which finance the university's animal care committees that make decisions about which animal research is conducted. Moreover, most of the private funding for biomedical research comes from medical charities which raise money in good faith from the Canadian public, in part because they are approved by and conducted at public universities, purportedly in accordance with public values including the 3Rs. …

[118] The appellant submits that it would be hard to overestimate the importance in having an open discussion about how animal research at universities is governed.

The university's reply submissions

[119] The university submits in reply that there is a significant interest in maintaining and indeed protecting animal research by virtue of the scientific and medical breakthroughs that such research has and continues to produce.

[120] The university further submits that:

> … While [the advocacy group of which the appellant is a member] has an interest in animal experimentation, there is no connection between this interest and the information requested. As described by [named individual] in the statement that accompanies the appellant's submissions, [the advocacy group] has an interest in: (1) informing students that animal experimentation is taking place on campus; (2) highlighting that this experimentation raises serious ethical issues; and (3) encouraging students to inform themselves about the scientific, ethical and legal issues that surround this animal experimentation. The information requested by the appellant is not directly related to this awareness-raising initiative, and neither do the affiants in support of the appellant indicate whether, if at all, the requested information is necessary to fulfill [the advocacy group's] mission of student engagement.

[121] The university submits that in regards to safeguarding the safety and/or health of individuals:

> … This is an especially pressing concern for the university given the sensitive nature of the information being requested, the fear expressed by

> the affiants in the university's initial submissions and the open nature of the university campus. Given that there is no evidence of a public interest in the specific information that has been requested, this consideration does not clearly outweigh the purpose of the exemption.
>
> Moreover, a compelling public interest has been found not to exist where another public process or forum has been established or where adequate information is already publicly disclosed to address public interest considerations. Here, that public process is the regulatory oversight provided by the Ministry of Agriculture and Rural Affairs and the CCAC, and the information published by those organizations.

[122] The university submits that it addressed the difference in the information disclosed by the UBC to that requested by the appellant in its initial representations and that:

> With respect to McGill, it is misleading for the appellant to state that McGill has "adopted a policy of disclosing this information on request". No such policy exists. Rather, McGill makes decisions on the release of data to individual requests on a case-by-case basis.

Analysis and findings

[123] I set out the parties' extensive submissions in order to provide a backdrop for the university's exercise of discretion.

[124] An institution's exercise of discretion must be made in full appreciation of the facts of the case, and upon proper application of the applicable principles of law.[26] It is my responsibility to ensure that this exercise of discretion is in accordance with the *Act*. If I conclude that discretion has not been exercised properly, I can order the institution to reconsider the exercise of discretion.[27]

[125] I start by finding that there is insufficient evidence before me to establish that the university exercised its discretion in bad faith, or for an improper purpose, or took into account irrelevant considerations. The university was aware of the wording and purpose of sections 14(1)(e) and 14(1)(i) and the nature of the information that it was withholding. Based on my review of all the materials before me, I also find that there is no evidence that the university was withholding the information for a collateral or improper purpose. There is also no evidence before me that the university took into account any irrelevant considerations. Nor am I satisfied that it was biased or that it

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[26] Order MO-1287-I.

[27] Order P-58.

fettered its discretion in any way.

[126] As set out in the university's representations, it was aware of the appellant's reasons and rationale for access to the information when it issued its decision letter. I am satisfied that the university was aware of the reason for the request, why the appellant wished to obtain the information, and the appellant's arguments as to why it should disclose the information. I am satisfied that in proceeding as it did, and based on all the circumstances, the university considered why the appellant sought access to the information, whether the appellant had a sympathetic or compelling need to receive the information, the nature of the information, the extent to which it is significant and/or sensitive to the institution and the appellant and the public interest in disclosure. In addition, the university considered whether the requester was an individual or an organization as well as its historic practice with respect to similar information. The information was relatively recent, so, in my view, the age of the information was not a relevant factor.

[127] In all the circumstances, I uphold the university's exercise of its discretion.

ORDER:

I uphold the university's decision and dismiss the appeal.

Original Signed by: June 29, 2016
Steven Faughnan
Adjudicator