

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-3094

Appeal PA09-185

York University

June 20, 2012

**Summary:** The appellant sought a number of different records pertaining to him held by the university. The university located over 2500 pages of records, disclosed a large number to him, in whole or in part, and withheld the rest pursuant to section 49(a), in conjunction with section 19 and section 49(c.1)ii. The appellant believed that additional records should exist. The withheld portions of the records are exempt under sections 49(a), in conjunction with section 19 and section 49(c.1)ii. The university's search for responsive records was upheld as reasonable.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of personal information), 19(c), 24, 49(a) and 49(c.1)ii.

### OVERVIEW:

[1] The appellant submitted a request to York University (the university) pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*) for the following:

Please make available for immediate inspection and copying all documents, correspondence and information, including all electronic media and tape recordings, produced by, received by, or in the possession of [the university] and/or Osgoode Hall Law School, or anyone acting directly or indirectly under any color of right for or in conjunction with [the

university] and/or Osgoode Hall Law School, that identify, relate or pertain to [the appellant].

The documents, correspondence, information and electronic media shall not be redacted or abridged in any way. Please also produce full complete unredacted, original documents, communications, and correspondence, including any and all electronic media and tape recordings, created or received by any members of [the university] and/or Osgoode Hall Law School, including but not limited to all undergraduate, graduate and law school student files, including files created in conjunction with or anticipation of any and all disciplinary actions or legal proceedings that identify, relate or pertain to me. The documents shall include all files, correspondence, information, tape recordings and electronic media pertaining to or made during any and all 1992 through 1998 appearances made by me before the Osgoode Hall Law School Grades Review Committee and/or Academic standing Committee.

[2] The university located responsive records and issued a decision in which it provided partial access to them, citing in its index the discretionary exemptions at sections 19(a) and (c) (solicitor-client privilege), 49(b) (personal privacy), 49(c.1)ii (evaluative or opinion material), and advised that some information was severed as non-responsive to the request.

[3] The university also issued a fee in the amount of \$243.80 for photocopying costs related to 1,219 pages.

[4] The appellant appealed this decision, and expressed his belief that there should be additional records.

[5] During mediation, the appellant requested a fee waiver and the university agreed, providing a copy of the records to the appellant at no charge.

[6] The appellant indicated that he was not interested in the severances made under section 49(b) (personal information of other individuals), or the non-responsive information, and records 4, 6, 160, 162, 166, 177 and 228 were removed from the appeal. The university agreed that section 49(a) (discretion to refuse requester's own information) should have been claimed for the records withheld under sections 19(a) and (c). Accordingly, the exemptions applied to the records at issue are sections 19(a) and (c), 49(c.1)ii and 49(a).

[7] After reviewing the records, the appellant indicated that he believed there were a number of records missing. He proposed that he would provide the mediator with a list of these records to assist the university in undertaking another search, though this had not occurred by the end of the mediation stage. However, prior to my completion of

the Notice of Inquiry, the appellant sent a letter to this office outlining those records he believed should exist. This information was provided to the university in the Notice of Inquiry that I sent to it, and is set out in the Records discussion below.

[8] Further mediation could not be effected and the file was moved to the adjudication stage of the appeal process.

[9] I sought and received representations from the university, initially. The university's representations were shared with the appellant in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[10] During the inquiry stage of this appeal, the university provided the appellant with a supplementary decision in which it disclosed some of the records at issue, namely records 104, 109, 124, 127, 129, 131, 209, 220 and 273 in full, and record 158 in part. The university's representations reflect this change. As a result, the records that had been disclosed in full or in part were no longer at issue in this appeal.

[11] In addition, the university indicated in its submissions that a further search had been conducted and additional records located. The University subsequently issued a decision to the appellant and copied to this office, which indicated that it had located 40 additional records. The university granted partial access to these records, withholding portions of two records pursuant to section 49(c.1)(ii).

[12] The university did not provide a copy of the newly located records to this office, although it attached a copy of the index to the decision letter. The appellant did not indicate that he wished to appeal the University's decision. Accordingly, the university's access decision regarding the 40 newly located records was not incorporated into this appeal. The new decision is relevant to the issue of reasonable search, however, and I have considered it in that context.

[13] Since reasonable search is an issue in this appeal, I decided to extend the time for the receipt of the appellant's representations in order to give the appellant time to review the university's decision regarding the newly located records and to address any outstanding issues regarding the search issue.

[14] The appellant submitted representations, which largely reiterate the university's representations, describing the records he had already received, and interspersed with comments that did not address the elements of the exemptions. With respect to the search issue, the appellant at times referred to records he had received and asked why there are not more records, but did not explain in any detail why he believed additional records should exist. At my request, a staff member from this office contacted the appellant for clarification. He asked that his initial representations be withdrawn, as he wished to submit a revised version of them. Although he was given numerous extensions to provide his representations, he did not do so. In determining the issues

in this appeal, I attempted to glean as much as I could from the file and the appellant's initial representations. However, I was unable to identify information that would assist his position in this appeal, including whether the university's search was reasonable, particularly in light of the records located as a result of a new search once the university received a copy of his letter outlining the records he believed to be missing. Accordingly, I will not refer to the appellant's representations in addressing the issues below.

[15] The current appeal is related to another appeal brought by the appellant with respect to a decision of the Ontario Human Rights Commission (Appeal PA09-184), which I disposed of in Order PO-3022. Although I have addressed the issues in each appeal separately, in the unique circumstances of this appeal I decided to review and consider information and representations made by the appellant in both appeals in determining the issues in each one. The appellant did not submit representations in Appeal PA09-184. In addition, I do not find any information contained in the file relating to Appeal PA09-184 that would assist the appellant's position in the current appeal.

[16] In the discussion that follows, I find that the records contain the appellant's personal information, but that the withheld portions are exempt under section 49(a), in conjunction with section 19(c) and section 49(c.1)ii. I find further that the university's search for responsive records was reasonable.

## **RECORDS:**

[17] The records remaining at issue in this appeal comprise the withheld portions of the following records:

Record 66	letter of reference
Record 142	memorandum
Record 158	fax
Record 222	letters of reference
Record 246	email

[18] And the following records, in their entirety:

Record 90	email
Record 145	memorandum
Record 159	fax
Record 179	memorandum
Record 206	letter of reference
Record 207	letter of reference

Record 223 email  
Records 257 to 260 human rights litigation file

[19] The University did not provide copies of Records 257 to 260 to this office because they are voluminous. The University was asked to provide an estimate of the number of pages contained in these four records and an index of the types of documents contained therein. The University did so in the body of its representations.

[20] The appellant indicates that the omissions in the materials provided include, but are not limited to, the following:

- Notes from a named University Ombudsman
- Notes from Financial aid concerning a 1997 suspension and removal of student loans, graduate funds, disability bursaries and including but not limited to statements that school was going to bring fraud charges against complainant and arrangements for the school to loan complainant money payable immediately upon completion of the school year
- Notes from a named University Academic vice president
- Notes from a named vice president
- Notes from a named Osgoode Hall Law School Dean
- Notes from a named individual at Osgoode
- Notes from a named Assistant Dean
- Notes from a named Assistant Dean
- Notes from members of the Academic Standing Committee
- Tape recordings, transcripts and notes made during Osgoode Academic Standing Committee hearings.

## **ISSUES:**

**A. Do the records contain personal information?**

**B. Does the discretionary exemption at section 49(a) in conjunction with the section 19 exemption apply to the information at issue in Records 90, 142, 145, 158, 159, 223, 246, and 257 – 260?**

**C. Does the discretionary exemption at section 49(c.1)ii apply to the information at issue in Records 66, 179, 206, 207 and 222?**

**D: Should the university's exercise of discretion under sections 19 and 49(a) be upheld?**

**E: Did the university conduct a reasonable search for records?**

## **DISCUSSION:**

### **A. Do the records contain personal information?**

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

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

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

- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

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

[23] Sections 2(2), (3) and (4) also relate to the definition of personal information. These sections state:

(2) Personal information does not include information about an individual who has been dead for more than thirty years.

(3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[24] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.<sup>2</sup>

[25] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.<sup>3</sup>

[26] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>4</sup>

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<sup>1</sup> Order 11.

<sup>2</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>3</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>4</sup> Order PO-1880, upheld on judicial review in Ontario (Attorney General) v. Pascoe, [2002] O.J. No. 4300 (C.A.).

[27] The university acknowledges that the records at issue all contain the appellant's personal information in the context of his educational history at the university. On review of the records, I agree. Accordingly, my analysis will be conducted under section 49 of the *Act*.

**B. Does the discretionary exemption at section 49(a) in conjunction with the section 19 exemption apply to the information at issue in Records #90, 142, 145, 158, 159, 223, 246, and 257 – 260?**

**Introduction**

[28] Section 47(1) gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right.

[29] Section 49(a) reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

where section 12, 13, 14, 14.1, 14.2, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information.

[30] Section 49(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information.<sup>5</sup>

[31] Where access is denied under section 49(a), the institution must demonstrate that, in exercising its discretion, it considered whether a record should be released to the requester because the record contains his or her personal information.

[32] In this case, the university relies on section 49(a) in conjunction with sections 19(a) and/or (c).

**Solicitor-Client Privilege**

***General principles***

Sections 19(a) and (c) of the *Act* state as follows:

A head may refuse to disclose a record,

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<sup>5</sup> Order M-352.



- (a) that is subject to solicitor-client privilege;
- (c) that was prepared by or for counsel employed or retained by an educational institution for use in giving legal advice or in contemplation of or for use in litigation.

[33] Section 19 contains two branches as described below. Branch 1 arises from the common law and section 19(a). Branch 2 is a statutory privilege and arises, in the case of an educational institution, from section 19(c). The institution must establish that at least one branch applies. I will begin with a discussion of branch 2.

### **Branch 2: statutory privileges**

[34] Branch 2 is a statutory exemption that is available in the context of counsel employed or retained by an educational institution giving legal advice or conducting litigation. The statutory exemption and common law privileges, although not necessarily identical, exist for similar reasons.

#### ***Statutory solicitor-client communication privilege***

[35] Branch 2 applies to a record that was prepared by or for counsel for an educational institution, "for use in giving legal advice."

#### ***Statutory litigation privilege***

[36] Branch 2 applies to a record that was prepared by or for counsel for an educational institution, "in contemplation of or for use in litigation."

[37] Termination of litigation does not affect the application of statutory litigation privilege under branch 2.<sup>6</sup>

#### ***Loss of Privilege***

[38] The application of branch 2 has been limited on the following common law grounds as stated or upheld by the Ontario courts:

- waiver of privilege by the *head of an institution*<sup>7</sup> and
- the lack of a "zone of privacy" in connection with records prepared for use in or in contemplation of litigation.<sup>8</sup>

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<sup>6</sup> Ontario (Attorney General) v. Ontario (Information and Privacy Commission, Inquiry Officer) (cited above).

<sup>7</sup> see Ontario (Attorney General) v. Big Canoe, [2006] O.J. No. 1812 (Div. Ct.).

[39] The university notes that all of the records for which section 19 has been claimed pertain to the human rights complaint the appellant made against it in December 1998.

*Records 90, 142, 145, 158, 159, 223 and 246*

[40] The university characterizes these records as follows:

[These records] consist of correspondence between [the university's] counsel and individuals in the Registrar's Office or Osgoode Hall Law School. These records were prepared for or by counsel employed by [the university] for use in litigating the Appellant's Human Rights complaint against [the university]. Some of the records reflect confidential advice sought from, and given by, counsel to university staff. Accordingly, these records are part of the continuum of privileged legal communications.

[41] On review of the records at issue in this discussion, I find that the university has accurately described them. I find further that Records 90, 142, 145, 158, 159, 223 and 246 were prepared by or for counsel for the university in contemplation of, or for use in litigation. The records pertain to the human rights complaint brought by the appellant against the university and reflect the communications between legal counsel and staff of the university in preparation of and in order to address the human rights complaint. I have no evidence before me that the university has waived its privilege in these records. Accordingly, I find that they qualify for exemption under sections 49(a) and 19(c) of the *Act*.

*Records 257 to 260*

[42] As I indicated above, the university did not provide copies of these records to this office because they were voluminous. In its representations, the university provides a detailed description of the 1,265 pages of documents contained in these four records. Due to the detailed nature of the description, I have not set them out in this order. The university also makes general submissions regarding them as follows:

[These records] are the legal files from the Office of the Counsel that pertain directly to counsel's activities in litigating the Human Rights complaint. These records were compiled by [two named legal counsel] and used by [a named] Counsel in litigating the case before the Ontario Human Rights Commission.

[43] After reviewing the descriptions of the documents contained in Records 257 to 260 provided by the university, in light of the submissions made and the other records at issue in this discussion, I am satisfied that all four of these records qualify for

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<sup>8</sup> see Ontario (Attorney General) v. Big Canoe, [2006] O.J. No. 1812 (Div. Ct.).

exemption under the litigation aspect of branch 2. As noted above, termination of litigation does not affect the application of this exemption to the records at issue, and I have no evidence before me that privilege has been waived or that the zone of privacy is lacking in connection with these records. Accordingly, they qualify for exemption under sections 49(a) and 19(c).

**C. Does the discretionary exemption at section 49(c.1)ii apply to the information at issue in Records 66, 179, 206, 207 and 222?**

[44] Section 47(1) gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right.

[45] Under section 49(c.1), the institution may refuse to disclose evaluative or opinion material in certain circumstances.

[46] Section 49(c.1)ii reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

(c.1) if the information is supplied explicitly or implicitly in confidence and is evaluative or opinion material compiled solely for the purpose of,

(ii) determining suitability, eligibility or qualifications for admission to an academic program of an educational institution,

[47] The university submits that the records at issue in this discussion are confidential evaluative or opinion material that fall squarely within the exemption. The university further submits that “[i]t is important that these records not be disclosed to the Appellant in order to ensure the integrity of the academic admissions process.”

*Records 66 (duplicate Record 206), 207 and 222*

[48] The university explains that the withheld portion of Record 66 (page 5) consists of a letter of reference pertaining to the appellant. The university notes that this letter was sent to the admissions office at Osgoode Hall Law School and is a required component of the application. The university submits that Record 207 and the six letters of reference comprising the withheld portions of Record 222 are of a similar nature, and that the process for obtaining reference letters has always been treated as confidential.

*Record 179*

[49] The university states that this record is a covering memorandum from the Chair of Osgoode Hall's Admissions Committee to the members of the Committee regarding the appellant's reapplication request. The university withheld this record in its entirety, noting that Committee discussions are confidential and the information contained in the memorandum was taken into consideration in assessing the appellant's request for readmission.

[50] Having reviewed the records at issue in this discussion, I find that they all pertain to the appellant's application for readmission to Osgoode Hall Law School. I am satisfied that the university compiles evaluative and opinion material for the purpose of determining suitability, eligibility or qualifications for admission to the Law School in a confidential manner. Records 66, 206, 207 and 222 are clearly letters of reference pertaining to the appellant's suitability, eligibility or qualifications. Record 179 contains comments made within the Admissions Committee's consideration of the appellant's application.

[51] Accordingly, I find that Records 66, 179, 206, 207 and 222 qualify for exemption under section 49(c.1)ii of the *Act*.

**D: Should the university's exercise its discretion under sections 19, 49(a) and 49(c.1)ii be upheld?**

[52] The section 19 and 49 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.

[53] 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.

[54] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>9</sup> This office may not, however, substitute its own discretion for that of the institution.<sup>10</sup>

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<sup>9</sup> Order MO-1573.

<sup>10</sup> section 54(2).

[55] The university notes that it has provided the appellant with a large number of records in response to his request free of charge. In exercising its discretion to withhold the remaining records and portions of records, the university indicated that it considered the integrity of the academic admissions process, and in particular, the importance of ensuring that referees are able to express their opinions freely and in confidence, without fear that the appellant would be apprised of their opinions and evaluations. The university submits that without assurances of confidentiality, it “could not expect the candor required to make a sound evaluation of the applicant.” The university indicates further that the confidentiality of the admissions process is a long-standing practice that is clearly identified on its website.

[56] Similarly, the university submits that Admissions Committee discussions have consistently been held in confidence, and notes that the amendment to the *Act* and the inclusion of section 49(c.1)ii recognizes the importance and value of such a process.

[57] With respect to the application of sections 49(a) and 19(c), the university notes that “[t]he Appellant engaged in an adversarial stance towards [the university] by bringing a Human Rights complaint against [the university].” The university indicates that it took the necessary legal actions to defend against the claim, and its decision to withhold solicitor-client protected records was made in this context.

[58] Based on the submissions made by the university and the overall context of the appellant’s request, the number of records identified as responding to this request and the number of records disclosed to the appellant, I am satisfied that the university exercised its discretion to withhold records under sections 49(a), 19 and 49(c.1)ii in a proper manner, taking into account relevant factors and not taking into account irrelevant factors.

[59] On this basis, I find that Records 90, 142, 145, 158, 159, 223, 246, and 257 – 260 are exempt under sections 49(a) and 19(c) and Records 66, 179, 206, 207 and 222 are exempt under section 49(c.1)ii of the *Act*.

**E: Did the university conduct a reasonable search for records?**

[60] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24.<sup>11</sup> If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution’s decision. If I am not satisfied, I may order further searches.

[61] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence

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<sup>11</sup> Orders P-85, P-221 and PO-1954-I.

to show that it has made a reasonable effort to identify and locate responsive records.<sup>12</sup> To be responsive, a record must be "reasonably related" to the request.<sup>13</sup>

[62] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.<sup>14</sup>

[63] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.<sup>15</sup>

[64] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.<sup>16</sup>

[65] A requester's lack of diligence in pursuing a request by not responding to requests from the institution for clarification may result in a finding that all steps taken by the institution to respond to the request were reasonable.<sup>17</sup>

[66] The university provided an affidavit of search from its Records Manager in the Information and Privacy Office. She indicates that she co-ordinated the search for records responsive to the appellant's request, and outlines the steps taken in conducting it. She notes that the appellant's request was clear and did not require clarification. I have set out below some of the steps taken to search for responsive records as affirmed by the Records Manager:

- searches were conducted in the office of the University's Secretary and General Counsel by the Co-ordinator, Senate Support and Co-ordinator, Administrative Support Services.
- The search in the University Secretariat included the Co-ordinator's e-mail, electronic records and Senate paper files. Records were located.
- The search in the Office of the Counsel included a search through the e-mail, personal drive of a named counsel, the shared server directory for the office and the database of records. Records were located.

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<sup>12</sup> Orders P-624 and PO-2559.

<sup>13</sup> Order PO-2554.

<sup>14</sup> Orders M-909, PO-2469, PO-2592.

<sup>15</sup> Order MO-2185.

<sup>16</sup> Order MO-2246.

<sup>17</sup> [Order MO-2213].

- The Senior Executive Officer in the office of the Vice-President Academic and Provost searched for records relating to the appellant with Osgoode Hall Law School as this school falls within the responsibility of this office. In conducting his search, the Senior Executive Officer consulted with the Assistant Dean Student Services, the Administrative Assistant to the Associate Dean, Osgoode Hall Law School. Records were located.
- Searches were also conducted in the Registrar's Office and the Office of Student Conduct and Dispute Resolution and the Student Community. Searches included scanned files and scanned versions of hardcopy files stored offsite, filing cabinets, IRIMS Reports and statistical spreadsheets. No records were located in the Student Community or Office of Student Conduct. Records were located in the Registrar's office.
- With respect to financial records in the Financial Aid and Student Financial Services department, located within the Office of the Registrar, the Associate Director confirms that all records relating to OSAP and Bursary for students with disabilities are transferred to the Ministry of Training, Colleges and Universities two years after the end of the annual loan cycle. The Records Manager attached a copy of the University's Records Schedule to her affidavit.
- The Executive Officer of the Faculty of Graduate Studies was searched for funding records and records were located.
- The Graduate Program Assistant, Department of Political Science searched the department files and records were located.

[67] In addition to the affidavit sworn by the Records Manager, the university addresses each of the "omissions" in the records identified by the appellant as follows:

- Notes from a named University Ombudsman – a number of records were identified as containing the Ombudsman's notes. The university confirms that no additional records exist.
- Notes from Financial aid concerning a 1997 suspension and removal of student loans, graduate funds, disability bursaries and including but not limited to statements that school was going to bring fraud charges against complainant and arrangements for the school to loan complainant money payable immediately upon completion of the school year – one record was located and provided to the appellant. Similar to the comments made by the Records Manager, the university noted that funding responsibilities rest with the Ministry of Training, Colleges and Universities and any documentation supporting an OSAP application collected by the university

was transferred to the Ministry two years after the completion of the loan cycle.

- Notes from a named University Academic Vice President – the university confirms that notes from this individual are contained in the records that were not disclosed to the appellant as they are exempt.
- Notes from a named Vice President – the university confirms that all records maintained by this individual have been disclosed to the appellant, in full or in part.
- Notes from a named Osgoode Hall Law School Dean – the university confirms that all records have been disclosed.
- Notes from a named individual at Osgoode – the university confirms that most records pertaining to this individual have been disclosed to the appellant and the rest are contained in records that have been found to be exempt.
- Notes from a named Assistant Dean – the university notes that not all records have been disclosed to the appellant as some qualify for exemption.
- Notes from a named Assistant Dean – the university confirms that no additional records exist other than the one record disclosed to the appellant.
- Notes from members of the Academic Standing Committee – the university confirms that all records have been disclosed to the appellant.
- Tape recordings, transcripts and notes made during Osgoode Academic Standing Committee hearings – the university confirms that transcripts and notes of Academic Standing Committee Hearing are not created. It states further the tape recordings are retained for five years and then destroyed. Any records sought by the appellant have been destroyed. Any other records pertaining to these hearings have been disclosed to the appellant.

[68] In addressing this issue, it must be kept in mind that a number of records, comprising over 1,350 pages, have been withheld from the appellant pursuant to the exemptions in sections 19 and 49(c.1). In addition, the appellant has been granted access to 40 newly located records, in whole or in part, which were not identified as part of the records at issue in this appeal.



[69] As I indicated above, the university need not prove with absolute certainty that further records do not exist. Rather, it is only required to provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.

[70] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.

[71] Based on the very detailed submissions made by the university regarding the locations searched, the number of individuals experienced in their respective areas who were contacted and participated in the search, and the explanations provided for certain missing records, I am satisfied that the university has expended reasonable effort to search for and locate responsive records. Accordingly, this portion of the appeal is dismissed.

**ORDER:**

1. I uphold the university's decision to withhold the records at issue.
2. The university's search for responsive records was reasonable and this portion of the appeal is dismissed.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Adjudicator

\_\_\_\_\_ June 20, 2012