Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3713

Appeal PA15-11

University of Guelph

March 29, 2017

Summary: The appellant submitted an access request to the University of Guelph for records relating to growing and maintaining natural turfgrass at the Rogers Centre in Toronto. The university denied access to some records and parts of records on the basis that they are excluded from the *Act* under section 65(8.1)(a) (records respecting or associated with research). It also claimed that parts of some records are exempt from disclosure under section 17(1) (third party information) and sections 18(1)(c) and (e) (economic and other interests) of the *Act*. The appellant appealed the university's decision to deny access to these records and parts of records and also claimed that the university had not conducted a reasonable search for records. In this order, the adjudicator finds that all of the records at issue are excluded from the *Act* under section 65(8.1)(a), because they are respecting or associated with research being conducted by an employee of the university. In addition, the adjudicator finds that the university conducted a reasonable search for records. He upholds the university's access decision and dismisses the appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 24, 65(8.1)(a) and 65(9).

Orders Considered: Orders PO-2693, PO-2694, MO-1412 and PO-2105-F.

Cases Considered: *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).

OVERVIEW:

[1] The appellant submitted an access request to the University of Guelph (the university) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to growing and maintaining natural turfgrass at the Rogers Centre in Toronto. After some discussions between the appellant and the university, the parties agreed that his access request was for the following records:

1. A copy of the final agreement entered into by [the university] and Toronto Blue Jays/Rogers Inc., for the purpose of providing the Blue Jays with advice/guidance relating to growing and maintaining turfgrass at the Rogers Centre. [To be provided when the agreement is considered final and signed by both parties.]

2. From January 1, 2014 to present, email correspondence between [university] staff/faculty and the Toronto Blue Jays/Rogers, the subject matter of which deals with (either peripherally or centrally) the timing of when turfgrass can be installed in the Rogers Centre. [Research-related records are not intended to be captured in this request.]

3. From January 1, 2014 to present, records reflecting meeting details (such as attendees, times, locations and agendas); and, any notes taken by university faculty and/or staff attendees during meetings with Rogers or Blue Jays staff and any of their representatives.

[2] The university located records that are responsive to parts 2 and 3 of the appellant's access request. It then notified the Toronto Blue Jays under section 28(1)(a) of the *Act* that these records might contain information referred to in section 17(1) that affects its interests. It provided the Blue Jays with a copy of the records and invited the baseball club to submit representations on whether the records or parts of the records are exempt under section 17(1).

[3] After hearing the Blue Jays' views, the university issued a decision letter to the appellant stating that it was providing him with partial access to the records that are responsive to parts 2 and 3 of his request. It denied access to parts of these records under the mandatory exemption in section 17(1) (third party information) and the discretionary exemptions in sections 18(1)(c) and (e) (economic and other interests) of the *Act*. In addition, it claimed that some records and parts of records are excluded from the *Act* under section 65(8.1)(a) (records respecting or associated with research). It further stated that an access decision would be issued with respect to part 1 of his request once a final agreement was reached between itself and the Blue Jays.

[4] The appellant appealed the university's access decision to this office, which assigned a mediator to assist the parties in resolving the issues in dispute. During mediation, the university issued two supplementary decision letters to the appellant.

First, it provided him with access to a copy of the agreement between itself and the Blue Jays that is responsive to part 1 of his access request. Second, it provided him with access to additional parts of two records that are responsive to parts 2 and 3 of his request.

[5] The appellant advised the mediator that he is continuing to seek access to the remaining information in the records that has been withheld by the university, except for email addresses. In addition, he stated that additional emails and meeting notes should exist that fall within the timeframe of his access request. Consequently, whether the university conducted a reasonable search for responsive records is at issue in this appeal.

[6] This appeal was not resolved during mediation and was moved to adjudication for an inquiry. I sought representations from the university, the Blue Jays and the appellant on the issues to be resolved. I received representations from both the university and the appellant. In its representations, the university states that it is no longer relying on the section 17(1) exemption. In addition, the Blue Jays submitted a brief response which stated that it did not feel that its business would be affected by disclosure of the records. Consequently, the section 17(1) exemption is no longer at issue in this appeal.

[7] In this order, I find that the records at issue are excluded from the *Act* under section 65(8.1)(a), and that the university has conducted a reasonable search for records that are responsive to the appellant's access request.

RECORDS:

[8] The records at issue in this appeal are summarized in the following chart:

Record number	Number of pages	Description of record	University's decision	Exclusion/exemptions claimed
2.001	3	Emails	Disclosed in part	s. 65(8.1)(a) ss. 18(1)(c) and (e)
2.002	3	Emails	Disclosed in part	s. 65(8.1)(a) ss. 18(1)(c) and (e)
2.003	5	Emails	Disclosed in part	s. 65(8.1)(a) ss. 18(1)(c) and (e)
2.004	1	Emails	Disclosed in part	s. 65(8.1)(a) ss. 18(1)(c) and (e)
2.005	2	Email and attachment (draft	Withheld in	s. 65(8.1)(a) ss.

		letter)	full	18(1)(c) and (e)
2.006	2	Emails	Disclosed in part	s. 65(8.1)(a) ss. 18(1)(c) and (e)
2.007	1	Email	Disclosed in part	s. 65(8.1)(a) ss. 18(1)(c) and (e)
2.008	2	Email attachment (proposal)	Withheld in full	s. 65(8.1)(a) ss. 18(1)(c) and (e)
3.001	1	Call report (meeting summary)	Disclosed in part	s. 65(8.1)(a) ss. 18(1)(c) and (e)
3.002	2	Call report (meeting summary)	Disclosed in part	s. 65(8.1)(a) ss. 18(1)(c) and (e)

ISSUES:

A. Does section 65(8.1)(a) exclude the records from the *Act*?

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

DISCUSSION:

RECORDS RESPECTING OR ASSOCIATED WITH RESEARCH

A. Does section 65(8.1)(a) exclude the records from the *Act*?

[9] The university claims that the records and parts of records that it withheld from the appellant are excluded from the *Act* under section 65(8.1)(a). This provision states:

> (8.1) This Act does not apply,
>
> (a) to a record respecting or associated with research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution;

[10] Sections 65(9) and (10) create exceptions to the exclusions found at section 65(8.1), including section 65(8.1)(a). These sections state:

> (9) Despite subsection (8.1), the head of the educational institution or hospital shall disclose the subject-matter and amount of funding being received with respect to the research referred to in that subsection.

> (10) Despite subsection (8.1), this Act does apply to evaluative or opinion material compiled in respect of teaching materials or research only to the extent that is necessary for the purpose of subclause 49(c.1)(i).

[11] The purpose of the section 65(8.1)(a) exclusion is to protect academic freedom and competitiveness.[1] If section 65(8.1)(a) applies to a record, and the exceptions found in sections 65(9) and (10) do not apply, that record is excluded from the scope of the *Act*.

[12] Section 65(8.1)(a) applies to a "record," not parts of a record. Consequently, even though the university claims that both records as a whole and parts of some records are excluded from the *Act* under section 65(8.1)(a), I will be determining whether each record as a whole is excluded under that provision.

"Research"

[13] Section 65(8.1)(a) applies to a record respecting or associated with "research" conducted or proposed by an employee of an educational institution or by a person associated with an educational institution. Consequently, it must first be determined whether the work being undertaken on the natural turfgrass project constitutes "research" conducted or proposed by the persons specified in the latter part of the exclusion.

[14] Research is defined as "… a systematic investigation designed to develop or establish principles, facts or generalizable knowledge, or any combination of them, and includes the development, testing and evaluation of research." The research must be referable to specific, identifiable research projects that have been conceived by a specific faculty member, employee or associate of an educational institution.[2]

[15] At the outset of its representations, the university provides the following background information about the natural turfgrass project:

> In or around the fall of 2013, the Rogers Blue Jays Baseball Partnership (the "Blue Jays") approached the University's business development centre with the goal of growing natural turfgrass inside the confines of the Rogers Centre. The University's business development centre contacted the [Ontario Agricultural College (OAC)], to determine its interest and ability to conceive research that would address the feasibility and costs associated with growing natural turfgrass indoors using the Rogers Centre as a model.

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[1] Order PO-3084.
[2] Order PO-2693.

> The University, [the OAC] and its Associate Professor Dr. Eric Lyons ("Dr. Lyons") designed and conceived of the research required on the topic of establishing, growing and maintaining natural turfgrass in an enclosed multi-use sports stadium (the "Project"). The Project provides a basis for further study to aid in refining the requirements for successful growth and maintenance of natural turfgrass fields in, among other places, the Rogers Centre.
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> Specifically, elements and objectives of the Project were conceived by Dr. Lyons and include the following clinical research goals:
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> - determination of natural turfgrass growth and maintenance relevant to environmental conditions in an enclosed multi-use stadium using the Rogers Centre as a model;
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> - determination of water requirements and water vapor dissipation needs of grasses grown under artificial lighting;
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> - selection of root zone depth and root zone system compatible with requirements of multi-use stadiums;
>
> - pest management of indoor turfgrass facilities; and
>
> - turf maintenance, durability and replacement needs (collectively referred to as the "Research Goals").

[16] The university submits that the work undertaken on the natural turfgrass project qualifies as "research" conducted by an employee of an educational institution, for the purposes of section 65(8.1)(a). It states:

> The Project is a systematic investigation conceived, created, and conducted by the OAC and Dr. Lyons in order to develop and establish the Research Goals. It is apparent from record 2.001 that Dr. Lyons conceived each of the research sub-projects included within the overall Project in order to meet the Research Goals. The Research Goals are principles, facts or generalizable knowledge, or any combination of them. Among other things, the Project will develop, test and evaluate:
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> - air turnover and boundary layer issues with air mixing;
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> - realistic estimates for water use and irrigation needs for grass grown indoors;
>
> - acceptable root zone sources;
>
> - approaches for integrated pest management; and

- feasibility of year round indoor turfgrass growth.

The Project is research conceived and conducted by an employee of an educational institution.

[17] The appellant disputes that the work being undertaken on the natural turfgrass project constitutes "research" conducted or proposed by an employee of an educational institution or by a person associated with an educational institution, as required by the section 65(8.1)(a) exclusion. In particular, he submits that:

- Rather than conducting "research," the university is providing technical and scientific consulting services to the Blue Jays for the narrow purpose of providing a report. Based on the Wikipedia definition of the term, "consultant," Dr. Lyons should be viewed as acting as the lead external technical and scientific consultant for the Blue Jays.

- Broadening the definition of "research" in section 65(8.1)(a) to include technical and scientific consulting that academics provide to the private sector was not part of the legislative intent underlying this exclusion.

- The close relationship between corporations and public universities, exemplified by this project, serves to create an unaccountable "black box" within universities. This "black box" threatens to engulf more work of university administrators if the IPC fails to see how this work is in fact technical and scientific consulting rather than bona fide academic or clinical research.

- The work and project were conceived by the Blue Jays, not the university or its faculty. A research question or project proposed by someone unaffiliated with the university does not constitute "research" at the university for the purposes of section 65(8.1)(a).

- To give the impression that the work being undertaken on the natural turfgrass project constitutes "research," the university's representations attempt to reframe his access request and the scope of the work being undertaken on the project to include growing and maintaining natural turfgrass not simply at the Rogers Centre but in other similar environments. In fact, the wording of the agreement between the university and the Blue Jays makes it clear that the project's scope is limited and directly related to the Rogers Centre, not other similar environments.

- Dr. Lyons has spoken in detail with the media about the natural turfgrass project and his work with the Blue Jays. Normally, a well-published scientist and academic would not provide the details of his "research" to the public, and presumably other scientists in the process, in advance of having published those details because of the importance of priority of publication. If Dr. Lyons was truly

engaged in "research," he would not be sharing the details of his work on this project with the media.

[18] In reply, the university disputes the arguments put forward by the appellant to support his view that the work being undertaken on the natural turfgrass project does not constitute "research" for the purposes of section 65(8.1)(a). It submits that:

- The University's Office of Research oversees a $130 million research enterprise, and university researchers attract funding from a broad range of public and private sponsors for fundamental and applied research. The funding provided by the Blue Jays is a research grant and the work being undertaken by Dr. Lyons should be viewed as sponsored research.

- Dr. Lyons is not an external and scientific consultant for the Blue Jays. He is the lead researcher on a sponsored research project. Under the collective bargaining agreement between the university and its faculty, faculty members are permitted to earn additional income from external activities, such as consulting, for a maximum of 25 days a year. Phase 1 of the project is longer than 25 days and hence, Dr. Lyons is not engaging in consultancy work for the purposes of the collective bargaining agreement.

- There is no legal basis to support the notion that an initiative arising or proposed by someone unaffiliated with a university is not "research" for the purposes of section 65(8.1)(a). Although the Blue Jays approached the university with a novel issue (growing and maintaining natural turfgrass at the Rogers Center), Dr. Lyons is conceiving, creating and conducting the research to address this issue, not the Blue Jays.

- The results of the research on growing and maintaining natural turfgrass will not be narrowly confined to the Rogers Centre, because examples of enclosed multi-use stadiums exist all over the world, including the Olympic Stadium in Montreal and the Astrodome in Houston, Texas. The facts, principles and generalized knowledge that result from the research could be applied to other enclosed multi-use stadiums around the world.

- Dr. Lyons has only made general comments to the media about issues raised by attempting to grow grass indoors. These general comments do not disclose the facts, principles or generalized knowledge related to his specific, identifiable research project. For example, in one interview, he specifically refrained from disclosing the areas of his research related to the type of grass that he may recommend and stated that, "[T]here are few dark horses out there that I am keeping close to my chest that I think will probably perform best."

[19] I have considered the parties' representations and for the reasons that follow, find that the work that Dr. Lyons is doing on the natural turfgrass project constitutes

"research" conducted by an employee of an educational institution for the purposes of the section 65(8.1)(a) exclusion.

[20] On its face, the natural turfgrass project appears to clearly fall within the definition of "research." The work on the project is being conducted by a professor in the university's Department of Plant Agriculture (Dr. Lyons), who is examining the feasibility of establishing, growing and maintaining natural turfgrass at the Rogers Centre. This work will include developing, testing and evaluating: air turnover and boundary layer issues with air mixing; realistic estimates for water use and irrigation needs for grass grown indoors; acceptable root zone sources; approaches for integrated pest management; and feasibility of year round indoor turfgrass growth.

[21] I find that Dr. Lyons is conducting a systematic investigation designed to develop and establish principles, facts or generalized knowledge about the feasibility of establishing, growing and maintaining natural turfgrass at the Rogers Centre, and his work includes the development, testing and evaluation of his research. This research refers to a specific identifiable research project ("Rogers Blue Jays Sport Turf Research Project"[3]) that is being conducted by Dr. Lyons, who is an employee of the university.

[22] The appellant takes the position that Dr. Lyons is not carrying out "research" but is acting as an external technical and scientific consultant for the Blue Jays. In my view, there may be situations where a university professor undertakes work for a private entity that does not fall within the definition of "research" for the purposes of section 65(8.1)(a), but this is not one of them.

[23] The university has adduced evidence to show that under the terms of the collective agreement between faculty and the university, Dr. Lyons is clearly not engaging in consulting. In addition, I note that the Grant-in-Aid Agreement between the university and the Blue Jays, identifies the baseball club as the research "sponsor" and Dr. Lyons as the "Principal Investigator." There is no wording in this agreement that suggests that he is carrying out consulting work for the Blue Jays. In addition, the agreement includes the following provisions:

1. The Grant is awarded in support of research that is directed by the Principal Investigator. The Principal Investigator's use of the Grant is restricted by the policies of the university.

2. Arising intellectual property shall be owned according to the University's policies, collective agreements and/or employment agreements. There are no requirements for the transfer of intellectual property rights to Sponsor.

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[3] This is the title of the "research project" on the Grant-in-Aid Agreement between the university and the Blue Jays.

3. There is no limitation on the University's teaching, research and scholarly publication of results of the Project.

[24] In my view, these provisions, when read together, clearly establish that Dr. Lyons is conducting "research," as contemplated by section 65(8.1)(a). There is no suggestion in these provisions or anywhere else in the agreement that Dr. Lyons is acting as an external technical and scientific consultant for the Blue Jays.

[25] The appellant also submits that a research question or project proposed by someone unaffiliated with the university does not constitute "research" at the university for the purposes of section 65(8.1)(a). In particular, he claims that the work and project were "conceived" by the Blue Jays, not the university or its faculty, which is a reference to Order PO-2693, which found that "research" for the purposes of the section 65(8.1)(a) exclusion must refer to specific, identifiable research projects that have been conceived by a specific faculty member, employee or associate of an educational institution.

[26] I am not persuaded by the appellant's submissions for two reasons. First, I agree with the university that although the Blue Jays approached the university with a novel issue (growing and maintaining natural turfgrass at the Rogers Center), Dr. Lyons is conceiving, creating and conducting the research to address this issue, not the Blue Jays. Secondly, and more importantly, the wording of the section 65(8.1)(a) exclusion states that it applies to a record respecting or associated with research *conducted or proposed* by an employee of an educational institution or by a person associated with an educational institution [emphasis added]. In my view, section 65(8.1)(a) contemplates that even if a basic research question or idea is initiated by a third party, the exclusion still applies if the actual research is "conducted" by one of the persons specified in the latter part of the exclusion, as is the case here.

[27] The appellant also suggests that the university's submissions attempt to fit the natural turfgrass project into the meaning of "research" in section 65(8.1)(a) by reframing his access request and falsely broadening the scope of the work to include other stadium environments, not just the Rogers Centre. In my view, whether Dr. Lyons' work is limited to one particular site or not has little bearing on determining whether his work constitutes "research" for the purposes of section 65(8.1)(a). Both limited and broader applications of his work could constitute "research" and I find that the other evidence discussed above is more relevant in making this determination.

[28] Finally, I find that the fact that Dr. Lyons has given interviews to the media about the natural turfgrass project does not pull his work outside the meaning of "research," as the appellant suggests. One purpose of section 65(8.1)(a) is to protect academic freedom, which includes giving researchers the right to control the dissemination of information about their research. In my view, the fact that professors conducting research may exercise their academic freedom by choosing to share some details about their work with the media or the public does not bring that work outside

the meaning of "research" for the purposes of section 65(8.1)(a).

[29] In short, I find that the work that Dr. Lyons is doing on the natural turfgrass project constitutes "research" conducted by an employee of an educational institution for the purposes of the section 65(8.1)(a) exclusion.

"Respecting or associated with"

[30] In order for the section 65(8.1)(a) exclusion to apply, it must also be established that the records at issue in this appeal are "respecting or associated with" the research being conducted by Dr. Lyons. In earlier orders, the IPC interpreted these words in section 65(8.1)(a) as requiring a "substantial connection" between the records and the subject matter of this exclusion.[4] However, in the 2010 decision, *Ontario (Attorney General) v. Toronto Star*,[5] the Divisional Court addressed the meaning of the term "relating to" in the prosecution exclusion in section 65(5.2) of the *Act* and found that it requires "some connection" between the records and the subject matter of that exclusion. It rejected the imputation of a "substantial connection" requirement into the meaning of "relating to."

[31] The IPC has concluded that the Divisional Court's finding in *Toronto Star* also applies to the words, "respecting or associated with" in section 65(8.1)(a).[6] Consequently, for section 65(8.1)(a) to apply in the circumstances of this appeal, it must be established that there is "some connection" between the records and the research being conducted by Dr. Lyons.

[32] The records at issue in this appeal document discussions between the university and the Blue Jays about the natural turfgrass project and include emails, two attachments (a letter and a proposal) and two call reports, which are summaries of meetings over the phone. I cannot reveal the specific contents of those records and parts of records that have been withheld by the university, but they are mainly about issues such as the planning, structuring and timing for the natural turfgrass project and a possible additional phase for this project.

[33] The appellant submits that these records should not be viewed as "respecting or associated with" the work being undertaken by Dr. Lyons on the project. He states:

> Regarding the "Respecting or Associated with" component of this exclusion, the university attempts to draw a parallel between the "project" (which it should be noted, there is no evidence that any project had at this point in time been created or conceived of, other than the university's assertion of this fact) and the negotiations with the Blue Jays to carry out

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[4] See, for example, Order PO-2693.
[5] 2010 ONSC 991 (Div. Ct.).
[6] Order PO-2942.

> the project on their behalf. In Order PO-2694, the IPC considered whether records relating to the proposed construction of an avian wind tunnel met the test to be "respecting or associated with" research. The IPC in this case overturned the University of Western Ontario's application of the research exclusion on the basis that the proposed construction of a research environment did not trigger the "respecting or associated with" test. Setting aside for a moment my reservation that the work in which the university is engaged is not research, I also submit that the records are not associated with research.
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> Much like the proposed construction of an avian wind tunnel which will be used for research purposes does not engage the "respecting or associated with" test, I submit that this is also not engaged by corresponding with a corporation that may or may not allow the university to ultimately engage in the work in helping understand what is necessary in order to retrofit a structure, or what would be required to have grass grow inside one.

[34] The university submits that the fact circumstances in Order PO-2694 can be distinguished from those that exist in this appeal. It states:

> . . . Order PO-2694 considered the proposed construction of an avian wind tunnel at the University of Western Ontario where various research projects would be conducted. In Order PO-2694, the basis of the IPC's decision was that, "[t]he design and construction of equipment used to conduct research does not necessarily equate with the research for which the equipment will be used ... The records were not prepared for the purpose of conducting a specific research project, nor do they result from such a project." The circumstances of this access request are in stark contrast to the circumstances in Order PO-2694. In the university's circumstance there is a specific, identifiable research project that is underway.

[35] I have considered the parties' representations and for the reasons that follow, find that the records at issue in this appeal are "respecting or associated with" the research being conducted by Dr. Lyons.

[36] The appellant has cited Order PO-2694 to support his position that records should not be viewed as "respecting or associated with" the work being undertaken on the natural turfgrass project. In that order, the adjudicator found that the records at issue did not qualify as records "respecting or associated with" research conducted or proposed by an employee or associate of the university. The adjudicator stated:

> I find that the records lack the substantial connection required for me to find that they are "respecting or associated with" research, within the meaning of section 65(8.1)(a). The records were not prepared for the

> purpose of conducting a specific research project, nor do they result from such a project. Significantly, as well, they do not disclose, either directly or by inference, the particulars or even the broad objectives of any specific proposed research project or projects. I have scoured the records for that kind of information and have not found it. At most, they disclose the design and capabilities of the tunnel, which might lead to speculation about the type of research that might be conducted.

[37] In my view, Order PO-2694 is both distinguishable from and inapplicable to the current appeal for two reasons. First, it was decided before the Divisional Court's ruling in *Toronto Star* and therefore imputed a "substantial connection" requirement into the meaning of "respecting or associated with" in section 65(8.1)(a). As noted above, because of the Court's decision, it must now be established that there is "some connection" (not a "substantial connection") between the records and the research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution.

[38] Second, I agree with the university that the fact circumstances before the adjudicator in Order PO-2694 were different than those that exist here. In Order PO-2694, the adjudicator found that the records were not prepared for a specific research project and, in fact, did not even disclose the particular or broad objectives of any specific research project. In contrast, the records at issue in this particular appeal do relate to a specific research project, which is the natural turfgrass project now being overseen by Dr. Lyons. Although the discussions between the university and the Blue Jays that are documented in these records may have occurred before Dr. Lyons commenced full-blown research on the feasibility of growing and maintaining natural turfgrass in the Rogers Centre, this does not derogate from the fact that the discussions in these records are about that specific research project.

[39] The question that must be answered here is simply whether there is "some connection" between the records and the research being conducted by Dr. Lyons. As noted above, the records document discussions between the university and the Blue Jays that are mainly about issues such as the planning, structuring and timing for the natural turfgrass project and a possible additional phase for this project. In my view, all of these records clearly have "some connection" to the research that Dr. Lyons is conducting on the feasibility of growing and maintaining natural turfgrass in the Rogers Centre. I find, therefore, that these records are "respecting or associated with" the research being conducted by him, for the purposes of the section 65(8.1)(a) exclusion.

Exceptions

[40] Sections 65(9) and (10) create exceptions to the exclusions found at section 65(8.1) including section 65(8.1)(a). None of the parties have raised the exception in section 65(10), and I find that it does not apply to any of the records at issue.

[41] However, the exception in section 65(9) might apply, and it must be determined whether any of the records contain the specific information set out in this provision, which states:

> Despite subsection (8.1), the head of the educational institution or hospital shall disclose the subject-matter and amount of funding being received with respect to the research referred to in that subsection.

[42] The university states that none of the records at issue contain information that would disclose the subject matter and amount of funding being received with respect to the research. It states that this information is found in the Grant-in-Aid Agreement between itself and the Blue Jays, which it disclosed in full to the appellant. In particular, the university received $600,000 from the Blue Jays for the research associated with Phase I of the natural turfgrass project. The appellant's representations do not address whether the section 65(9) exception applies to any of the records.

[43] Based on my review of the records at issue, I find that the section 65(9) exception does not apply to any of these records. Some records discuss potential funding for an additional phase of the project. However, a plain interpretation of the funding requirement in section 65(9) is that it only applies to the amount of actual funding being received for research, not potential funding that might be received. In short, I find that the exception in section 65(9) does not apply to any of the records.

Conclusion

[44] I find that the records at issue in this appeal meet the requirements of the section 65(8.1)(a) exclusion because they are respecting or associated with research conducted by an employee of the university (Dr. Lyons). None of the records contain information that fits within the exceptions in sections 65(9) or (10). As a result, these records fall within section 65(8.1)(a), and they are excluded from the scope of the *Act*. Given this finding, it is not necessary to consider whether the records and parts of records withheld by the university are also exempt under sections 18(1)(c) or (e) of the *Act*.

SEARCH FOR RESPONSIVE RECORDS

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

[45] The appellant submits that the university did not conduct a reasonable search for records that are responsive to his access request.

[46] 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.[7] 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.

[47] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.[8] To be responsive, a record must be "reasonably related" to the request.[9]

[48] 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.[10]

[49] 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.[11]

[50] The university provided a detailed affidavit from its privacy officer, which sets out the steps she undertook to locate and identify records that are responsive to the appellant's access request. It submits that the evidence provided in this affidavit shows that the university conducted a reasonable search for responsive records.

[51] In response, the appellant states that he is satisfied that the university conducted a reasonable search for records, except for two records identified in paragraph 16 of the privacy officer's affidavit. This paragraph states:

> Dr. Lyons advised that he found only two records that were not copied to Dr. Van Acker [associate dean, external relations at the OAC] and that both of these records were tied directly to his research activities and form part of his pursuit of research and scholarly activities as a faculty member . . .

[52] Previous IPC orders have examined whether an institution should be ordered to conduct further searches for responsive records in cases where an exclusion has been found to apply to those records which have been already located. In Order MO-1412, the adjudicator faced a similar situation involving the exclusion in section 52(3) (labour relations and employment records) of the *Municipal Freedom of Information and Protection of Privacy Act*. He stated:

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[7] Orders P-85, P-221 and PO-1954-I.
[8] Orders P-624 and PO-2559.
[9] Order PO-2554.
[10] Orders M-909, PO-2469 and PO-2592.
[11] Order MO-2246.

> . . . [T]he appellant submits that Hydro did not conduct a reasonable search for responsive records. In his representations, the appellant provides detailed descriptions of the records or types of records which he believes Hydro should have identified as responsive to his request. In my view, these records, whether or not they exist or should have been identified by Hydro, would fall within the scope of section 52(3)3, for the reasons outlined above. Accordingly, no useful purpose would be served by making a determination on this issue and, therefore, I will not do so.

[53] In Order PO-2105-F, the adjudicator cited Order MO-1412 and applied the same approach with respect to the equivalent exclusion in section 65(6) of the *Act*. He stated:

> It is clear from this quotation from Order MO-1412 that a decision to absolve an institution of its responsibilities to conduct searches for all responsive records is dependent on the specific fact situation presented in a particular appeal. In Order MO-1412, [the adjudicator] was satisfied, based on his treatment of records that had been identified as responsive, that any other records that might exist would, by definition, be treated in the same manner. In my view, I am faced with a similar situation in this appeal.
>
> As a result of its extensive search efforts, the Ministry identified one record . . . that was created by one of the individuals in attendance at the [identified meeting]. For reasons outlined in this order, I determined that this record falls within the scope of section 65(6)1 and is excluded from the *Act*. In my view, any records created by other individuals in attendance at [the same meeting] would, by definition, also be excluded, for the same reasons. Accordingly, no useful purpose would be served by determining whether the Ministry's searches for other records created at [the meeting] were reasonable, and I will not consider the search issue further in this appeal.[12]

[54] In my view, this approach can be applied to the circumstances of this appeal. The appellant submits that the university should conduct further searches for the two records identified in paragraph 16 of the privacy officer's affidavit. However, I have found that all of the records at issue in this appeal are excluded from the scope of the *Act* under section 65(8.1)(a). Based on this finding and the description of the two records in the privacy officer's affidavit, I am satisfied that these records are also respecting or associated with research conducted by Dr. Lyons. Consequently, I find that they would be excluded from the scope of the *Act* under section 65(8.1)(a), and no useful purpose would be served by ordering the university to conduct further searches for them.

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[12] See also Orders PO-3194, PO-3327 and PO-3686.

[55] In short, I find that the university conducted a reasonable search for records that are responsive to the appellant's access request.

ORDER:

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

Original Signed by: March 29, 2017

Colin Bhattacharjee
Adjudicator