

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4071

Appeal PA17-161

Ryerson University

October 1, 2020

Summary: Ryerson University (the university) received a request made under the *Freedom of Information and Protection of Privacy Act (the Act)* for access to any agreements and related documents between the university and five named entities. The university identified four responsive records, and took the position that each of them is excluded from the scope of the *Act* under section 65(8.1)(a) (records respecting or associated with research). The appellant appealed the university's decision. In this order, the adjudicator upholds the university's decision and dismisses the appeal.

Statute Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, sections 65(8.1), (9), and (10).

OVERVIEW:

[1] The appellant made a request to Ryerson University (the university) under the *Freedom of Information and Protection of Privacy Act (the Act)* for access to the following:

... any agreements between [the university] and Hydro One Networks Inc.,¹ [four named companies], regarding the Centre for Urban Energy.

¹ Hydro One Networks Inc. is identified in this order because it is a subsidiary of Hydro One, which is an institution under the *Act*.

This would include, but is not limited to, contracts, memorandums of understanding, or notes spelling out terms of partnership.

[2] The university identified four records (three agreements and an amendment to an agreement) as being responsive to the request and took the position that they are each excluded from the scope of the *Act* by virtue of the exclusion at section 65(8.1) for research records. As required by section 65(9) of the *Act*, the university disclosed to the appellant the subject matter and the amount of funding with respect to the research. However, it continued to withhold the records at issue.

[3] The appellant appealed the university's decision to the Office of the Information and Privacy Commissioner of Ontario (the IPC, or this office).

[4] During mediation, the university shared additional information about the records at issue with the appellant, and responded to general questions about the university's research agreements.

[5] Since mediation did not resolve the issues, the appeal was moved to the adjudication stage of the appeal process, where an adjudicator may conduct a written inquiry under the *Act*.

[6] The adjudicator initially assigned to this appeal began the inquiry by seeking the university's representations in response to a Notice of Inquiry, setting out the facts and issues on appeal. The university provided representations, which were shared with the appellant. The adjudicator then sought representations from the appellant. The appellant did not provide representations, but asked that the adjudicator rely on a letter he had sent to the IPC earlier.² The appeal was then transferred to me.

[7] For the reasons that follow, I uphold the university's decision and dismiss the appeal.

RECORDS:

[8] The university provided a description of the four records at issue, Records 1 through 4, summarized below:

- Record 1 is an agreement between the university and Hydro One Networks Inc., dated January 1, 2010, to research and consider urban energy issues and to support the Centre for Urban Energy.
- Record 2 is a research collaboration agreement between the university and [a named company], and Ontario Centres of Excellence Inc., dated May 8, 2012.

² The appellant sent this letter during the Intake process.

- Record 3 is a an amendment to Record 2, involving the same parties as well as Toronto Hydro-Electric System Ltd., dated October 29, 2012.
- Record 4 is a Memorandum of Understanding between the university and the company named in Record 2, regarding Record 2.

DISCUSSION:

[9] The sole issue in this appeal is whether the records are excluded from the application of the *Act* under section 65(8.1). The university takes the position that they are, and for the reasons that follow, I agree.

[10] Section 65(8.1)(a) says:

This Act does not apply ... 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[.]

[11] The effect of an exclusion is different from the effect of an exemption. If a record is found to be excluded under the *Act*, that means that the *Act* does not apply to the record. However, the institution can still disclose outside of the *Act* if the exclusion is found to apply.

[12] The purpose of section 65(8.1) is to protect academic freedom and competitiveness.³

[13] 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 conducted or proposed by a specific faculty member, employee or associate of an educational institution.⁴

[14] I will address each component of the legal test for section 65(8.1)(a) below.

Respecting or associated with research

[15] The university's position is that each of the four records is respecting or associated with research, that the research meets the definition of research (as set out above), and that the research is connected to identifiable research projects.

³ See, for example, Orders PO-2942 and PO-3713.

⁴ Order PO-2693.

Record 1

[16] Based on my review of Record 1, I accept the university's submission that Record 1 is a record respecting or associated with research, as set out below.

[17] The university explains that Record 1 provides core funding to the Centre for Urban Energy (CUE), a research centre in the university's Faculty of Engineering, Architecture and Science (FEAS) and sets out the relationship between the University and Hydro One Networks Inc. (HONI) as being mutually interested in research on urban energy issues. The funding provided by HONI under the agreement is to support the research efforts of university faculty members participating in CUE. The university explains that CUE is not a separate legal entity from the university. Rather, it is a collection of researchers working in the area of energy research. The university states that CUE is equivalent to a department of FEAS and it reports to the dean of FEAS. The purpose of CUE is described as being to explore, develop and commercialize sustainable, innovative, cost-effective and practical clean energy solutions and technologies.

[18] In addition, the university submits, and I find, that Record 1 is respecting or associated with several research areas, including the following nine areas listed in the record:

- transmission and distribution power engineering and utility applications;
- conservation and demand management;
- alternative local energy/fuel applications and options;
- distributed generation and energy storage applications;
- transmission supply enhancements;
- renewable energy integration;
- plug-in hybrid vehicle and electric vehicles infrastructure requirements;
- carbon footprint reduction; and
- integrated planning methodologies and models.

[19] Furthermore, on the basis of the university's representations, I accept that Record 1 relates to research that is referable to specific, identifiable research projects. The university explains that Record 1 calls for a Joint Committee, which reviews applications for research projects relating to the specific research areas described above to be undertaken by CUE-affiliated researchers. Schedule A of Record 1 is a sample "Collaboration and Waiver Agreement" (waiver), to be signed by a university faculty

association member and HONI for each specific research project approved by the Joint Committee. The university explains that Record 1 both acknowledges that intellectual property may be created as an outcome of any research projects and notifies HONI of the university's policy to allow faculty to own intellectual property associated with their research while employed at the university. The university submits that its collective agreement with its faculty association provides specific legal rights to faculty members in the protection, management and use of intellectual property created by faculty members. This includes the requirement to obtain a waiver from a faculty member for research projects they are undertaking with external parties that that may result in the creation of intellectual property. Once signed, the university states that the waivers are incorporated into Record 1. The university also states that there are 12 completed waivers that each include named university faculty members, the targeted research area, the research- proposal description, research approach and methodology description. The university submits that Record 1 includes the completed waivers, and as a result, submits that Record 1 is associated with identifiable research projects that meet the definition of research.

[20] Based on my review of Record 1, including Schedule A (the blank waiver), I am satisfied that there is "some connection" between Record 1 and specific research projects, and therefore, Record 1 qualifies as being respecting or associated with research for the purpose of section 65(8.1)(a).

Records 2, 3, and 4

[21] The university's position is that Records 3 and 4 are related to Record 2, and that all are respecting or associated with research. I agree, as I will explain below.

[22] As the university states, Record 2 is a research collaboration agreement between three parties: the university, a named company, and Ontario Centres of Excellence Inc. (OCE). This is important to keep in mind as Record 3 specifically references these parties and amends this (and other) aspects of Record 2.

[23] The university states that under Record 2, the named company seeks collaboration with the university and OCE on a specified research project, and the university undertakes the research. The university explains that OCE has a mandate to support the advancement of academic research with industrial partners for the economic benefit of Ontario.

[24] Furthermore, the university highlights two schedules of the agreement to further support its position that Record 2 is respecting or associated with a specific research project: schedules B and F. Schedule "B" of Record 2 describes project milestones for testing, developing models, formulating, and reporting on the project that plans to develop theoretical battery storage models. Schedule "F" of Record 2 describes the research project, including the problem or issue addressed by the research, the proposed technology or solution including key steps, the forecast benefits of the

research, and the outcomes of the research. The detailed proposal includes diagrams, a literature review, a description of the uniqueness of the science and technology and the application, and provides linkages to future inventions.

[25] Based on my review of Record 2 and the university's representations, I find that Record 2 is respecting or associated with a specific research project.

[26] Given this finding, and based on my review of Record 3, I also find that, as the university submits, Record 3 is an amendment to Record 2. Since Record 3 relates to the same specific research project that is the subject matter of Record 2, I find that Record 3 is respecting or associated with research.

[27] Regarding Record 4, based on my review of it, I confirm the university's description that it is a memorandum of understanding between the company named in Record 2 and the university. As the university submits, Record 4 is associated with Record 2, being a memorandum of understanding relating to the specific research project that is the subject matter of Record 2. The purpose of Record 4 is to clarify roles and responsibilities noted in Record 2. As a result, the university submits, and I find, that Record 4 is a record respecting or associated with research.

The appellant's position

[28] The appellant submits that the intent of his request is not to obtain "proprietary research" or "research results" but to obtain "the terms and conditions governing [the research]," and goes on to discuss the "intent" behind his request.

[29] In my view, however, the intent behind a request is not relevant to the question of whether the exclusion at section 65(8.1)(a) applies.

[30] All that is required for the exclusion at section 65(8.1)(a) to apply is that there be "some connection" between the record and the specific, identifiable "research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution."⁵

[31] While the appellant disagrees that the exclusion applies, this does not mean that he challenges the fact that the record at issue is "respecting or associated with research." To interpret his position that way would be to ignore a plain reading of his representations. Specifically, he argues that:

- the intent of his request is not to obtain research results, but rather the terms and conditions governing research; and

⁵ Order PO-2942; see also *Ontario (Attorney General) v. Toronto Star*, 2010 ONSC 991 (Div. Ct.).

- he is trying to “access research agreements at a public institution in the hopes of evaluating any provisions that may affect academic integrity at the institution,” and that much money has been invested in research at the university and the public should know how or if “that research meets the standards of academic integrity.”

[32] In my view, the appellant’s representations, on their face, acknowledge that the records he is seeking have “some connection” to research.

Conclusion re: respecting or associated with research

[33] Based on the wording of the request, the parties’ representations, and my review of the records themselves, I find that there is “some connection” between a specific field of research and each record. Accordingly, each record qualifies as being “respecting or associated with research” under section 65(8.1)(a).

[34] As a result, I will move on to the next part of the test of whether section 65(8.1)(a) has been met.

Conducted or proposed by an employee of an educational institution or by a person associated with an educational institution

[35] With respect to Record 1, as discussed, this record calls for a Joint Committee to review applications for research projects relating to the specific research areas described in Record 1, and that the university faculty members conduct the research. Furthermore, the completed waivers, which are related to Record 1, specify individual faculty members who are undertaking the research for a specific research project.

[36] The university submits, and I find, that Record 2 relates to a research project that is performed by a named faculty member who is an employee of the university. Since Records 3 and 4 relate to the same research project which that employee is responsible for, I find that Records 2, 3, and 4 qualify as respecting or associated with research conducted by an employee of the university.

[37] As a result, the university submits, and I find, that each record is respecting or associated with research conducted by faculty members who are employees of the university.

[38] The appellant did not address this aspect of the test under section 65(8.1)(a).

[39] I find, therefore, that the elements of the section 65(8.1)(a) exclusion have been established for each record at issue. I will now turn to the exceptions to the exclusion.

Exceptions do not apply

[40] Sections 65(9) and (10) create exceptions to the section 65(8.1)(a) exclusion.

These sections say:

(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).

[41] As mentioned in the overview, the university disclosed to the appellant the subject matter and the amount of funding relating to the research, as required by section 65(9) of the *Act*. It did so in the university's decision letter. The appellant has not disputed this. Therefore, I find that the university met its obligation under section 65(9).

[42] Furthermore, I accept that the exception at section 65(10) does not apply. That exception relates to evaluative or opinion material compiled in respect of teaching materials or research under certain circumstances. However, as the university states, the records at issue in this appeal are not evaluative or opinion materials. Accordingly, the exception at section 65(10) has no relevance in this case.

Conclusion

[43] Since the university has demonstrated that the records are respecting or associated with research conducted by an employee of the university, the records are excluded from the application of the *Act* under s. 65(8.1)(a). Since the exclusion applies, each record as a whole is removed from the scope of the *Act* and a severed portion of it cannot be provided under the *Act*.

No public interest override

[44] The appellant argues that even if the exclusion applies, the public interest override at section 23 of the *Act* would apply to allow for disclosure of the records. However, the public interest override can only apply to a record that is covered by the *Act*. As the records at issue are excluded from the *Act*, the public interest override cannot apply to them.

ORDER:

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

Original signed by: _____
Marian Sami
Adjudicator

_____ October 1, 2020

