

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-4073

Appeal PA18-00645

Unity Health Toronto

October 14, 2020

**Summary:** UHT received an access request, pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*), for records pertaining to the use of dogs and cats for any purpose. UHT denied access to the responsive records, relying on the exclusion at section 65(8.1)(c) (research). In the alternative, it also relied on the discretionary exemptions at sections 14(1)(e) (endanger life or safety), 14(1)(i) (endanger security) and 20 (endanger to safety or health). In this order, the adjudicator finds that the exclusion at section 65(8.1)(c) does not apply to exclude the records from the *Act*. She also finds that the exemptions at sections 14(1)(e), 14(1)(i) and 20 do not apply, and orders the records to be disclosed to the appellant.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 65(8.1)(c), 14(1)(e), 14(1)(i), 17 and 20.

**Orders Considered:** Orders P-169, P-252, P-357, P-1537, PO-1747, PO-2942, PO-3626 and PO- 3930.

### BACKGROUND:

[1] Unity Health Toronto (UHT) received a 3-part access request, pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*), for records relating to its use of dogs and cats. UHT issued a decision denying access to the requested records under the exclusions in sections 65(8.1)(c) (research) and 65(8.1)(d) (teaching materials). It also relied on the discretionary exemptions in sections 14(1)(e) (endanger

life or safety), 14(1)(i) (endanger security) and 20 (endanger to safety or health) of the *Act*.

[2] The requester, now the appellant, appealed UHT's decision to this office.

[3] During mediation, the appellant narrowed her request to the following:

Whether or not St. Michael's Hospital uses dogs or cats for any purpose, and whether they are purpose-bred or randomly sourced.

[4] UHT issued a revised decision based on the narrowed request stating:

[UHT] is declining to answer this question and provide you with the requested information, as this information is excluded under...section 65(8.1)c-d [of the *Act*] and the hospital has not decided to exercise its discretion to release this information given the exemptions permitted for the following reasons:

- 14(1)(e) - endangerment to the life or physical safety of a person
- 14(1)(i) – endangerment to the security of a building, and
- 20 – danger to safety or health

[5] The appellant subsequently revised her narrowed request to the following:

Whether or not UHT uses dogs or cats for any purpose, and whether they are purpose-bred or randomly sourced.

[6] UHT confirmed its decision remains the same on this revised narrowed request.

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

[8] I commenced my inquiry by seeking representations from the parties. Non-confidential portions of the parties' representations were shared with the other party in accordance with section 7 of this office's *Code of Procedure and Practice Direction Number 7*.<sup>1</sup>

[9] UHT confirmed that it was no longer relying on the exclusion at section 65(8.1)(d) as it acknowledged that the records at issue in the revised narrowed request are not used for teaching.

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<sup>1</sup> Some portions of UHT's representations were withheld as they met the criteria for withholding representations found in this office's *Practice Direction Number 7: Sharing of representations*.

[10] In this order, I find that the section 65(8.1)(c) research exclusion does not apply to exclude the responsive records from the *Act*. I also find that sections 14(1)(e), 14(1)(i), and 20 do not apply to the information at issue.

## **RECORDS:**

[11] The records at issue are five annual reports from 2014 to 2018 (totaling 15 pages) summarizing the number and species of animals used at UHT.

## **ISSUES:**

- A. Does section 65(8.1)(c) exclude the records from the *Act*?
- B. Do the discretionary exemptions at sections 14(1)(e) or 14(1)(i) apply to the records?
- C. Does the discretionary exemption at section 20 apply to the records?

## **DISCUSSION:**

### **A: Does section 65(8.1)(c) exclude the records from the *Act*?**

[12] UHT claims that section 65(8.1)(c) excludes the records from the *Act*, which states:

(8.1) This Act does not apply,

(c) to a record respecting or associated with research, including clinical trials, conducted or proposed by an employee of a hospital or by a person associated with a hospital; or

[13] Past decisions of this office have defined research 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."<sup>2</sup> The research must be referable to specific, identifiable research projects conducted or proposed by an employee or person associated with a hospital.<sup>3</sup>

[14] This office has also stated that this section applies where it is reasonable to conclude that there is "some connection" between the record and the specific, identifiable

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<sup>2</sup> Orders PO-2693 and PO-3365.

<sup>3</sup> Order PO-2942; see also *Ontario (Attorney General) v. Toronto Star*, 2010 ONSC 991 (Div. Ct.).

“research conducted or proposed by an employee of a hospital or by a person associated with a hospital.”<sup>4</sup>

[15] Previous orders have emphasized the importance of considering the purposes of the *Act* as a context for interpreting the research exclusions under section 65(8.1).<sup>5</sup> In Order PO-3365, the adjudicator concluded that the legislative intent with regard to section 65(8.1)(c) was to protect the academic freedom and competitiveness of hospital-based research.

[16] If the exclusion in section 65(8.1)(c) applies to the records at issue, they will be completely excluded from the access and privacy provisions of the *Act*.<sup>6</sup>

[17] UHT submits that the records are strictly associated with research studies conducted and proposed by its staff and/or persons affiliated with it as parties in the research studies. It explains that the records at issue are annual reports that list the assortment and numbers of individual species obtained for all active studies requiring animals within each calendar year.

[18] The appellant submits that section 65(8.1)(c) does not apply to exclude the records. She submits that her request for these specific records is sufficiently narrow that no connection can be made between the records and the research including “clinical trials, conducted or proposed by an employee of a hospital or by a person associated with the hospital for the use at the hospital”.

[19] Moreover, she submits that her request does not ask for specific, identifiable research projects, information about who might have conceived the project, or who is actually conducting the research.

[20] On my review of the records, I find that section 65(8.1)(c) does not apply to exclude them from the *Act*. As stated in Order PO-2942, there must be *some* connection between the records at issue and the specific, identifiable research. In this case, UHT has not identified (and it is not obvious to me) the specific research to which the records relate. In my view, the information at issue relates generally to the use of animals. The records do not provide any details about the use of the animals and do not refer to specific research. As such, I do not see any connection between the records and any specific, identifiable research. Accordingly, I am not satisfied that the exclusion at section 65(8.1)(c) applies to exclude the records from the *Act*.

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<sup>4</sup> Orders PO-2693 and PO-3365.

<sup>5</sup> Orders PO-2693, PO-2942 and PO-3365.

<sup>6</sup> Order PO-3365.

**B: Do the discretionary exemptions at sections 14(1)(e) or 14(1)(i) apply to the records?**

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

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

(e) endanger the life or physical safety of a law enforcement officer or any other person;

(i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;

[22] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.<sup>7</sup>

[23] It is not enough for an institution to take the position that the harms under section 14 are self-evident from the record or that the exemption applies simply because of the existence of a continuing law enforcement matter.<sup>8</sup> The institution must provide detailed evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.<sup>9</sup>

***Representations***

[24] UHT submits that sections 14(1)(e) and 14(1)(i) apply to exempt the records. It submits that the public is aware that St. Michael's Hospital, one of its three hospitals, has an animal research facility, which is also the designated animal facility for Ryerson University.

[25] It submits that disclosure of the records could reasonably be expected to endanger the safety of all St. Michael's Hospital staff, students and volunteers who work in its Li Ka Shing Knowledge Institute building, where its animal research facility is housed.

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<sup>7</sup> *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

<sup>8</sup> Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

<sup>9</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

[26] UHT also submits that, if disclosed, the information in the records would be potentially available to all individuals and groups involved in the animal rights movement, including those who may elect to use acts of harassment and violence to promote their cause. In support of this argument, UHT cites Orders P-169 and PO-3626.

[27] With respect to recent attacks on its facility and staff, UHT points out the following:

- In 2017, a Ryerson University professor, a person known for public nuisance previously and prosecuted in Guelph, wrote on the sidewalk outside the Li Ka Shing Knowledge Institute, where the research facility is housed, "Murder rate at level 8". Subsequently, he came to the building regularly to write on it, yell variations of "animal killers" outside the building to bring attention to the building, bombarded the organization with threatening emails, and demanded information on animal research taking place at the facility. Security had to keep guard and intervene on a regular basis to maintain safety and regular operations of the research facility.
- In 2018, a Ryerson journalism student approached the research facility, and tried to enter it on her own and by persuading others to allow her to access the restricted area. Security had to intervene. The student then wrote about this in the student newspaper The Eye Opener.

[28] In addition, UHT relies on Order PO-1747 in which Assistant Commissioner David Goodis states:

...information associated with individuals or facilities has been found to meet the harm threshold in section 14, while more generalized information which cannot be linked to specific individuals or facilities, or which would not reveal new or identifying information, has been considered accessible under the Act.

[29] It submits that, as the appellant seeks information relating to the use of dogs and cats specifically, which has not been previously disclosed or otherwise made public, the release of this information would be 'new' information about species that are known to evoke greater emotion and public interest, due to their status as companion animals.

[30] In response, the appellant submits that UHT already publicizes significant information about its animal use, by type of animal and location. She points out that one can find, through a simple internet search, the website about its research facility, which sets out some of its activities and the scientists involved. The appellant also points out that she found, on the internet, articles about animal research published by St. Michael's Hospital.

[31] The appellant submits that UHT's claim that "disclosure of the records could reasonably be expected to endanger the safety of all St. Michael's Hospital staff, students and volunteers who work in the hospital's research facility" is misleading and inaccurate. She submits that the listings of individual researchers and staff, including their biographies and photographs, who work at the research facility are publicly available.

[32] With respect to the incident involving a Ryerson University professor, the appellant submits that no complaint was filed with the police, nor were the police involved in these situations, despite the description that the incidents "threatened the physical safety of both our facilities and staff". She submits that while the professor's actions were unpleasant, his actions did not rise to the level of a threat to the physical safety of staff and students.

[33] With respect to the journalism student incident, the appellant states that it appears UHT considered the student, who is simply asking questions about what type of animal research is being conducted at Ryerson, a threat to the physical safety of the facility and staff. However, she submits that the actions of this journalism student do not rise to the level of a threat to the physical safety of the facility and staff.

[34] In addition, the appellant submits that the requests for information referred to in Orders P-169 and P-252 were significantly broader than the information she requested. She states that has not sought the names and particulars of the Animal Care Committee members and information regarding the numbers and species of animals used by both public and commercial facilities, which were requested in those previous orders.

[35] Finally, the appellant submits that the Ontario Ministry of Agriculture and Food released a document titled, "Registered Research Facilities Ranked According to the Total Number of Impounded Cats and Dogs Used in 1987" and St. Michael's Hospital was listed as number 7, using a total of 214 pound-sourced cats and dogs. As such, she submits that UHT's claim is inaccurate and the release of the records would not be considered "new" information.

[36] In response, UHT submits that simply because no person was physically harmed, nor was there damage to the safety of the building in these two incidents, it does not mean that there was no threat or intention to provoke and entice a reaction that could lead to harassment, intimidation and/or violence.

[37] UHT states that in 1988 a request was made and the report from the Ontario Ministry of Agriculture and Food titled "Registered Research Facilities Ranked According to the Total Number of Impounded Cats and Dogs in 1987" was released. However, it points out that subsequent appeals to the IPC resulted in Orders P-169, P-252 and P-557 in which the IPC acknowledged that the release of information about specie-specific information could be reasonably expected to endanger the security of the building (facility) or the security of the vehicle used for transportation of animals. UHT submits that these orders call into question whether the document should have been released.

[38] UHT also submits:

... information about St. Michael's current use of dogs and cats, which is the information requested by the appellant, could in no way have been contained in a record from 1987. Any information created or gathered subsequently, including to answer the current request, is therefore, new information.

[39] Finally, UHT submits that the two incidents cited indicate persistent intimidating and harassing activity, planned ahead and executed in order to provoke others into actions that would threaten our staff and researchers.

[40] In response, the appellant submits that UHT's premise that knowing dogs and cats are used in research "is more likely to trigger the type of activism that often involve staff harassment, intimidation, property damage and violence" is false. She submits that, if it was true, no public discussion could take place about the use of dogs and cats in research because the mere knowledge of these animals being used in research would likely trigger the alleged "negative activism". In support of her position, the appellant points out a couple of examples of public bodies dealing with the use of pet dogs and cats in research without negative activism occurring.

[41] In addition, the appellant submits that taxpayers have the right to discuss and decide whether the sale of their lost pet dogs and cats to be used in research is acceptable. She explains that Ontarian municipalities, whose pounds are paid for by municipal tax dollars, have been requisitioned by research facilities for their dogs and cats. The appellant submits that residents in a number of municipalities have asked their municipal representatives to stop their pounds from selling their lost pet dogs and cats to research. She submits that UHT wants to stifle such debate under the guise of sections 14(1)(e) and 14(1)(i) exemptions.

[42] Finally, the appellant submits that times have changed significantly since the issuance of Orders P-169 and P-252 in 1991.

### ***Analysis and findings***

[43] UHT argues that sections 14(1)(e) and 14(1)(i) apply to exempt the responsive records.

[44] For either of these exemptions to apply, UHT must provide detailed evidence about the potential for harm. As set out by the Supreme Court of Canada in *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*,<sup>10</sup> UHT must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.<sup>11</sup>

[45] This office has previously addressed requests for information pertaining to animal experimentation and abortion services. Although they are for different information, the cases are similar to the extent that in these types of appeals, institutions are concerned

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<sup>10</sup> 2014 SCC 31 (CanLII).

<sup>11</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.



that upon disclosure of the information, members of activist groups could reasonably be expected to threaten the health or safety of individuals or commit acts of violence against individuals or facilities.

[46] In both the animal experimentation and abortion cases, information associated with individuals or facilities has been found to meet the harm test in section 14, while more generalized information which cannot be linked to specific individuals or facilities, or which would not reveal new or additional identifying information, has been considered accessible under the *Act*.<sup>12</sup>

[47] UHT relies on previous IPC orders<sup>13</sup> where this office upheld the application of one or both of sections 14(1)(e) or 14(1)(i) to the records which can generally be described as statistical reports identifying the numbers and species of animals used by each identified facility. However, Orders P-169 and P-252 can be distinguished on the basis that the requests in those orders were much broader than the one in the current appeal as the appellant in those orders wanted the numbers and species of animals used by a number of facilities. As well, in those orders there were sufficiently detailed evidence from the institution and the affected parties about the potential for harm.

[48] With respect to Order PO-3626, this order can be distinguished on the basis that the current request did not ask for the category of invasiveness to which the dogs and/or cats are subjected. In other words, the current request is not seeking disclosure of details as to the way in which the dogs and/or cats are used.

[49] I have reviewed the records and considered the arguments advanced by the parties. Although I have considered previous IPC orders pertaining to animal experimentation, each case must be decided on its own facts. In this case, I find that UHT has not provided sufficiently detailed evidence about the potential harm to establish that disclosure of the records before me could reasonably be expected to endanger the life or physical safety of a person or endanger the security of a building, vehicle, or system/procedure. As stated above, UHT's evidence consists of incidents involving a Ryerson professor and a journalism student. While these incidents are troubling, they did not involve endangerment or a clear risk of endangerment. I am mindful, however, that as noted in Order PO-3626, the issue is not whether harms have materialised in the past, but rather, there is a reasonable expectation of harms in the future.

[50] Although UHT argues that the information about the numbers and species of animals used by each facility is new information, information about the numbers and species of animals used in research/teaching/testing in Ontario is publicly available upon request. As the appellant points out, the Ontario Ministry of Agriculture, Food and Rural

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<sup>12</sup> See for example the discussion in Order PO-1747.

<sup>13</sup> Such as P-169, P-252 and PO-3626.

Affairs (OMAFRA) compiles numbers of animals used in research, including the use of both purpose-bred and random sourced dogs and cats.

[51] As the appellant argues, it is publicly known that St. Michael's Hospital used pound- sourced dogs and cats in 1987. As such, given my review of the information at issue, I am not satisfied that UHT has established that disclosure of the records at issue could reasonably be expected to result in the harms set out in sections 14(1)(e) or 14(1)(i).

[52] Finally, I note that information about UHT's animal research facility, its staff and its researchers is publicly available. UHT publicizes much of this information itself. UHT has not convinced me that disclosure of the particular information at issue in addition to the already public information, including its use of dogs and cats in 1987, could reasonably be expected to result in the harms set out in sections 14(1)(e) or 14(1)(i).

[53] Accordingly, for the reasons set out above, I find that disclosure of the records at issue could not reasonably be expected to endanger the life or physical safety of an individual or threaten the security of a building. I therefore find that the records do not qualify for exemption under sections 14(1)(e) or 14(1)(i) of the *Act*.

**C: Does the discretionary exemption at section 20 apply to the records?**

[54] Section 20 states:

A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

[55] For this exemption to apply, the institution must provide detailed evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.<sup>14</sup>

[56] An individual's subjective fear, while relevant, may not be enough to justify the exemption.<sup>15</sup>

[57] The term "individual" is not necessarily confined to a particular identified individual, and may include any member of an identifiable group or organization.<sup>16</sup>

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<sup>14</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

<sup>15</sup> Order PO-2003.

<sup>16</sup> Order PO-1817-R.

[58] UHT claims that section 20 applies to exempt the records. I note that both UHT and the appellant rely on the same arguments they made for sections 14(1)(e) and 14(1)(i) for section 20. As stated above, I found that UHT did not provide sufficiently detailed evidence about the potential harm to establish that disclosure of the records could reasonably be expected to endanger the life or physical safety of a person or endanger the security of a building, vehicle, or system/procedure. Similarly, for the reasons stated above, I do not find that UHT has provided sufficiently detailed evidence about the potential for harm under section 20. Accordingly, I find that disclosure of the records at issue could not reasonably be expected to endanger the safety or health of an individual. I therefore find that the records do not qualify for exemption under section 20 of the *Act*.

**ORDER:**

1. I order UHT to disclose the records to the appellant by **November 18, 2020** but not before **November 11, 2020**.
2. In order to verify compliance with this order, I reserve the right to require UHT to provide me with a copy of the records as disclosed to the appellant.
3. The timelines noted in order provision 1 may be extended if UHT is unable to comply in light of the current COVID-19 situation, and I remain seized to consider any resulting extension request.

Original signed by: \_\_\_\_\_  
Lan An  
Adjudicator

\_\_\_\_\_ October 14, 2020