Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4074

Appeal PA19-00069

Mohawk College of Applied Arts and Technology

October 15, 2020

Summary: The appellant submitted an access request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the college for certain records. The college granted the appellant access to them, in part. The college withheld portions of the records under the discretionary exemption in section 18(1) (economic and other interests) and the mandatory exemption in section 21(1) (personal privacy) of the *Act*. The appellant appealed the college's decision.

During the appeal, the college maintained its position that portions of the records are exempt although under section 49(a), read with section 18(1), or section 49(b) of the *Act*.

In this order, the adjudicator upholds the college's decision to withhold the records on the basis of the discretionary personal privacy exemption in section 49(b), except for one portion that does not qualify for the exemption in section 49(b) or section 49(a), in conjunction with section 18(1).

Statutes Considered: *Freedom of Information and Protection of Privacy Act,* R.S.O. 1990, c. F.31, sections 2(1) definition of "personal information," 18(1)(c), 18(1)(d), 49(a) and 49(b).

Orders and Investigation Reports Considered: Orders P-171, P-37, PO-1750 and PO-1901.

OVERVIEW:

[1] The appellant submitted an access request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to Mohawk College of Applied Arts and Technology (the

college) for copies of specified email correspondence. The appellant was a student in the college's paralegal program.

[2] The college located a number of responsive email records and granted the appellant partial access to them. The college withheld portions of the records under the discretionary exemption in section 18(1) (economic and other interests) and the mandatory exemption in section 21(1) (personal privacy) of the *Act*.

[3] The appellant appealed the college's decision.

[4] During mediation, the mediator noted that some of the records appear to contain the appellant's personal information. Accordingly, the mediator raised the possible application of the discretionary exemptions in sections 49(a) and (b) of the *Act*. The appellant also confirmed that he only seeks access to the information withheld from a particular email.

[5] The college maintained its position that portions of the email are exempt under section 49(a), read with section 18(1), or section 49(b) of the *Act*.

[6] The mediator notified the individual identified in the email (the affected party) who did not consent to the disclosure of the withheld portions of the email. The affected party is a representative of a placement host, an organization that provides work placement opportunities for students in the college's paralegal program (referred to below as the placement partner).

[7] The appeal could not be resolved at mediation and it was transferred to the adjudication stage of the appeal process where a written inquiry occurred. The college, the appellant and the affected party provided representations in the inquiry, which were shared in accordance with the IPC's *Code of Procedure* and Practice Direction 7.

[8] During the inquiry, the appellant clarified that he seeks access to the withheld information in two related emails and does not seek access to information relating to any other students.

[9] In this order, I uphold the college's decision to withhold the emails on the basis of the discretionary exemption in section 49(b), except for one portion that I order it to disclose because it does not qualify for the discretionary exemptions in section 49(b) or 49(a) (in conjunction with section 18(1)).

RECORDS:

Remaining at issue are the withheld portions of emails dated November 13, 2018 at 10:13 a.m. (Email 1) and November 13, 2018 at 4:58 p.m. (Email 2).

ISSUES:

A. Do the emails contain the "personal information" of the appellant or the affected party or both?

B. Does the discretionary exemption at section 49(b) apply to the personal information?

C. Does the discretionary exemption at section 49(a) in conjunction with the section 18(1) exemption apply to the emails?

D. Did the college exercise its discretion under section 49(b) to withhold the personal information? If so, should this office uphold the exercise of discretion?

DISCUSSION:

Issue A: Do the emails contain the "personal information" of the appellant or the affected party or both?

[10] Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution, but this right is qualified by section 49, which states in part:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > (a) where section … 18 … would apply to the disclosure of the personal information;
> >
> > (b) where the disclosure would constitute an unjustified invasion of another individual's personal privacy;

[11] Before reviewing section 49(a) and (b), I must decide whether the emails contain the appellant's personal information or that of other individuals.

[12] The college agrees and based on my review, I find that the emails contain the appellant's personal information. I am not able to characterize the nature of the appellant's personal information further due to confidentiality concerns.

[13] The college and the affected party submit that the emails also contain the affected party's personal information. The appellant disputes this and submits that the only personal information in the emails is his own. I must therefore determine whether the emails contain the affected party's personal information.[1]

[14] Relevant parts of the definition of "personal information" in section 2(1) are:

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

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[1] Initially, the college submitted that the records contained personal information of other students of the college. The appellant confirmed, as he had in the mediation, that he does not seek access to the personal information of other students and he clarified specifically which emails to which he seeks access.

…

> (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;

[15] 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.[2]

[16] Sections 2 (3) and (4) also relate to the definition of personal information and are relevant to this appeal. These sections state:

> (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.

[17] 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.[3] However, if information associated with an individual in a professional capacity reveals something of a personal nature about the individual, it may qualify as personal information.[4]

Representations

[18] The affected party submits that the emails contain their "personal information," pointing to paragraph (g) of the definition of "personal information," which is, "the views or opinion of another individual about the individual." Their position is connected to their

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[2] Order 11.

[3] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

[4] Orders P-1409, R-980015, PO-2225 and MO-2344.

argument that disclosure of the information would be a presumed unjustified invasion of personal privacy under section 21(3)(g) and they submit that the emails contain their personal recommendation about another person in both their personal and professional capacity.

[19] The affected party makes other submissions about some of the information that I am not able to disclose because it would reveal the content of the emails, except to state that they submit that the information at issue also includes opinions that are unrelated to another individual.

[20] In reliance on prior orders of this office,[5] the appellant submits that the information at issue was communicated by the affected party in a professional or business capacity and that therefore, it does not qualify as personal information. In support of this point, he submits that both the college and the affected party have conceded that the statements at issue were provided in a professional capacity and that the emails are by implication professional or official because they were integral to the college and the placement partner's respective operations.

[21] The appellant also argues that the emails contain only his personal information. In support of his position, he refers to Order P-171.

[22] In reply, the college submits that even if the affected party was acting in a business capacity, the information at issue is personal in nature. The college points to Order MO-1547 as an example of a person communicating in a professional capacity nevertheless revealing personal information within the meaning of the *Act*.

[23] Alternatively, the college submits that if I find that the information has a "professional dimension" to it, it says that the information is inextricably linked to the affected party's personal views and these must be found to constitute the affected party's personal information. The college submits that the orders relied upon by the appellant are distinguishable from the present appeal because the information at issue in this appeal has a personal dimension.

[24] In reply, the affected party re-states the position that the information at issue is personal information because of paragraph (g) of the definition of personal information in section 2(1) and section 21(3)(g) of the *Act.* The affected party submits that even if the information was provided in a professional capacity, it is possible for the affected party to be acting also in a personal capacity and to have the benefit of the protections in the *Act* for their personal information.

[25] Further, the affected party challenges the appellant's arguments that the representations of the college and the affected party indicated that the communications at issue are fundamental to their respective operations, making them professional not personal. The affected party says that the communications between the college and the placement partner are fundamental to a different objective – experimental learning – and not to their respective mandates.

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[5] P-427 and P-300.

[26] Regarding the appellant's argument that the information at issue is not the affected party's personal information, but the appellant's, the affected party disagrees and characterizes the information in general as their personal views about matters that do not involve the appellant.

Analysis and finding

[27] For clarity, I first observe that part of Email 1 contains personal information of another student. The appellant does not seek this information and it is not at issue in this appeal. It should not be disclosed and I will not discuss it further in this order.

[28] Much of the parties' representations focused on whether the affected party's views and opinions, although shared in a professional capacity, could qualify as personal information. In my view, it is well established that records created in a professional setting may also include personal information that is capable of protection under the privacy protection provisions of the *Act*[6] and I have taken this into account in my review of the records.

[29] With one exception, I find that the emails contain the affected party's personal information which includes information that reveals the affected party's views and opinions that are unrelated to the appellant. Although the emails contain some of the appellant's personal information, I find that the affected party's personal information is so inextricably intertwined with the appellant's personal information that it may not be reasonably severed because to do so would render the severed portions meaningless, would remove them from necessary context or would otherwise reveal the affected party's personal information.

[30] In reaching this conclusion, I considered the appellant's argument that information was provided in the affected party's professional capacity and that therefore it is not their personal information. Based on my review, this is a case where the information at issue reveals something of a personal nature about the affected party, even though it also relates to them in a professional, official or business capacity.[7]

[31] The exception to my finding above is a single sentence in Email 1 that I find was made by the affected party in a professional capacity and has no personal component, and is therefore not the affected party's personal information.

Summary

[32] I find that with the exception of a single sentence in Email 1, the emails contain both the appellant's and the affected party's personal information. I will refer collectively to the appellant's and the affected party's personal information in this order as the personal information.

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[6] Order MO-1547.

[7] Orders P-1409, R-980015, PO-2225 and MO-2344.

[33] I will now consider whether the personal information is exempt under section 49(b).

Issue B: Does the discretionary exemption at section 49(b) apply to the personal information?

[34] Where a record contains personal information of both the requester (the appellant in this appeal) and another individual (the affected party in this appeal), and disclosure of the information would be an "unjustified invasion" of the affected party's privacy, the college may refuse to disclose that information to the appellant. Since the section 49(b) exemption is discretionary, the college may also decide to disclose the information to the appellant.

[35] In applying the section 49(b) exemption, sections 21(2) and (3) assist in determining whether disclosure would be an unjustified invasion of personal privacy of the affected party. (Section 21(4) may also be relevant but not in the circumstances of this appeal.)

[36] In determining whether the disclosure of the personal information would be an unjustified invasion of personal privacy of the affected party under section 49(b), I will consider, and weigh, the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.[8]

Section 21(3)(g) – personal recommendations

[37] If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 49(b). The affected party argues that sections 21(3)(g) is relevant to this appeal.

[38] Section 21(3) (g) states,

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> > (g) consists of personal recommendations or evaluations, character references or personnel evaluations;

[39] The terms "personal evaluations" or "personnel evaluations" in section 21(3)(g) refer to assessments made according to measurable standards.[9] The thrust of section 21(3)(g) is to raise a presumption concerning recommendations, evaluations or references about the identified individual in question rather than evaluations, etc., by that individual.[10]

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[8] Order MO-2954.

[9] Orders PO-1756 and PO-2176.

[10] Order P-171.

Section 21(2) factors

[40] If none of the presumptions in section 21(3) apply, it is necessary to consider the factors in section 21(2). Section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.[11] The list of factors under section 21(2) is not exhaustive. The college must also consider any circumstances that are relevant, even if they are not listed under section 21(2).[12]

[41] The college and the affected party argue that factors 21(2)(f), (h), (i) and (e) apply and weigh in favour of withholding the information. The appellant argues that sections 21(2)(b), (d) and (g) apply, which he says favour disclosure. These sections state:

> Criteria re invasion of privacy
>
> (2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
>
> (b) access to the personal information may promote public health and safety;
>
> (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
>
> (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
>
> (f) the personal information is highly sensitive;
>
> (g) the personal information is unlikely to be accurate or reliable;
>
> (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
>
> (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

Representations

The college

[42] The college points to the criteria in sections 21(2) (f), (h), (i) and (e) in support of its position that the personal information ought to be withheld. Regarding section 21(2)(f) (highly sensitive), it says that the personal information is highly sensitive and, in some cases, critical information about students of the college, including the appellant. It states

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[11] Order P-239.

[12] Order P-99.

that section 21(2)(h) (supplied in confidence) is applicable because the views of one individual – who I understand to be the affected party – were provided in confidence. It also refers to factors 21(2)(i) and (e); however, these initial arguments related to possible harm that could come to students other than the appellant, none of whose information is at issue in this appeal.[13]

The affected party

[43] The affected party's main argument is that because of section 21(3)(g), disclosure would constitute a presumed unjustified invasion of the affected party's personal privacy. They state that the information "consists of personal information relating to personal recommendations, evaluations, and character references of [someone other than the affected party]." They state that such recommendations were provided in a personal and other capacity.

[44] They also submit that the information at issue is implicitly confidential within the meaning of section 21(2)(f).[14]

[45] Further, the affected party submits that there must be "open and honest" communication between the college and placement hosts so that experimental learning can be achieved. They elaborate that experimental learning requires that feedback be provided and that placement hosts must be able to provide such feedback to the college without risk that the information be shared with the students. The affected party states, "[i]f these communications can be shared with the related students, placement hosts will be unlikely to provide candid and open feedback to [the college] and will also be unlikely to take students for placements."

The appellant

[46] In response, the appellant states that section 21(3)(g) is not applicable because the personal information that would qualify under the presumption – personal recommendations – consists of his own personal information, which he is requesting. In support, he refers to Order 171.

[47] The appellant also relies on Order P-447 to argue that to qualify as a "personal evaluation" it must be associated with measureable standards. Although he is unable to review the information at issue, he submits that it may consist of "conjecture" not an assessment based on measureable criteria.

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[13] The college initially argued that sections 21(3)(d) and (g) applied to the withheld information because the information related to students' employment and educational history and an evaluation of their resumes. The college says that the personal information occurred in an "evaluative context" in which students' qualification and suitability for placement is discussed. The appellant then clarified that he did not seek information relating to other students, so I have not elaborated on the college's claims in this regard.

[14] The affected party also made arguments about information pertaining to other students, before it was clarified that the appellant does not seek this information.

[48] The appellant makes several arguments about the criteria in section 21(2) that are responsive to the other parties' representations and his own views about the applicability of the criteria.

[49] First, he addresses the college's reliance on section 21(2)(h), a criterion that favours privacy protection. Relying on Order PO-1670, he submits that for section 21(2)(h) (supplied in confidence) to apply it must be shown that both the individual supplying the information and the recipient had an expectation that it would be treated confidentially. He says, based on the representations made, that it was only the affected party who believed the information was provided in confidence. He says that because the college is subject to the access provisions of the *Act,* it is unlikely that the college could have provided any assurance of confidentiality to the affected party or any person. He also submits that the emails in question were disseminated to other members of the college administration and externally.

[50] Further, the appellant submits that because the emails appear to have been sent by the affected party on an unsolicited basis it "would not be prudent or reasonable to assume" that the information would not be further distributed.

[51] He submits that because the recipient of the email was a college employee using that employee's work email account, the information was received by the *college* not any particular individual and therefore not personal.

[52] He submits that any effort to characterize the emails as confidential is done to retroactively shield the sender and recipient from accountability for their words and actions.[15]

[53] Regarding criteria 21(2)(f) (highly sensitive), a factor favouring privacy protection, the appellant disputes that the information contains highly sensitive information and he points to Order PO-1670. The appellant's submissions on this point start from the proposition that the personal information at issue is his own, not the affected party's. He says, "[g]iven that further communications resulting from the severed information were characterized as 'concerning' and relating to the appellant, the appellant is already aware of the nature of the redacted comments" and that although he does not know what the emails say about him it "would not cause any further 'excessive personal distress' that has not already resulted from the initial dissemination of the information by the [college]."

[54] Similarly, regarding criterion 21(2)(e) (pecuniary or other harm), the appellant states that disclosure of his personal information would not result in any further harms than he has already experienced.

[55] Regarding harms that could come to the affected party – the only other party whose personal information is at stake – he submits that if disclosure of the affected party's information causes harm in the form of potential liability, there are fair processes

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[15] The appellant made representation about the applicability of professional obligations of lawyers and paralegals and of requirements under the *Occupational Heath and Safety Act* that are not relevant to the issues in this appeal.

that would unfold to adjudicate those issues such as civil actions or the complaint processes with professional regulatory bodies.

[56] The appellant submits that section 21(2)(b) (promotion of public health) is relevant and favours disclosure. He says that disclosure would further the objectives of the college's obligations under the *Occupational Health and Safety Act*[16] to address workplace harassment and violence. He submits that the emails may contain information that is "pejorative in nature, malicious, inaccurate, disparaging and highly offensive" to him and that dissemination of the information "continued and built upon" harassment against him by the college.

[57] The appellant also says that section 21(2)(d) (fair determination of rights) also favours disclosure. He submits that all of the requirements set out in Order P-312 (discussed in more detail below) have been established. He explains that he has filed a civil claim against the college and the affected party for damages for a variety of causes of action. He says that the withheld portions are "highly relevant to the claim as they form the cause of action" and "served as a base for the subsequent torts associated with the dissemination of the disparaging comments and treatment of the appellant." He says that disclosure of the severed information is integral to his right to a fair, impartial hearing of the civil claim.

[58] The appellant also submits that he is considering making a misconduct complaint about the affected party to a professional regulatory body and to report an incident under the college's Respectful Workplace Policy. He says that he has a right and a duty to make such complaints and that disclosure of the withheld information is required to prepare for the proceeding or to ensure an impartial hearing. He also submits under section 21(2)(d), that disclosure is required in order for him to assess whether he should pursue his right to seek a correction under section 47(2) of the *Act.*

[59] The appellant asserts that section 21(2)(g) (unlikely to be accurate or reliable) is relevant. Although he is not able to review the information, he submits that the information about him is malicious and inaccurate and that this fact favours disclosure.

[60] In addition to the enumerated section 21(2) criteria, the appellant submits that there are inherent fairness issues that ought to be considered. He refers to Orders P-37 and PO-1750 and submits that when the information at issue relates to accusations or complaints about an individual or when another party provides personal information to a government agency it is unfair that the person about whom the information relates is not provided with the information.

[61] The appellant also provided additional information about certain circumstances that I am not able to disclose in this order due to confidentiality concerns.

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[16] R.S.O. 1990, Chapter O.1.

The college's reply

[62] The college disputes the appellant's argument in relation to section 21(2)(h) (supplied in confidence) that it did not treat the information provided by the affected party as confidential. It affirms that it did treat the communications as confidential and regarding the appellant's argument that because the college is subject to the *Act,* it may not have been able to provide any assurance of confidentiality, it says the "existence of limited statutory processes that pierce confidentiality does not mean that the information isn't considered to be confidential." In support of this position, the college describes how the access to information framework works in general.

[63] Further, the college submits that the exchange of opinions about candidates "carries an expectation of confidentiality" and that it is required to engage in open and honest communications with organizations considering placements. The college points to the affected party's representations about the need to protect open and honest communications between the college and placement hosts.

[64] The college submits that whether the information at issue was solicited by the college has no bearing on whether it was confidential. The college states that the nature of the comments "raises the inherent understanding" that they would not be shared with the appellant. The college submits that the affected party's expectation that the communication would be confidential was *bona fide* and something that the college has supported throughout as evidenced by the position taken in this appeal. The college expressly rejects the suggestion by the appellant that it has retroactively claimed confidentiality.

[65] The college submits that the fact that the information at issue was shared with an external person does not impact the fact that the information is to be confidential from the appellant.

[66] Regarding section 21(2)(f) (highly sensitive), the college says that the affected party would suffer significant personal distress if the information is disclosed.[17]

[67] Regarding section 21(2)(e) (exposure to pecuniary or other harm) the college submits that disclosure of the information would result in harm to the affected party because of the principle that disclosure under the *Act* is considered a disclosure to the public at large.[18]

[68] The college states that the appellant's arguments about the relevance of section 21(2)(b) (promotion of public health) and the *Occupational Health and Safety Act* are not relevant to the issues before me. In any event, the college denies that it engaged in harassment of the appellant.

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[17] The college made additional representations on this issue that are not able to be repeated in this order due to confidentiality concerns.

[18] The college made additional representations on this issue that are not able to be repeated in this order due to confidentiality concerns.

[69] The college says that because the appellant has already commenced a civil action, the relevance of section 21(2)(d) (fair determination of rights) is mitigated or irrelevant. The college says that as a party to litigation, the appellant will be able to claim access to information through the litigation process.

[70] Regarding the possibility of a complaint to a professional regulatory body, the college submits that this office should not order disclosure of information on a "groundless allegation that the communications amount to harassment."

[71] The college says that there is nothing unfair about it withholding the information because it includes information that are the personal opinions and views of the affected party and for other reasons that I am not able to describe because to do so would reveal the content of the information.

[72] The college says that Order P-37 is distinguishable because the information at issue in that appeal was third party allegations about something that happened to that third party. The college submits that the information in this case is different in nature.[19]

[73] The college says that Order PO-1750 is also distinguishable. The college states that in Order PO-1750, "the fairness principle was raised in relation to potential prejudice to the requester arising from not receiving the disclosure of the factual information supplied by a third party. Here, the [affected party] did not provide independent factual information. The appellant is not prejudiced by not having access to the [affected party's] communications."

[74] Finally, regarding section 21(2)(g) (reliable and accurate), the college says that the appellant's "unfounded assertion" that the emails are "malicious and inaccurate" is not sufficient to support disclosure.

The affected party's reply

[75] In reply, the affected party re-iterates their position that the personal information at issue is their own personal views and that the presumption in section 21(3)(g) – personal recommendations or evaluations, character references or personnel evaluations – applies.

[76] In response to the appellant's arguments that for section 21(3)(g) to apply, it must be shown that the review or evaluation must be made against measurable criteria, the affected party states that they were not limited to using any particular criteria to evaluate prospective students.

[77] Regarding section 21(2)(h) (supplied in confidence) the affected party submits that the records at issue are implicitly confidential because they provide open and frank discussions and evaluations.[20]

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[19] The college made additional representations on this issue that are not able to be repeated in this order due to confidentiality concerns.

[20] The affected party also responds to the appellant's arguments about the applicability of the rules of professional conduct, which I have determined are not relevant to this appeal.

[78] Regarding section 21(2)(b) (promote public health) the affected party states that the appellant's arguments about employers' obligations under the *Occupational Health and Safety Act* are not germane to the appeal; they state that the appellant did not work at the placement partner. Nevertheless, the affected party states that the withheld information does not constitute harassment of the appellant.

[79] Regarding section 21(2)(f) (highly sensitive), the affected party reiterates that disclosure of the withheld information would cause them personal distress.[21] The affected party points to the appellant's statement that he may make a complaint about the affected party and others as evidence of the distress that may be caused.

[80] Regarding section 21(2)(e) (harms) and the appellant's general claims that he has suffered harms, the affected party disputes that the appellant has suffered harms. They submit that they, the college and the placement host will suffer harms, including those that arise due to the litigation and complaints that the appellant has made or may make.

[81] Regarding section 21(2)(d) (fair determination of rights), the affected party points out that the appellant acknowledges that he may have access to the emails in the course of already-commenced litigation. The affected party says that the appellant is not prevented or unable to make complaints to a professional regulatory body without the information. As I understand these arguments, the affected party is making the same point made by the college that the fact that there is ongoing litigation mitigates or renders the appellant's claims under section 21(2)(d) irrelevant.

[82] Regarding section 21(2)(g) (unlikely to be accurate or reliable), the affected party states that the personal information at issue, which they submit is their own, is accurate and reliable.

[83] In response to the appellant's argument that there are inherent issues of fairness at stake, the affected party disagrees and distinguishes the orders relied upon by the appellant. Regarding Order P-37, the affected party says that it is distinct from the present appeal because it dealt with an employment relationship, it involved complaints or accusations and there was risk of discipline. The affected party similarly distinguishes Order PO-1750, noting that in that appeal the information at issue was disseminated to a government body. The affected party states that this is not the case in the present appeal.

[84] Finally, the affected party states that the appellant's assertion about the contents of the email and where they were disseminated is mere speculation.

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[21] The affected party also states that it would cause distress to the college and the placement partner; however, it is only harm to a person's whose personal information is at issue who can claim a harm under section 21(2)(f).

Analysis and finding

Section 21(3)(g)

[85] I first considered whether the presumption in section 21(3)(g) applies, which is the affected party's main argument. In my view, section 21(3)(g) does not apply in this appeal. Section 21(3)(g) states,

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> (g) consists of personal recommendations or evaluations, character references or personnel evaluations

[86] The adjudicator in Order P-171 addressed the proper interpretation of paragraph (g):

> The correct interpretation of subparagraph (g) is perhaps not abundantly clear. When it is kept in mind, however, that the definition of "personal information" set out in section 2(1) of the Act [...], excludes from the definition in subparagraph (e), "the personal opinions or views of the individual except where they relate to another individual", it becomes apparent that the thrust of 21(3)(g) is to raise a presumption concerning recommendations, evaluations or references about the identified individual in question rather than evaluations, etc., by that individual. If the evaluations were by the individual and about someone else, they would not constitute "personal information" about the evaluating individual under the Act. To give the subparagraph a consistent reading, then, it appears that it is properly construed to apply to recommendations, evaluations and references about, rather than by, the identified individual in question.

[87] As described by the adjudicator in Order P-171, for presumption 21(3)(g) to apply the evaluations at issue must be *about* the individual claiming that disclosure would constitute an unjustified invasion of privacy. Regardless of whether the information qualifies as "personal recommendations or evaluations, character references or personnel evaluations," as argued by the affected party (and disputed by the appellant), the parts of the personal information that could arguably be viewed as recommendations are not *about* the affected party and therefore the presumption in paragraph (g) does not apply.

Section 21(2) Criteria

[88] I will now consider the parties' arguments about the criteria in section 21(2).

[89] I note that much of the appellant's representations on section 21(2) focused on whether disclosure of his own personal information would result in harm to him, something that he denies. I do not address these arguments because the issue before me is whether disclosure of the affected party's personal information would result in an unjustified invasion of their personal privacy.

Factors that favour disclosure

Section 21(2)(d)

[90] The appellant argues that disclosure of the information is "relevant to a fair determination of rights affecting" him, factor 21(2)(d). This office has established the following criteria to determine whether this factor applies:

1. the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
2. the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
3. the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
4. the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.[22]

[91] The appellant has commenced a lawsuit for damages for a number of torts, including defamation, satisfying criteria 1 and 2. In the context of a defamation suit, I accept that what was said about him at least has some bearing on the determination of his rights and that the information is necessary to prepare for the proceeding, satisfying criteria 3 and 4.

[92] The college says that the appellant's interests protected by this factor are mitigated because he will be able to obtain records pursuant to the civil litigation process. In my view, the existence of other alternative methods to access the records does not determine whether the criteria applies; however, it may reduce the weight to be given to it.[23]

[93] I find that the appellant has established that section 21(1)(2)(d) applies in relation to the litigation that he has pursued against the college and others. It is a factor that weighs in favour of disclosure; however, the discovery processes available to the appellant as a party to the litigation reduce the weight to be given to this factor to a degree.

[94] However, I find that the appellant's other contemplated complaints are not sufficient to establish the applicability of section 21(2)(d). In my view, a complaint to a regulatory college may have an impact on the rights of the individual complained about, but not the rights of the complainant. I acknowledge the appellant's position that as regulated professional himself, he has a duty to report such misconduct; however, I find that whether he is able to access the personal information has no bearing on that duty.

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[22] Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.) ("*Ontario (Ministry of Government Services)*").

[23] Orders MO-2980 and MO-3893.

[95] I also do not accept that the possible respectful workplace complaint meets criterion 1. As the appellant was a *student* of the college, I am unpersuaded that he would have any rights under a college policy for *its employees* that may provide rights within the meaning of section 21(2)(d).

[96] Lastly, I do not accept the appellant's argument that a possible correction request under section 47(2) of the *Act* meets the criteria in section 21(2)(d). The present appeal is part of the continuum of events leading to a possible correction request and it is, in my view, not eligible to be considered under criteria 1 of section 21(2)(d).

Section 21(2)(b)

[97] To rely on paragraph 21(2)(b), it must be shown that disclosure would promote health and safety.

[98] I have considered the appellant's arguments on section 21(2)(b) (promotion of public health) and I do not accept that it applies to the withheld personal information in this appeal. The appellant's arguments focus on the college's obligations under provincial legislation; however, his concerns and the circumstances on which he relies to make the argument relate only to him and have no broader impact on public health or raise any safety concerns. Section 21(2)(b) will be given no weight. The section 21(2)(b) criterion has not been established and I will not consider it further.

Section 21(2)(g)

[99] While criterion 21(2)(g) (unlikely to be accurate or reliable) is normally invoked to weigh against disclosure, where the information in issue is the appellant's personal information, this factor will weigh in favour of disclosure.[24] Based on my review of the information, I find that section 21(2)(g) (unlikely to be accurate or reliable) applies and I will therefore give this factor weight. In forming this conclusion, I make no finding nor should I be interpreted as commenting on the veracity of any of the information in the records.

Inherent fairness

[100] In addition to the enumerated section 21(2) criteria, the appellant submits that there are inherent fairness issues that ought to be considered. He refers to Orders P-37 and PO-1750, which the college and the affected party seek to distinguish. In previous orders, considerations which have also been found relevant in determining whether the disclosure would be an unjustified invasion of personal privacy include inherent fairness issues.[25]

[101] In my view, Order P-37 does not stand for the proposition urged by the appellant. The passage to which he refers was commentary and context given by the Commissioner to situate the issues in the appeal and is not relevant to the issues before me.

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[24] Order PO-3458.

[25] Orders M-82, PO-1731, PO-1750, PO-1767 and P-1014.

[102] I am persuaded that the fairness issue described in Order PO-1750 is relevant to the present appeal and I will give this principle consideration when weighing the relevant factors. In Order PO-1750, the adjudicator stated,

> I have considered the other factors in section 21(2) and find that none apply. However, in the circumstances of this appeal, the fact that the information is actually about the appellant is a relevant consideration. In this regard, I find that there is an inherent fairness issue in circumstances where one individual provides detailed personal information about another individual to a government body. In my view, this goes to the autonomy of the individual and his ability to control the dissemination and use of his own personal information, and is reflected in section 1 (b) of the Act as one of the fundamental purposes of the Act.

[103] The information at issue in Order PO-1750 was provided by a third party about the requester to the Family Responsibility Office for its use in making a determination about the requester (then the appellant). Unlike the present appeal, the information was provided in a structured process known to the appellant.

[104] The college submits that Order PO-1750 is distinguishable because the affected party had provided "factual" information to the Family Responsibility Office. In the present appeal, the college says that the affected party did not provide this type of information and that the appellant would suffer no prejudice not having access to it.

[105] While the circumstances are different, I find that the underlying principle of Order PO-1750 is applicable to the present appeal. To protect confidentiality, I am limited in how I can characterize the information; however, based on my review, inherent principles of fairness weigh in favour of disclosure.

[106] Before leaving this topic, I acknowledge that the affected party argued that Order PO-1750 should be distinguished because no information was provided to a "government." The reference to government in PO-1750 is a generic reference to an institution governed by the *Act*, of which the college is one and so I reject this argument.

Factors that favour privacy protection

Section 21(2)(h)

[107] I will now consider section 21(2)(h) (information supplied in confidence). Section 21(2)(h) applies if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. Section 21(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.[26]

[108] Based on the representations and my review, I find that the information at issue was provided to the college in confidence and that the expectation of privacy was shared

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[26] Order PO-1670.

by both the college and the affected party. I have considered but remain unpersuaded by the appellant's arguments that the college did not intend to treat the information confidentially or that it could not do so because it is bound by the *Act.* As argued by the college, the *Act* provides for various exemptions that may have the effect of maintaining confidentiality. In summary, section 21(2)(h) is established and it weighs in favour of privacy protection.

Section 21(2)(f)

[109] To be considered highly sensitive within the meaning of section 21(2)(f), there must be a reasonable expectation of significant personal distress if the information is disclosed.[27] It is not sufficient that disclosure may cause some level of embarrassment.[28]

[110] I accept the evidence of the affected party that they would suffer significant personal distress if the information at issue was disclosed. My ability to describe my assessment of this factor is limited because to do so would reveal the content of the records.

Section 21(2)(e)

[111] In order for section 21(2)(e) to apply, the evidence must demonstrate that the damage or harm envisioned by the clause is present or foreseeable, and that this damage or harm would be "unfair" to the individual involved.

[112] The college and the affected party vigorously argue that disclosure of the emails would expose the affected party unfairly to pecuniary or other harm within the meaning of section 21(2)(e). The college and the affected party point to the outstanding litigation and the risk of possible other complaints. In my view, the risk of other complaints or litigation is not sufficient to establish the criterion in section 21(2)(e), particularly without evidence of unfairness.[29] I agree with the appellant's representations that a risk of liability is not sufficient to establish this factor; furthermore litigation and other complaint processes have procedural rules that address concerns of fairness and harm that may arise in specific relation to those processes.

[113] The college also submits that the affected party may experience non-pecuniary harm. In order for section 21(2)(e) to apply, the evidence must demonstrate that the damage or harm envisioned by the clause is present or foreseeable, and that this damage or harm would be "unfair" to the individual involved. While the college makes a compelling case, I am not able to conclude that I have sufficient evidence of such harm before me to conclude that section 21(2)(e) applies. In my view, the college's compelling arguments on this point are extensions of their arguments under section 21(2)(h).

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[27] Orders PO-2518, PO-2617, MO-2262 and MO-2344.

[28] Order P-434

[29] Order P-1014.

Conclusion

[114] The personal information includes the affected party's views and opinions that are unrelated to the appellant. In consideration of the nature of the information and the affected party's expectation of confidentiality, it is my view that factors in sections 21(2)(f) and (h) weigh heavily in favour of privacy protection.

[115] While disclosure of the information may be relevant to the fair determination of the appellant's rights (section 21(2)(d)), disclosure is not necessary for the appellant to assert those rights. On the basis of my review of the records, I find that the interests protected by this factor are not sufficient to overcome the factors that weigh in favour of privacy protection.

[116] The inherent issue of fairness and section 21(2)(g) weigh in favour of disclosure, but when viewed carefully against the nature of the information at issue and the factors that weigh in favour of privacy protection, I find that the latter interests prevail and are more compelling.

[117] In my view, the factors that weigh in favour of privacy protection outweigh the factors that favour disclosure of the personal information.

[118] In summary, I find that the personal information is exempt pursuant to the discretionary exemption in section 49(b). Subject to my review of the college's exercise of discretion at Issue D below, I will uphold the college's decision to withhold the personal information.

[119] I will now consider the college's alternative argument that section 49(a) in conjunction with the section 18(1) exemption applies to the emails.[30]

Issue C: Does the discretionary exemption at section 49(a) in conjunction with the section 18(1) exemption apply to the emails?

[120] The college relies on section 49(a) in conjunction with section 18(1)(c) and (d) (economic and other interests) to withhold the emails in their entirety.

[121] Sections 18(1)(c) and (d) state:

> A head may refuse to disclose a record that contains,
>
> > (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;

[30] Although it is only necessary to consider the section 49(a)/18(1) claims in relation to the single sentence that may be severed from the personal information, I have considered the college's complete arguments, which were made in relation to the entirety of the records.

> (d) information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario;

[122] The purpose of section 18 is to protect certain economic interests of institutions. Generally, it is intended to exempt commercially valuable information of institutions to the same extent that similar information of non-governmental organizations is protected under the *Act*.[31]

[123] For sections 18(1)(c) or (d) to apply, the college 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.[32]

[124] The purpose of section 18(1)(c) is to protect the ability of institutions to earn money in the marketplace. This exemption recognizes that institutions sometimes have economic interests and compete for business with other public or private sector entities, and it provides discretion to refuse disclosure of information on the basis of a reasonable expectation of prejudice to these economic interests or competitive positions.[33]

[125] This exemption does not require the college to establish that the information in the record belongs to the college, that it falls within any particular category or type of information, or that it has intrinsic monetary value. The exemption requires only that disclosure of the information could reasonably be expected to prejudice the college's economic interests or competitive position.[34]

[126] Section 18(1)(d) is intended to protect the broader economic interests of Ontarians.[35]

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[31] *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy, 1980* (The Williams Commission Report), Toronto: Queen's Printer, 1980.

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

[33] Orders P-1190 and MO-2233.

[34] Orders PO-2014-I, PO-2632, PO-2758, MO-2233 and MO-2363.

[35] Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] 118 O.A.C. 108, [1999] O.J. No. 484 (C.A.), leave to appeal to Supreme Court of Canada refused (January 20, 2000), Doc. 27191 (S.C.C.); see also Order MO-2233.

Representations

The college

[127] The college submits that although the appellant has a general right of access to his own personal information, disclosure of the emails would result in harm to the college. It explains how the field placement program is situated within its paralegal licensing program offered by the college. It states that colleges wishing to offer a paralegal education program must include 120 hours of field placement or practicum work. It explains that the college is one of "just two dozen" public institutions licensed to provide an accredited paralegal education program.

[128] It submits that section 18(1)(c) allows institutions to protect information that would harm the economic interests or competitive position of institutions. It says that the exemption protects parties involved from gaining any advantages or disadvantages from the disclosure of information.

[129] The college points to Order PO-1901 that, it says, is an example of an order where this office held that disclosure of information that would seriously undermine the institution's position with any potential third parties qualifies for the exemption.

[130] The college says that the risk of harm in disclosing the emails is the risk that placement partners will withdraw from, or decline to participate in, the college placement program. It says that the success and viability of the student placement program, and the paralegal program as a whole, depends on the employers who are willing to participate and take on students.

[131] It explains that the risk (that placement partners will withdraw) results from the prospect of having private communications about placement arrangements disclosed that would reveal a discussion of the suitability of students, privately-communicated details about the placement partner's organizational needs and frank feedback from a valued placement partner. The college says that another harm arises from the unique context of the placement program and that the disclosure of private communications about arrangements for the placement program can reasonably be expected to harm the partner's interest in retaining the placement student after the placement.

[132] The college submits that I must only be satisfied that there is a direct link between the disclosure of the information in question and economic harm to the college – the prospect that placement partners will withdrawn from or decline to participate in the placement program. The college submits that in this case, the harm has crystallized because the placement partner in question "has stated that they will no longer be participating in the placement program." The college says that this is a critical blow to the program and its financial interests. It says that this is clear evidence that the college's economic interest and competitive position is jeopardized by the prospect of having private communications disclosed.

[133] Regarding section 18(d) the college submits that disclosure of the information at issue could also reasonably be expected to be injurious to the financial interests of the government of Ontario or the ability of the government of Ontario to manage the economy

of Ontario. The college states that it must provide detailed and convincing evidence that disclosure could reasonably be expected to be injurious to the government, to manage the economy of Ontario or, as in this case, where the integrity of a government system could be jeopardized.

[134] The college says that licensing of paralegals is strictly regulated, that the government has made the decision to require paralegal licensing. It also describes the benefits of the placement program to its paralegal students and how it makes them more viable to join the workforce in their chosen profession.

[135] Against this backdrop, the college says that "the mere prospect of having the private communications at issue in this appeal disclosed has resulted in the affected placement partner withdrawing from its arrangement with" the college. It says that the decision to withdraw exemplifies harm to the government-implemented licensing system. It explains that the placement partner in question had typically taken on a student per year and that it had even hired a student full-time after placement.

[136] In sum, it says that the placement partner's decision to withdraw from the program is "clear evidence" that the disclosure of such private communications can reasonably be expected to be injurious to the financial interests of the government of Ontario, which will have fewer paralegal ready to join the workforce upon being licensed, as well as the ability of the government of Ontario to manage regulated paralegals.

The affected party

[137] The affected party agrees with the college's submissions on this issue. It elaborates that if the college does not have placement hosts for students to complete their placement, students will go to other schools. The affected party confirms that as a result of this appeal, the placement partner will no longer be taking placement students from the college.

The appellant

[138] The appellant disputes that sections 18(1)(c) or (d) apply to the emails on the basis that the college has failed to meet the evidentiary burden necessary to demonstrate the harms described in the sections.

[139] The appellant points to *Ontario (Community Safety and Correctional Services)*[36], a Supreme Court of Canada decision that considered the language, "could reasonably be expected to", the operative language in sections 18(1)(c) and (d). He notes that the Supreme Court described the burden as follows: "The institution must provide evidence 'well beyond' or 'considerably above' a mere possibility of harm…".

[140] The appellant says that the college and the affected party have over-stated the possible harms and that the actual risk of harm is remote and does not come close to meeting the test established by the Supreme Court of Canada.

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[36] Cited above.

[141] The appellant disputes the notion that disclosure would result in other placement partners leaving the placement program. He says that if the representatives of the placement partners are engaging in courteous communications which are a requirement of licensed paralegals or lawyers, there should be no concern on the part of other placement partners that their communications may be disclosed.

[142] He states further that because communications about students between the college and the placement hosts should be evaluative, there is an expectation that such information, the personal information of the students, would be passed on to the student. The appellant rejects the notion that underpins the college's representations that students should not be able to access the college's evaluations of them.

[143] The appellant states that Order PO-1901 is distinguishable from the appeal. It says that the harm at stake in Order PO-1901 – confidential price negotiation information – was direct and rationally substantiated, which he says is not the case in the present appeal.

[144] The appellant states that the college has failed to take into account that there are benefits to placement holders of having students – that they receive work at no cost and an opportunity to assess a student's competencies, work habits and ethics.

[145] The appellant points out that the college has disclosed some of the information provided by the affected party and that information appears to disclose that placement host's operational needs. The appellant states that this undermines the college's arguments that disclosure of operational needs of a placement partner results in harm.

[146] The appellant says that the placement partner's decision to withdraw from the program is isolated to this case and has likely occurred due to other reasons. He submits that little or no weight should be given to this evidence.

The college and affected party's replies

[147] In reply, the college submits that its evidence meets the "could reasonably be expected to" threshold. The college says that the affected party has stated that the prospect of the emails being disclosed led to the decision to withdraw from the program. The college says this is tangible, concrete evidence of harm.

[148] Further, the college says that it is "reasonable to expect" that other placement partners might act similarly. It says that the decision that this office renders in this appeal will have a significant impact of experimental learning placement partners.

[149] In reply on this issue, the affected party re-states that it has decided to withdraw as a placement host.

Analysis and finding

[150] Sections 18(1)(c) and (d) are harms-based exemptions under which the college bears the onus of demonstrating a reasonable expectation of harm with disclosure. To

meet this burden, the college must provide evidence “well beyond” or “considerably above” a mere possibility of harm.[37]

[151] Under section 18(1)(c), the college (supported by the affected party) submits not only that disclosure would cause harm but that this harm has already crystallized in part because a placement partner withdrew from the program. It submits that if disclosure is ordered, other placement partners will similarly withdraw and that such an outcome would negatively impact its ability to compete with other similar providers.

[152] The college frames the harm as a risk that other partners will withdraw, and it argues that I consider the prospect that placement partners will withdraw or decline to participate in the program. However, the college has offered no evidence from any other placement partners to support its contentions.

[153] I have considered Order PO-1901, relied on by the college. While I agree with the college’s summary of the proposition for which that order stands, the circumstances of that appeal are different than the one before me. Specifically, in Order PO-1901 the institution seeking to rely on the section 18(1)(c) (and (d)) exemption provided detailed evidence in relation to the particular information at issue about its value and how its disclosure would harm the institution. Order PO-1901 dealt with confidential information about the value of certain properties; the institution provided evidence, for example, to validate that the information remained current in support of its contention that disclosure would harm its bargaining and negotiating ability.

[154] The college has not provided any similar information in this case. At best, it asks that I infer that other placement partners would take a position similar to the placement partner in this appeal without providing any evidence to support that inference. While I accept that the placement partner at issue in this appeal has decided to withdraw – although the decision to withdraw has in fact occurred regardless of any disclosure – I have insufficient evidence before me to understand the variety of considerations that another placement partner may bring to bear on such a decision.

[155] The college and affected party[38] submit that the outcome of this appeal will have a significant impact of experimental learning placement partners. Without further evidence, I am not able to accept this conclusion. The college and other similar educational institutions have been subject to the *Act* for more than two decades. Despite this, I have not been made aware of any prior order that supports its contention.

[156] In my view, the college has not established that section 18(1)(c) applies.

[157] Under section 18(1)(d), the college says that disclosure of the information at issue could also reasonably be expected to be injurious to the financial interests of the government of Ontario or the ability of the government of Ontario to manage the economy of Ontario.

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[37] *Ontario (Community Safety and Correctional Services)*, cited above.

[38] These arguments of the affected party were made in its representations regarding section 49(b).

[158] Based only on the decision of the particular placement partner to withdraw from its program in this case, the college urges me to conclude that other placement partners would act similarly and, as I understand the argument, accordingly cause significant harm to the paralegal profession by reducing the number of qualifying programs available to individuals seeking to enter the profession. The college extrapolates that this harm – to the paralegal profession – is in fact harm to the government of Ontario because the government has chosen to regulate that profession.

[159] In my view, the college's arguments under section 18(1)(d) are an extension of its arguments under section 18(1)(c). The college has not provided sufficient evidence on the part of the government of Ontario, nor any other similar providers who may have been in a position to support the college's contention. Rather, it asks me to draw inferences that in my view are not able to be drawn because of the variety of other factors that students and placement partners my take into account when selecting or designing a paralegal program.

[160] I find that the college has not established that section 18(1)(d) applies to the emails.

[161] In summary, I do not uphold the college's decision to withhold the emails on the basis of section 18(1)(c) or (d). Accordingly, because section 18(1) does not apply and no other discretionary exemptions have been claimed, I will order the college to disclose the single sentence that may be severed from the personal information.

Issue D: Did the college exercise its discretion under 49(b) to withhold the personal information? If so, should this office uphold the exercise of discretion?

[162] The section 49(b) exemption is discretionary, and permits 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.

[163] The issue in this section is whether the college exercised its discretion to withhold the personal information even though it has the discretion to disclose it regardless of the fact that the information qualifies for the section 49(b) exemption.

[164] On review, I may find that the college 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, or it fails to take into account relevant considerations. While this office may send the matter back to the institution for an exercise of discretion based on proper considerations,[39] it may not substitute its own discretion for that of the institution.[40]

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[39] Order MO-1573.

[40] Section 54(2).

[165] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:[41]

- the purposes of the *Act*, including the principles that
  - information should be available to the public
  - individuals should have a right of access to their own personal information
  - exemptions from the right of access should be limited and specific
  - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information.

[166] The college says that it exercised its discretion in good faith. It says that in relation to its section 49(b) claim, the primary consideration it had was the protection of the personal information of the affected party (and others, initially). It denies that it acted in bad faith and it indicates that it weighed the appellant's right to access his own information against the personal privacy protection. Although the appellant made significant representations, as outlined throughout, regarding the college's exemption claims, he did not make any representations on the issue of the college's exercise of discretion.

[167] I uphold the college's exercise of discretion. I find that the college has not acted in bad faith nor for any improper considerations. It was appropriate for the college to concern itself with the privacy protection of the affected party (and others) when deciding to apply section 49(b).

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

ORDER:

1. I uphold the college's decision to withhold the personal information on the basis that it qualifies for exemption under section 49(b).

2. I order the college to disclose the single sentence to the appellant by **November 30, 2020** but not before **November 16, 2020**. For certainty, the single sentence is highlighted on the copy of the records provided to the college with this order.

3. In order to verify compliance with this order, I reserve the right to require the college to provide me with a copy of the information I have ordered disclosed in order provision 2.

4. The timelines in this order may be extended if the college is unable to comply in light of the current COVID-19 situation. I remain seized of the appeal to address any such requests.

Original signed by: October 15, 2020

Valerie Jepson
Adjudicator