

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4280

Appeal PA20-00074

York University

July 20, 2022

Summary: The appellant, a former university graduate student, submitted an access request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to York University for academic-related records about herself. The university issued an access decision in which it denied access to the records in part, under the discretionary exemptions in section 49(a) (discretion to refuse requester's own personal information, read with 13(1) (advice or recommendations) and with 19 (solicitor-client privilege), and section 49(b) (personal privacy). The university also withheld some information on the basis that it was not responsive to the appellant's request.

The appellant appealed the university's decision to deny access to the records in part to the Information and Privacy Commissioner of Ontario. She also claimed that the university had not conducted a reasonable search for responsive records and that the university should provide her with a legible copy of one page of one record.

In this order, the adjudicator upholds the university's decision that certain information in the records is not responsive to the request. She upholds the university's decision under section 49(b) with respect to one sentence in one record and upholds its decision regarding sections 49(a) with 19 with respect to the responsive information at issue in two records. She also upholds the university's decision not to provide the appellant with another copy of the page that the appellant asserted was illegible.

The adjudicator does not uphold the university's application of sections 49(a) with 13 to the responsive information for which this has been claimed and she orders this information to be disclosed.

Lastly, the adjudicator orders the university to conduct another search for responsive records and to issue an access decision with respect to any additional records it finds.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of "personal information"), 13(1), 13(2)(a), 13(2)(l), 19, 21(3)(d), 24, 30, 48(4), 49(a), and 49(b).

Orders Considered: Order MO-2106.

OVERVIEW:

[1] This order concerns academic-related records about the appellant, who was a university graduate student.

[2] The appellant submitted an access request under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) to York University (York or the university) for records relating to her. I have reproduced the appellant's entire clarified request¹ in the Appendix to this order. Generally speaking, the appellant seeks records in her student file, as well as communications about her between university personnel, or between the university and certain external bodies.

[3] The university located responsive records and issued a decision granting the appellant partial access to them. The university withheld some of the records under the discretionary exemptions in sections 49(a) of the *Act* (discretion to refuse requester's own personal information), read with 13(1) (advice or recommendations) and 19 (solicitor-client privilege). It also withheld records under the discretionary 49(b) (personal privacy) exemption. The university also withheld some information on the basis that it was not responsive to the appellant's request. The university provided the appellant with an index of records.

[4] The appellant appealed the university's decision to the Information and Privacy Commissioner of Ontario (the IPC) and a mediator was appointed to attempt resolution of this appeal.

[5] During mediation, the appellant confirmed her interest in pursuing access to the information withheld from disclosure. In addition, the appellant claimed that additional responsive records ought to exist, thereby raising the issue of reasonable search.

[6] Also during mediation, the appellant raised the issue of legibility of one page of a record; specifically, the appellant claims the university is required to provide her with a more legible version of page 13 of record 127. The university advised the appellant that it did not have a more legible version of page 13 of record 127 because it is a copy of a record from another university. The appellant was not satisfied with the university's

¹ The university and the appellant worked together to clarify the appellant's original request.

response and confirmed her interest in pursuing this issue at adjudication.

[7] The university issued a revised access decision disclosing an additional seven records, in full, and 31 records, in part, to the appellant. The university also advised the appellant that no further responsive records exist. In addition, the university provided the appellant with an index of records with an explanation regarding the information identified as not responsive. The appellant confirmed her interest in pursuing access to some of the records withheld from disclosure.

[8] No further mediation was possible and the appeal was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry into the issues under appeal. The former adjudicator in this appeal began the inquiry by inviting the university to make submissions in response to a Notice of Inquiry, which summarized the facts and issues under appeal. Despite a number of extensions being granted, the university did not submit representations. The former adjudicator then decided to invite the appellant to submit representations in the absence of the university's representations to avoid further delay in the inquiry.

[9] The appellant submitted representations. The former adjudicator decided to give the university another opportunity to submit representations in response to the Notice of Inquiry and the appellant's representations, which were shared in accordance with *Practice Direction Number 7* of the IPC's *Code of Procedure*. The university did not submit representations despite multiple follow-ups by the IPC and granting of extensions to provide representations.

[10] The previous adjudicator also notified 11 affected persons of the appeal and invited them to submit representations on the application of the personal privacy exemption in section 49(b) to their personal information in the records. Three affected persons responded and provided their consent to disclosure of their information.² The remaining eight affected persons did not respond.³

[11] The file was then transferred to me to continue the adjudication of the appeal. I have reviewed the complete file, including the representations, and I do not need any further information in order to render a decision.

[12] Under section 53 of the *Act*, where an institution refuses access to a record or part of a record, as is the case here with the university, the burden of proof that the record or part of the record falls within one of the specified exemptions in the *Act* lies upon the institution. I note this here because the university did not provide representations in support of its decision to apply exemptions to the records.

² Other than the personal or cell phone numbers of two of these individuals in the records.

³ As the three affected persons' information in the records is intertwined with that of the other eight affected persons, it cannot be severed and disclosed separately. Therefore, I will consider the information of all of the affected persons in arriving at my determinations in this order.

[13] In this order, I uphold the university's decision that certain information identified as non-responsive is not reasonably related to the request and find that additional information in the records is not responsive to the request.

[14] I also uphold the university's decision under section 49(b) with respect to one sentence in one record and under sections 49(a) with 19 with respect to the responsive information in two records.

[15] Furthermore, I uphold the university's decision that it does not need to provide the appellant with another copy of the page of the records that the appellant asserts is illegible.

[16] However, I do not uphold the university's application of sections 49(a) with 13(1) and I order this information to be disclosed to the appellant.

[17] Lastly, I also order the university to conduct another search for responsive records and to issue an access decision with respect to any additional records it finds.

RECORDS:

[18] The records at issue are described in the following index of records:

No.	Description	University's Decision	Portions at issue
59	Emails re appellant dated 2018.11.07 to 2018.11.08	Withheld in part under section 49(b)	Page 2 of the record
61	Emails re appellant dated 2018.11.07 to 2018.11.08	Withheld in part under section 49(a)/19	All withheld information under section 49(a)/19
62	Emails re appellant and university policy for appeals and petitions dated 2018.11.28 to 2018.11.29	Withheld in part under sections 49(a)/19 and 49(b)	Page 1 for sections 49(a)/19 Page 3 for section 49(b)
70	Emails re contacting re student dated 2018.01.19 to 2018.01.26	Withhold in part under sections 49(a)/13(1) and 49(b)	Pages 1 and 3 for sections 49(a)/13(1) Pages 4 and 6 for section 49(b)
72	Emails re Practicum Evaluation for appellant	Withhold in part under	All withheld information under sections

	dated 2018.01.31 to 2018.02.01	sections 49(a)/13(1)	49(a)/13(1)
73	Emails re update on appellant dated 2018.02.01	Withhold in part under section 49(a)/13(1)	All withheld information under sections 49(a)/13(1)
75	Emails re Follow up re appellant dated 2018.02.02	Withhold in part under sections 49(a)/13(1) and 49(b)	Page 2 for sections 49(a)/13(1) Page 1 for section 49(b)
77	Emails re appellant dated 2018.02.14	Withhold in part under section 49(a)/13(1)	All withheld information under section 49(a)/13(1)
82	Emails re Meeting re appellant dated 2018.06.07	Withhold in part under section 49(a)/13(1) and as not responsive	All withheld information under section 49(a)/13(1) and as being not responsive
83	Email re communication and [evaluations] re appellant plus three attachments dated 2018.06.07	Withhold in part under sections 49(a)/13(1) and 49(b)	Pages 4, 5, 7, 8, 9, 10, and 13 for sections 49(a)/13(1) Pages 2 and 12 for section 49(b)
84	Emails re update re appellant dated 2018.06.07 to 2018.06.09	Withhold in part under sections 49(a)/13(1) and 49(b) and as not responsive	All withheld information under section 49(a)/13(1) and as being not responsive Page 1 for section 49(b)
85	Email re appellant dated 2018.06.26	Withhold in part under section 49(a)/13(1)	All withheld information under section 49(a)/13(1)
86	Emails re Year End Letter dated 2018.07.05 to 2018.07.07	Withhold in part under section 49(a)/13(1)	All withheld information under section 49(a)/13(1)
88	Emails re Meeting with appellant dated	Withhold in part under sections 49(a)/13(1)	All withheld information under section

	2018.07.10	and 49(b)	49(a)/13(1) Page 1 for section 49(b)
89	Emails dated 2012.07.12 to 2019.07.19	Withhold in part under sections 49(a)/13(1) and 49(b)	All withheld information under section 49(a)/13(1) Page 1 for section 49(b)
92	Emails re appellant year-end evaluation dated 2018.07.31	Withhold in part under section 49(a)/13(1)	All withheld information under section 49(a)/13(1)
94	Emails re request to call you to discuss appellant dated 2018.08.23	Withhold in part under sections 49(a)/13(1)	All withheld information under section 49(a)/13(1)
95	Emails re appellant dated 2018.06.26 to 2018.08.30	Withhold in part under sections 49(a)/13(1)	All withheld information under section 49(a)/13(1)
97	Emails re appellant and YUPC dated 2018.09.12	Withhold in part under sections 49(a)/13(1) and 49(b) and as not responsive	All withheld information under section 49(a)/13(1) and as being not responsive Page 1 for section 49(b)
98	Emails re Special Clinical area meeting Monday cancelled dated 2018.09.16 to 2018.09.17	Withhold in part under section 49(a)/13(1) and as not responsive	All withheld information under section 49(a)/13(1) and as being not responsive
101	Emails re scheduling an appointment with appellant dated 2018.09.25	Withhold in part under section 49(a)/13(1) and as not responsive	All withheld information under section 49(a)/13(1) and as being not responsive
103	Email dated 2018.09.25	Withhold in part under section 49(a)/13(1)	All withheld information under section 49(a)/13(1)
104	Email re appellant dated	Withhold in part under	All withheld information under section

	2018.06.08	section 49(a)/13(1)	49(a)/13(1)
107	Email re area meeting dated 2018.09.17	Withhold in part under sections 49(a)/13(1) and 49(b)	All withheld information under section 49(a)/13(1) Page 1 for section 49(b)
108	Email re residual from our special meeting on Monday dated 2018.09.19	Withhold in part under sections 49(a)/13(1) and 49(b)	All withheld information under section 49(a)/13(1) Page 1 for section 49(b)
109	Email re appellant feedback	Withhold in part under section 49(a)/13(1)	Withhold in part under section 49(a)/13(1)
115	Emails re meeting with appellant dated 2018.10.03	Withhold in part under section 49(a)/13(1)	All withheld information under section 49(a)/13(1)
121	Email re update on appellant dated 2018.10.25	Withhold in part under section 49(a)/13(1)	All withheld information under section 49(a)/13(1)
127	Graduate Applicant Summary Profile	Release in full; appellant claims page 13 is illegible	Page 13 is illegible

ISSUES:

- A. What is the scope of the request? What records are responsive to the request?
- B. Do the records contain personal information as defined in section 2(1) and, if so, to whom does it relate?
- C. Does the discretionary exemption at section 49(a) (discretion to refuse requester's personal information), read with section 13(1) (advice or recommendations) apply to the information at issue?
- D. Does the discretionary exemption at section 49(a) read with section 19 (solicitor-client privilege) apply to the information at issue?
- E. Does the discretionary exemption at section 49(b) (personal privacy) apply to the information at issue?

- F. Did the university conduct a reasonable search for responsive records?
- G. Is the university required to provide the appellant with a more legible copy of page 13 of record 127?

DISCUSSION:

Issue A: What is the scope of the request? What records are responsive to the request?

[19] The appellant's request sought records relating to her position in a graduate program at the university, as more particularly described in the Appendix to this order. When it disclosed records to the appellant the university marked several portions of the records as "non-responsive." The issue before me is whether the university was correct, or whether the information is responsive and should have been disclosed (absent the applicability of exemptions).

[20] Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;
 - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;

. . .

- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[21] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.⁴

[22] To be considered responsive to the request, records must "reasonably relate" to the request.⁵

⁴ Orders P-134 and P-880.

⁵ Orders P-880 and PO-2661.

Findings

[23] As I noted above, when the university disclosed records to the appellant it marked several withheld portions of the records as “non-responsive.”

[24] The university did not provide representations during the adjudication of this appeal; however, it did provide the appellant with an index of records during mediation. This index of records included the university’s explanation as to why it marked information as non-responsive.

[25] The appellant’s position is that the information marked as non-responsive by the university in records 82, 84, 97, 98 and 101 is responsive to her request, as it relates to her. She bases this claim on the disclosed information in each of these records.

[26] I will consider each of these records separately, and, in doing so, I will take into account all of the information before me, including the university’s comments on the responsiveness of the information at issue in its index of records for records 82, 84, 97, 98 and 101, along with the appellant’s submissions.

Record 82

[27] The university’s position is that the portions of record 82 that are marked as non-responsive relate to an internal administrative review of the Faculty of Graduate Studies Calendar provided to students in 2018-2019 initiated by the Coordinator, Faculty Governance, and are not reasonably related to the request.

[28] Record 82 is a six-page email chain among a number of university staff. The initiating email is about the calendar referred to by the university. This is followed by a number of emails discussing the contents of this calendar. These emails are not about the appellant and are, therefore, not responsive to the request.

[29] Halfway through record 82, one of the university staff in the email chain stops emailing about the calendar and asks another university staff member about the appellant. The remainder of this record is about the appellant and has been disclosed to her, other than two paragraphs that the university has withheld on the basis of section 49(a) with section 13(1). I agree with the university that the exchange up to this point is not responsive to her request.

Record 84

[30] Record 84 consists of three pages. The university’s position is that there is one non-responsive paragraph of this three-page record that relates to the progress of another student, and not to the appellant.

[31] Most of this record has been withheld by reason of section 49(a) with section 13(1). I agree with the university that the paragraph identified by the university as non-

responsive relates to another student and is unrelated to the appellant's request. Therefore, I find that the paragraph of the record marked as non-responsive in record 84 is not responsive to the request.

Record 97

[32] The university has marked portions of record 97 as non-responsive. It says that these portions relate to a personal, complimentary closing of an email and not to the request.

[33] Most of record 97 has been withheld by reason of section 49(a) with section 13(1). I agree with the university that the portion of record 97 that is marked as non-responsive relates to a personal, complimentary closing of an email, specifically a personal exchange between two individuals unrelated to the appellant and her request. Therefore, I find that the portion of the record marked as non-responsive in record 97 is not responsive to the request.

Record 98

[34] The university has marked portions of record 98 as non-responsive because it says they relate to a university-wide York University Faculty Association (YUFA) General Meeting and not to the request.

[35] Portions of this two-page record have been withheld by reason of section 49(a) with section 13(1). Three small sentences have been withheld as non-responsive. I agree with the university that the portions marked as non-responsive of this record relate to YUFA and not to the appellant's request. Therefore, I find that these portions are not reasonably related to the request.

Record 101

[36] Two portions of this two-page record have been withheld by reason of section 49(a) with section 13(1).⁶ The university's position is that a one sentence portion of record 101 is non-responsive as it relates to internal administrative duties of a specific professor and not to the request.

[37] I agree with the university that the one sentence portion identified as non-responsive relates to internal administrative duties of a specific professor and is not responsive to the request.

Conclusion about records 82, 84, 97, 98 and 101

[38] I agree with the university that the portions of records 82, 84, 97, 98 and 101 that it has marked as non-responsive to the request are not reasonably related to the

⁶ Page 2 of record 101 is blank.

appellant's request, which seeks records about the appellant. These portions are entirely unrelated to the appellant. I will therefore uphold the university's decision to withhold the portions of records 82, 84, 97, 98 and 101 that it has marked as non-responsive.

[39] The remainder of the information that has been withheld from Records 82, 84, 97, 98 and 101 has been withheld by reason of section 49(a) with section 13(1). I will consider below at Issue C whether these portions are exempt under these sections.

Records 59, 61, 70, 75, 83, 88, 97, 107 and 108

[40] Based on my review of the records, I find that several other records contain information that is entirely unrelated to the appellant and is, therefore, not responsive to her request. This information concerns individuals other than the appellant and does not contain information that is reasonably related to her request.

[41] The non-responsive information includes the personal phone numbers of the other individuals in the records. It also includes information about personal vacation, marital status, personal appointments, and other personal matters relating to other individuals in the records, which is found on:

- page 2 of record 59 (the first set of bracketed information)
- page 2 of record 61 (the first set of bracketed information)
- page 3 of record 62
- pages 4 and 6 of record 70
- page 1 of record 75
- pages 2 and 12 of record 83
- page 1 of record 88
- the first paragraph of the second severance on page 1 of record 97
- the last sentence of the first severance on page 1 of record 107
- the last severance on page 1 of record 108.

Conclusion on responsiveness

[42] I will order all of the information that I have found to be non-responsive to the appellant's request, as set out above, to be withheld.

[43] The remaining information at issue is responsiveness to the request. I will next

consider whether it is exempt under the claimed exemptions.

Issue B: Do the records contain “personal information” as defined in section 2(1) and, if so, to whom does it relate?

[44] The university claims the application of the exemptions in sections 49(a) and (b). In order to determine whether these exemptions may apply, it is necessary to decide whether the records contain personal information and, if so, to whom it relates. That term is defined in section 2(1) of the *Act* as “recorded information about an identifiable individual.”

[45] Section 2(1) of the *Act* gives a list of examples of personal information:

“personal information” means recorded information about an identifiable individual, including,

(a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except if they relate to another individual,

(f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual, and

(h) the individual’s name if 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.

[46] The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be "personal information."⁷

[47] 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.

[48] However, even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.

[49] To qualify as personal information, it must be reasonable to expect that an individual will be identified if the information is disclosed.

Representations of the appellant

[50] The appellant submits that the records contain her personal information. As stated above, the university did not provide any representations in this inquiry.

Findings

[51] All of the records at issue consist of email correspondence. The records relate to the appellant and her enrolment with the university as a graduate student. Given these circumstances, I find that all of the records contain recorded information about the appellant as per the introductory wording of the definition of personal information in section 2(1) of the *Act*.

[52] In addition, the records contain the appellant's personal information as they contain information relating to her education (considered to personal information under paragraph (b) of the definition of that term in section 2(1)), the personal views or opinions of other individuals about the appellant (paragraph (g)), and the appellant's name where it appears with other personal information relating to her (paragraph (h)).

[53] Because the university claims that the section 49(b) exemption for personal privacy applies to some of the records, I must also determine whether the records contain the personal information of individuals other than the appellant.

[54] The appellant has indicated that she is only interested in receiving access to the personal information of other individuals found in records 59 (pg. 2), 62, 70 (pg. 4 and 6), 75 (pg. 1), 83 (pg. 2 and 12), 84 (pg. 1), 88 (pg. 1), 89, 97, 107 (pg. 1), and 108 (pg. 1). Above, I have found that most of this information is not responsive to the appellant's request and it is, therefore, not necessary to consider some of the information on these pages further.

⁷ Order 11.

[55] For the remaining withheld responsive information, the university claims the section 49(b) personal privacy exemption applies to pages 59, 62, 70, 75, 83, 84, 88, 89, 97, 107, 108.

[56] Of these records, I find that the information on page 1 of record 84 contains personal information of an individual other than the appellant. In particular, page 1 of record 84 contains personal information relating to the education of two individuals under paragraph (b) of the definition of that term in section 2(1).

[57] The remaining information for which the personal privacy exemption has been claimed also contains other individuals' information; however, in all other instances this is information about these other individuals acting on behalf of York in their professional capacities. This information of other individuals does not reveal something of a personal nature about them and it is therefore not "personal information" within the meaning of the *Act*. As no other exemptions have been claimed for that information, and no mandatory exemptions apply, I will order it disclosed.

[58] As a result of my findings, I will only consider the application of section 49(b) to page 1 of record 84. See Issue E below.

[59] First, I will consider the application of section 49(a) with sections 13(1) or 19 to the information at issue in the records for which these exemptions have been claimed.

Issue C: Does the discretionary exemption at section 49(a) (discretion to refuse requester's own personal information), read with section 13(1) (advice or recommendations) apply to the information at issue?

[60] All but three⁸ of the records at issue contain information that has been withheld by reason of section 49(a) in conjunction with section 13(1). Therefore, I will consider whether section 49(a) in conjunction with section 13(1) applies to the information that the appellant is pursuing that has been withheld under these sections. This information is found in records 70, 72, 73, 75, 77, 82-86, 88, 89, 92, 94, 95, 97, 98, 101, 103, 104, 107-109, 115, and 121.

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

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

where section 12, 13, 14, 14.1, 14.2, 15, 15.1, 16, 17, 18, 18, 20 or 22 would apply to the disclosure of that personal information.

⁸ Records 59, 61 and 62.

[62] Section 49(a) recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their own personal information.⁹ Where access is denied under section 49(a), an institution must demonstrate that, in exercising its discretion, it considered whether it should release the record(s) to the requester because the record(s) contain his or her personal information.

[63] In this case, the university applied the exemption in section 49(a), read with section 13(1) to withhold portions of the records.

[64] Section 13(1) of the *Act* exempts certain records containing advice or recommendations given to an institution. This exemption aims to preserve an effective and neutral public service by ensuring that people employed or retained by institutions are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making.¹⁰

[65] Section 13(1) states,

A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultation retained by an institution.

[66] Advice and recommendations have distinct meanings. Recommendations refers to a suggested course of action that will ultimately be accepted or rejected by the person being advised. Recommendations can be express or inferred.

[67] Advice has a broader meaning than recommendations. It includes policy options, which are the public servant or consultant's identification of alternative possible courses of action. Advice includes the views or opinions of a public servant or consultant as to the range of policy options to be considered by the decision maker even if they do not include a specific recommendation on which option to take.¹¹

[68] Advice involves an evaluative analysis of information. Neither advice nor recommendations include objective information or factual material.

[69] Section 13(1) applies if disclosure would *reveal* advice or recommendations, either because the information itself consists of advice or recommendations or the information, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations.¹²

⁹ Order M-352.

¹⁰ *John Doe v. Ontario (Finance)*, 2014 SCC 36, at para. 43. (*John Doe*)

¹¹ See above at paras 25 and 47.

¹² Orders PO-2084, PO-2028, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.), aff'd

[70] The relevant time for assessing the application of section 13(1) is the point when the public servant or consultant prepared the advice or recommendations. The institution does not have to prove that the public servant or consultant actually communicated the advice or recommendations. Section 13(1) can also apply if there is no evidence of an intention to communicate, since that intention is inherent to the job of policy development, whether by a public servant or consultant.¹³

Representations

[71] Based on the information already disclosed, the appellant describes in detail each record and then provides submissions on the application of section 49(a), read with section 13(1), to the information at issue. Essentially, the appellant's submission is that none of the information at issue contains advice or recommendations or any information from which advice or recommendations could be inferred.

[72] The appellant also submits that the records largely contain factual information and relies on the section 13(2)(a) exception to section 13(1).

[73] The appellant further submits that if any of the redactions in the records contain reference by her supervisors to an evaluation of her performance, her supervisors would be providing after-the-fact communication of their actions to support their evaluation. As such, she submits that her supervisors are not requesting or asking advice or recommendations from, and any information would be factual information such as, *inter alia*, the signing of the evaluation.

[74] The appellant also submits that some of the records would contain "reasons for a decision, order or ruling" and so governed by the exception in section 13(2)(l), as they form a chain of reasons for the university's final decision about the appellant.

[75] As noted above, the appellant's detailed representations as to why each piece of information at issue in the records does not fall within the section 49(a) read with section 13(1) exemption, was provided to the university. The university did not provide reply representations (nor did it provide initial representations on this exemption.)

Findings

[76] As set out above, section 13(1) applies if disclosure would reveal advice or recommendations, either because the information itself consists of advice or recommendations or the information, if disclosed, would permit the drawing of accurate inferences as to the nature of the advice or recommendations.

[2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564; see also Order PO-1993, upheld on judicial review in *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563.

¹³ *John Doe*, cited above at note 4 at para 51.

[77] Section 13(2) creates a list of mandatory exceptions to the section 13(1) exemption. If the information falls into one of these categories, it cannot be withheld under section 13(1). The appellant relies on the exceptions to section 13(1) in sections 13(2)(a) and 13(2)(l), which read:

(2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,

(a) factual material;

(l) the reasons for a final decision, order or ruling of an officer of the institution made during or at the conclusion of the exercise of discretionary power conferred by or under an enactment or scheme administered by the institution, whether or not the enactment or scheme allows an appeal to be taken against the decision, order or ruling, whether or not the reasons,

(i) are contained in an internal memorandum of the institution or in a letter addressed by an officer or employee of the institution to a named person, or

(ii) were given by the officer who made the decision, order or ruling or were incorporated by reference into the decision, order or ruling.

[78] The mandatory exceptions in section 13(2) can be divided into two categories: objective information, and specific types of records that could contain advice or recommendations.¹⁴ The first four paragraphs in section 13(2), paragraphs (a) to (d), are examples of objective information. They do not contain an opinion related to a decision to be made, but rather provide factual information.

[79] The remaining exceptions in section 13(2), paragraphs (e) to (l), may or may not contain advice or recommendations. Even if they do, section 13(2) ensures that they are not protected from disclosure by section 13(1).

[80] Under section 13(2)(a), factual material refers to a coherent body of facts separate and distinct from the advice and recommendations contained in the record.¹⁵ Where the factual information is inextricably intertwined with the advice or recommendations, section 13(2)(a) may not apply.¹⁶

[81] Under section 13(2)(l), reasons for a final decision, order or ruling of an officer or an employee of an institution pursuant to the exercise of a discretionary power under

¹⁴ *John Doe v. Ontario (Finance)*, cited above, at para. 30.

¹⁵ Order P-24.

¹⁶ Order PO-2097.

an act or scheme administered by the institution cannot be withheld under section 13(1).

[82] The university did not provide any representations on the application of the exemptions in this appeal, which are all discretionary exemptions. A similar situation arose in Order MO-2106. In that order, the Municipality of Marmora and Lake (the municipality) claimed that the discretionary exemptions at sections 11, 12 and 15(a) of the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*¹⁷ applied to the one record at issue, but did not submit representations in support of its decision to withhold the record by reason of those exemptions.

[83] During the course of that appeal, the municipality offered little or no explanation regarding the application of these exemptions to the record. For example, the municipality had not even taken the step of specifying which paragraphs of the section 11 exemption it relied upon to deny access.

[84] The adjudicator in Order MO-2106 found that she had not been provided with any basis to support the position that the discretionary exemptions cited by the municipality in its decision applied to the record. Furthermore, her review of the record itself, and other material before her, did not provide a basis for upholding the application of these discretionary exemptions. Therefore, she found that the municipality had failed to establish the application of the discretionary exemptions at sections 11, 12 and 15(a) of *MFIPPA*.

[85] I agree with the approach taken by the adjudicator. Absent any representations from the university I am left with only the records themselves and the other file material to review in deciding the applicability of the claimed exemptions.

[86] As set out above, under section 53 of the *Act*, the burden of proof that the record or part of the record falls within one of the specified exemptions in the *Act* lies upon the university.

[87] In the absence of representations from the university, and based on my review of the information at issue and the other information in the file, I find that there is an insufficient basis to support the position that the discretionary exemption in section 49(a), read with section 13(1), applies to the information at issue in the records.

[88] Therefore, I will order the university to disclose the information in the records that it has withheld under section 49(a) read with section 13(1).

Issue D: Does the discretionary exemption at section 49(a), read with section 19 (solicitor-client privilege) apply to the information at issue?

[89] In this case, the university applied section 49(a), read with section 19, to

¹⁷ The equivalent to sections 18, 19, and 22 of *FIPPA*.

withhold portions of the records 61 and 62.

[90] Section 19 of the *Act* states as follows:

A head may refuse to disclose a record,

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

[91] Section 19 contains two branches. Branch 1 (“subject to solicitor-client privilege”) is based on the common law. Branch 2 (prepared by or for Crown counsel or counsel employed or retained by an educational institution or hospital) is a statutory privilege. The institution must establish that one or the other (or both) branches apply.

[92] As set out in the Notice of Inquiry sent to the university, solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining or giving professional legal advice.¹⁸ The rationale for this privilege is to ensure that a client may freely confide in his or her lawyer on a legal matter.¹⁹ The privilege covers not only the document containing the legal advice, or the request for advice, but information passed between the solicitor and client aimed at keeping both informed so that advice can be sought and given.²⁰

[93] Confidentiality is an essential component of the privilege. Therefore, the institution must demonstrate that the communication was made in confidence, either expressly or by implication.²¹

[94] As also noted in the Notice of Inquiry, solicitor-client privilege may be waived and an express waiver of privilege will occur where the holder of the privilege

- knows of the existence of the privilege, and
- voluntarily demonstrates an intention to waive the privilege.²²

¹⁸ *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).

¹⁹ Orders PO-2441, MO-2166 and MO-1925.

²⁰ *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.); *Canada (Ministry of Public Safety and Emergency Preparedness) v. Canada (Information Commissioner)*, 2013 FCA 104.

²¹ *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.

²² *S. & K. Processors Ltd. v. Campbell Avenue Herring Producers Ltd.* (1983), 45 B.C.L.R. 218 (S.C.).

[95] Further, an implied waiver of solicitor-client privilege may also occur where fairness requires it and where some form of voluntary conduct by the privilege holder supports a finding of an implied or objective intention to waive it.²³ Generally, disclosure to outsiders of privileged information constitutes waiver of privilege.²⁴ However, waiver may not apply where the record is disclosed to another party that has a common interest with the disclosing party.²⁵

[96] The university was specifically asked in the Notice of Inquiry how the information at issue is subject to solicitor-client communication privilege and if any such privilege had been lost by waiver. As noted above, the university did not provide any representations in this inquiry.

Representations of the appellant

[97] The appellant submits that despite the records at issue containing the subject: "Privileged and Confidential," privilege does not attach to a communication by mere assertion of a privilege, and something being "privileged and confidential" does not necessarily mean the criteria for solicitor-client privilege are met. She also submits that in the absence of representations from the university this exemption cannot be addressed or determined.

Findings

Record 61

[98] Record 61 is a 4-page email chain exchanged between a counsel at the university and two university staff members. The university has withheld portions of this record.

[99] I find that this information at issue in record 61 is subject to sections 49(a) with 19, as it contains solicitor-client communication privileged information within the meaning of that section. This information consists of a communication between counsel and the university staff regarding the seeking legal advice.

[100] As set out above, solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client made for the purpose of obtaining or giving professional legal advice. The information at issue in this record is information passed between the solicitor and client aimed at keeping both informed so that advice can be sought and given.

[101] Accordingly, I find that the information at issue in record 61 is subject to the

²³ *R. v. Youvarajah*, 2011 ONCA 654 (CanLII) and Order MO-2945-I.

²⁴ J. Sopinka et al., *The Law of Evidence in Canada* at p. 669; Order P-1342, upheld on judicial review in *Ontario (Attorney General) v. Big Canoe*, [1997] O.J. No. 4495 (Div. Ct.).

²⁵ *General Accident Assurance Co. v. Chrusz*, cited above; Orders MO-1678 and PO-3167.

discretionary solicitor-client privilege exemption in sections 49(a) with 19. While the university did not provide representations on exercising its discretion under sections 49(a) with 19, based on the information disclosed to the appellant, I find that there is no evidence that the university's decision to withhold portions of this record was made in bad faith, for an improper purpose, or taking into account irrelevant considerations. What was withheld in this record appears to reflect a balancing, on the one hand, of the right of the appellant to have access to her own personal information with, on the other hand, the need to protect confidential privileged information. There is no evidence that what has been withheld from the appellant in this record was withheld in bad faith towards her or for an improper or irrelevant purpose. Therefore, I uphold the exercise of discretion by the university and the responsive information at issue is exempt by reason of sections 49(a) with 19.

[102] I have found that the information in the first set of brackets on page 2 of record 61 not responsive to the request at Issue A, above. I will order the remaining information at issue in this record withheld, which has been withheld by reason of sections 49(a) with 19.²⁶

Record 62

[103] Record 62 is a 4-page email chain exchanged between a counsel at the university and several university staff members. One paragraph on page 1 has been withheld on the basis of section 49(a) with section 19. This paragraph is contained in an email from counsel at York to three other York staff members and includes legal advice concerning the appellant's situation in the university.

[104] The paragraph at issue in record 62 contains direct communication of a confidential nature between lawyer and client made for the purpose of giving legal advice and is subject to the discretionary solicitor-client privilege exemption in sections 49(a) with 19.

[105] As with the case for record 61, while the university did not provide representations on exercising its discretion under sections 49(a) with 19, based on the information disclosed to the appellant in this record, I find that there is no evidence that the university's decision to withhold portions of this record was made in bad faith, for an improper purpose, or taking into account irrelevant considerations. Therefore, I uphold the exercise of discretion by the university and the responsive information at issue is exempt by reason of sections 49(a) with 19.

[106] I have found that the information withheld on page 3 of record 62 not responsive to the request at Issue A, above. I will order the remaining information at issue in this

²⁶ I found above that the information withheld that is in the first set of brackets in the second severance on page 2 of this record is not responsive to the request. This information concerns the personal situation of a non-university individual and is information that is not related to the appellant's request.

record withheld, which has been withheld by reason of sections 49(a) with 19.²⁷

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

[107] The university has claimed that certain information in the records is subject to the mandatory personal privacy exemption in section 21(1) or the discretionary personal privacy exemption in section 49(b). Section 21 may apply where a record contains personal information of another individual but not the requester. Section 49(b) may apply where a record contains the personal information of both the requester and another individual. In this appeal, all of the records contain the personal information of the appellant, therefore the appropriate personal privacy exemption to consider is section 49(b), not section 21(1).

[108] I found above that page 1 of record 84 contains the personal information of the appellant, as well as two other individuals. This information of other individuals is found in one sentence on that page of this record. The appellant did not provide representations on this information as she is unaware of what it is about.

[109] The information at issue in the one sentence at issue in record 84 reveals the academic graduate programs of two individuals.

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

[111] Under section 49(b), where a record contains personal information of both the appellant and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester. Since the section 49(b) exemption is discretionary, the institution may also decide to disclose the information to the appellant.

[112] Sections 21(1) to (4) provide guidance in determining whether disclosure would be an unjustified invasion of personal privacy.

[113] If the information at issue fits within any of paragraphs (a) to (e) of section 21(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 49(b).

[114] Although consent was sought from a number of individuals named in the records by the former adjudicator in this appeal, as set out above, these individuals were

²⁷ I found above that the information withheld that on page 3 of this record is not responsive to the request. This information concerns the personal situation of an individual and is information that is not related to the appellant's request.

employed or retained by the university and their contact information is apparent from the records. The two individuals referred to on page 1 of record 84 appear to me to be graduate students at the university. One of these individuals is only referred to by their first name. Therefore, as consent was not sought or provided, the exception in section 21(a) does not apply.²⁸ Neither do any of the other exceptions in section 21(1) apply.

[115] Also, section 21(4) lists situations that would not be an unjustified invasion of personal privacy. None of the situations set out in paragraphs (a) to (d) of section 21(4) apply.

[116] Sections 21(2) and (3) also help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 49(b).

[117] Sections 21(3)(a) to (h) list several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy under section 49(b).

[118] In determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 49(b), the IPC considers, and weighs, the factors and presumptions in sections 21(2) and (3) and balances the interests of the parties.²⁹ In consideration of the information at issue, which is educational information, I have considered whether the presumption in section 21(3)(d) applies. This section reads:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

relates to employment or educational history.

[119] The information at issue in record 84 relates to the two individuals' education position for a single event. Previous orders have found that information relating to a single event is insufficient to constitute an employment or educational "history" within the meaning of section 21(3)(d),³⁰ while information describing a series of events would represent a "history" and thereby satisfy the requirements of this section 21(3)(d).³¹ As the information at issue in record 84 relates to a single event, I find that the presumption in section 21(3)(d) does not apply in this appeal to the information at issue in record 84.

²⁸ Section 21(a) reads:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
(a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access.

²⁹ Order MO-2954.

³⁰ Section 21(3)(d) of *FIPPA* or its equivalent in the municipal *Act*, section 14(3)(d) of *MFIPPA*.

³¹ See for example, Orders PO-2711, M-609, and P-1027.

[120] Therefore, only section 21(2) is possibly relevant in the present appeal. 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.³² A factor that favours privacy protection, for example, is that the information is highly sensitive. A factor that favours disclosure, for example, is that disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny.

[121] The list of factors under section 21(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 21(2).³³

[122] As noted, the university has not put forward any argument about the factors that it took into account when deciding to apply the section 49(b) exemption.

[123] Based on my review of the information, I find that none of the listed or unlisted factors in section 21(2) that favour either disclosure or privacy protection apply to the information at issue.

[124] The focus of my analysis is, therefore, a balancing of interests between the parties. In balancing the interests of the parties, I have taken into account that there is no sympathetic or other reason for the appellant to have this personal information of other these two individuals. I find that section 49(b) applies, as disclosure of the one sentence at issue in record 84 to the appellant would be an unjustified invasion of the personal privacy of the two individuals mentioned therein under section 49(b).

[125] As was the case for records 61 and 62, above, I find that there is no evidence that the university's decision to withhold the one sentence in record 84 under section 49(b) was made in bad faith, for an improper purpose, or taking into account irrelevant considerations.

[126] Therefore, I will uphold the university's exercise of discretion and find that the one sentence at issue in record 84 is exempt by reason of section 49(b). I will order this sentence withheld.

Issue F: Did the university conduct a reasonable search for records?

[127] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24.³⁴ If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

³² Order P-239.

³³ Order P-99.

³⁴ Orders P-85, P-221 and PO-1954-I.

[128] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.³⁵ To be responsive, a record must be "reasonably related" to the request.³⁶

[129] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.³⁷

[130] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.³⁸

[131] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.³⁹

[132] The university was asked to provide a written summary of all steps taken in response to the request. In particular, it was asked:

1. Did the institution contact the requester for additional clarification of the request? If so, please provide details including a summary of any further information the requester provided.
2. If the institution did not contact the requester to clarify the request, did it:
 - a. choose to respond literally to the request?
 - b. choose to define the scope of the request unilaterally? If so, did the institution outline the limits of the scope of the request to the requester? If yes, for what reasons was the scope of the request defined this way? When and how did the institution inform the requester of this decision? Did the institution explain to the requester why it was narrowing the scope of the request?
3. Please provide details of any searches carried out including: by whom were they conducted, what places were searched, who was contacted in the course of the search, what types of files were searched and finally, what were the results of the searches? Please include details of any searches carried out to respond to the request.

³⁵ Orders P-624 and PO-2559.

³⁶ Order PO-2554.

³⁷ Orders M-909, PO-2469 and PO-2592.

³⁸ Order MO-2185.

³⁹ Order MO-2246.

4. Is it possible that such records existed but no longer exist? If so please provide details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.

[133] As noted above, the university did not provide representations; therefore, it did not respond to these questions in the Notice of Inquiry.

Representations of the appellant

[134] The appellant states that the reasonableness of the university's search is at issue for points #2, 4, 5, 6, 8, 9, 10, 12, and 14 of her request. She provided detailed specific representations on these points, relying on information contained in other records and conversations she had with university officials. I will summarize the appellant's representations below.

[135] For points #2, 5, 6, 8, and 12 of her request, the appellant relies on records 63, 83, and 88 and submits that the university has not located all responsive records of the former Director of Clinical Training (who is the co-chair of the Student Programme Committee) and the Graduate Program Director.

[136] The appellant also indicates that she has not received the entirety of record 83.

[137] For point #9, the appellant submits that although York provided information about meetings between the Director of Clinical Training and representatives from a named hospital (in records 70, 72, 73, 75, 77, and 78), it has not provided evidence of a search for meeting minutes and phone logs for any conversations between the Director of Clinical Training and the hospital's representatives during the responsive period.

[138] For point #10, the appellant submits York has not conducted a reasonable search for responsive records, such as meeting minutes and phone logs from the Director of Clinical Training or any of York's employees, staff, agents, or representatives. In support, the appellant refers to records 70 and 81 and conversations she had with the Director of Clinical Training about meetings with hospital officials relating to the appellant.

[139] For point #12, the appellant submits that York has not provided records confirming the date of the meetings, the meeting minutes, and the meeting participant list, regarding meetings with an American university official. In support, the appellant refers to records 93 and 94 and a conversation she had with the Director of Clinical Training she had about a telephone meeting with this official.

[140] For point #14, the appellant submits that York should have searched for meeting minutes or phone logs from the Director of Clinical Training regarding her meeting with the appellant for the responsive date in point #14. The appellant relies records 75, 76, and 77 in support of her position that such further responsive records exist.

Findings

[141] Based on my review of the appellant's detailed representations, and in the absence of any representations on the university's search for records, I find that the appellant has provided a reasonable basis for me to conclude that additional responsive records exist.

[142] The appellant has provided details, as summarized above, as to what additional responsive records should exist that are responsive to points #2, 4, 5, 6, 8, 9, 10, 12, and 14 of her request. The appellant referred to specific records, meetings, and conversations to back up her submission that additional responsive records exist. The university did not provide reply representations as to its position, nor did it provide details of its searches.

[143] Based on my review of the appellant's representations, and in the absence of any from the university, I find that the university has not undertaken a reasonable search for records responsive to points #2, 4, 5, 6, 8, 9, 10, 12, and 14 of her request. Therefore, I will order the university to conduct another search for these records, taking into account the appellant's representations, and to issue a new access decision to her.

Issue G: Is the university required to provide the appellant with a more legible copy of page 13 of record 127?

[144] The appellant takes the position that the university is required to provide her with a legible copy of page 13 of record 127. She would like the university to search its record holdings and produce the original of this page of record 127 so she can review a "legible copy" to ascertain the name of the person who wrote in handwriting on this page.

Findings

[145] Section 48(4) of the *Act* states,

Where access to personal information is to be given, the head shall ensure that the personal information is provided to the individual in a comprehensible form and in a manner which indicates the general terms and conditions under which the personal information is stored and used.

[146] Section 30 of the *Act* addresses issues regarding copies of the records. This section states, in part,

(1) Subject to subsection (2), a person who is given access to a record or a part thereof under this Act shall be given a copy thereof unless it would not be reasonably practical to reproduce the record or part thereof by reason of its length or nature, in which case the person shall be given an

opportunity to examine the record or part thereof in accordance with the regulations.

(2) Where a person requests the opportunity to examine a record or a part thereof and it is reasonably practicable to give the person that opportunity, the head shall allow the person to examine the record or part thereof in accordance with the regulations.

[147] The appellant raised the issue of legibility of page 13 of record 127 during the mediation of this appeal. The university advised the appellant during mediation that it did not have a more legible version of page 13 of record 127 because it is a copy of a record from another university.

[148] Based on my review of the electronic copy of page 13 of record 127, I find that this page is legible. It is a transcript page from the American university referred to in point #12 of the appellant's request. There are handwritten notes on this transcript page. There is no indication thereon, or in the appellant's representations, if these handwritten notes were placed on this page by someone at York or by someone at the American university.

[149] The appellant indicates that she cannot tell from reviewing this electronic page the name of the person who wrote these handwritten notes on this page.

[150] In my view, this page is legible, including the handwritten notes thereon. The person who made these notes thereon did not sign or print their full name, but instead wrote their initials. These initials are in signature form and are readable, but, as they are in a sprawling signature form, it is not clear what the initials are.

[151] I find that the university has provided the appellant with a legible copy of page 13 of record 127 in a comprehensible form. Therefore, I find that the university is not required to provide a more legible copy of page 13 of record 127 to the appellant. I note that it is open to the appellant to ask the university to attend to view the university's copy of the record for herself.

ORDER:

1. I order the university to disclose to the appellant by **August 22, 2022** the information at issue in the records, except for the following information at issue:
 - information marked as non-responsive by the university in records 82, 84, 97, 98 and 101
 - personal phone numbers
 - page 2 of record 59 (the first set of bracketed information)

- record 61
 - record 62
 - pages 4 and 6 of record 70
 - page 1 of record 75
 - pages 2 and 12 of record 83
 - the one sentence withheld under section 49(b) in record 84
 - page 1 of record 88
 - the first paragraph of the second severance on page 1 of record 97
 - the last sentence of the first severance on page 1 of record 107
 - the last severance on page 1 of record 108.
2. I order the university conduct another search for records responsive to points #2, 4, 5, 6, 8, 9, 10, 12, and 14 of the appellant's request, taking into account the appellant's representations, and to issue a new access decision to her, treating the date of this order as the date of the request.
 3. I uphold the university's decision to not provide the appellant with a more legible copy of page 13 of record 127.

Original Signed By: _____
Diane Smith
Adjudicator

_____ July 20, 2022

APPENDIX

THE APPELLANT'S ACCESS REQUEST

- (a) From January 1, 2002 to the present date:
 - 1. Any and all records in the custody or control of the institution's Department of [name], [named] Graduate Program, that may be referred to as, but not limited to the department's "student file" or "clinical student file" or "clinical file" (collectively referred to as "the File") on [the requester] that refer to or are in regard to the requester. This includes faculty emails if submitted in "the File" as records.

- (b) From September 1, 2015 to the present date [August 6, 2019]
 - 2. Any and all records created by, sent from, or received by one or more of the following individuals [four named individuals], that refers to the requester.
 - 3. All communications from and to any members of the Institution's Faculty of Graduate Studies (FGS) including but not limited to [3 named individuals], that refer to the requester, or are in regard to the requester

- (c) From July 1, 2016 to present date:
 - 4. Any and all records held by Institution's Registrar's Office in the requester's name or that refer to the requester.

- (d) From September 1, 2016 to present date:
 - 5. Any and all records created by, sent from, or received by one or more of the following individuals [4 named individuals] that refer to the requester's graduate [named] program status.

- (e) From January 1, 2017 to present date:
 - 6. Any and all records created by, sent from, or received by one or more of the following individuals: [three named individuals, and received from or sent to any employees, staff, agents or representatives of [two named hospitals], that refer to or are in regard to the requester.
 - 7. Any and all records created by, sent from, or received by [named individual] or any employees, staff, agents or representatives of the Institution and received from or sent to one of more of the following individuals and institutions: [two named hospitals, four named individuals], that refer to the requester.

(f) From September 1, 2017 to present date

8. Any and all records by, sent from, or received by one or more of the following individuals: [four named individuals], relating to the Requester's practicum with [two named hospitals].

(g) From January 1, 2018 to present date:

9. Any and all records including but not limited to phone logs, audio recordings, meeting minutes, or memos, created by, sent from, or received by [a named individual] and received from or sent to [two named individuals] that refer to phone conversations or in-person meetings, between [three named individuals] in regard to the requester.

10. Any and all records including but not limited to phone logs, meeting minutes, or memos, created by, sent from, or received by [named individual] or any employees, staff, agents or representatives of the institution and received from or sent to [a third named hospital], [a named individual] that refers to the requester, or the requester's practicum, or are in regard to the requester.

11. Any and all records created by, sent from, or received by [named individual] and received from or sent to one or more of the following institutions or individuals: [two named hospitals], [two named individuals] relating to or are in regard to a [hospital's] letter ... sent to [named individual].

12. Any and all records including but not limited to documents, phone logs, meeting minutes, or memos created by, sent from, or received by one of more of the following individuals: [three named individuals], or any employees, staff, agents or representatives of the institution and received from or sent to [named individual], or any employees, staff, agents or representatives of [a named American university], that either directly or indirectly refer to, or are in regard to the requester.

(h) From February 1, 2018 to July 11, 2018

13. Any and all records created by, sent from, or received by [a named individual] and received from or sent to one or more of the following external institutions or individuals: [two named hospitals, four named individuals], related to document(s) from [two named individuals] that were quoted by [a named individual] as follows:

At the end of our meeting, we made it clear to leave behind patient information but instead she put paper MINIs into the shredding bin. When we asked her about this she said we told her to do so. We also asked her return her keys and badge. She returned the badge

but refused to give us her keys, saying she wanted to give them back to our program manager.

In [named individual's] document, "[requester] DCT Year-End Evaluation 2018.docx" created on or about Tuesday, July 10, 2018.

(i) From February 1, 2018 to the present date:

14. Any and all records including but not limited to documents, phone logs, audio recordings, meeting minutes, or memos, created by, sent from, or received by [a named individual] that refer to or are in regard to a phone conversation between [the named individual] and the requester on February 2, 2018.