

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4314

Appeal PA19-00541

University Health Network

October 27, 2022

Summary: The appellant is a former graduate student who was terminated from her clinical practicum in the bariatric surgery program of a University Health Network (UHN) hospital. After the termination of her placement, the appellant made a detailed, multi-part request to UHN under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to her practicum and the decision to terminate her from her placement, and records relating to the bariatric clinic more generally. She also requested certain metadata (such as the dates of creation and modification) for some of the records. UHN located 171 records in response to the request, and disclosed most of these to the appellant. The appellant appealed UHN's decision to withhold discrete portions of the records under various sections of the *Act*. She also challenged UHN's failure to locate additional records that she believes must exist.

In this order, the adjudicator allows the appeal in part. She upholds UHN's decision to withhold portions of the records under section 49(a) of the *Act* (discretion to refuse requester's own personal information), read with section 19 (solicitor-client privilege), or on the ground they are not responsive to the request. With respect to UHN's search for records, the adjudicator finds that UHN largely met its obligations under section 24 of the *Act* to conduct a reasonable search for responsive records, with two main exceptions. She finds that certain human rights-related documentation (which UHN identified during the inquiry), and its policies concerning the opening, closing, and operations of the bariatric clinic are responsive to the request, and should be the subject of an access decision. She also finds that UHN has not demonstrated reasonable efforts to locate metadata associated with certain source (original) records responsive to the request. She orders UHN to conduct a further search for this metadata, and to issue an access decision in respect of it, along with an explanation of its search.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31, sections 2 (definitions), 19, 24, and 49(a).

OVERVIEW:

[1] The appellant was a graduate student in the clinical psychology program at York University. As part of the clinical program, the appellant was to complete her practicum training in the bariatric surgery program of Toronto Western Hospital (TWH), which is part of the University Health Network (UHN). The appellant was terminated from her placement, for reasons she alleges are related to her disability and her need for accommodation.

[2] After the termination of her placement, the appellant made a detailed, multi-part request to UHN under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for "any and all records," covering various periods of time, that generally relate to her practicum and the decision to terminate her from her placement. She also requested certain metadata (such as the dates of creation and modification) for some of the records, and records relating to the general operation of the bariatric clinic, including clinic policies and practices. Attached as an appendix to this order is the full text of the appellant's 13-part request (from which I have severed the names of individuals referred to in her request).

[3] With her access request, the appellant provided UHN with two attachments (Schedules "B" and "C"), which are a letter and an email between individuals at TWH and York University concerning the appellant's termination from her placement. She also included a Schedule "A" that lists the names, titles, and contact information of the various individuals named in her request.

[4] UHN identified 171 records responsive to the appellant's request, and it granted the appellant partial access to these records. It withheld (severed) some records and portions of records based on the exemptions at sections 19 (solicitor-client privilege) and 21 (personal privacy) of the *Act*. UHN explained that its severances under section 21 included severances of personal health information of UHN patients. With its access decision, UHN provided the appellant with an index of records describing each of the 171 records it had located, and its decision on access for each one.

[5] The appellant was dissatisfied with UHN's decision and filed an appeal with the Office of the Information and Privacy Commissioner of Ontario (the IPC).

[6] An IPC mediator assisted the parties in resolving some of the issues in the appeal. The appellant clarified that she does not seek access to any personal health information of UHN patients, or any personal information of UHN staff (such as private contact information and human resources information). UHN disclosed to the appellant some other information that it initially had withheld under section 21. As a result, UHN's severances to the records under section 21 of the *Act* are no longer at issue in this

appeal.

[7] Also during mediation, UHN provided the appellant with fresh copies of certain records that the appellant had deemed illegible. The legibility of disclosed records is no longer an issue in the appeal.

[8] Some other issues could not be resolved through mediation. The appellant continues to seek access to information in the records that UHN withheld on the basis of solicitor-client privilege. She also seeks access to the information UHN withheld in an additional record (containing committee meeting agendas), which UHN provided to her in a later disclosure (and which is thus not among the 171 records listed in UHN's index of records). The appellant does not accept UHN's claim that the withheld portion of this additional record is not responsive to her request. As a result, UHN's severances to the records on the basis of solicitor-client privilege and on the ground of non-responsiveness remain at issue in this appeal.

[9] Another issue on appeal is the reasonableness of UHN's search for responsive records. The appellant believes that there exist additional responsive records and information that UHN has not identified. As I explain in more detail further below, the additional information she seeks falls into three broad categories: UHN policies and standards, including Standard Operating Procedures (SOPs); other specific records identified by the appellant during the appeal process; and metadata for certain disclosed records.

[10] As these issues could not be resolved through mediation, the appeal was moved to the adjudication stage of the appeal process, where I conducted a written inquiry under the *Act*. The parties' representations were shared with one another in accordance with the IPC's *Code of Procedure and Practice Direction 7*.

[11] In this order, I allow the appellant's appeal in part. I uphold UHN's severances to the records on the basis of the solicitor-client privilege exemption, or because they are not responsive to the appellant's access request. I also uphold UHN's search for responsive records, with two main exceptions. I find that certain human rights-related documentation (to which UHN referred during the inquiry) and its policies for clerical staff concerning the opening, closing, and operations of the bariatric clinic are responsive to the appellant's broad access request, and I order UHN to issue an access decision in respect of these records. I also find that UHN has not conducted a reasonable search for the metadata associated with particular records. I order UHN to conduct a further search for this information, and to issue an access decision with respect to it, which must include details about its search for metadata.

RECORDS:

[12] At issue are the following records:

- Records 7, 25, 44, 94, and 146 (as numbered in UHN's index of records), which contain severances under section 19 (and which I consider with the discretionary exemption at section 49(a) of the *Act*, as I explain below).
- An additional record that UHN later partially disclosed to the appellant (record "Redacted 8"), containing one severance based on a claim of non-responsiveness.
- Records 10-13, 22, 32-34, 44, 48, 145-147, 153-155, 164, 167, and 168 (as numbered in UHN's index of records), for which the appellant seeks certain metadata.

ISSUES:

- A. Does the discretionary exemption at section 49(a) (allowing an institution to refuse access to a requester's own personal information), read with the discretionary solicitor-client privilege exemption at section 19, apply to records 7, 25, 44, 94, and 146? If so, should I uphold UHN's exercise of discretion under section 49(a) of the *Act*?
- B. Are the withheld portions of record "Redacted 8" responsive to the request?
- C. Did UHN conduct a reasonable search for records?

DISCUSSION:

A. Does the discretionary exemption at section 49(a) (allowing an institution to refuse access to a requester's own personal information), read with the discretionary solicitor-client privilege exemption at section 19, apply to records 7, 25, 44, 94, and 146?

If so, should I uphold UHN's exercise of discretion under section 49(a) of the *Act*?

[13] At issue under this heading are UHN's severances under section 19 to the following records (as numbered in UHN's index of records): 7, 25, 44, 94, and 146.

[14] In my correspondence to the parties during the inquiry, I set out my preliminary view that all these records contain the appellant's "personal information," as that term is defined at section 2 of the *Act*. Section 2(1) defines personal information as recorded information about an identifiable individual, and includes, among other things, the views or opinions of another individual about the individual (at paragraph (g) of the definition), and the individual's name where it appears with other personal information about her [at paragraph (h)]. (Sections 2(2), (3) and (4) also relate to the definition of personal information; however, it is not necessary for me to consider those sections of

the *Act* in the circumstances.¹)

[15] The parties agreed with my preliminary view, and I confirm my finding here. All the records at issue under this heading contain the appellant's personal information within the meaning of the *Act*. They contain, among other things, information about the appellant's experiences and interactions during her clinical practicum, and other personal information about the appellant in connection with her name. As a result, UHN's reliance on the section 19 exemption must be read with section 49(a), found under Part III of the *Act*, which is the appropriate part of the *Act* under which to consider requests made by an individual for access to the individual's own personal information. Section 49(a) reads:

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, **19**, 20 or 22 would apply to the disclosure of that personal information[.]

[16] The discretionary nature of section 49(a) ("may" refuse to disclose) 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.²

[17] If an institution refuses to give an individual access to the individual's own personal information under section 49(a), the institution must show that it considered whether a record should be released to the requester, despite the application of an exemption such as section 19, because the record contains the requester's personal information. (I address UHN's exercise of discretion further below.)

[18] In this case, UHN relies on section 49(a) read with sections 19(a) and (c). These sections state:

A head may refuse to disclose a record,
(a) that is subject to solicitor-client privilege;

¹ These sections set out an exception to the definition of personal information for information that relates to an individual in a professional, official, or business capacity: see Orders P-257, P-427, and PO-2225, among others. However, in some situations, such information may still be "personal information" about the individual if it reveals something of a personal nature about the individual: Orders P-1409, PO-2225, and MO-2344, among others.

None of the issues to be determined in this order turns on whether the information about other individuals appearing in the records (for example, information about various individuals affiliated with TWH or with York University) is their "personal information" within the meaning of the *Act*. It is thus unnecessary for me to make a finding with respect to that information, and I decline to do so.

² Order M-352.

(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.

[19] Section 19 exempts certain records from disclosure, either because they are subject to solicitor-client privilege or because they were prepared by or for legal counsel for an institution.

[20] The exemption in section 19(a) ("subject to solicitor-client privilege") is based on the common law. The exemption in section 19(c) ("prepared by or for counsel employed or retained by ... a hospital") contains statutory privileges created by the *Act*. The institution must establish that the common law exemption, or the statutory exemption, or both, applies.

[21] In this case, UHN relies on the solicitor-client communication privilege contained in both the common law and statutory exemptions. As I explain below, I find that all of the information at issue is subject to solicitor-client communication privilege at common law, and is therefore exempt under section 19(a) (read with section 49(a), as discussed above). It is therefore unnecessary for me to consider the statutory exemption at section 19(c).

[22] The purpose of solicitor-client communication privilege is to ensure that clients may freely confide in their lawyers on legal matters.³ This privilege protects direct communications of a confidential nature between lawyer and client, or their agents or employees, made for the purpose of obtaining or giving legal advice.⁴ The privilege covers not only the legal advice itself and the request for advice, but also communications between the lawyer and client aimed at keeping both informed so that advice can be sought and given.⁵

[23] Confidentiality is an essential component of solicitor-client communication privilege. The institution must demonstrate that the communication was made in confidence, either expressly or by implication.⁶

[24] Records 7, 25, and 94 are emails exchanged between individuals in TWH's bariatric surgery program about the appellant as a clinical practicum student in the program. Records 44 and 146 are clinical supervision records concerning the appellant, which are nearly identical to one another in content. As I describe further below, all these records contain or refer to legal advice sought or received from UHN counsel.

[25] The appellant says that because records 7 and 25 have been withheld nearly in

³ Orders PO-2441, MO-2166 and MO-1925.

⁴ *Descôteaux et al. v. Mierzwinski*, 1982 CanLII 22 (SCC), [1982] 1 SCR 860.

⁵ *Balabel v. Air India*, [1988] 2 WLR 1036 at 1046 (Eng. CA); *Canada (Ministry of Public Safety and Emergency Preparedness) v. Canada (Information Commissioner)*, 2013 FCA 104.

⁶ *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.

full, she is unable to make informed representations about UHN's claim of solicitor-client privilege for these records. However, she observes that legal counsel is not a sender or recipient of any of the emails contained in record 25.

[26] Unlike the appellant, I have had the benefit of examining the withheld portions of the emails in records 7, 25, and 94. I am satisfied that the withheld portions of these records are covered by solicitor-client communication privilege.

[27] Record 7 is an email addressed to a member of UHN's legal department, in which the sender seeks legal advice on matters involving the appellant. It is a direct communication between client and lawyer that falls squarely within the solicitor-client communication privilege at common law, and is therefore exempt under section 19(a).

[28] Records 25 and 94 are emails between UHN staff that do not include UHN legal counsel as sender or recipient. The withheld portions of these emails are nonetheless protected by solicitor-client communication privilege, because they contain discussions between staff about matters to raise with legal counsel, and summaries of advice obtained from a UHN lawyer. Although the lawyer is not directly involved in these discussions, disclosure of these portions of the records would reveal communications of a confidential nature between lawyer and client covered by solicitor-client communication privilege at common law.

[29] For these records, UHN maintains that it has not waived its privilege in the withheld information, and the appellant provides no evidence to refute UHN's assertion. I am satisfied there has been no express or implied waiver of privilege by UHN.

[30] Next, I consider records 44 and 146, which are slightly different versions of clinical supervision records prepared by UHN staff about the appellant. UHN disclosed these records in part, withholding only the information it asserts is subject to solicitor-client communication privilege.

[31] As I understand the appellant's representations, she makes three main arguments in respect of these records. First, she asserts that as the supervisee whose progress is documented in these records, she is an "intended beneficiary" of the records, and thus has a common interest (with UHN) in the records. I understand the appellant to be claiming that in this situation, solicitor-client privilege in the records cannot apply as against her. Alternatively, in the event solicitor-client privilege does apply, the appellant proposes that the inclusion of solicitor-client privileged discussions in a student's clinical supervision record is evidence of an implied waiver by UHN of its privilege in these discussions.

[32] Lastly, the appellant points to evidence (from other information disclosed to her) that at the time the withheld information was entered into the records, UHN staff had not yet contacted legal counsel (though they were considering doing so). She submits that solicitor-client communication privilege cannot apply to matters discussed before

legal counsel was formally engaged.

[33] I have considered the parties' representations and the records themselves. I am satisfied that the withheld portions of the records are covered by solicitor-client communication privilege. For the benefit of the appellant, I confirm that the discrete severances in these records contain summaries of matters that UHN staff discussed with UHN legal counsel concerning the appellant. Without accepting the general proposition (advanced by the appellant) that a formal retainer is always necessary to establish a claim of solicitor-client communication privilege, I have no difficulty finding in this case that at the relevant time there was (and is) a lawyer-client relationship between lawyers in UHN's in-house legal department and members of UHN staff, who are agents of the client UHN.

[34] I have also considered but do not accept the appellant's other arguments against finding solicitor-client communication privilege applies in these circumstances.

[35] I do not accept the claim that the appellant has a "common interest" with UHN in her clinical supervision records, so that UHN cannot withhold portions of these records based on solicitor-client privilege. First, it is clear that in the context of this access request, the appellant is not the client (UHN) nor an agent of the client. The client is the party that holds the privilege in solicitor-client privileged communications (and thus the party who may waive it). The appellant may be referring to the principle that the disclosure of solicitor-client privileged information to a third party may not constitute waiver where that third party has a common interest with the disclosing party.⁷ That principle has no application to the situation before me. There is no suggestion by either party that UHN disclosed the information at issue to any third party with whom it shares a common interest.

[36] The appellant's remaining argument (as I understand it) is that by their very nature, clinical supervision records are records intended to be shared by a clinical supervisor with the supervisee (in this case, the appellant). She directs me to evidence⁸ that these types of records are generally understood to serve as teaching aids, for the purpose of fostering student learning and aiding in clinical skill development. (I note that UHN rejects the appellant's characterization of the records as teaching aids, and describes them instead as notes by a supervisor to document a student's activities and progress over time.) In this context, the appellant says it is simply not believable that privileged information would be contained in a clinical supervision record. In the alternative, the appellant proposes that UHN's voluntary conduct in placing privileged information in such records amounts to an implied waiver of privilege.

⁷ *General Accident Assurance Company v. Chrusz*, cited above; Orders MO-1678 and PO-3167.

⁸ Specifically, the appellant points to a description of clinical supervision records that she attributes to the College of Psychologists of Ontario, and to the following statement contained in meeting minutes obtained by the appellant: "[The UHN Practice Leader in Psychology] recommended developing a supervision notes template that is reviewed with the student at each supervision so that students are aware of the criteria for evaluation."

[37] I do not agree. Even accepting for the sake of argument the appellant's description of the general purpose and uses of clinical supervision records, I do not accept that this would preclude UHN from withholding under the *Act* any properly exempt solicitor-client privileged information in the records before disclosing them to the appellant. While the appellant proposes that these types of records are intended to be routinely shared with clinical practicum students (outside an access request under the *Act*), she does not suggest that she has obtained complete (unsevered) records through another process (which could potentially have a bearing on UHN's ability to claim solicitor-client privilege for the same information in the appeal before me). More generally, the existence of an alternate means to obtain these records would not, by itself, preclude an institution from relying on exemptions in the *Act* in responding to an access request under the *Act*.

[38] I also do not accept the appellant's related claim that the inclusion of solicitor-client privileged information in clinical supervision records qualifies as a waiver of UHN's privilege in this information. UHN denies that it has expressly waived any privilege in this information, and I am not satisfied that the appellant's evidence establishes an implied waiver of privilege. The appellant's argument relies again on her claim of a beneficial interest in the records that entitles her to the records in whole. It is clear that UHN did not consider or treat these records in this way. The clinical supervision records contain information of interest to both supervisor and supervisee, and I am not persuaded that any pedagogical purpose of the records would prevent UHN from properly withholding solicitor-client privileged information in the records before disclosing them to the appellant for that purpose.

[39] For these reasons, I find that the withheld portions of records 7, 25, 44, 94, and 146 are protected by solicitor-client communication privilege under the common law exemption at section 19(a), read with section 49(a) of the *Act*.

[40] I am also satisfied that UHN properly exercised its discretion in applying section 49(a) of the *Act*, read with section 19, to withhold these portions of the records. UHN explains that in deciding to apply the discretionary exemption, it took into account factors including the purposes of the *Act* and of the solicitor-client privilege exemption, and the appellant's need for the information at issue.

[41] The appellant states that UHN's representations on this topic are too generalized to provide insight into how its determination was made. She argues that UHN has made bald assertions about factors it says it took into account, with no evidence to support its assertions. For instance, she notes that UHN claims that disclosure of the withheld information will have no impact on public confidence in the organization, but does not provide evidence to demonstrate this.

[42] I note that in the event the IPC finds an institution failed to exercise its discretion, or failed to exercise its discretion in a proper manner (where the institution did so in bad faith or for an improper purpose, for instance), the IPC may send the

matter back to the institution for an exercise of discretion based on proper considerations.⁹ The IPC cannot, however, substitute its own discretion for that of the institution.¹⁰

[43] In this case, I see no basis to conclude that UHN did not properly exercise its discretion under the *Act*. There is no evidence to suggest that UHN failed to consider relevant factors, took into account irrelevant factors, or otherwise exercised its discretion in an improper manner. The appellant takes issue with UHN's generalized representations on this topic, but taking into consideration UHN's representations as a whole, along the significant level of disclosure it has already made to the appellant, I am satisfied that UHN exercised its discretion in accordance with the requirements of the *Act*.

[44] I therefore uphold UHN's severances to the records under section 49(a), read with section 19(a) of the *Act*.

B. Are the withheld portions of record "Redacted 8" responsive to the request?

[45] Under this heading I will consider the withheld portions of record "Redacted 8," an additional record that UHN disclosed to the appellant during the course of this appeal. For the reasons that follow, I uphold UHN's decision that the withheld portions of this record are not responsive to the appellant's request.

[46] Record "Redacted 8" contains four agendas and minutes of meetings of the Psychology Education and Training Committee. UHN states that it has already disclosed to the appellant the portions of the meeting agendas and minutes that relate to her. UHN submits that the withheld portions of the record do not relate to the appellant or to her practicum, and are thus not responsive to the appellant's request.

[47] The appellant says that because the record documents committee training meetings, it is reasonable to expect that they would "**be informed**" by matters relating to her, and/or would to be helpful "**to inform**" the appellant's understanding of the matters relating to her (emphasis hers). She proposes that a liberal interpretation of the request would include information that would be helpful to her in this way. In the event I find the withheld portions of this record are not responsive to her request, the appellant asks that I still order the disclosure of these portions (subject to any applicable exemptions), to assist her in better understanding the events surrounding the discussions about her at the meeting.

[48] Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. To be considered

⁹ Order MO-1573.

¹⁰ Section 54(2).

responsive to the request, records must “reasonably relate” to the request.¹¹ Institutions should interpret requests liberally, in order to best serve the purpose and spirit of the *Act*. Generally, if there is ambiguity in the request, this should be resolved in the requester’s favour.¹²

[49] I have examined the record in its entirety. I find that the withheld portions relate to matters entirely unrelated to the appellant, and are not reasonably related to her request for records relating to her and to her practicum.¹³ On this point, I reject the appellant’s suggestion that a large and liberal interpretation of her request militates in favour of treating as responsive any matters discussed at these meetings before and after the topic relating to the appellant (which information has already been disclosed to her), either in order to give context to the discussions about her, or based on a theory that all committee discussions are informed by matters relating to the appellant. There is no evidence in the record or in the parties’ representations to support the appellant’s theory.

[50] I thus uphold UHN’s decision to withhold portions of record “Redacted 8” on the basis they are not responsive to the request. If the appellant wishes to seek access to the record in its entirety, she may file a new access request with UHN. I note that in the normal course, the IPC does not itself provide records at issue to the requester in an access appeal.¹⁴

C. Did UHN conduct a reasonable search for records?

[51] Under this heading, I will consider the reasonableness of UHN’s search for records responsive to the appellant’s access request, specifically in relation to three main categories of records and information identified by the appellant. The records and information at issue under this heading are:

- Policies and Standards of Practice (SOPs);
- Other specific records identified by the appellant during the appeal process, which I describe more particularly further below; and
- Metadata for the following records (as numbered in UHN’s index of records): 10-13, 22, 32-34, 44, 48, 145-147, 153-155, 164, 167, and 168.

¹¹ Orders P-880 and PO-2661.

¹² Orders P-134 and P-880.

¹³ The appellant observes that one of the severed meetings agendas contained in the record (the agenda dated February 13, 2018) does not contain any text after the heading “Present” (i.e., to indicate who attended this particular meeting). The appellant alleges that UHN inappropriately severed the names and titles of UHN staff from this portion of the record. I confirm for the appellant’s benefit that the unsevered (i.e., complete) version of the record does not contain any text after the heading “Present” for this particular meeting. In other words, UHN did not sever any staff names or titles from this portion of the record.

¹⁴ See, for example, Orders MO-2178, PO-2879-R, and PO-3655-I.

[52] If a requester claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 24 of the *Act*.¹⁵ If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision. Otherwise, it may order the institution to conduct another search for records.

[53] 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.¹⁶

[54] I asked UHN to provide a written explanation of the steps it had taken in response to the request, including, among other things, details of who conducted the searches, the places searched, the types of files that were searched, and the results of the searches. In my Notice of Inquiry to UHN, I asked UHN to provide this information in the form of an affidavit.

[55] UHN provided representations on its searches, including in the form of an affidavit, which were shared with the appellant in the course of the inquiry. Before addressing the substance of parties' representations, I will briefly address an issue raised by the appellant concerning UHN's affidavit.

[56] To meet one of the deadlines for submitting its representations, UHN initially provided an affidavit that had not yet been sworn or affirmed before a commissioner. UHN endeavoured to provide a sworn version of the same document at a later date, which it did. Before and after UHN provided the sworn affidavit, the appellant challenged the reliability and evidentiary value of UHN's representations because they had initially been provided in the form of an unsworn document. She asks that I draw an adverse inference from UHN's unwillingness to initially provide a properly sworn affidavit in a timely manner.

[57] I find no merit in this argument, and I draw no adverse inferences from UHN's failure to initially provide a sworn affidavit regarding its search. As I advised the parties during the inquiry, the IPC, as an administrative tribunal, is not bound by the traditional rules of evidence, and it is generally open to tribunal adjudicators to rely on unsworn evidence, hearsay evidence, and opinions, and to accord such evidence its proper weight.¹⁷ In any case, UHN did provide a sworn copy of its affidavit for the purposes of the inquiry, and I see no basis for the appellant's assertion that the affidavit's contents are unreliable simply because they were initially provided in unsworn form. I will not further address the appellant's arguments on this point. I will, however, consider the substance of the affidavit (along with other relevant evidence provided by the parties)

¹⁵ Orders P-85, P-221 and PO-1954-I.

¹⁶ Order MO-2246.

¹⁷ *Cooper v. Canada (Human Rights Commission)*, 1996 CanLII 152 (SCC) at paragraph 60. See also IPC Orders MO-4003-R [application for judicial review dismissed in *Brown v. Information and Privacy Commissioner of Ontario*, 2021 ONSC 8081 (CanLII)], PO-2242, and MO-3404.

in deciding whether UHN has met its obligations under the *Act* to conduct a reasonable search for responsive records.

[58] I turn now to address the substantive issue of reasonable search. In the discussion that follows, I will explain why I am largely satisfied that UHN conducted a reasonable search for records responsive to the appellant's broad access request. However, I find that UHN's search was deficient in two main respects, and I order UHN to take steps to remedy these deficiencies. Specifically, I will require UHN to issue an access decision in relation to certain additional policies and documentation it described at the inquiry stage, because these records are responsive to the appellant's request. I will also require UHN to conduct a further search for metadata associated with particular records, and to issue an access decision following its search. This decision must include a report to the appellant regarding its search for metadata.

[59] I will consider each of the three main categories of records in turn.

Policies and SOPs

[60] Because part of the dispute between the parties turns on the scope of the appellant's request for policies and SOPs, I reproduce the relevant portion of her request here:

Pursuant to the Freedom of Information and Protection of Privacy Act, R.S.O. 1990 ("Act"), I request access to and a copy of all records (as defined in the Act) in the custody or under the control of Toronto Western Hospital ('TWH') or University Health Network ('UHN' collectively with TWH referred to as the "Institution") in any format including but not limited [to] electronic format stored in the Institution's incumbent data/cloud service providers or by individuals employed by, or agents of the Institution, including a complete copy of the following records:

(A) From March 1, 2017 to the present date [August 6, 2019]: ...

9. Any and all records of UHN TWH bariatric clinic "Standard Practice" policy and practice statements for each year.

[61] UHN says that after receiving clarification from the appellant that she wants all standards and practices applicable to the bariatric clinic in general (and not only standards and practices applicable to practicum students like the appellant), it advised her that the clinic does not have a comprehensive manual of its SOPs and guidance documents, and that searching for all applicable documents would take some time. UHN advised that the clinic is subject to most of UHN's corporate policies, as well as a number of professional standards. UHN says that it communicated this information to the appellant, along with a listing of the types of policies maintained by UHN, to encourage the appellant to narrow the focus of this portion of her request.

[62] In my Notices of Inquiry to the parties, I noted that the appellant has said she wants policies that are “specific” to the bariatric clinic, as well as policies that are “exhaustive.” I said that I understand the appellant’s reference to “exhaustive” policies to mean policies that apply to the bariatric clinic as a part of UHN, though not directed specifically to the bariatric clinic. (The appellant later confirmed my understanding of her statement.) She has also specified that she seeks operational policies that govern the bariatric clinic, with the exception of financial policies and policies specific to surgery.

[63] In response to the appellant’s request for a “specific and exhaustive” listing of UHN policies (except for financial policies and policies specific to surgery), UHN referred the appellant to an online listing of some UHN policies, and asked her to identify the topic of any policy or SOP she is interested in. UHN says the appellant has refused to do so. UHN’s position is that without this information from the appellant, “a search for responsive records would be extremely difficult, if not impossible.”

[64] In response, the appellant says that the online list to which she was referred by UHN “appears to be a partial list of policies that apply to UHN and which may or may not apply to the [clinic].” The appellant refers me to a UHN web page¹⁸ that contains links to a number of UHN policies, grouped in categories that cover a wide range of subject areas, such as “Privacy and Patient Information,” “General Administration,” “Workplace Health and Safety,” “Accessibility,” and “Media and Technology,” among others. The page contains a caveat stating that it contains only a partial list of policies at UHN, and that other policies are available upon request. The appellant reports that at an earlier stage of the appeal, she informed UHN (through the IPC mediator) that the online list is inadequate, not functional, and contains broken URL links, which prevented her from examining the policies. I note that I did not encounter broken links on any of the multiple times I visited this page, including most recently in October 2022.

[65] The appellant devotes a significant portion of her representations to challenging UHN’s statement that it initially understood her request to cover policies and SOPs applicable to the appellant (or to practicum students like the appellant), and that it only later understood her request to be for policies and SOPs applicable to the bariatric clinic more generally. She asserts this demonstrates that UHN did not comply with its obligations under the *Act* to seek clarification from the requester regarding the scope of the request, and that UHN acted unilaterally in adopting a narrow interpretation of her request with the intention of responding in a manner favourable only to UHN.

[66] Whatever UHN’s initial interpretation of this part of the request, it is clear that UHN has since come to understand that the request encompasses policies and SOPs applicable to the bariatric clinic (excluding financial policies and policies specific to

¹⁸ The appellant says she was referred to the following link: https://www.uhn.ca/corporate/AboutUHN/Governance_Leadership/Policies#collapseOne. I accessed this link on various dates in December 2021 (after receiving the appellant’s initial representations containing her statement about broken links), and again in September and October 2022.

surgery), and not only those applicable specifically to the appellant. It is also clear from UHN's representations filed during the inquiry that its searches were based on this understanding. Thus the evidence I will be considering in this order is based on UHN's accurate understanding of the scope of the appellant's request for "any and all records of UHN TWH bariatric clinic "Standard Practice" policy and practice statements for each year." In deciding this appeal, it is unnecessary for me to engage further with the appellant's criticisms about UHN's initial (and now superseded) interpretation of her request, and I will not do so.

[67] Apart from this, the main issue raised by the appellant concerns UHN's claim that it does not know offhand all the policies and SOPs that govern the bariatric clinic, and that a search for such records would take some time. The appellant asserts that it is unreasonable to believe UHN could operate and manage the clinic without having readily available all the policies and SOPs that apply to it. She says that UHN's invitation to narrow the scope of her request (by identifying the topic of any policies and SOPs of interest to her) "is clearly designed as an obstacle rather than a clarifier, given the appellant¹⁹ has not been provided with information on UHN's policy naming convention."

[68] I can understand the appellant's initial expectation that the clinic should have ready knowledge of the policies and SOPs that apply to it. However, considering the breadth of the appellant's request (for "specific" as well as "exhaustive" policies applicable to the clinic), and the evidence of the wide range of policies UHN maintains across its operations (which I discuss in more detail next), I find credible UHN's explanation that it does not currently maintain a comprehensive listing of all policies, including UHN-wide policies, that apply to the clinic.

[69] In coming to this conclusion, I have found relevant the online list of UHN policies that is publicly available at the link to which the appellant directed me. This list, which is not a complete list of UHN policies, is organized by broad categories that vary widely in subject matter. Given that the appellant's request covers all policies applicable to the bariatric clinic as a part of UHN, responsive records would seem to include most of the policies appearing on this partial list. They would include, for example, policies in such varied areas as: privacy and confidentiality of patient information (nine policies under the category "Privacy and Patient Information"); UHN's compliance with the *Accessibility for Ontarians with Disabilities Act, 2005*²⁰ (six policies under the category "Accessibility"); matters having to do with workplace health and safety (eight policies listed under the category "Workplace Health and Safety"); and UHN's rules for the use of technology by its agents (three policies listed under the category "Media and Technology").

¹⁹ The appellant refers to herself in the third person in the portions of her representations quoted in this order.

²⁰ SO 2005, c 11.

[70] The appellant's broad request results in over 30 responsive policies from UHN's abbreviated online listing alone. (All these policies are accessible in full from the UHN link cited by the appellant.) The number and wide-ranging scope of responsive policies from this partial list alone suggests to me that the appellant's broad request is likely to yield a significant number of responsive records. Considering this, I do not find unreasonable UHN's requests that the appellant identify the broad topics of interest to her, to help narrow its search for the policies and SOPs she seeks. On this point, I do not agree with the appellant that UHN's request for clarification is suspect because it was not accompanied by information about UHN's policy naming convention. I have no reason to believe that UHN expected the appellant to know and to use its naming convention in providing the requested clarification.

[71] In any event, during the inquiry, the appellant did eventually provide the following clarification of the scope of this part of her request:

To further assist the Institution in request point #9, the following incomplete list is provided. Per its obligations under the *Act*, the Institution must search and provide access to all responsive records for policies that govern the Bariatric Clinic, not limited to the following standard practice policy or SOP topics:

- (a) Termination of staff from the Bariatric Clinic and UHN;
- (b) Termination of practicum students, and psychology practicum students from the Bariatric Clinic and UHN;
- (c) UHN's human rights policies concerning its rights, obligations, responsibilities, and escalation processes at the Bariatric Clinic toward its employees, students, and trainees. The appellant is not requesting UHN's human rights policies governing its services to the public;
- (d) Policies on the rights and obligations of volunteers, student trainees and practicum students (collectively referred to as "Students") and the same of UHN's obligation and responsibilities to the Students. The appellant confirms possession of copies of personalized supervisory practicum contracts between [a named individual at UHN] and herself, and [another named individual at UHN] and herself;
- (e) Policies authored by UHN or the Bariatric Clinic governing the psychologist's (role/position of all ranks) conduct, performance evaluation, and performance improvement process at the Bariatric Clinic, their responsibilities and obligations to clinical doctoral students, and information that also informs the profile of the role as

posted for public and internal hiring. The appellant is not requesting policies defined by the College of Psychologist[s] of Ontario;

(f) Employee and Students' dispute, complaint, and problem escalation processes and policies at the Bariatric Clinic;

(g) The Bariatric Clinic's routine opening, closing and operational procedures.

[72] In response to this clarification, UHN states the following:

- There is no UHN-wide or bariatric clinic-specific policy on the termination of staff. This is because the circumstances of termination "vary due to a number of factors including reason for termination, full-time versus casual status, union versus non-union staff etc. and decisions are supported individually."
- With regard to human rights policies, "UHN adheres to Ontario's *Human Rights Code*²¹ although we maintain documentation on issues such as civility and respect, anti-racism, etc."
- Regarding the appellant's focus on policies that are applicable to students: There are no policies other than the policies of individual students' colleges or universities, and, for practicum students, the separate agreement that outlines the terms and conditions of their placement. The appellant has already received a copy of this agreement.
- The only opening, closing, and operational policies governing the bariatric clinic "are those for clerical staff. There are none that address the clinical staff and there are no opening and closing policies for UHN as a whole."

[73] In response, the appellant discusses at some length her concerns about UHN's behaviour in handling her access request. The parties have now had the benefit of exchanging written representations on this topic, and I will not further address their views on this point, except to the extent they are relevant to the issue of reasonable search and the related issue of the scope of the appellant's request.

[74] I now turn to consider the appellant's evidence in support of her belief that there exist policies addressing the termination of staff, despite UHN's assertion that it has no such policies for the bariatric clinic, or for UHN more generally.

[75] First, the appellant says it is not believable that an institution of UHN's size²² has no staff termination policy, "in substance, if not in form." Second, she asserts that

²¹ RSO 1990, c H.19.

²² The appellant states that UHN has 16,671 full-time staff employees, according to information published by UHN on its website in 2019-2020.

UHN's reference to varying circumstances that could lead to the termination of a staff member "indicates the existence of knowable factors relevant to termination that are very likely to be set out in records (either as consolidated records or across many records)." Next, the appellant highlights UHN's statement that the bariatric clinic "does not maintain **separate** policies" on staff termination (emphasis hers). The appellant proposes that UHN's use of the word "separate" in this sentence indicates that UHN's "policies addressing termination are not part of a standalone policy but are part of some larger, unidentified policy." She states that in the event "specific termination policies are subsumed under more general HR (human resources) policies, termination policies still exist in substance and must be disclosed as responsive to the Appellant's request."

[76] I agree with the premise that an institution of UHN's size could reasonably be expected to have HR policies addressing a variety of staff issues, which could include a policy addressing the termination of staff. However, in the face of UHN's explicit denial that it has such a policy, I do not find persuasive the appellant's arguments in support of her view that staff termination policies must exist. Specifically, I am not persuaded by the appellant's selective reading of UHN's representations, and I do not accept the conclusions she urges me to draw from them. For example, I see no reasonable basis for the assumption that UHN maintains staff termination procedures within a broader policy or policies, and that it has failed to identify responsive portions of these broader policies. I also see no basis for the assertion that staff termination policies must exist "in substance, if not in form."

[77] Instead, I find reasonable UHN's explanation for the absence of specific policies on staff termination, and its broader search efforts for any records responsive to the appellant's request. UHN's evidence is that these efforts included searches of paper and electronic files conducted by the six staff members named in the appellant's request and the senior director of clinical education. I observe that these searches initially yielded 171 responsive records,²³ the majority of which appear to be records of the appellant's personal information. In these circumstances, I find no reasonable basis for the appellant's belief that UHN has concealed the existence of or otherwise failed to conduct a reasonable search for policies concerning staff termination. Similarly, I find no reason to doubt UHN's statement that its searches yielded no additional records addressing student matters.

[78] However, I agree with the appellant that certain other records mentioned in UHN's representations are responsive to her broad request for policies applicable to the bariatric clinic, and are properly the subject of an access decision by UHN. They are the *Human Rights Code*-related documentation (which UHN describes as "documentation on issues such as civility and respect, anti-racism etc."), and the "opening, closing, and operational procedures" specific to the bariatric clinic, which UHN describes as policies directed to clerical staff, not to clinical staff or to UHN as a whole. The appellant

²³ As noted above, a later search yielded an additional record.

observes that she placed no restrictions on the types of policies she seeks²⁴—she did not specify, for example, that she wants policies applicable only to clinical staff and not to administrative staff. I agree. Given this, both UHN's *Human Rights Code*-related documentation and its bariatric clinic policies for clerical staff fall within the scope of the appellant's request. I will order UHN to issue an access decision to the appellant in respect of these records.

[79] Lastly under this heading, I consider the appellant's assertion that there must exist records of SOPs related to the appellant or to her practicum. The appellant refers me to particular passages in other records that she has received from UHN that, in her view, establish "a reasonable basis to expect that the appellant's related matters would be officially on the "to-do" list of the SOPs meetings or plans." The passages cited by the appellant include portions of email strings between UHN staff members concerning the appellant, in which one staff member comments that an issue should be on their "to-do list for SOPs." The appellant states that UHN has refused to provide her with any information about the constitution of any SOP groups or its agendas to aid in her access request. In response, UHN clarified that there are no formal SOP meetings, and that while discussion of SOP matters between staff "may occur casually," there are no additional SOP-related records concerning the appellant or her practicum.

[80] I agree with the appellant that her access request is broad enough to cover not only SOPs concerning the appellant or her practicum, but also meeting agendas and other records of discussion of these topics by any "SOP groups" within the timeframe of her request. I also agree that her request would cover responsive records generated from such meetings whether they occur casually or on a regular basis. However, the appellant has not established a reasonable basis to believe that any such records exist. UHN has provided evidence of reasonable efforts to search for responsive records, and explicitly denies the existence of additional SOP-related records concerning the appellant or her practicum. In the absence of credible evidence to doubt this claim, I uphold this aspect of UHN's search.

Other specific records identified by the appellant

[81] In correspondence to the mediator during the mediation stage of the appeal, the appellant provided a detailed list of additional records that she believes ought to exist but that have not been located by UHN through its searches. In the appendix to this decision I have reproduced the full text of this list (redacted to remove the names of individuals). In this list, the appellant identifies particular components of her multi-part request that she believes should yield records beyond any located by UHN.

[82] Many of the items on this list concern meetings that the appellant believes must have occurred around specific dates and times, based on information she gleaned from other records UHN disclosed to her. As one example, she quotes from portions from

²⁴ Other than her initial clarification that she does not seek financial policies or policies specific to surgery.

emails she received that refer to an individual's having "connected with" another individual, and to certain individuals' having gotten "in touch" about matters concerning the appellant. I understand the appellant to be arguing that these excerpts establish a reasonable basis to believe there are additional records documenting meetings or other communications about the appellant that occurred between these individuals.

[83] I am not persuaded by the appellant's evidence. With respect to the email extracts in particular, I am not persuaded that the passages cited by the appellant establish a reasonable basis for believing that further searches would yield records of meetings or other communications concerning the appellant or her practicum beyond those already located by UHN. Assuming these meetings occurred, it is equally plausible, in my view, that they would not entail the creation of records falling within the scope of the appellant's access request. UHN's evidence demonstrates to my satisfaction that it conducted a reasonable search for records responsive to her request, which would include records of meetings and other communications between the individuals identified by the appellant, over the time periods specified by the appellant, on the topics described by the appellant. That UHN has not located records of additional meetings the appellant believes must have occurred does not, on its own, establish that its search was unreasonable.

[84] I will particularly address one aspect of the appellant's claim about additional meeting records. The appellant asserts that record "Redacted 8" supports her belief that there must exist additional records of meetings of the Psychology Education and Training Committee (PETC) that are responsive to her request.²⁵ The appellant notes that among the listed attendees of PETC meetings is a designated "note-taker." She states that the assignment of an individual to this role supports her view that there must be meeting minutes, participants' notes, and other records of PETC meetings responsive to her access request.

[85] In response, UHN repeats its assertion that there are no responsive meeting notes or other records of discussions of the appellant at PETC meetings. By way of explanation, UHN later added the following: "To ensure open and honest discussions, notes are not always taken when addressing HR matters unless there are actionable items."

[86] In response to this, the appellant makes the following argument: Because the appellant's information is registered in UHN's HR system, there is a reasonable basis to conclude that UHN's termination of the appellant's practicum is an "actionable [HR] item;" as a result, it is reasonable to conclude that there exist additional responsive HR and/or PETC records.

[87] I do not agree. I accept the logic of the appellant's assumption that a meeting

²⁵ Under Issue B, above, I considered and rejected the appellant's claim that portions of record "Redacted 8," containing agendas and minutes of four meetings of the PETC, are responsive to her request.

with a designated note-taker could yield notes or other records of the meeting. However, UHN has provided a credible explanation for the absence of notes from PETC meetings generally, and I am satisfied by UHN's evidence that it made reasonable efforts to locate records of specific PETC meetings covered by the appellant's access request and found only those already addressed above. In the face of this evidence, the appellant does not establish a reasonable basis to believe that additional records must exist.

[88] The appellant made similar arguments concerning her request for SOPs (or records relating to meetings at which SOPs were discussed), including SOPs that specifically relate to the appellant or to her practicum.²⁶ I addressed under the previous heading, above, the appellant's request for SOPs, including those relating to herself or to her practicum, and I will not address this category of records again here. In summary, I am satisfied that UHN conducted a reasonable search for these records in accordance with its obligations under the *Act*.

[89] Finally, the appellant's list includes assertions that UHN's search in response to other specific parts of her multi-part request was "incomplete," or that UHN provided "no record or proof of search." I do not agree.

[90] As noted above, UHN provided evidence, including in the form of an affidavit, setting out the steps it took in searching for records responsive to the appellant's request. This includes searches by the six individuals named in her request, the senior director of clinical education, and other staff of the clinical education department. I acknowledge that the appellant identifies a number of other individuals at UHN who she believes would have been better placed to locate records responsive to her request, particularly in respect of her request for policies governing the bariatric clinic. However, I see no fault in UHN's having delegated the searches to the particular individuals it did; these individuals included the appellant's mentors at UHN and staff responsible for the administrative records of practicum students. I note again that these individuals' searches of their paper and electronic files yielded over 170 responsive records. Overall, I am satisfied that experienced employees knowledgeable in the subject matter of the request made reasonable efforts to locate records reasonably related to the request,²⁷ and that, in this way, UHN met its obligations under section 24 of the *Act*.

[91] Finally, to address another point raised by the appellant, I see no need for further evidence of UHN's communications with York University in order to be satisfied that UHN expended reasonable efforts to locate records *in UHN's custody or control*

²⁶ The appellant included the following items on her list of additional records: "Appeal ID 11 (2): 2. All records relating to me or my practicum regarding SOPs. As a result, I request any and all records in any format relating to "SOP" or "SOPs" that relate to or are in regard to myself or my practicum at UHN;" "Request point 6: [...] This request point includes PETC and also SOP records as responsive and search is at issue;" and "Request point 8 [partially covered in your Mediator Report]: This request point includes PETC and also SOP records as responsive and search is at issue[.]"

²⁷ Orders M-909, PO-2469 and PO-2592.

involving individuals affiliated with York University. I am satisfied that the searches conducted by UHN would have yielded records involving individuals at York University that are responsive to the appellant's request. The appellant maintains that UHN's evidence is deficient, largely based on arguments about the lack of probative value of unsworn affidavit evidence. I addressed this criticism above, finding it has no merit in the circumstances. The appellant's assertions do not establish a reasonable basis to conclude that further searches would yield additional responsive records.

[92] In summary, in respect of this category of records, I conclude that UHN has conducted a reasonable search in satisfaction of its obligations under the *Act*.

Metadata for particular records

[93] Lastly, under this heading, I will address the appellant's request for metadata with respect to certain records that UHN disclosed to her. The relevant portion of the appellant's request reads as follows:

Pursuant to the Freedom of Information and Protection of Privacy Act, R.S.O. 1990 ("Act"), I request access to and a copy of all records (as defined in the Act) in the custody or under the control of Toronto Western Hospital ('TWH') or University Health Network ('UHN' collectively with TWH referred to as the "Institution") in any format including but not limited [to] electronic format stored in the Institution's incumbent data/cloud service providers or by individuals employed by, or agents of the Institution, including a complete copy of the following records:

(A) From March 1, 2017 to the present date [August 6, 2019]:

5. A list of all 'computer file attribute' values of attribute types "Created" date, "Content Created" date, "Modified" date, and "Date Last Saved" date, for all records referred to as "Clinical Supervision Record" created by [one or other of two named individuals], or in the care or control of TWH, UHN, or TWH Bariatric Clinic Program, relating to the Requester's practicum with TWH/UHN or are in regard to the Requester.

[94] As noted above, the inquiry proceeded on the basis (undisputed by the parties) that the following records (as numbered in UHN's index of records) are at issue under this heading: records 10-13, 22, 32-34, 44, 48, 145-147, 153-155, 164, 167, and 168.²⁸

²⁸ It does not appear to be in dispute that the requested metadata is responsive information subject to the right of access in the *Act*. In this regard, I agree with the adjudicator in Order MO-4091, who found, in the case of an access request for certain Word documents along with their metadata, that the records and their associated metadata were responsive "records" for the purposes of the municipal equivalent to the *Act*.

[95] In the discussion that follows, I will explain why I am not satisfied that UHN conducted a reasonable search for the metadata associated with the above records.

[96] In response to this portion of the appellant's request, UHN disclosed, for some of the above records, pages containing printouts of the details appearing under the "Info" tab of a Word document. These details appear under headings including "Properties" (for example, document size and number of words in the documents); "Related Dates" (the dates the document was created, last modified, and last printed); and "Related People" (the author of the document, and the identity of the person who last modified the document).

[97] UHN states that it has disclosed to the appellant all the available metadata for the requested records, which it says in most cases consists only of the name of the original author or creator of the document, and the name of the last user. It maintains that it has no further information to provide. UHN offers this explanation:

UHN does not have an integrated word processing system and the only metadata retained rests with each individual document on the device on which it was created. This metadata becomes lost once a new document is created or saved to another device.

[98] UHN says that for Word documents, staff searched their records and "printed out the page containing the document properties as per the appellant's instructions." (I describe these instructions below).

[99] For PDF documents, UHN states the following:

These have been converted or scanned from a Word document. Once the document is scanned, it loses whatever metadata might have been attached to the original [Word] document. Staff were unable to provide metadata for the PDF documents.

[100] The appellant asserts that there is a simple and quick method to obtain metadata from a digital file, which is outlined in instructions she obtained from Microsoft (the company that produces Word, the word processing software used by UHN), and then provided to UHN. In summary, the method she suggests involves the following steps:

- Accessing the original (source) location where the file resides (for example, the file server, the user local workstation, or cloud file server);
- From the file directory, right-clicking on the file to open its file properties;
- From this tab, selecting the "Details" tab;

- From the "Details" tab, viewing and/or copying all the requested metadata (i.e., file attributes), such as "Content created" date, "Date last saved," "Authors," and other fields.

[101] The appellant provided me with a copy of the instructions she provided to UHN. They are easy to follow, and are accompanied by annotated screenshots that clearly explain each step of the process. They also explain that it is possible to select certain metadata fields (in order to copy and paste the desired metadata in another document), and to determine the source location of the file in question, and illustrate how to do that.

[102] UHN provided me with copies of some of the metadata records it has disclosed to the appellant to date. These records appear to display the metadata sought by the appellant, although it is not clear to me that UHN followed the precise instructions supplied by the appellant. (As noted above, the disclosed metadata records appear to be printed copies of the information appearing under the "Info" tab from the "File" menu of a given Word document.) Regardless of the method used by UHN, it does not appear to be in dispute that UHN provided the appellant with the requested metadata for some of the records of interest to her.²⁹

[103] Rather, the main dispute between the parties is whether UHN conducted a reasonable search in respect of other records for which UHN says metadata does not exist. UHN says that PDF records in particular pose a problem, because (as I understand UHN's argument) when the original (Word) versions of these records were saved in Adobe (PDF) format, the file attributes of the original versions were lost. As a result, UHN submits, there is no metadata available for these other records.

[104] I do not accept UHN's explanation. As the appellant notes, converting a Word document to PDF format would remove the metadata for the source (original) record (i.e., the Word document) from the metadata for the newly created PDF file, which has its own metadata. However, this should not affect the source record's metadata, which would continue to be maintained at the source record's location. Like the appellant, I question UHN's statement that a source record's metadata "becomes lost once a new document is created or saved to another device."

[105] On this point, I also find relevant the appellant's evidence that in response to her access request, UHN disclosed multiple versions of identically titled records (that are also nearly identical in content). The appellant suggests that this illustrates UHN does not have a practice of saving documents in a manner that replaces previous versions with the newest version. I agree. The appellant notes that in the case of the six identically titled records, each record would exist independently of the others in its own source location, and that each of the six records would have its own, distinct, metadata.

²⁹ As I address further below, however, the appellant requests that UHN specify which set of disclosed metadata corresponds to which record listed on its index of records. I later order UHN to provide this clarification to the appellant.

I also agree with this statement. The appellant states that it is her understanding that all the source records are Word documents, not PDF documents. When invited to respond to the appellant's representations on this topic, which raised these points and others, UHN merely repeated the statements summarized above, including that it has a limited ability to provide metadata, and that it has already disclosed to the appellant all the metadata that is available.

[106] After considering the parties' representations, it remains unclear to me why UHN takes the position that it is unable to retrieve metadata from the source records from which PDF records were generated, which would be distinct from the metadata of their PDF versions. UHN states that this metadata "becomes lost once a new document is created or saved to another device," but it does not clearly explain why this would be the case. For example, UHN does not appear to be claiming that the records at issue were originally generated in PDF format, so that there simply do not exist any source records in Word format, or that its practice is to delete source records (in Word format) once their contents are saved in a new format (such as PDF). If I am misunderstanding UHN's position, then it lies on UHN to state its position clearly, and to support its position with evidence, which it has not done. Further, I find unclear the relevance of UHN's assertion that it lacks an integrated word processing system. I agree with the appellant that an institution does not need to use an integrated word processing system to retrieve metadata from responsive records in its custody or control.

[107] In summary, while I make no finding on whether the requested metadata in fact exists, I am not satisfied that UHN has conducted a reasonable search for this information, or provided an adequate explanation for why this information does not exist. As a result, I will order UHN to conduct another search for metadata. In this context, a reasonable search could involve engaging UHN's technology services to retrieve the metadata for source records at their original locations. Following its search, UHN must issue another access decision to the appellant in respect of this information. Along with its decision, I will require UHN to provide a detailed explanation of the steps it took to conduct this search. This explanation must include confirmation that UHN has followed the instructions provided by the appellant, or else a description of what alternate method it used to search for metadata, and why it used this alternate method.

[108] Lastly under this heading, with respect to the metadata UHN has already disclosed to the appellant, the appellant requests that UHN identify for her the specific record (in UHN's index of records) that corresponds to the disclosed metadata. She observes, for example, that many of the records she has received are slightly different versions of the same document (and are sometimes identically titled), so that without this clarification from UHN, it is difficult for her to identify the precise record to which the metadata relates. I find this to be a reasonable request, and one that UHN should be able to fulfil without much difficulty on its part. I will thus order UHN to provide this clarification to the appellant for the metadata records it has already disclosed to her, and for any new records of metadata that UHN locates as a result of this order. If UHN is unable to provide this information, it must explain to the appellant why.

ORDER:

I uphold UHN's decision in part, as follows:

1. I uphold UHN's decision to withhold portions of records 7, 25, 44, 94, and 146 (as numbered in UHN's index of records), under section 49(a) of the *Act*, read with section 19(a).
2. I uphold UHN's decision to withhold portions of record "Redacted 8" on the basis they are not responsive to the appellant's request.
3. I do not uphold UHN's searches in respect of the following information:
 - Documentation maintained by UHN "on issues such as civility and respect, anti-racism, etc;"
 - Opening, closing, and operational policies governing the bariatric clinic that are directed to clerical staff; and
 - Metadata for the following records (as numbered in UHN's index of records): 10-13, 22, 32-34, 44, 48, 145-147, 153-155, 164, 167, and 168.
4. I order UHN to conduct further searches for the above records, and to issue an access decision or access decisions to the appellant in respect of these records, treating the date of this order as the date of the request for the purposes of the procedural requirements of the *Act*.
5. If UHN's searches in respect of any of the categories of records described in order provision 3 fail to locate further records, UHN must provide to the appellant, along with its access decision(s), a detailed explanation of its search efforts. This explanation must identify, at a minimum:
 - Who conducted the search, and/or who was contacted in the course of the search (for example, whether technology services was engaged for assistance in the search);
 - The places searched;
 - The types of files searched; and
 - The results of the search.
6. In respect of the metadata UHN has already disclosed to the appellant, and for any new records of metadata that UHN locates as a result of its further searches, I order UHN to identify for the appellant the precise record (as identified in UHN's

index of records) to which the metadata relates. If UHN is unable to provide this information, it must explain to the appellant why.

7. I uphold UHN's search for responsive records in all other respects.

8. To ensure compliance with this order, I reserve the right to require UHN to provide me with the access decision(s) and/or written explanations described in order provisions 4, 5, and 6.

Original Signed by: _____

October 27, 2022 _____

Jenny Ryu
Adjudicator

APPENDIX

The appellant's access request

Pursuant to the Freedom of Information and Protection of Privacy Act, R.S.O. 1990 ("Act"), I request access to and a copy of all records (as defined in the Act) in the custody or under the control of Toronto Western Hospital ('TWH') or University Health Network ('UHN' collectively with TWH referred to as the "Institution") in any format including but not limited [to] electronic format stored in the Institution's incumbent data/cloud service providers or by individuals employed by, or agents of the Institution, including a complete copy of the following records:

A. From March 1, 2017 to the present date [August 6, 2019]:

1. Any and all records created by, sent from, or received by one or more of the following individuals: [six named individuals], or any other employee, staff, agent or representatives of TWH or UHN, that either directly or indirectly refer to, or are in regard to the requester [the appellant's name], (having York student number [specified student number]) and may include references to [the appellant] using the following identifiers, among others, 'her', 'student,' 'she,' 'psych student,' 'practicum student,' 'psychology practicum student,' [appellant's email York University and UHN addresses], UHN staff number: [specified number], etc.) (referred to collectively as the "Requester" in this access request).

2. Any and all records created by, sent from, or received by one or more of the following individuals: [six named individuals] or any other employee, staff, agent or representatives of TWH or UHN, and being authored by, sent from, or received by one or more of the following institution or people: 'York University' ('York'), [three named individuals

associated with York University], that either directly or indirectly refer to, or are in regard to the Requester.

3. Any and all records referred to as "Clinical Supervision Record" created by [one or other of two named individuals] or in the care or control of TWH, UHN, or TWH Bariatric Clinic Program, relating to the Requester's practicum with TWH/UHN or are in regard to the Requester.

4. Any and all records including but not limited to audio recordings, meeting minutes, or memos, created by, sent from, or received by [one or other of two named individuals], that refer to or are in regard to by [one or other of same two named individuals]'s conversations with the Requester.

5. A list of all 'computer file attribute' values of attribute types "Created" date, "Content Created" date, "Modified" date, and "Date Last Saved" date, for all records referred to as "Clinical Supervision Record" created by [one or other of two named individuals], or in the care or control of TWH, UHN, or TWH Bariatric Clinic Program, relating to the Requester's practicum with TWH/UHN or are in regard to the Requester.

6. Any and all records in the care or control of TWH, UHN, or TWH Bariatric Clinic Program, relating to the Requester's practicum with TWH/UHN or are in regard to the Requester.

7. Any and all records held by the Institution of record type 'Human Resources Records' or any other department where personal information is stored in the Requester's name or that refers to the Requester.

8. Any and all records in any format including but not limited to meeting minutes or memos relating to the TWH bariatric clinic "weekly interdisciplinary rounds" meetings, or "Rounds" meetings.

9. Any and all records of UHN TWH bariatric clinic "Standard Practice" policy and practice statements for each year.

A. From January 1, 2018 to [August 6, 2019]:

1. Any and all records created by, sent from, or received by one or more employee, staff, agent or representative of TWH, or UHN, to any members of York University's legal counsel, that refer to the Requester.

2. Any and all records created by, sent from, or received by one or more of TWH, UHN, [one or other of two named individuals], and [a third named individual] (York), relating to or containing the record identified as a letter (please see Schedule "B") dated February 14, 2018 sent from

TWH/UHN to [the same third named individual associated with York University], "Re: [Appellant]."

A. From February 1, 2018 to July 11, 2018:

1. Any and all records created by, sent from, or received by one or more of TWH, UHN, [one or other of two named individuals], and a [third named individual] (York) relating to a letter (or "Clinical Supervision Record") from [one or other of the same two named individuals] sent to [the same third named individual associated with York University] that contain the following quote, or parts thereof:

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.

A. From February 1, 2018 to [August 6, 2019]:

1. Any and all records including but not limited to phone logs, meeting minutes, memos, or emails created by, sent from, or received by one or more of the following individuals: [four named individuals] or any other employee, staff, agent or representative of the Institution, and [a fifth named individual] (York) that either directly or indirectly refer to the requester and this record (please see Schedule "C").

The appellant's list of additional records she believes ought to exist

Request point 1

- Appeal ID 1 (a), (b), (c), (d):
 - All records created by each UHN meeting participant for the following meeting dates, on or about:
 - a. January 25, 2018 10:30 a.m.: [three named individuals];
 - b. July 24, 2018: [one named individual] (with [another named individual] on phone);
 - c. January 19, 2018: [two named individuals] (with [another named individual] on phone); and

d. February 2, 2018, 12:30 p.m.: [four named individuals].

- Appeal ID 2 (1), (2), (3):

1. Records by [two named individuals], for a meeting that occurred before a February 2, 2018 8:53 a.m. email referred to in Record Item #96, where [one of the two named individuals] states, “[the other named individual] connected with me to let me know [...]”;

2. records by [three named individuals], for a meeting that occurred before a February 2, 2018 8:53 a.m. email referred to in Record Item #96, where [a fourth named individual] states, “[...] she [one of the three named individuals] and [another of the three named individuals] got in touch with you [the third named individual] about our student [Requester] complaint”; and

3. any and all other records from meetings that occurred that relate to or are in regard to myself.

- Appeal ID 11 (2):

2. All records relating to me or my practicum regarding SOPs. As a result, I request any and all records in any format relating to “SOP” or “SOPs” that relate to or are in regard to myself or my practicum at UHN.

Access Request 2

- Appeal ID 9

- All communications between [two named individuals], in any record format.

Request point 4

- Incomplete search of records for this request

Request point 6:

- Appeal ID 7; (if responded to by other means besides email, e.g., phone record, minutes, these are sought)
- Search is incomplete for Record 46
- This request point includes PETC and also SOP records as responsive and search is at issue.

Request point 8 [partially covered in your Mediator Report]

- This request point includes PETC and also SOP records as responsive and search is at issue.

Request point 10

- No record or proof of search has been provided for this request.