Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4479

Appeal PA21-00125

Toronto Metropolitan University

February 5, 2024

Summary: The appellant made a request under the *Act* to the Toronto Metropolitan University (the university) for access to records relating to a complaint made against him under the university's Sexual Violence Policy. The university took the position that the records are excluded from the scope of the *Act* under section 65(6)3 (labour relations or employment related matters) In this order the adjudicator finds that except for an invoice, which is subject to the *Act*, the balance of the records are excluded from the scope of the *Act* under section 65(6)3. He orders the university to issue an access decision with respect to the invoice and upholds its decision not to disclose the remaining records.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31, section 65(6)3.

Orders Considered: Orders MO-3664, MO-4019, PO-2212, PO-2234, PO-2614 and PO-2625-I.

Cases Considered: *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27; *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.), 2008 CanLII 2603 (ON SCDC); *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 509; *Ontario (Ministry of Community and Social Services) v. Doe*, 2014 ONSC 239, appeal dismissed *Ontario (Ministry of Community and Social Services) v. John Doe*, 2015 ONCA 107; *Brockville (City) v. Information and Privacy Commissioner, Ontario*, 2020 ONSC 4413 (Div Ct.).

OVERVIEW:

[1] This matter arises out of a complaint about the appellant made to the Toronto Metropolitan University (the university) under its Sexual Violence Policy (SVP). The policy is administered by the university's Human Rights Services (HRS) and is applicable to all members of the university community, including employees. The complaint was processed and then investigated by an outside entity and an Investigation Report was prepared. The complaint was upheld, with the appellant being subject to certain limitations on any potential volunteer opportunities and re-employment with the university.

[2] The appellant subsequently made a request to the university under the *Freedom of Information and Protection of Privacy Act* (the *Act* or *FIPPA*) for access to the following information:

> The Sexual Violence Policy investigatory report prepared by [a named individual] for the Department of Human Rights Services, that would have been submitted to [another named individual] of HRS approximately in January of 2020, regarding the allegations made against me.
>
> Any correspondence between [2 named individuals], or any other employees of [the university] related to [the] investigation, from July 1, 2019 to present.
>
> Any invoices, time sheets, or other similar documents submitted by [a named individual] or [named law firm] to [the university] in the period of July 1, 2019 to present.
>
> Any correspondence between any employees of HRS, or notes (electronic or handwritten) taken by any employees of HRS relating to the allegations made against me, or the investigation of those allegations.
>
> Any correspondence between [a named individual], or any other member of HRS; and [the Dean], Faculty of Science; or any members of [the Dean's] staff, relating to the allegations made against [the appellant], or the investigation of those allegations.
>
> Any notes (electronic or handwritten) made by [the Dean] relating to these allegations, or the investigation of these allegations.

[3] The university identified responsive records and denied access to them in full, relying on the exclusion at section 65(6)3 (labour and employment) or, if the *Act* were found to apply, the exemption at section 13(1) (advice or recommendations).

[4] The appellant appealed the university's decision to the Information and Privacy Commissioner of Ontario (the IPC).

[5] Mediation did not resolve the appeal and it was moved to the adjudication stage of the appeals process where an adjudicator may decide to conduct an inquiry under the *Act*.

[6] I decided to conduct an inquiry and I sought and received representations from the parties. Representations were shared in accordance with the IPC's *Code of Procedure*.[1]

[7] In this order, I find that except for an invoice, which is subject to the *Act*, the balance of the records are excluded from the scope of the *Act* under section 65(6)3. I order the university to issue an access decision with respect to the invoice and uphold its decision not to disclose the remaining records.

RECORDS:

The records at issue in this appeal include an Investigation Report, correspondence between university staff and an invoice received from an external investigator for services provided to the university.

DISCUSSION:

[8] The university takes the position that the records at issue are excluded from the *Act* under section 65(6)3 of *FIPPA*. The appellant asserts that they are not excluded.

[9] Section 65(6) of the *Act* excludes, from the scope of the *Act*, certain records held by an institution that relate to labour relations or employment matters. If the exclusion applies, the record is not subject to the access scheme in the *Act*, although the institution may choose to disclose it outside of the *Act*'s access scheme.[2]

[10] The university submits that paragraph 3 of section 65(6) applies to the records at issue. This provision states:

> Subject to subsection (7), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:
>
> 3. Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest….

[1] Portions of the representations were withheld as they met the criteria for withholding representations in Practice Direction 7.
[2] Order PO-2639.

[11] If section 65(6) applies to the records, and none of the exceptions found in section 65(7) applies, the records are excluded from the scope of the *Act*. None of the exceptions apply in the circumstances of the appeal before me.

[12] If section 65(6) applied at the time the record was collected, prepared, maintained or used, it does not stop applying at a later date.[3]

[13] The type of records excluded from the *Act* by section 65(6) are those relating to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue.[4]

[14] For the collection, preparation, maintenance or use of a record to be "in relation to" one of the three subjects mentioned in this section, there must be "some connection" between them.[5]

[15] The "some connection" standard must, however, involve a connection relevant to the scheme and purpose of the *Act*, understood in their proper context. For example, given that accountability for public expenditures is a core focus of freedom of information legislation, accounting documents that detail an institution's expenditures on legal and other services in collective bargaining negotiations do not have "some connection" to labour relations.[6]

[16] The term "labour relations" refers to the collective bargaining relationship between an institution and its employees, as governed by collective bargaining legislation, or to similar relationships. The meaning of "labour relations" is not restricted to employer-employee relationships.[7]

[17] The term "employment of a person" refers to the relationship between an employer and an employee. The term "employment-related matters" refers to human resources or staff relations issues arising from the relationship between an employer and employees that do not arise out of a collective bargaining relationship.[8]

The university's representations

[18] The university explains that it hired the appellant as a teaching assistant and that

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[3] *Ontario* (*Solicitor General*) *v. Ontario* (*Assistant Information and Privacy Commissioner*) (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 509.
[4] *Ontario* (*Ministry of Correctional Services*) *v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.). The CanLII citation is "2008 CanLII 2603 (ON SCDC)."
[5] Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).
[6] Order MO-3664, application for judicial review denied in *Brockville* (*City*) *v. Information and Privacy Commissioner, Ontario*, 2020 ONSC 4413 (Div Ct.).
[7] *Ontario* (*Minister of Health and Long-Term Care*) *v. Ontario* (*Assistant Information and Privacy Commissioner*), [2003] O.J. No. 4123 (C.A.); see also Order PO-2157.
[8] Order PO-2157.

he was a unionized employee. It states that the appellant, like all employees of the university, was required to complete training on Workplace Harassment Prevention and follow the Teaching Assistant/Graduate Assistant policies and orientation administered by the university's Learning and Teaching Office.

[19] The university submits that the complaint arose in the context of the appellant's performance of his job-related duties.

[20] The university explains that the allegations against the appellant were reviewed and addressed by the university's HRS, the relevant Dean, and human resources. It notes that the Dean was appointed as the designated decision maker on the matter by virtue of his oversight of the appellant as an employee of the university.

[21] The university states that the Dean determined that the allegations of sexual violence against the appellant were substantiated and in accordance with the SVP and the applicable employment contract and collective agreement, the appellant was terminated from his employment. He was also deemed ineligible for any employment or volunteer opportunities for a specified time-period.

[22] The university submits that all the responsive records were collected, prepared, maintained, and used by the university or by an external investigator retained by the university to investigate and determine the allegations. It submits that all the responsive records pertain to the allegations against the appellant and thereby relate to labour relations and employment related matters in which the university has an interest.

[23] In that regard, the university references Order PO-2625-I, where the adjudicator found that the section 65(6)3 exclusion applied to records related to sexual harassment complaints filed with the university.[9]

[24] The university also points to the findings in Order PO-2614, submitting that:

> … Order PO-2614 found that there is no question that a university's sexual harassment policy refers to the employment obligations of an employee. As noted above, the university's SVP defines "[university] Community Members" to include university employees and empowers the decision maker with measures related to employment modification or restriction. A sexual harassment complaint brought against or brought by an employee is, by definition, an employment matter. The university submits that the substance of the records is an employment matter as they relate directly to the management of an employee as the subject of a university policy and the possible employment-related sanctions he faced. The university also has a broad interest in the consequences that arise from instances of sexual violence in terms of its educational mandate, which interacts with the labour and employment-related matters.

[9] The appeal related to the university before its name was changed.

> … in order PO-2614 it was found that records collected, prepared, maintained and used under a sexual harassment policy and the employment context relate to the university's management of its own workforce and, thereby, engaged its interest. The university submits that its interest is comparably engaged in this case.

[25] The university submits that the fact that the appellant is no longer employed by the university does not stop the investigation of the complaint from being an employment-related matter under section 65(6)3.

[26] Finally, the university explains that Record 17 is an invoice received by the university from the external investigator. Referencing Order PO-2614, the university submits that the invoice was collected and maintained by the university and reflects the investigation process conducted by the external investigator and the outcome of their investigation about employment-related matters, thereby falling within the scope of the section 65(6)3 exclusion.

The appellant's representations

[27] The appellant asserts that the section 65(6)3 exclusion does not apply in the circumstances of this appeal. The appellant takes the position that because the complaint and the investigation process occurred after he had ended his graduate studies and was no longer an employee of the university, the section 65(3)3 exclusion does not apply. In that regard, the appellant submits that to the extent the complaint and SVP process applied to him, it was as a member of the university community, namely as a student, and not as an employee.

[28] The appellant argues that because he was a student and not an employee, Order PO-2625-I is distinguishable. He says this is because in upholding the application of section 65(6)3, the adjudicator in that order specifically noted that, "[u]pon my review of the records, I find that the [Office of Discrimination and Harassment Prevention Services] records concern employment-related matters and do not relate to a complaint against a student, visitor or contractor." The appellant also relies on *Ontario (Ministry of Correctional Services) v. Goodis*,[10] in support of an assertion that it can be inferred that the Divisional Court concluded in that case that the type of records excluded from the *Act* by section 65(6)3 are documents related to matters in which the institution is currently acting as an employer, and terms and conditions of employment or human resources questions are at issue.

[29] He states that in the appeal before me the employment relationship had ended, and no terms or conditions of employment or human resources questions were in issue.

[30] The appellant also refers to the Ontario Court of Appeal decision in *Ontario*

[10] *Ontario* (*Ministry of Correctional Services*) *v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.). The CanLII citation is "2008 CanLII 2603 (ON SCDC)."

(Solicitor General) v. Ontario (Assistant Information & Privacy Commissioner),[11] where the Court commented that:

> … Examined in the general context of subs. (6), the words "in which the institution has an interest" appear on their face to relate simply to matters involving the institution's own workforce. … Subclause 3 deals with records relating to a miscellaneous category of events "about labour relations or employment-related matters in which the institution has an interest." Having regard to the purpose for which the section was enacted, and the wording of the subsection as a whole, the words "in which the institution has an interest" in subclause 3 operate simply to restrict the categories of excluded records to those records relating to the institutions' own workforce where the focus has shifted from "employment of a person" to "employment-related matters." …[12]

[31] The appellant submits that the university should not be permitted to rely on the section 65(6)3 exclusion, which is limited to terms and conditions of employment or human resources questions, because the focus must be on the employment of a person rather than broadly based employment-related matters. He asserts that if taken to its logical conclusion, it would necessarily follow that any institution governed by the *Act* may, at any time after the conclusion of an individual's employment, collect information about that person and withhold it on the basis that they had previously been an employee.

[32] The appellant submits that the sole employment element in this matter that touches upon human resources is the penalty the university fashioned of prohibiting a former employee, who had expressed no intention whatsoever of again becoming an employee of the university, from taking employment at the university at some later date. The appellant submits that the university should not be permitted to "bootstrap its argument in such cases by fashioning an employment-related prohibition that had never previously been within the contemplation of any of the parties."

[33] The appellant submits that considering the purposes of the *Act*, while the university was entitled to conduct the investigation in the way that it did, "it is not entitled to withhold the records from the appellant, as a deeply-affected individual, on the basis of a false assertion that its investigation of a non-employee was an investigation of an employee whose employment was terminated as a result of that investigation."

The university's reply representations

[34] In reply, the university submits the investigation was related to the conduct of

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[11] *Ontario* (*Solicitor General*) *v. Ontario* (*Assistant Information and Privacy Commissioner*) (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 509.
[12] At paragraph 35.

the appellant in his professional role in the workplace.

[35] The university adds that the Dean's decision clearly contemplates a sanction and an outcome for the appellant as an employee, a determination that impacted his current and future employment by the university. The university states that it did not apply the SVP to the appellant as a community member, but in an employment context.

[36] While acknowledging that the records were not created during the appellant's work term, referencing Orders PO-2212 and PO-2344, the university submits that the records are about employment-related matters that took place at the time the appellant was an employee of the university. It submits that its interest in labour relations and employee related matters extends to former employees.

[37] In Order PO-2212, the adjudicator found that records relating to the insured benefits for Ontario Public Service (OPS) retirees were excluded under 65(6)3. In that order, the adjudicator wrote:

> The records at issue in this appeal relate to the provision of benefits to former employees who have retired from the OPS. In my view, the fact that the records relate to individuals who are no longer employed by the OPS and do not have a current employment relationship with the Ontario government does not mean that the records are not "employment-related" for the purposes of section 65(6)3. The only reason the records exist is because the pension beneficiaries had an employment relationship with the OPS. Applying similar reasoning from past orders where records created prior to the establishment of an employment relationship such as job competition records concerned "employment-related matters", I find that records stemming directly from a previously existing employment agreement also concern "employment-related matters", regardless of the fact that the employment relationship has terminated.[13]

[38] Finally, the university submits that the SVP provided an opportunity for the appellant to appeal the university's decision through the grievance and arbitration process outlined in the collective agreement applicable to the appellant.

Appellant's sur-reply representations

[39] In sur-reply, the appellant reiterates his position that the date of the notice of the complaint and creation of the records is central to the analysis because in his view, the university was investigating a non-employee. The appellant submits that although he was under no employment obligation to participate in the investigation, he did so only due to his continuing status as a student. The appellant submits that as a former employee he had no ability under the relevant collective agreement to file a grievance.

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[13] At page 6 of Order PO-2212.

[40] The appellant also asserts that while most of the interactions that appear to have given rise to the complaint took place at a time when he was a teaching assistant, he was not the complainant's teaching assistant and had no authority over her marks or any other element of her academic progress. He submits that his employment status gave him no authority or control over the complainant and was merely coincidental to the situation. The appellant argues that any interactions with the complainant that appear to have given rise to her complaint are therefore interactions between two students at the university.

[41] The appellant also takes the position that the factual underpinnings of Orders PO-2212 and PO-2234 are distinguishable from those under consideration in this appeal. He submits:

> … In Order PO-2212, the subject matter of the underlying dispute related specifically to pension rights - rights derived from a former employment relationship but which continued to subsist - as a right to payment of a pension - at the time that the records there at issue were created. Similarly, Order PO-2234 related to the benefits payable to a retired employee, again being inextricably tied to a then-current entitlement of the former employee. No analogous current connection exists in the present matter.

[42] The appellant adds that there is no indication that Order PO-2625-I was about anyone other than then-current employees of the subject institution.

[43] Finally, the appellant asserts that the university's position "essentially seems to be that once a person has been an employee, the availability of the [section] 65(6)3 exclusion is eternal." He asks:

> … If the employer retains the ability to conduct an after the fact investigation 4 months post separation and shield it under s. 65(6)3, can it continue to do so after a year? After 3 years? After 5 years? If the [IPC] is to adopt the notion that a post-employment exercise can be hidden from view on the basis of the 65(6)3 exception, it then become an open question as to whether the ability to do that exists in perpetuity, or whether there is a post-separation time limit, and, if it is the latter, then for how long does it run, and on what basis?

[44] The appellant suggests a different approach. He submits that the appropriate means of considering a post-employment document generating process is to assess the extent to which the creation of the records serves a genuine employment-related purpose such as severance, pension or insurance benefits, and not "a merely theoretical one based on some entirely speculative future relationship."

Analysis and findings

[45] Based on my review of the records and the parties' representations, for the reasons that follow, I find that all of the records, except for Record 17, are excluded from the *Act* under section 65(6)3.

[46] This case turns on the meaning and scope of the exclusion set out in section 65(6)3. Statutory interpretation starts with Professor Driedger's "modern approach" described by the Supreme Court of Canada in *Rizzo & Rizzo Shoes Ltd. (Re)*[14], at paragraph 21 as follows:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[47] I agree with this approach and will adopt it in my interpretation of 65(6)3 in the context of this appeal.

[48] For section 65(6)3 to apply, the university must establish that:

1. the records were collected, prepared, maintained or used by an institution or on its behalf;

2. this collection, preparation, maintenance or use was in relation to meetings, consultations, discussions or communications; and

3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest.

[49] The phrase "in which the institution has an interest" means more than a "mere curiosity or concern," and refers to matters involving the institution's own workforce.[15]

[50] The records are excluded only if the meetings, consultations, discussions or communications are about labour relations or "employment-related" matters in which the institution has an interest. Matters related to the actions of employees, for which an institution may be responsible are not employment-related matters for the purpose of section 65(6).[16]

[51] I find that in the circumstances of this appeal, except for Record 17, the three-part test under section 65(6)3, set out above, has been met and that the remaining records are excluded from the scope of the *Act*.

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[14] 1998 CanLII 837 (SCC), [1998] 1 SCR 27.
[15] *Ontario* (*Solicitor General*) *v. Ontario* (*Assistant Information and Privacy Commissioner*), cited above.
[16] *Ontario (Ministry of Correctional Services) v. Goodis*, cited above.

[52] Record 17 is an invoice received by the university from the external investigator. In Order MO-3664, which was upheld by the Ontario Divisional Court in *Brockville (City) v. Information and Privacy Commissioner, Ontario*,[17] the adjudicator considered whether legal invoices were subject to the exclusion for labour relations and employment-related matters. The legal invoices at issue in that order were accounting records for the assistance that external legal counsel provided in negotiating a collective bargaining agreement. In dismissing the City of Brockville's reliance on the municipal equivalent of section 65(6)2[18] to deny access to law firm invoices, among other records, the adjudicator made the following finding:[19]

> [… the records were] collected, used or maintained by the city for accounting purposes as they consist of statements of accounts or invoices prepared by arbitrators or legal counsel to charge the city for services rendered. It does not appear that these records have some connection or relate to the negotiations or anticipated negotiations themselves, other than in a tangential way. In light of the purpose of the exclusion to protect "records relating to" an institution's relations with their own work force, I am not satisfied the collection, preparation, maintenance or use of the accounting or expense records at issue can be considered to have some connection to the labour relations negotiations between the city and the [Brockville Professional Fire Fighters Association] for the purpose of section 52(3)2 of the *Act*.
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> As noted by the Divisional Court in *Reynolds*,[20] the purpose of section 52(3)2 is to protect the interests of institutions by removing the public right of access to certain records relating to institutions' relations with their own workforces.[21] In my view, the records at issue relate not to the city's relations with its workforce but to expenses arising out of those relations. I find that these are not the types of records that section 52(3)2 is intended to exclude from the *Act*.[22] (emphasis added)

[53] Order MO-3664 was quoted extensively and relied upon by the adjudicator in Order MO-4019, which addressed an access request to the Toronto Community Housing Corporation (TCHC) under the *Municipal Freedom of Information and Protection of*

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[17] 2020 ONSC 4413 (Div Ct.).
[18] In the *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M.56, section 52(3)2 is the counterpart of the exclusion for labour relations and employment-related information at section 65(6)2 of *FIPPA*.
[19] Order MO-3664 at paragraphs 26 and 27.
[20] *Reynolds v. Binstock*, 2006 CanLii 36624 (ON SCDC).
[21] Adjudicator Wei referenced *Ontario (Ministry of Correctional Services) v. Goodis*, cited above.
[22] At paragraph 42, Adjudicator Wai said that for similar reasons, she was not satisfied that the records related to the relations between the city and its workforce for the purpose of section 52(3)3, but that they were only "tangentially connected" to the meetings, discussions, consultations, or communications contemplated by that exclusion.

Privacy Act[23] seeking information about the TCHC's expenditures on external legal counsel. In that appeal, the TCHC submitted that the requested information from law firm invoices relates directly to employment matters, because the invoices address human resources and staff matters arising from the relationship between the TCHC and its employees. Given the context in which the invoices were created, the TCHC maintained that they relate to the TCHC's management of its own workforce and are therefore excluded under section 52(3)3, the municipal equivalent of section 65(6)3.

[54] In Order MO-4019, the adjudicator concluded at paragraphs 44 and 45 of her decision that:

> [44] In Order MO-3664, the legal invoices at issue were accounting records for the assistance that external legal counsel provided in negotiating a collective bargaining agreement. In this appeal, the record summarizes the TCHC's spending on workplace investigations conducted by external legal counsel in response to an access request under the *Act*. The record uses information from law firm invoices that were generated to request payment for the investigations they conducted for the TCHC.
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> [45] In my view, the record before me does not bear any more of a connection to the section 52(3) matters than those considered in Order MO-3664. I find that the record relates to legal accounts and expenses that do not have "some connection" to labour or employment matters within the meaning of section 52(3). As a result, I find that the record, which reflects the TCHC's spending on workplace investigations, is merely *tangentially* related to the matters described in paragraphs 1, 2, and 3 of section 52(3), such that the "some connection" requirement in part 2 of the three-part tests is not met.

[55] I agree with the reasoning of the adjudicators in Orders MO-3664 and MO-4019 and in my view, the invoice before me does not bear any more of a connection to the section 65(6)3 matters than those considered in Orders MO-3664 and MO-4019. As a result, I find that Record 17 is merely tangentially or peripherally related to the matters described in paragraph 3 of section 65(6), such that the "some connection" requirement in part 2 of the three-part tests is not met.

[56] Given my finding that the second requirement of the section 65(6)3 test has not been established for Record 17, I find that the 65(6)3 exclusion does not apply to it and that, unlike the other records that I will discuss below, the invoice falls within the scope of the *Act*. Given these circumstances, I will order the university to issue a further access decision regarding the invoice.

[57] I now turn to the balance of the records at issue.

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[23] RSO 1990, c M.56.

[58] I find that the remaining records were collected, prepared and maintained or used by the university in relation to meetings, consultations, discussions or communications by the university pertaining to the commencement, investigation and disposition of a complaint under the the university's SVP, which involved an external review, the creation of an Investigation Report and a disposition by the Dean. The records pertain to the procedural and substantive steps to investigate the allegations in the complaint, including the interviewing of witnesses and the discussion of the results, which are reflected in the content of the records. I am also satisfied that the meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the university has an interest.

[59] In that regard, in *Ontario (Ministry of Community and Social Services) v. Doe* (*John Doe*),[24] the Divisional Court found that the dictionary definition of the word "about" in section 65(6)3 of *FIPPA* requires that the record do more than have some connection to, or some relationship with, a labour relations or employment related matter. It stated that "about" means "on the subject of" or "concerning."[25] This means that to qualify for the section 65(6)3 exclusion, the subject matter of the record must be a labour relations or employment-related matter.[26]

[60] The remaining records at issue all relate to the commencement, investigation and disposition of a complaint under the university's SVP. Whether or not the appellant was acting as a teaching assistant for the complainant at the time, it is undisputed that interactions that gave rise to the complaint occurred while he was a teaching assistant employed by the university. Simply put, events that gave rise to the complaint took place while he was employed by the university. I accept that the commencement, investigation and determination of a sexual harassment complaint made against an employee is a labour relations or employment-related matter in which the university has an interest and that, except for the Record 17 which I addressed above, in all the circumstances, the contents of the records have some connection to, or some relationship with that labour relations or employment-related matter.

[61] I have considered the appellant's position regarding the timing of the complaint in relation to the end of the appellant's employment. I do not agree with his position. *Ontario (Ministry of Correctional Services) v. Goodis* did not consider whether the result would change if an employee's status has changed. That issue was not before the Divisional Court. Accordingly, I find that it does not stand for the principle the appellant seeks to draw from that decision. I also find that, in keeping with the adjudicator's finding in Order PO-2212, with which I agree, whether the employment relationship had ended does not change the employment-related nature of the records in this case and thus, the application of the section 65(6)3 exclusion. In that regard, as discussed in the

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[24] 2014 ONSC 239, appeal dismissed *Ontario* (*Ministry of Community and Social Services*) *v. John Doe*, 2015 ONCA 107

[25] The Divisional Court referenced the Concise Oxford English Dictionary, 11th ed., 2004, s.v. "about".

[26] At paragraph 29.

excerpt from PO-2212 that I reproduced above, prior orders have found that records stemming directly from a pre-existing employment agreement also concern "employment-related matters," regardless of the fact that the employment relationship has terminated. In this case, the records pertain to the conduct of the appellant while he was in an employment relationship with the university. In my view that is sufficient to bring the remaining records at issue within the scope of the section 65(6)3 exclusion. In the result, I find that all three parts of the section 65(6)3 test have been met and all the remaining records at issue are excluded from the scope of the *Act* under that section.

ORDER:

1. The *Act* applies to Record 17 at issue in this appeal.

2. The *Act* does not apply to the other records at issue in this appeal.

3. I order the university to issue an access decision to the appellant on Record 17, in accordance with the requirements of the *Act*, treating the date of this order as the date of the request for the purpose of the procedural requirements of the *Act*.

4. I further order the university to send me a copy of the access decision issued to the appellant pursuant to Provision 3 of this order when the decision is issued to the appellant.

Original Signed by: February 5, 2024

Steven Faughnan
Adjudicator