

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4492

Appeal PA21-00278

Toronto Metropolitan University

February 28, 2024

Summary: The appellant made a request to the university for access to information about herself. The university located responsive records and granted partial access to them. The appellant appealed the university's decision to deny access to some records on the basis of section 49(a) (right to refuse access to requester's own personal information), read with sections 13(1) (advice or recommendations) and 14(1)(c) (reveal investigative techniques or procedures). In this order, the adjudicator partially upholds the university's decision.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of "personal information"), 13(1), 14(1)(c) and 49(a).

OVERVIEW:

[1] The appellant made a request to Toronto Metropolitan University¹ (the university) for access under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to records relating to herself. She sought access to:

- all communication, emails, notes, case notes or other information and records" from four individuals in the office of integrated risk management between September 15, 2016 and September 1, 2017; and,

¹ At the time of the request and the decision under appeal, this institution was known as Ryerson University.

- all communication relating to herself from a specific individual between September 1, 2020 and December 30, 2020.

[2] The parties continued to communicate about the request after the appellant submitted it, with the result that the appellant provided search terms and key words relating to campus events, additional dates, and an email address to help the university identify responsive records.

[3] The university located 105 responsive records and issued a decision granting partial access. The university claimed the following exemptions over the records to which it denied access: sections 13(1) (advice or recommendations); 14(1) (law enforcement); 19 (solicitor-client privilege); 49(b) (personal privacy); and 49(c.1) (evaluative or opinion material). The university later issued a revised decision by which it granted access to some of the records previously withheld.

[4] The appellant appealed the university's decision to the Information and Privacy Commissioner of Ontario (IPC). The parties participated in mediation to explore the possibility of resolution. Several exemptions and access to a number of records were resolved during mediation.

[5] Because the records remaining at issue appeared to include the appellant's personal information, the mediator raised the possible application of section 49(a) (discretion to refuse requester's own information). Section 49(a) allows an institution to deny a requester access to their own personal information when read with sections 13, 14 or 19.

[6] The appeal was transferred to the adjudication stage of the appeal process. I conducted an inquiry during which I received representations from the university and the appellant that I shared between them in accordance with the IPC's *Practice Direction 7* on the sharing of representations.

[7] In her representations submitted during the inquiry, the appellant wrote that she "accepts the university's submissions regarding the applicability of solicitor-client privilege to the relevant documents" over which section 49(a) read with section 19 was claimed. As a result, the only issues before me are the university's claims that the remaining four records at issue are exempt under section 49(a) read with sections 13(1) or 14(1)(c).

[8] In this order, I partially uphold the university's decision. I find that records 2 and 36 contain information that is exempt under section 49(a) read with section 13(1). I uphold the university's decision to withhold this information from record 2, and order the university to disclose a severed version of record 36 to the appellant, with this information removed. I find that record 52 is exempt under section 49(a) read with section 13(1) and I uphold the university's decision to deny access to it. I find that the university exercised its discretion to deny access to portions of records 2 and 36, and to record 52, appropriately. Finally, I find that record 10 is not exempt under section 49(a) read with

section 14(1)(c), and I order the university to disclose record 10 to the appellant.

RECORDS:

[9] There are four records remaining at issue in this appeal. They are listed below, with the exemptions claimed by the university. The records have been numbered by the university and the numbers correspond to the Index of Records prepared by the university:

Record(s)	Exemptions claimed
2, 36, 52	Section 49(a) (refuse requester's own information) read with section 13(1) (advice or recommendations)
10	Section 49(a), read with section 14(1)(c) (law enforcement / reveal investigative techniques and procedures)

ISSUES:

- A. Do the records contain the appellant's "personal information" as defined in section 2(1) of the *Act*?
- B. Does the discretionary exemption at section 49(a), allowing an institution to refuse access to a requester's own personal information, read with the section 13(1) exemption for advice or recommendations, apply to records 2, 36 and 52?
- C. Does the discretionary exemption at section 49(a), read with the section 14(1)(c) exemption for law enforcement, apply to record 10?

DISCUSSION:

Issue A: Do the records contain the appellant's "personal information" as defined in section 2(1) of the *Act*?

[10] The parties do not dispute that the records contain the appellant's personal information, although the university argues that the records contain both the appellant's personal information and "personal information about...employees of the University."

[11] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual." Information is about an identifiable individual when it refers to the individual in a personal capacity, meaning that it reveals something of a personal nature about them, and it is reasonable to expect that the individual can be

identified from the information alone or combined with other information.² Section 2(1) of the *Act* contains a list of examples of personal information.

[12] I find that the records at issue contain the appellant's personal information because they contain her date of birth, information relating to her education, student number, contact details, and her name which, if disclosed, would reveal other personal information about her, including about her dealings with the university as a student.³

[13] Because the university has not denied access to the records at issue under section 49(b), it is not necessary for me to determine whether the records contain personal information belonging to individuals other than the appellant (i.e. to employees, as the university submits). In any event, however, I find that the records do not contain university employees' personal information.

[14] Section 2(3) of the *Act* states that personal information "does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity." I find that the employees' information in the records is information about them acting in their professional or official capacity in the course of their employment, does not reveal anything of a personal nature about them, and is not personal information as that term is defined in section 2(1) of the *Act*. Because this is not personal information, I will order this information disclosed where I find it is contained in records or portions of records that I find are not exempt under section 49(a) read with sections 13(1) or 14(1)(c).

Issue B: Does the discretionary exemption at section 49(a), allowing an institution to refuse access to a requester's own personal information, read with the section 13 exemption for advice or recommendations, apply to records 2, 36 and 52?

[15] Having found that the records contain the appellant's personal information, I must consider the university's section 13(1) claim through the lens of section 49(a).

[16] Section 49(a) allows the university to withhold records if they would be exempt under section 13(1) of the *Act*.⁴ Section 13(1) is also discretionary and allows the university to refuse to disclose a record "where the disclosure would reveal advice or recommendations of an officer or employee of an institution."⁵

² Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v Pascoe*, [2002 O.J. No. 4300 (C.A.).

³ See sections 2(1)(a), (b), (c), (d) and (h) of the *Act*.

⁴ Section 49(a) states that an institution "may refuse to disclose to the individual to whom the information relates personal information, where section 12, 13, 14, 14.1, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information."

⁵ Section 7(1) states, in its entirety, that: "A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution."

[17] The purpose of section 13 is to preserve an effective and neutral public service by ensuring that people employed or retained by institutions are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making.⁶

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

[19] "Advice" has a broader meaning than "recommendations". It includes "policy options," which are lists of alternative courses of action to be accepted or rejected in relation to a decision that is to be made, and the public servant's identification and consideration of alternative decisions that could be made. "Advice" includes the views or opinions of a public servant as to the range of policy options to be considered by the decision maker even if they do not include a specific recommendation on which option to take.⁷ "Advice" involves an evaluative analysis of information. Neither of the terms "advice" or "recommendations" extends to "objective information" or factual material.

[20] Advice or recommendations may be revealed in two ways:

- the information itself consists of advice or recommendations
- the information, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations.⁸

[21] The application of section 13(1) is assessed as of the time the public servant prepared the advice or recommendations. Information such as factual or background information has been found not to qualify as advice or recommendations.⁹

Representations

The university's representations

[22] The university submits that records 2, 36 and 52 "should remain partially redacted due to section 13(1)." The university says that record 2 consists of forwarded emails from a University Strategic Projects Liaison to university security. It says that disclosure would reveal advice provided by the strategic projects liaison to university employees and that the record "expresses the views and opinions of the [strategic project liaison] regarding actions taken by their team in response to incidents that occurred during a student-organized event."

[23] The university submits that record 36 is an email with a series of attachments that

⁶ *John Doe v Ontario (Finance)*, 2014 SCC 36, at para. 43.

⁷ See above at paras. 26 and 47.

⁸ Order P-1054.

⁹ Order PO-2677.

consist of emails between university employees regarding a student-organized event. The university says that disclosure of record 36 would reveal a recommendation provided by one university employee to three other university employees that includes a suggested approach to an incident that occurred at the event and that it would reveal the advice provided by the liaison contained in record 2.

[24] The university submits that record 52 is exempt under section 13(1) because it contains advice provided by a University Strategic Advisor to three university employees regarding complaints made to university security. The university says that the strategic advisor's advice "includes an evaluative analysis of the complaints and suggests to the University how it should view each complaint."

[25] The university says that it weighed the appellant's general right of access to her own personal information against its own, and the public, interest protected by section 13. The university says it considered the purposes of the *Act*, whether the appellant had a sympathetic or compelling need to receive the information, and the extent to which the information is significant or sensitive to the parties. The university says that if the records were to be disclosed, employees would "likely suffer from self-censorship, knowing that their views and opinions might be exposed to the public. The university says that this, in turn, would interfere with its ability to formulate and justify its policies."¹⁰

The appellant's representations

[26] The appellant submits that records 2 and 36 contain "final decisions that were being executed on and enforced." She says that the reasons for final decisions of a senior university employee are captured by the exception in section 13(2)(l), so that the university does not have the discretion to refuse to disclose these records, either in full or in part. She says that record 2 deals with a final decision made by a university strategic projects liaison directing university employees on how to respond to an incident at a student-organized event and that record 36 appears to be about university employees implementing the liaison's final decision.

[27] As for record 52, the appellant submits that it does not contain advice, and that, because it contains "the reasons for a final decision, order or ruling of an officer of the institution made during or at the conclusion of the exercise of discretionary power conferred by or under an enactment or scheme administered by the institution," the exception in section 13(2)(l) also applies to it.

[28] The appellant says that the university's representations suggest a clear hierarchy, with the strategic advisor in a position of oversight of and authority over the three employees. She says that what the university describes as "advice" is, in fact, a final decision by which the university strategic advisor decided how to move forward regarding certain complaints and communicated the reasons for this decision to three university

¹⁰ Citing the Supreme Court of Canada in *John Doe v Ontario (Finance)*, 2014 SCC 36, at paras. 44-45.

employees.

[29] The appellant submits that any consideration of the discretionary nature of sections 49(a) and section 13(1) must include that there is a strong public interest in disclosure because disclosure is about transparency and the concomitant principles of accountability and trust. She submits that, if the advice and final decisions made by university employees were made in good faith, then the university need not worry about employees suffering from self-censorship if records 2, 36 and 52 are disclosed.

Analysis and findings

[30] As noted above, the university submits that records 2, 36 and 52 “should remain partially redacted due to section 13(1)” but has not indicated in its representations which portions of any of records 2, 36 or 52 contain advice or recommendations that may be exempt as contemplated in section 13(1). I have reviewed the records and make the following findings.

Records 2 and 36

[31] Based on my review, records 2 and 36 contain overlapping emails. I will first deal with record 36, because record 2 appears to be a severed version of record 36 that contains the same form and emails contained in record 36.

[32] Record 36 contains a three-page application form¹¹ that the appellant completed and submitted to the university. In it, she provided details in support of an application to organize a student-run event on campus. There are five additional attachments to the record, consisting of discrete email threads.

[33] The fourth of the five email threads attached to record 36 contains an email that was disclosed by the university during mediation.¹² Accordingly, this attachment is not before me in this appeal. My findings relate only to the application form and email threads 1, 2, 3 and 5, and which I have found contain the appellant’s personal information.

[34] The application form contains information provided by the appellant to the university about the proposed event, including its purpose, description, date and time, and prospective number of attendees and speakers. The attached email threads at issue (1, 2, 3 and 5) consist of emails between the appellant and the university in which the appellant provides more details about the event’s projected itinerary, format, visual materials to be used and equipment required. The emails also contain follow-up discussion between the appellant and university employees regarding the proposed event and its organization.

[35] It is clear from the application form that it contains only information provided by

¹¹ Called a “response form” by the university.

¹² Based on consent provided by an affected party.

the appellant in support of the proposed event. It contains no other information, including advice or recommendations. I find that it is not exempt under section 13(1) and will order it disclosed.

[36] Likewise, email threads 1, 3 and 5 consist of emails exchanged directly between the appellant and university employees about the event. They include additional information provided by the appellant about the event in response to university employees' questions and requests for more particulars. I find that these threads also do not contain any advice or recommendations, are therefore not exempt under section 13(1), and I will order them disclosed.

[37] Email thread 2 contains an email from a university employee, an events architect who met with the appellant for a "walk-through" of the proposed event site, to the university's strategic projects liaison, and the strategic projects liaison's email to other university employees.

[38] From my review, the events architect's email summarizes their discussion and meeting with the appellant for the strategic projects liaison and includes a summary of additional information collected from the appellant. The university has not provided me with a basis to conclude that this email contains advice or recommendations, and based on my review, I find that it does not. The strategic projects liaison's email, however, contains their assessment and evaluation of the proposed event and an analysis of considerations in support of its approval, conveyed to other university employees. I find that the strategic projects liaison's email contains a summary of their analysis and evaluation undertaken as part of the event approval process. I am satisfied that this email contains a university employee's advice to other university employees because it contains an evaluation of considerations relating to decisions underlying the university's approval of the event. I accept the university's submission and find that disclosure of this evaluation and analysis would impair university employees' ability to freely discuss matters of potential concern or to plan for events that may result in incidents or conflicts on campus.

[39] For these reasons, I find that the strategic projects liaison's email contained in record 36 is exempt under section 13(1). This email is reproduced in (and was withheld from) record 2. For the same reasons, I find that this email is also exempt from record 2, and I uphold the university's decision to deny access to it by withholding it from record 2.

[40] I will order the university to disclose a severed version of record 36 with the strategic projects liaison's email removed.

Record 52

[41] Record 52 contains a university employee's assessment of complaints at the

university over a period of time.¹³ Based on my review of record 52, I accept the university's submission that it contains the university's strategic advisor's advice to three other university employees about complaints brought to university security. I find that the record contains the strategic advisor's assessment and evaluation of the complaints listed in an attachment to the record, one of which names the appellant, and whether they fall within a university policy that is excerpted in the strategic advisor's email that is part of the record. I am also satisfied that the record contains an evolving discussion of the strategic advisor's views, opinions and analysis, and is therefore part of a deliberative process that includes discussions among university employees about the strategic advisor's advice. I find that disclosure of record 52 would reveal the strategic advisor's evaluative analysis provided to the university of the complaints and that it is therefore advice. I find that record 52 is exempt under section 13(1) and I uphold the university's decision to deny access to it.

The university exercised its discretion appropriately

[42] I am satisfied that the university appropriately exercised its discretion to deny access to record 52 and to the portions of records 2 and 36 that I have found to be exempt under section 49(a) read with section 13(1). I find that the university considered relevant factors, including that necessary exemptions from the appellant's general right of access to her own personal information should be limited and specific.¹⁴ I find that the university did not exercise its discretion for an improper purpose and that it relied on relevant considerations. Although I have found that severed versions of records 2 and 36 must be disclosed to the appellant, this does not affect my conclusion that the university acted appropriately in exercising its discretion, and I uphold its decision to deny access to portions of those records.

Issue C: Does the discretionary exemption at section 49(a), read with the section 14(1)(c) exemption for law enforcement, apply to record 10?

[43] It is also necessary to consider the university's section 14 claim through the lens of section 49(a) because record 10 contains the appellant's personal information.

[44] The exemptions in section 14 relate to law enforcement. The university relies on section 14(1)(c), which states that:

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

¹³ I note that this record is outside of the time frame set out in the appellant's request, although the university identified it as responsive to the request. The scope of the appellant's request is not an issue in this appeal, and the parties agree that access to this record is at issue.

¹⁴ Section 1(a) of the *Act*.

reveal investigative techniques and procedures currently in use or likely to be used in law enforcement[.]

[45] For a record to qualify for exemption under section 14, the matter to which the record relates must first fall within the following definition of the term "law enforcement" contained in section 2(1) of the *Act*. This definition states that:

"law enforcement" means,

(a) policing,

(b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or

(c) the conduct of proceedings referred to in clause (b).

[46] The university denied access to all of record 10 on the basis that, even though it contains the appellant's personal information, it also contains information that the university says is exempt from disclosure under the law enforcement exemption in section 14(1)(c).

Representations

The university's representations

[47] The university submits that record 10 contains techniques and procedures pertaining to a series of steps that a university employee must conduct to assess whether an individual presents a risk to safety on campus. It says that, depending on the risk posed by an individual, the assessment is forwarded to other university departments or to the police.

[48] The university says that disclosure of record 10 would affect its ability to provide an accurate risk assessment of individuals on campus. The university says that the steps outlined in record 10 are unique and that disclosure would hinder their effectiveness because, if revealed, individuals subject to an assessment would know what the university is looking for and would try to alter, anonymize, or delete information.

The appellant's representations

[49] The appellant submits that section 14(1)(c) is entirely inapplicable to record 10. She says that, to her knowledge, there were no investigations that occurred or were occurring in and around the time that would have been captured by her request. She says that, in the unlikely event that the record reflects unique techniques or procedures being used, that they "pertained to the enforcement of law, not to any ongoing investigation" and that the IPC has found that the exemption in section 14(1)(c) will not

apply to techniques or procedures related to “enforcing” the law.¹⁵

Analysis and findings

[50] The university denied access to all of record 10 on the basis that, even though it contains the appellant’s personal information, it also contains law enforcement information that the university says is exempt from disclosure under section 14(1)(c).

[51] The purpose of section 14(1)(c) is to protect the effectiveness of law enforcement agencies and their investigative efforts, recognizing that disclosure of specific investigative techniques or procedures could undermine the ability of law enforcement agencies to carry out their duties effectively.

[52] Record 10 is a case screening form that summarizes a complaint of incivility made against the appellant at a campus event. It contains the appellant’s biographical information (her name, date of birth and contact information), information related to her status at the school, including her student number, program of study and GPA, and information about the appellant collected after the complaint was received, and indicates that the complaint did not proceed any farther.

[53] Based on my review, record 10 does not contain the type of information the legislature intended to be captured by section 14(1)(c). The record at issue is not in use or likely to be in use in “law enforcement” as that term is defined in the *Act*. In Order P-377, Assistant Commissioner Tom Mitchinson found that an internal investigation by campus security did not meet the definition of “law enforcement” in section 2(1) of the *Act*. He wrote that:

It has been established in a number of previous orders that the definition of law enforcement found in section 2(1) does not extend to internal disciplinary-related matters [Orders 157, 170, 182, 192]. Based on the representations provided by the College, it is my view that the investigation conducted by the College which led to the issuance of the Notice of Trespass is properly characterized as an internal administrative decision which does not satisfy the requirements of the definition of “law enforcement” found in section 2(1). The investigation was conducted to provide the College with information required to make a decision about the appellant. The decision made by the College as a result of this investigation was to revoke the appellant’s student registration and issue a Notice of Trespass to bar his entry onto the College property. In my view, this investigation was an internal matter and was not undertaken with a view to providing a court or tribunal with the facts by which it could make a determination of a party’s rights. The College itself acknowledges that “this investigation ended with the Notice.”

¹⁵ Orders PO-2034 and P-1340.

[54] I find that the same reasoning applies to record 10 and I accept and adopt it here. The university has not explained how the complaint that is the subject of record 10 is either a policing matter or could lead to "proceedings in a court or tribunal if a penalty or sanction could be imposed."¹⁶ Based on the case screening form, an internal investigation was conducted to provide the university with information required to make a decision about the appellant. In this case, the decision was that no action was taken after the complaint was screened.

[55] I therefore find that the matter which gave rise to the university's investigation and assessment of the appellant based on an allegation of incivility does not meet the definition of "law enforcement" in section 2(1) of the *Act* and that the exemption in section 14(1)(c) does not apply to it. Because section 14(1)(c) is the only section claimed by the university in support of its decision to deny access to all of record 10, I will order the university to disclose record 10 to the appellant in its entirety.

ORDER:

1. I uphold the university's decision to grant partial access to record 2 and to deny access to record 52.
2. I order the university to disclose the following records to the appellant by April 8, 2024 but not before April 2, 2024:
 - a. a severed version of record 36 by removing the portion that is struck through in the copy of record 36 being provided to the university with this order; and,
 - b. a copy of record 10 in its entirety.
3. I reserve the right to require the university to provide to the IPC a copy of the records it discloses to the appellant.

Original signed by: _____
Jessica Kowalski
Adjudicator

February 28, 2024 _____

¹⁶ Definition of "law enforcement" in section 2(1) of the *Act*.