

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4701

Appeal PA23-00080

University of Toronto

August 14, 2025

Summary: The university received a request from a journalist for certain emails and attachments sent or received by a named employee. The university identified responsive records. It decided that the Hospital for Sick Children had a greater interest in the responsive records, and it transferred the request to the hospital under section 25(2) of the *Act*. The journalist appealed the university's decision to transfer the request to the hospital. In this decision, the adjudicator upholds the university's decision to transfer the journalist's request to the hospital and dismisses the appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, section 25.

Orders Considered: Order MO-3435.

OVERVIEW:

[1] The University of Toronto (the university) received a request from a journalist under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for emails and attachments related to a 2006 paper published in specific journal. The journalist provided the title of the paper, the names of the co-authors and the relevant dates for the communications he sought.

[2] After receiving the request and identifying the responsive records, the university transferred the request to the Hospital for Sick Children (the hospital) pursuant to

section 25(2) of the *Act*. The journalist (now the appellant) appealed the university's decision to transfer the request to the hospital to the Information and Privacy Commissioner (the IPC).

[3] An IPC mediator discussed the appeal with both the appellant and the university. The appellant disagreed with the university's decision to transfer the request. The appellant took the position that the university should respond to the request and issue an access decision. The university took the position that the transfer was allowed under the *Act* because the hospital had a greater interest in the records than the university. The appellant disagreed that the hospital had a greater interest in the records and asked that the appeal be moved to adjudication.

[4] Further mediation was not possible, and the matter was transferred to the adjudication stage of the appeals process where an adjudicator may conduct an inquiry under the *Act*. An adjudicator commenced an inquiry and sought representations from the university and the appellant. The matter was then transferred to me to continue the inquiry. After reviewing the file materials, I sought representations from the hospital, which declined to participate. In this order I uphold the university's decision to transfer the request to the hospital, and I dismiss the appeal.

DISCUSSION:

[5] The sole issue in this appeal is whether the university's decision to transfer the appellant's access request to the hospital pursuant to section 25(2) of the *Act* should be upheld. Section 25 of the *Act* states the following:

(1) Where an institution receives a request for access to a record that the institution does not have in its custody or under its control, the head shall make all necessary inquiries to determine whether another institution has custody or control of the record, and where the head determines that another institution has custody or control of the record, the head shall within fifteen days after the request is received,

(a) forward the request to the other institution; and

(b) give written notice to the person who made the request that it has been forwarded to the other institution.

(2) Where an institution receives a request for access to a record and the head considers that another institution has a greater interest in the record, the head may transfer the request and, if necessary, the record to the other institution, within fifteen days after the request is received, in which case the head transferring the request shall give written notice of the transfer to the person who made the request.

(3) For the purpose of subsection (2), another institution has a greater interest in a record than the institution that receives the request for access if,

(a) the record was originally produced in or for the other institution;
or

(b) in the case of a record not originally produced in or for an institution, the other institution was the first institution to receive the record or a copy thereof.

[6] As explained in the Notice of Inquiry provided to the parties, the purpose of sections 25(2) and (3) is to give the head of an institution some latitude to decline to respond to a request for a record that the institution does, in fact, have in its custody or control, if another institution is better able to respond to the request. Which of the two institutions has the “greater interest” in a particular record depends on the circumstances of its creation and dissemination, having regard to the criteria in sections 25(3)(a) and (b).¹

The university’s representations

[7] The university says that the records that are responsive to the request it transferred to the hospital are two email chains and four attachments. It provided additional representations about the records that meet the confidentiality criteria in the IPC’s Practice Direction Number 7.² Below, I summarize the relevant portions of the university’s representations without revealing the specific content of those representations, or the records at issue.

[8] The university explains that it initially received an email from an outside party (not the appellant) with a specified request. It says that after reviewing the outside party’s request and its own policies, it determined that the outside party’s email should be forwarded to the hospital for a response. The university then then forwarded the outside party’s email to the hospital. In the second email chain, the hospital forwards a copy of its response (with attachments) to the outside party’s request to the university. These email chains and attachments are the records sought by the appellant in this appeal.

[9] The university submits that both email chains were co-produced by it and the hospital. It says the four attachments were created by the hospital and subsequently sent to the university on what amounts to a “for your information” basis. It submits that the original email from the outside party was sent first to the university as a result of a jurisdictional error made by the outside party, which was immediately corrected in the reply email from the university responding to the outside party and forwarding it to the

¹ Order MO-1494.

² Available at <https://www.ipc.on.ca/en/access-organizations/code-of-procedure#dir>.

hospital.

[10] While I cannot describe the content of the emails at issue, the university refers me to information in them that supports its assertion that the university and the hospital agreed that the hospital had jurisdiction over the outside party's request.³

[11] The university further submits that:

- the researcher who was the subject of the outside party's inquiry was primarily affiliated with the hospital at the time of the matter in question,
- the hospital and the university agreed that the hospital should respond, and
- the university received information from hospital on an "FYI" basis, including four attachments originally produced by the hospital and subsequently provided to the university.

[12] The university submits that it transferred the request to the hospital seven days after receiving it. It says it gave written notice of the transfer to the appellant, detailing the basis for the transfer and the institution to which the request was transferred, including contact information for that institution's Compliance and Privacy Office.

[13] The university submits that it properly exercised its discretion to transfer the request and records pursuant to section 25(3), for the reasons set out above. It asserts that it considered all relevant and/or material factors and no other considerations.

[14] The university submits that the records fall under the jurisdiction of the hospital. It says that the hospital can work with the records and with the issues and matters to which they relate, while the university cannot. The university denies that the appellant is prejudiced by the transfer to the hospital since it is an institution under the *Act* and subject to the obligations of an institution in responding to the request.

The appellant's representations

[15] The appellant submits that the university should not have transferred the request to the hospital. He denies that the hospital has a "greatest interest" in the records as defined by the *Act*. He argues that the university has a shared interest in the records and should respond to the request and issue an access decision.

[16] The appellant says that the request that is the subject of this appeal was made in the public interest, as part of his ongoing reporting on a national medical scandal. He says that the reporting has had significant systemic implications, including highlighting the challenges of correcting flaws in medical publishing. He says the scandal involves both the university and the hospital.

³ The university provided the IPC with copies of the emails and attachments at issue in this appeal.

[17] The appellant says that the university is a member of the Toronto Academic Health Science Network (the Network), which he says is a group of academic health organizations that provide research, teaching and clinical care. The appellant says that the Network serves as a leader in Canadian healthcare and describes itself as one of the largest, most productive academic centres in North America. He further states that the Network consists of the university and its affiliated academic hospitals, including the hospital in this appeal. The appellant argues that the university shares responsibility for the research conducted by doctors in its affiliated hospitals.

[18] The appellant provides background information about one of the co-authors of the paper that he says the email correspondence is about and says that the co-author held a cross-appointment with the hospital and the university. He says the co-author founded and ran a program used in some criminal court cases that was later exposed as "inadequate and unreliable" for use in court. The appellant submits that the scandal raised concerns about possible problems in the publication records of the other co-author, who co-authored many academic papers during his tenure at the university and the hospital.

[19] The appellant says that the university has been directly involved with concerns relating to one of the co-authors and that it has penalized him for his conduct in a dispute with the university and the hospital. The appellant argues that the university is jointly responsible for the decision not to terminate one of the co-authors, despite acknowledging that there were sufficient grounds to terminate him.

[20] The appellant says that an investigation identified possible problems with more than 400 articles by one of the co-authors, and that the hospital conducted a systematic review of his published work. At that time, the appellant says that the academic paper referenced in this access request came under renewed scrutiny. It says the paper was re-examined and its conclusions were determined to be "implausible."

[21] The appellant submits that prominent individuals at both the hospital and the university were among the signatories on letters to the editors of various journals that published the research the paper. They say that two Canadian medical journals retracted the article, but one did not. The appellant explains that a spokesperson for that journal told the appellant that the journal had referred allegations it received about the paper to the hospital, which determined that a retraction of the paper was not warranted.

[22] The appellant explains that the request underlying this appeal is for email correspondence sent or received by the university's Associate Vice-President, Research Oversight and Compliance, relating to the article, following the request for the journal to retract it. He says that the article is the subject of intense scrutiny, and he seeks access to the records in the public interest, to hold the university to account for the way in which it responded to serious concerns about the article.

[23] The appellant says that section 25(3) of the *Act* states that an institution has “greater interest” if (a) the record was originally produced in or for the other institution; or (b) in the case of a record not originally produced in or for an institution, the other institution was the first institution to receive the record or a copy thereof. The appellant argues that the email correspondence it seeks was sent to the university first. It says that it was sent to the Associate Vice President, Research Oversight and Compliance at the university because the person in that role has responsibility with respect to the matters underlying the appellant’s request.

[24] Finally, the appellant submits that determining the “greater interest” is not an exercise in weighing the risk of reputational damage posed by the release of the records to the various institutions involved. He submits that the university incorrectly applied section 25 and asserts that the university should be ordered to respond to the request and issue an access decision.

Findings and analysis

[25] Below are my reasons for upholding the university’s decision to transfer the appellant’s request to the hospital.

[26] In addition to its representations, the university also provided the IPC with copies of the records at issue. I have reviewed the emails and find that they confirm the circumstances described by the university. In summary, an editor of a journal emailed the Associate Vice President, Research Oversight and Compliance at the university with a question. The Vice President responded to the editor by saying that the hospital’s Integrity Officer was the appropriate person to respond to the question and she forwarded the request to him. In the second email chain, the Integrity Officer responds to the question and forwards that response to the university on a “for your information” basis. Based on my review of the emails, I find that it was appropriate for the university to forward the appellant’s request for information to the hospital since the hospital was the party that prepared the response to the editor’s question.

[27] To be clear, I make no findings about whether the university acted appropriately when it forwarded the editor’s question to the hospital. That is not the issue before me. The issue before me is whether the university’s decision to transfer of the appellant’s request to the hospital should be upheld under the *Act*, and I find that it should.

[28] I note the appellant’s reliance on sections 25(3)(a) and (b), which state:

(3) For the purpose of subsection (2), another institution has a greater interest in a record than the institution that receives the request for access if,

(a) the record was originally produced in or for the other institution;
or

(b) in the case of a record not originally produced in or for an institution, the other institution was the first institution to receive the record or a copy thereof.

[29] The appellant argues that the email correspondence they seek was sent to the university first because it has responsibility with respect to the matters underlying their request. As a result, the appellant submits that the university incorrectly applied section 25. I disagree. While the university received the editor's request first, it concluded that it was not the appropriate party to respond and sent it on to the hospital, which then prepared a response to the editor and provided the university a copy.

[30] In my view, that the fact that the university was the first to receive the request does not mean it automatically has a greater interest in the emails that followed. As noted by Adjudicator Shaw in MO-3435, where she addressed the municipal counterpart of section 25(3) of the *Act*, additional factors beyond those noted in sections 25(3)(a) and (b) may also be relevant:

...I do not read [the municipal counterpart of section 25(3)] as containing an exhaustive list of circumstances under which another institution is considered to have a greater interest in a record. In my view, other circumstances can be relevant, including the circumstances of the record's creation and dissemination.

[31] In this case, while the university received the initial question that is the subject of the emails and attachments, it is the hospital that ultimately created the response. In these circumstances, I agree with the university that the hospital is in the best position to respond to the appellant's request.

[32] The appellant raises concerns about transparency. He submits that the university should be responsible for the content of the editor's question. Again, I note that the issue of who should have responded to the editor's question is not the issue before me. The issue is which institution will respond to the appellant's request for information under the *Act*. As Adjudicator Shaw noted in Order MO-3435, the decision of an institution to transfer an appellant's request to another institution does not render the information in the records less accessible. The university's decision did not deny the appellant access to the records; it transferred the request to the hospital, which has an obligation under the *Act* to respond in a timely manner.

[33] For these reasons, I conclude that the university was entitled to transfer the appellant's request to the hospital under section 25(3). I am also satisfied that the university appropriately exercised its discretion in doing so and I accept the reasons it provided for taking that step. Having regard to section 25(3) and the creation and dissemination of the records, I am satisfied that the hospital has a greater interest in the records at issue than the university.

ORDER:

I uphold the university's decision to transfer the appellant's request to the hospital pursuant to section 25(3) of the *Act* and dismiss the appeal.

Original Signed by: _____
Meganne Cameron
Adjudicator

August 14, 2025 _____