



Information and Privacy  
Commissioner/Ontario  
Commissaire à l'information  
et à la protection de la vie privée/Ontario

# **ORDER PO-2861**

**Appeal PA08-117-2**

**Brock University**



Tribunal Services Department  
2 Bloor Street East  
Suite 1400  
Toronto, Ontario  
Canada M4W 1A8

Services de tribunal administratif  
2, rue Bloor Est  
Bureau 1400  
Toronto (Ontario)  
Canada M4W 1A8

Tel: 416-326-3333  
1-800-387-0073  
Fax/Télé: 416-325-9188  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **BACKGROUND**

The Learning Commons is a newly renovated section of the James A. Gibson Library at Brock University (the University). It officially opened on October 26, 2008 and provides a space for informal learning outside the classroom.

The University received \$2 million in support for constructing the Learning Commons, including \$1 million from students through the Brock University Students' Union (BUSU) "Strategic Expansion Fund" and \$1 million in private gifts from faculty, staff, alumni and friends of the University.

The annual fee that Brock students pay to the BUSU includes a contribution to the Strategic Expansion Fund. In a 2006 referendum, students voted in favour of contributing \$1 million over five years (\$200,000 per year) from this fund towards the construction of the new Learning Commons.

## **NATURE OF THE APPEAL:**

The University received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for the following information:

All records created, amended, received or distributed by Brock University since January 1, 2006 that are about or related to the Learning Commons and the Strategic Expansion Fund or any monies transferred to or from the Strategic Expansion Fund.

The University contacted the requester to clarify the scope of the request. After a series of conversations and letters between the parties, the University sent an email to the requester stating that it understood the request had been narrowed to the following:

[R]ecords that relate to, or are about, the Strategic Expansion Fund monies or donations, including a copy of any donor receipts relating to the Strategic Expansion Fund; that you are not requesting any records regarding the Learning Commons unless directly related to the Strategic Expansion Fund; however, [you] are requesting fundraising records regarding the Learning Commons: PowerPoint presentations, plans, correspondence, and brochures.

The requester agreed that the University had accurately described its request.

The University then located records responsive to the request and issued an interim access decision and fee estimate of \$1004.70 to the requester. To reduce the fee, the requester further narrowed the scope of the request, and the University provided a revised fee estimate of \$384.70, along with a required deposit. The requester paid the fee deposit to the University but subsequently filed a "deemed refusal" appeal with this office alleging that the University had not provided it with the requested records within the 30-day timeframe set out in the *Act*. This office opened Appeal PA08-117.

The University then issued a decision letter to the requester, along with an index of records that identified 89 records that are responsive to the request. It provided the requester with full access to 70 records and partial access to the remaining records. As a result, the requester's "deemed refusal" appeal was rendered moot, and Appeal PA08-117 was closed.

The University denied access to portions of the remaining records pursuant to the discretionary exemptions in sections 13(1) (advice to government) and sections 18(1)(c) and (g) (economic and other interests) of the *Act*. In addition, it denied access to other portions of these records pursuant to the mandatory exemption in section 21(1) (personal privacy), read in conjunction with the presumption in section 21(3)(f) (finances). It also claimed that some of the withheld portions of the remaining records are not responsive to the request.

The requester (now the appellant) appealed the University's decision to deny it access to portions of the following 14 records: 1, 3A, 4B, 6A, 12, 14, 16, 25, 29, 35, 50, 51, 72 and 73. This office opened the current appeal (Appeal PA08-117-2) and assigned a mediator to assist the parties in resolving the remaining issues.

During the mediation stage of the appeal process, the appellant stated that it had been provided with Record 29 in its entirety. In addition, the mediator reviewed Record 25 and provided his opinion to the appellant that this record was not responsive to the request. As a result, the appellant agreed that it would not pursue access to Record 25. The University also issued a revised decision letter to the appellant and provided full access to Records 35 and 50. In short, Records 25, 29, 35 and 50 are no longer at issue in this appeal.

In addition, the University stated that it was no longer relying on the discretionary exemption in section 13(1) to withhold a portion of Record 51. However, it further stated that it was continuing to deny access to this portion of the record on the basis that the withheld information is not responsive to the appellant's request.

The University also stated that the withheld portion of Record 73 is not responsive to the appellant's request but, in the alternative, it was withholding this information under the discretionary exemption in section 18(1)(g). The mediator drew the University's attention to the fact that the Confirmation of Appeal sent to the University by this office stated that because this was an appeal arising from a previous "deemed refusal" appeal, the University was not permitted to claim new discretionary exemptions. Consequently, an additional issue in the current appeal is whether this office should consider the University's alternative claim that the section 18(1)(g) exemption applies to the withheld portion of Record 73.

This appeal was not resolved during mediation and it was moved to the adjudication stage of the appeal process for an inquiry. I started my inquiry by sending a Notice of Inquiry, setting out the facts and issues, to the University, which submitted representations in response. I then sent a Notice of Inquiry to the appellant, along with a complete copy of the University's representations. The appellant did not submit any representations in response.

## RECORDS:

The 10 records remaining at issue in this appeal are summarized in the following chart, which is based on the index of records prepared by the University and the mediator's report:

<b>Record number</b>	<b>Title/description of record</b>	<b>University's decision</b>	<b>Exemptions claimed/reason for denying access</b>
1	Project Budget and Financing Strategy	Withheld in part	Section 18(1)(c)
3A	Report to the Advancement and Community Relations Committee	Withheld in part	Section 13(1)
4B	Report to the Advancement and Community Relations Committee	Withheld in part	Section 13(1)
6A	Memorandum of Understanding: Contribution to Learning Commons Building Construction Referendum, 2006	Withheld in part	Section 13(1)
12	Email Attachment: Learning Commons @ Brock: Imagination, Innovation & Commitment	Withheld in part	Section 18(1)(c)

14	Email: List of Faculty/Staff Names	Withheld in part	Section 13(1)
16	Email Attachment: Faculty & Staff Campaign Meeting Notes	Withheld in part	Section 13(1)
51	Email: (Promoting) Learning Commons	Withheld in part	Not responsive to appellant's request
72	Email: Learning Commons Update (to Library staff)	Withheld in part	Section 18(1)(g)
73	Email: Learning Commons Update (to stakeholders)	Withheld in part	Not responsive to appellant's request; or Section 18(1)(g)

**DISCUSSION:**

**RESPONSIVENESS OF RECORDS**

The University claims that the withheld portions of Records 51 and 73 are not responsive to the appellant's request.

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

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

. . . . .

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

Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour [Orders P-134 and P-880]. To be considered responsive to the request, records must "reasonably relate" to the request [Orders P-880 and PO-2661].

The University states that the withheld portion of Record 51 refers to a fundraising issue that does not relate to the Learning Commons or the Strategic Expansion Fund. Consequently, it submits that this withheld portion is not responsive to the appellant's request.

With respect to Record 73, the University submits that the withheld portion of this record relates to the construction of the Learning Commons, which is information that the appellant excluded from the scope of its request. The University cites a letter from the appellant, dated February 4, 2008, which states:

... the request should be considered to exclude documents relating to the actual construction of the library renovation and expansion (i.e. the Learning Commons)... unless they specifically include information about the Strategic Expansion Fund.

I have carefully reviewed the withheld portions of Records 51 and 73 and considered the University's representations. I agree with the University that the withheld portions of these two records are not responsive to the appellant's request. The withheld portion of Record 51 appears to relate to a fundraising issue that is not directly connected to the Learning Commons or the Strategic Expansion Fund. In addition, the withheld portion of Record 73 relates primarily to the construction of the Learning Commons, which is information that the appellant specifically excluded from the scope of its request in its letter of February 4, 2008 to the University.

In short, I find that the withheld portions of Records 51 and 73 do not "reasonably relate" to the appellant's request and are not, therefore, responsive to the request.

As noted above, the University made the alternative claim, during the mediation stage of the appeal process, that the withheld portion of Record 73 is also exempt from disclosure under section 18(1)(g) of the *Act*. Given that I have found that the withheld portion of Record 73 is not responsive to the appellant's request, it is not necessary for me to determine whether the University had the right to claim, at a late stage, that the section 18(1)(g) exemption also applies to this withheld portion. Nor is it necessary for me to determine whether this information is exempt from disclosure under section 18(1)(g).

## **PERSONAL INFORMATION**

There are 10 records remaining at issue in this appeal. Initially, the University did not claim that any of the information in these remaining records is exempt from disclosure under the personal

privacy exemption in section 21(1) of the *Act*, although it did claim the presumption in section 21(3)(f) for other records that are no longer at issue in this appeal. The section 21(1) exemption is mandatory and only applies to “personal information,” as that term is defined in section 2(1) of the *Act*.

In its representations, however, the University states that Record 14, which contains a list of the names of faculty and staff, “could likely reveal personal information” about these individuals. In addition, I note that Record 16 also refers to the names of some faculty and staff. Consequently, as a preliminary matter, it must be determined whether this information qualifies as “personal information,” and if so, whether it is exempt from disclosure under section 21(1) of the *Act*.

“Personal information” is defined in section 2(1) of the *Act* as “recorded information about an identifiable individual.” A list of examples of personal information is set out in paragraphs (a) to (h). However, section 2(3) excludes certain information from the definition of “personal information.” It reads:

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.

Both Records 14 and 16 contain the names of University faculty and staff who are to be approached as potential volunteers to assist with the campaign for the Learning Commons initiative. In my view, the names of these individuals identify them in a professional capacity, not a personal capacity. Consequently, these names fall squarely within the exclusion in section 2(3) of the *Act* and do not qualify as “personal information.”

The personal privacy exemption in section 21(1) of the *Act* only applies to “personal information.” Because the names of faculty and staff in Records 14 and 16 do not qualify as “personal information,” I find that the personal privacy exemption in section 21(1) cannot apply to this information.

## **ADVICE AND RECOMMENDATIONS**

### **Section 13(1): the exemption**

The University claims that the withheld portions of Records 3A, 4B, 6A, 14 and 16 that are responsive to the appellant’s request are exempt from disclosure under the discretionary exemption in section 13(1) of the *Act*. This provision states:

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

The purpose of section 13 is to ensure that persons employed in the public service are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making. The exemption also seeks to preserve the

decision maker or policy maker's ability to take actions and make decisions without unfair pressure [Orders 24, P-1398, upheld on judicial review in *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1999), 118 O.A.C. 108 (C.A.)].

On June 10, 2006, universities in Ontario, including Brock University, became subject to the *Act*. Consequently, the purpose of section 13 is also to ensure that persons employed by universities are able to freely and frankly advise and make recommendations within the deliberative process of decision-making and policy-making.

“Advice” and “recommendations” have a similar meaning. In order to qualify as “advice or recommendations”, the information in the record must suggest a course of action that will ultimately be accepted or rejected by the person being advised [Orders PO-2028, PO-2084, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564; see also Order PO-1993, upheld on judicial review in *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563].

Advice or recommendations may be revealed in two ways:

- the information itself consists of advice or recommendations
- the information, if disclosed, would permit one to accurately infer the advice or recommendations given

[Orders PO-2028, PO-2084, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, (cited above); see also *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, (cited above)]

Examples of the types of information that have been found *not* to qualify as advice or recommendations include

- factual or background information
- analytical information
- evaluative information
- notifications or cautions
- views
- draft documents
- a supervisor's direction to staff on how to conduct an investigation

[Order P-434; Order PO-1993, upheld on judicial review in *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, (cited above); Order PO-2115; Order P-363, upheld on judicial review in *Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner)* (March 25, 1994), Toronto Doc. 721/92 (Ont. Div. Ct.); Order PO-



2028, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, (cited above)].

### **Sections 13(2) and (3): exceptions to the exemption**

Sections 13(2) and (3) create a list of mandatory exceptions to the section 13(1) exemption. If the information falls into one of these categories, it cannot be withheld under section 13.

### **Analysis and findings**

At the outset, it is important to bear in mind the public accountability purpose of the *Act*, which is set out in section 1(a). This provision states, in part, that one purpose of the *Act* is to provide a right of access to information under the control of institutions in accordance with the principles that information should be available to the public and that necessary exemptions from the right of access should be limited and specific.

In Order 94, former Assistant Commissioner Sidney Linden emphasised that the section 13(1) exemption should be interpreted in a limited and specific manner, in accordance with the purposes of the *Act*:

[In] my view, section 13 was not intended to exempt all communications between public servants despite the fact that many can be viewed, broadly speaking, as advice or recommendations. As noted above, section 1 of the *Act* stipulates that exemptions from the right of access should be limited and specific. Accordingly, I have taken a purposive approach to the interpretation of subsection 13(1) of the *Act*. In my opinion, this exemption purports to protect the free flow of advice and recommendations within the deliberative process of government decision-making and policy-making.

In this appeal, the University makes the general submission that disclosing the withheld portions of Records 3A, 4B, 6A, 14 and 16 would reveal the advice and recommendations of its senior administration and would also inhibit the free flow of such advice and recommendations. In addition, it makes specific submissions about the withheld portions of each of these records.

### ***Records 3A and 4B***

Record 3A is a report that was submitted to the University's Advancement and Community Relations Committee, presumably by a University employee. Record 4B is a revised version of the same report. The University has disclosed these records in part to the appellant.

The last page of both records contains a specific recommendation that was made to the University's Advancement and Community Relations Committee. In my view, this recommendation fits squarely within the section 13(1) exemption, because it clearly constitutes a "recommendation" of a person employed in the service of the University. I find, therefore, that this information qualifies for exemption under section 13(1) of the *Act*.

Most of the remaining withheld portions of these two records contain information that relates to the fundraising project for the proposed Learning Commons. As noted above, in order to qualify as “advice or recommendations,” the information in a record must suggest a course of action that will ultimately be accepted or rejected by the person being advised.

The University submits that Records 3A and 4B contain “a course of action” (i.e., fundraising) suggested by senior administration which was ultimately accepted or rejected by the Board of Trustees. Based on my review of these two records, I accept the University’s submission. In my view, most of the remaining withheld information constitutes “advice or recommendations,” because it suggests a course of action with respect to the fundraising project for the proposed Learning Commons that was ultimately accepted or rejected by the University’s Board of Trustees. In addition, some of this information, if disclosed, would permit one to accurately infer the advice or recommendations given.

In short, I find that the withheld portions of Records 3A and 4B qualify for exemption under section 13(1) of the *Act*.

#### ***Record 6A***

Record 6A is an unsigned memorandum of understanding between senior university officials and the president of the BUSU. The University has disclosed this record in part to the appellant.

The University states that this record was for a suggested “course of action” (i.e., referendum) which was later rejected or accepted by senior administration. It submits that disclosing the withheld portions of this record would reveal the advice or recommendations regarding this subject matter.

In my view, the University is attempting to broaden the scope of the section 13(1) exemption, which is meant to be interpreted in a limited and specific manner, to information that clearly does not fall within the scope of the exemption.

The memorandum of understanding is plainly an agreement between senior University administrators and the president of the BUSU, not “advice” or “recommendations” of a person employed in the service of the University, as stipulated in section 13(1). In short, I find that the withheld portions of Record 6A do not qualify for exemption under section 13(1) and this information must, therefore, be disclosed to the appellant.

#### ***Records 14 and 16***

Record 14 is an email sent from the University’s Director of Development and Donor Relations to other individuals at the University. Record 16 comprises “Campaign Meeting Notes” of a meeting of faculty and staff that relate to fundraising for the Learning Commons. The University has disclosed these records in part to the appellant.

The University submits that these records contain “advice” by senior administration for a suggested course of action (i.e., list of potential volunteers to support the Learning Commons

campaign), which was later “rejected or accepted.” In addition, it submits that it is not possible to sever the advice and recommendations that correspond with the list of potential volunteers without disclosing the advice that was given.

In the first withheld portion of Record 14, the Director of Development and Donor Relations asks two other individuals to carry out a task. This constitutes a direction or request to these two individuals, not “advice” or “recommendations,” as contemplated by section 13(1).

The second withheld portion of Record 14 contains a list of names of potential volunteers that was provided at a meeting the day before. The withheld portions of Record 16 summarize the discussions that took place at another meeting, including the names of potential volunteers and other items.

As noted above, in order to qualify as “advice or recommendations,” the information in the record must suggest a course of action that will ultimately be accepted or rejected by the person being advised. Although the University claims that Records 14 and 16 contain “advice” by senior administration for a suggested course of action (i.e., list of potential volunteers to support the Learning Commons campaign), it has not identified the decision-maker who apparently “rejected or accepted” the list of volunteers, nor the specific advice or recommendation that was made to this individual or group of individuals.

In my view, the withheld information in Records 14 and 16 constitutes factual information and deliberations and discussions that took place with respect to potential volunteers, not “advice” or “recommendations,” as contemplated by section 13(1). In short, I find that the withheld portions of these records do not qualify for exemption under section 13(1) and must be disclosed to the appellant.

## **ECONOMIC AND OTHER INTERESTS**

### **Introduction**

The University claims that the withheld portions of Records 1 and 12 qualify for exemption under section 18(1)(c) of the *Act*. In addition, it claims that the withheld portions of Record 72 qualify for exemption under section 18(1)(g) of the *Act*. These provisions state:

A head may refuse to disclose a record that contains,

- (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (g) information including the proposed plans, policies or projects of an institution where the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person;

The purpose of section 18 is to protect certain economic interests of institutions. The report titled *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (Toronto: Queen's Printer, 1980) (the Williams Commission Report) explains the rationale for including a "valuable government information" exemption in the *Act*:

In our view, the commercially valuable information of institutions such as this should be exempt from the general rule of public access to the same extent that similar information of non-governmental organizations is protected under the statute . . . Government sponsored research is sometimes undertaken with the intention of developing expertise or scientific innovations which can be exploited.

For sections 18(1)(c) or (g) to apply, the institution must demonstrate that disclosure of the record "could reasonably be expected to" lead to the specified result. To meet this test, the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

#### **Section 18(1)(c): prejudice to economic interests**

The purpose of section 18(1)(c) is to protect the ability of institutions to earn money in the marketplace. This exemption recognizes that institutions sometimes have economic interests and compete for business with other public or private sector entities, and it provides discretion to refuse disclosure of information on the basis of a reasonable expectation of prejudice to these economic interests or competitive positions [Order P-1190].

This exemption is arguably broader than section 18(1)(a) in that it does not require the institution to establish that the information in the record belongs to the institution, that it falls within any particular category or type of information, or that it has intrinsic monetary value. The exemption requires only that disclosure of the information could reasonably be expected to prejudice the institution's economic interests or competitive position [Order PO-2014-I].

#### **Section 18(1)(g): proposed plans, policies or projects**

In order for section 18(1)(g) to apply, the institution must show that:

1. the record contains information including proposed plans, policies or projects of an institution; and
2. disclosure of the record could reasonably be expected to result in:
  - (i) premature disclosure of a pending policy decision, or
  - (ii) undue financial benefit or loss to a person.

[Order PO-1709, upheld on judicial review in *Ontario (Minister of Health and Long-Term Care) v. Goodis*, [2000] O.J. No. 4944 (Div. Ct.)]

For this section to apply, there must exist a policy decision that the institution has already made [Order P-726].

## **Analysis and findings**

### ***Records 1 and 12***

Record 1 is entitled, “Project Budget and Financing Strategy.” The University has disclosed this record in part to the appellant. It has withheld portions containing the proposed “project budget” for the Learning Commons, including a total dollar amount. It has also withheld other portions that list sources of “project financing” for the Learning Commons, including a total dollar amount.

Record 12 is entitled, “Learning Commons @ Brock: Imagination, Innovation & Commitment.” The University has disclosed this record in part to the appellant. It has withheld portions of this record which appear beneath the heading, “Project Budget.”

The University claims that the withheld portions of these records qualify for exemption under section 18(1)(c) of the *Act*, which allows an institution to withhold information if disclosure could reasonably be expected to prejudice its economic interests or competitive position.

In its representations, the University states that it has made a “significant investment” into developing long-term financial forecasts, goals and draft plans for developing the Learning Commons. It submits that disclosing the withheld portions of Records 1 and 12, which contain “preliminary estimates and plans,” could reasonably be expected to prejudice the University’s economic interests or competitive position, because not all stages of the Learning Commons are complete.

I have carefully reviewed the withheld portions of Records 1 and 12 and considered the University’s representations. In my view, the University’s submissions, in the absence of further elaboration, fall short of the “detailed and convincing evidence” required to prove that the section 18(1)(c) exemption applies.

I recognize that the University has economic interests to protect when embarking on new projects, and that it operates in a competitive fundraising environment, particularly against other universities. However, to prove that the section 18(1)(c) exemption applies to the withheld budgetary and financing information, it is not sufficient for the University to simply assert that it has made a “significant investment” into developing long-term forecasts and plans for the Learning Commons, and that not all stages of the Learning Commons are complete. In my view, the University’s representations do not contain a necessary link that explains why these assertions should lead to the conclusion that disclosing the withheld budgetary and financing information could reasonably be expected to prejudice the University’s economic interests or competitive position.

In short, I find that the withheld portions of Records 1 and 12 do not qualify for exemption under section 18(1)(c) and must be disclosed to the appellant.

### ***Record 72***

Record 72 is an email from the University Librarian that provides an update on the Learning Commons initiative. The University has disclosed this record in part to the appellant.

The University has withheld one paragraph of this record under section 18(1)(g) of the *Act*, which allows an institution to withhold information, including the proposed plans, policies or projects of an institution, where the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person.

In its representations, the University states that Record 72 contains proposed plans regarding the Learning Commons and other capital projects not relevant to the appellant's request. It submits that the University has approved one of the options and clearly intends to implement one or more of the plans described. It further submits that disclosure would reasonably be expected to result in premature disclosure of upcoming capital projects.

Based on my review of Record 72 and the University's representations, I am satisfied that it contains information relating to "proposed projects" of the University, and that "disclosure could reasonably be expected to result in premature disclosure of a pending policy decision" with respect to one of those projects. In short, I find that the withheld portion of Record 72 qualifies for exemption under section 18(1)(g).

### **EXERCISE OF DISCRETION**

I have upheld the University's decision to withhold portions of Records 3A and 4B under section 13(1), and portions of Record 72 under section 18(1)(g) of the *Act*. The sections 13(1) and 18(1)(g) exemptions are discretionary, and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations

In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 43(2)].

The University states that it exercised its discretion properly in applying the section 13(1) and 18(1)(g) exemptions. In particular, it submits that it took into account relevant considerations, including the principle that information should be available to the public, which is one of the purposes of the *Act*. In addition, it considered whether the appellant had a sympathetic or compelling need to receive the information.

There is no evidence before me to suggest that the University failed to take into account relevant considerations, took into account irrelevant considerations, or exercised its discretion in bad faith or for an improper purpose. Consequently, I find that the University exercised its discretion properly in withholding portions of Record 3A and 4B under section 13(1), and portions of Record 72 under section 18(1)(g) of the *Act*.

**ORDER:**

1. I uphold the University's decision to withhold portions of Records 51 and 73 because they are not responsive to the appellant's request.
2. I uphold the University's decision to withhold portions of Records 3A and 4B under section 13(1) of the *Act*, and portions of Record 72 under section 18(1)(g) of the *Act*.
3. I order the University to disclose the withheld portions of Records 6A, 14 and 16 that I have found are not exempt under section 13(1) of the *Act*, and the withheld portions of Records 1 and 12 that I found are not exempt under section 18(1)(c) of the *Act*.
4. I order the University to disclose the non-exempt portions of Records 1, 6A, 12, 14 and 16 to the appellant by **January 27, 2010**. I have provided the University with copies of these records and highlighted in green those portions that must not be disclosed to the appellant because they are not responsive to its request. To be clear, the non-highlighted portions must be disclosed to the appellant.
5. In order to verify compliance with the provisions of this order, I reserve the right to require the University to provide me with a copy of the records that it sends to the appellant.

Original Signed By: \_\_\_\_\_

Colin Bhattacharjee  
Adjudicator

\_\_\_\_\_  
January 6, 2010