

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-3153

Appeal PA12-177

Brock University

January 15, 2013

**Summary:** Brock University (the university) received a request for access to the contact information for members of its Board of Trustees (the affected parties). The university denied access to the record in full. This order decides that the home contact information contained in the record constitutes the personal information of the affected parties and that the personal privacy exemption at section 21(1) applies to exempt that information from disclosure. In addition, the decision finds no compelling public interest in the disclosure of this information which would outweigh the purpose of the personal privacy exemption. However, the remainder of the record consisting of business contact information for some trustees should be disclosed to the appellant.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1), 21(1), 22(a) and 23.

**Orders and Investigation Reports Considered:** P-1398.

### OVERVIEW:

[1] Brock University (the university) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to:

The contact information for all Board of Trustees members including but not limited to email addresses.

[2] The university identified a record responsive to the request and issued a decision, advising the requester that it denied access to the record in full.

[3] The requester, now the appellant, appealed the university's decision to this office.

[4] During mediation, the university issued a revised decision letter, clarifying that the record was denied in full, pursuant to the personal privacy exemption in section 21(1) of the *Act*. The university referred to the factor weighing against disclosure in section 21(2)(h) to justify its decision.

[5] The university also stated that a full listing of the names of the members of the Board of Trustees (the board) and their biographies, which includes some members' contact information, is publicly available on the university Secretariat's website and is therefore exempt from disclosure under section 22(a) of the *Act*.

[6] The appellant advised that he does not seek access to the contact information for the eleven members listed under Faculty Members, Staff Members, Students, Chancellor: Ex officio and President and Vice-Chancellor: Ex officio, which are contained on pages five, six and seven of the record. Accordingly, this information is no longer at issue.

[7] However, the appellant confirmed that he does seek access to the contact information for the remaining twenty-one members of the Board of Trustees (the affected parties). The appellant advised that he does not seek access to the home contact information of the affected parties unless the only contact information available in the record is their home contact information.

[8] The appellant also raised the possible application of the public interest override provision at section 23 of the *Act* to the record at issue.

[9] As no further mediation was possible, the appeal was moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*.

[10] During my inquiry into this appeal, I sought and received representations from the university, the affected parties and the appellant. Representations were shared in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction Number 7*.

[11] In the discussion that follows, I find that section 21(1) applies to exempt the home contact information of the affected parties from disclosure but order the university to disclose the remainder of the record at issue to the appellant.

## **RECORD:**

[12] The record at issue consist of pages 1, 2, 3, 4 and part of page 5 of a document entitled *Brock University Board of Trustees 2011-2012*. The record contains the names of the members of the Board of Trustees of the university. For each trustee, contact information is provided. This may relate to their home, business or both. The contact information for each trustee varies, but may consist of a phone number (both home or cell), fax number or email address.

## **ISSUES:**

- A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the mandatory exemption at section 21(1) apply to the information at issue?
- C. Is there a compelling public interest in disclosure of the record that clearly outweighs the purpose of the section 21 exemption?
- D. Does the discretionary exemption at section 22(a) apply to the record?

## **DISCUSSION:**

### **A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?**

[13] The university relies on the mandatory exemption in section 21(1) to withhold the record at issue. Before I can determine which sections of the *Act* may apply to the record, it is necessary to decide whether the records contain "personal information" and, if so, to whom it relates.

[14] The term "personal information" is defined in section 2(1) of the *Act* as follows:

"personal information" means recorded information about an identifiable individual including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history

of the individual or information relating to financial transactions in which the individual has been involved,

- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or view of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[15] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.<sup>1</sup>

[16] Sections 2(3) and (4) also relate to the definition of personal information. These sections state:

(3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or other capacity.

(4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

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<sup>1</sup> Order 11.

[17] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.<sup>2</sup>

[18] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.<sup>3</sup>

[19] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>4</sup>

[20] In its representations, the university submits that the record contains the personal information of the affected parties, including their names, addresses, telephone numbers, email addresses, and other contact information. The university submits that the information in the record in question constitutes the affected parties' personal information because the information reveals something of a personal nature about each of the individuals.

[21] The affected parties who responded to the Notice of Inquiry advise that they agree with the university's position.

[22] In response, the appellant submits that the board members act in an official capacity in accordance with the provisions of the *Brock University Act* and as such, their contact information is not personal information, based on sections 2(3) and 2(4) of the *Act*.

[23] I have carefully reviewed the record at issue and find that the first and second columns, titled "NAME" and "BUSINESS ADDRESS", do not qualify as personal information within the meaning of section 2(1). As the appellant submits, this information relates to the affected parties in a professional, official or business capacity. Furthermore, the affected parties' names and business contact information does not reveal anything of a personal nature about them. This is consistent with sections 2(3) of the *Act* which specifically excludes business contact information from the definition of personal information. Therefore, I find that the first two columns of the record do not constitute "personal information" within the meaning of section 2(1) of the *Act*.

[24] However, I find that the third column, titled "HOME ADDRESS", contains information that qualifies as the affected parties' "personal information" within the meaning of that term in section 2(1) of the *Act*. This includes the affected parties'

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<sup>2</sup> Orders P-257, P-427, P-1412, P-1612, R-980015, MO-1550-F and PO-2225.

<sup>3</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>4</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No.4300 (C.A.).

home addresses, home telephone, fax and mobile numbers and home email addresses. There is no indication in the record or the representations provided by the parties that the home contact information of the affected parties is related to the affected parties' professional or business activities. As such, I find that the information contained in the "HOME ADDRESS" column constitutes the "personal information" of the affected parties as contemplated by paragraph (d) of the definition in section 2(1).

[25] I will now consider whether the mandatory personal privacy exemption in section 21(1) applies to the personal information contained in the third column of the record.

**B. Does the mandatory exemption at section 21(1) apply to the information at issue?**

[26] Under section 21 of the *Act*, where a record contains the personal information of an individual other than the requester, the institution must refuse to disclose that information unless disclosure would not constitute an "unjustified invasion of personal privacy". Section 21(1)(f) reads:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

[27] Sections 21(1), (2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the individual's personal privacy.

[28] I have carefully reviewed the personal information in the record and find that none of the presumptions listed in section 21(3) apply to it.

[29] In its representations, the university claims that section 21(2)(h) applies as a factor weighing against the disclosure of the information in the record. Section 21(2)(h) reads as follows:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether

the personal information has been supplied by the individual to whom the information relates in confidence.

[30] This office has found that the factor in section 21(2)(h) applies if both the individual supplying the information and the recipient had an expectation that the

information would be treated confidentially, and that expectation is reasonable in the circumstances. Thus, section 21(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.<sup>5</sup>

[31] The university submits that there is a reasonably-held expectation of privacy in this information on the part of both the affected parties and the university as the contact information was supplied by the affected parties to the university in confidence. It submits that both parties shared the expectation that the information would be treated confidentially. The university submits that the information has not been made public in the past and this policy was supported by a resolution of the Board of Trustees. Further, the university submits that the affected parties are private citizens and community volunteers, not employees of the university. The affected parties receive no salary, benefits or compensation for their membership on the Board of Trustees. As such, this contact information is personal and not business, as contemplated by section 2(3), according to the university.

[32] In his representations, the appellant did not address the application of section 21(2)(h) to the personal information in the record. Moreover, the appellant did not raise the application of any factors listed in section 21(2) that might weigh in favour of the disclosure of the personal information in the record.

[33] I have carefully reviewed the record and am satisfied that the disclosure of home addresses and contact information would constitute an unjustified invasion of privacy. I find that the factor at section 21(2)(h) weighs in favour of non-disclosure. As the university submits, the affected parties supplied their contact information to the university in confidence and with an expectation of privacy.

[34] The appellant has not identified any factors weighing in favour of disclosure and I find that none exists in the circumstances. Accordingly, I am satisfied and find that section 21(1) applies to exempt the home contact information of the affected parties from disclosure.

[35] I note that in the case of the affected parties for which there is only a home address in the records, the university made an offer to the appellant in its representations that correspondence for these affected parties could be forwarded to the Secretary of the university for distribution through the Chair of the Board of Trustees.

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<sup>5</sup> Order PO-1670.

**C. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 21 exemption?**

[36] As I have determined that section 21(1) operates to exempt the home contact information of the affected parties, I will now consider whether there exists a compelling public interest in the disclosure of the record that clearly outweighs the purpose of the section 21(1) exemption.

[37] In his representations, the appellant claims that the “public interest override” in section 23 of the *Act* applies in this case. This section reads:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 and 21 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[38] In Order P-1398,<sup>6</sup> former Inquiry Office John Higgins outlined the requirements for the application of section 23 of the *Act*. He stated:

An analysis of section 23 reveals two requirements which must be satisfied in order for it to apply: (1) there must be a compelling public interest in disclosure, and (2) this compelling public interest must clearly outweigh the purpose of the exemption.

If a compelling public interest is established, it must then be balanced against the purpose of any exemptions which have been found to apply. Section 23 recognizes that each of the exemptions listed, while serving to protect a valid interest, must yield on occasion to the public interest in access to information which has been requested. An important consideration in this balance is the extent to which denying access to the information is consistent with the purpose of the exemption.

[39] The *Act* is silent as to who bears the burden of proof in respect of section 23. This onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submissions in support of his or her contention that section 23 applies. To find otherwise would be to impose an onus which could seldom if ever be met by an appellant. Accordingly, the IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption.<sup>7</sup>

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<sup>6</sup> Upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)* (1999), 118 O.A.C. 108 (C.A.), leave to appeal refused (January 20, 2000), Doc. 27191 (S.C.C.).

<sup>7</sup> Order P-244.



[40] The university submits that there is no compelling interest to disclose the record that clearly outweighs the purpose of the exemption. The university also notes that previous IPC orders have found that “a public interest does not exist where the interests being advanced are essentially private in nature”.<sup>8</sup>

[41] In considering whether there is a “public interest” in disclosure of a record, the first question to ask is whether there is a relationship between the record and the *Act's* central purpose of shedding light on the operations of government.<sup>9</sup> Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.<sup>10</sup>

[42] A public interest does not exist where the interests being advanced are essentially private in nature.<sup>11</sup> Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.<sup>12</sup> The word “compelling” has been defined in previous orders as “rousing strong interest or attention.”<sup>13</sup> In addition to considering whether there is a public interest in disclosure, any public interest in *non*-disclosure that may exist must also be considered.<sup>14</sup>

[43] After carefully reviewing the personal information which I have found to be exempt under section 21(1) and the representations of the parties, I find that there is no compelling public interest in the disclosure of the home contact information of the affected parties. There is no evidence before me to suggest that the disclosure of the home contact information of the affected parties will serve a public purpose. Further, there is no indication that the disclosure of the affected parties’ home contact information would either shed light on government operations or add to the information the public has available to express public opinion or make political choices. Finally, to the extent that there is a public interest in allowing members of the public to contact university trustees, the appellant will have access to the professional contact information of most of the affected parties. As noted, for those individuals that do not have business contact information, his contact will be facilitated through the university.

[44] Therefore, I find that the home contact information contained in the column “HOME ADDRESS” in the record is exempt from disclosure under section 21(1) of the *Act* and is not subject to the application of section 23.

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<sup>8</sup> Orders P-12.

<sup>9</sup> Order P-984.

<sup>10</sup> *Ibid.*

<sup>11</sup> Orders P-12, P-347 and P-1439.

<sup>12</sup> Order MO-1564.

<sup>13</sup> Order P-984.

<sup>14</sup> *Ontario Hydro v. Michinson*, [1996] O.J. No. 4636 (Div. Ct.).

**D. Does the discretionary exemption at section 22(a) apply to the records?**

[45] The university also claims that section 22(a) applies to exempt the record from disclosure.

[46] Section 22(a) states:

A head may refuse to disclose a record where,

the record or the information contained in the record has been published or is currently available to the public.

[47] For this section to apply, the institution must establish that the record is available to the public generally, through a regularized system of access, such as a public library or a government publications centre.<sup>15</sup>

[48] To show that a "regularized system of access" exists, the institution must demonstrate that:

- a system exists;
- the record is available to everyone; and
- there is a pricing structure that is applied to all who wish to obtain the information.<sup>16</sup>

[49] Section 22(a) is intended to provide an institution with the option of referring a requester to a publicly available source of information where the balance of convenience favours this method of alternative access. It is not intended to be used in order to avoid an institution's obligations under the *Act*.<sup>17</sup>

[50] In its representations, the university submits that the full listing of the names of the affected parties and their biographies is publicly available on the university Secretariat's web site.

[51] The appellant submits that the biographies posted on the university Secretariat's website do not provide the contact information of the affected parties and only provide information about the external Board of Trustees members.

[52] I accept that the university Secretariat's website could be considered a "regularized system of access". However, I have reviewed the website and the

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<sup>15</sup> Orders P-327, P-1387.

<sup>16</sup> Order P-1316.

<sup>17</sup> Orders P-327, P-1114 and MO-2280.

information relating to the Board of Trustees and find that the affected parties' business contact information is not available at that location. The only information available on the Secretariat's website is the names and biographies of the affected parties.

[53] As the information at issue is not publicly available as the university claims, I find that section 22(a) does not apply to exempt the remaining information at issue from disclosure.

**ORDER:**

1. I order the university to disclose the records at issue, with the exception of the information contained in the third column ("HOME ADDRESS") to the appellant by providing him with a copy of the severed records. This disclosure is to take place no later than **February 19, 2013** but not before **February 14, 2013**.
2. In order to verify compliance with provision 2 of this order, I reserve the right to require the university to provide me with a copy of the information disclosed to the appellant.

Original signed by: \_\_\_\_\_  
Brian Beamish  
Assistant Commissioner

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January 15, 2013