Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3572

Appeal PA14-86

University of Ottawa

January 28, 2016

Summary: The appellant, a union representing student staff of the university, sought access to a full breakdown of the university's operating budget allocated to expenditures in the years 2012-2013 and 2013-2014. The university compiled the requested information into two records of approximately 10,000 line items each. It denied access to the records, in full, on the basis the records are excluded from the operation of the *Freedom of Information and Protection of Privacy Act* by virtue of section 65(6)2 (employment or labour relations exclusion) or, in the alternative, that they are exempt under section 18(1) (economic and other interests). Also at issue are the reasonableness of the university's search and a component of its fee for access to less detailed versions of the two records that it disclosed to the appellant in full. In this order, the adjudicator finds the records are not excluded under section 65(6). However, she finds that they are exempt in full under section 18(1)(c), and she upholds the university's search for responsive information. Finally, she disallows the component of the fee that was charged as a cost of manual search, but she allows the university to claim this same fee as a cost of preparing the records for disclosure.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 18(1)(c), 24, 57(1), 65(6)2; R.R.O. 1990, Regulation 460, s. 6.

Orders and Investigation Reports Considered: Orders MO-3163, PO-2613.

Cases Considered: *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).

OVERVIEW:

[1] The appellant, a union representing student staff of the University of Ottawa (the university), made a request to the university under the *Freedom of Information and Protection of Privacy Act* (the *Act*) on behalf of its members. In particular, the appellant requested access to:

> … a full breakdown of the operating budget allocated to the following expenditures for the period 2012-2013 and 2013-2014 including, but not limited to, by faculty, by job classification (i.e., job title), salary and wages, and hours or percent of time for each position:
>
> 1. Academic Salaries
> 2. Employee Benefits
> 3. Student Salaries
> 4. Professional Fees
> 5. Travel expenses
> 6. External Institutional Contracts
> 7. Other Expenditures

[2] In response, the university granted full access to two records. In its decision letter, the university explained that it had created two records responsive to the request using information compiled during a search of its office of Financial Planning Service (FPS office). It also set out a fee for access in the amount of $62.40, based on two hours of search time (at $30 per hour) and 12 pages of photocopies (at $0.20 per page), citing the fee provisions of the *Act*.

[3] The appellant sent the university an email containing a clarification of its request, in response to which the university produced two additional records. In a supplementary decision letter, the university explained that it conducted an additional search of the FPS office in response to the clarification, and created two new records with the information compiled during the additional search. The university granted full access to the two new records. It charged a fee of $280, based on nine hours of search time and provision of one CD-ROM at $10.

[4] The appellant appealed the university's decision to this office, based on its view that the university had failed to disclose records responsive to its request.

[5] The university then issued a second supplementary decision that addressed the portion of the appellant's request seeking access to employee benefits. Its decision was

to deny access to this information:

> Access to the budget related to the employee benefits by faculty and job description is denied on the basis that the information you are requesting does not exist. The University has a central budget for employee benefits; the budget for employee benefits is not divided by faculties and services.

[6] The university also provided links to its website where central budget information for the 2012-2013 and 2013-2014 years is available.

[7] During the mediation stage of the appeal, the appellant provided further clarification about the information it seeks:

> We wish to see the broad budget categories (enumerated in our request) fully broken down, meaning down to the smallest subdivision (the first level of compilation of individual expenditures).
>
> We believe the University uses an itemized budget code system based on a Fund-Organization-Activity-Project ("FOAP") number. We did not explicitly ask for the breakdown by FOAP in our initial request, as we are not sure of the internal organization of the University's budget. We allowed for this breakdown by our use of the phrase "including, but not limited to."
>
> None of the budget lines are fully broken down, meaning down to the individual budget codes. Most tables are only broken down by faculty/service.

[8] The appellant also identified some formatting errors in the numerical data contained in the hard copy records it received from the university, and asked for electronic copies of the records. The university corrected these errors in new electronic versions of the records sent to the appellant.

[9] The university also conducted an additional search of its FPS office in response to the appellant's second clarification. In a new supplementary decision letter, the university explained that it had created two new records with the information compiled during its most recent search. The university denied access to these records, in full, citing sections 65(6) (employment or labour relations exclusion), 21 (personal privacy exemption) and 18 (economic and other interests exemption) of the *Act*.

[10] The university later provided the following description of the two new records:

> The records consist of two separate spreadsheets relating to the 2012-2013 and 2013-2014 budgets. As clarified by the appellant, the data reflects the lowest breakdown of expenditures and it is organized by FOAP. More specifically, the spreadsheet is divided by budget series, fund

number, organization number, organization description, account number, program number, account description, position number and total.

[11] The university also specified that it applied section 21 of the *Act* to deny access to the position numbers of employees who earned less than $100,000. The appellant confirmed he does not seek access to the information withheld under section 21. He confirmed his interest in pursuing access to all other withheld information in the records. As a result, the university's reliance on sections 65(6) and 18 of the *Act* is at issue in this appeal.

[12] The appellant also objects to the nine hours of search time claimed by the university in its first supplementary decision letter, and with the university's claim that information relating to employee benefits by faculty and job description does not exist. Given this, the university's fee for access and its search for records are also issues in this appeal.

[13] As no further mediation was possible, the appeal was transferred to the adjudication stage of the appeal process for a written inquiry under the *Act.* The adjudicator formerly assigned to this appeal sought and received representations from the university and the appellant, which were shared in accordance with this office's *Practice Direction Number 7* and section 7 of its *Code of Procedure*.

[14] The appeal was then transferred to me to complete the inquiry. In this order, I do not accept the university's claim that the records are excluded from the operation of the *Act* by virtue of section 65(6). I find, however, that they are exempt from disclosure on the basis of section 18(1)(c). In the result, I uphold the university's decision to withhold the records in full. I also uphold the university's search for records. I do not uphold the component of the fee claimed by the university as a cost of search, but I allow it to claim the same fee as a cost of preparing the records for disclosure.

RECORDS:

[15] The records at issue are two spreadsheets setting out the full expense budgets of the university for the 2012-2013 and 2013-2014 budget years. Each spreadsheet contains approximately 10,000 line items.

ISSUES:

A. Does section 65(6) exclude the records from the *Act*?

B. If the records are not excluded from the *Act*, does the discretionary exemption at section 18(1) apply to the records? Did the university exercise its discretion under section 18(1)? Can any portions of the records be severed from exempt portions?

C. Did the university conduct a reasonable search for records?

D. Should the university's fee be upheld?

DISCUSSION:

Issue A: Does section 65(6) exclude the records from the *Act*?

[16] The university claims that the records are excluded from the operation of the *Act* by virtue of section 65(6)2. Its other claims are made in the alternative to its exclusion claim. If section 65(6) applies to the records, there is no right of access under the *Act* and I need not consider the university's alternative claims.

[17] The exclusion at section 65(6)2 states:

> Subject to subsection (7), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to …
>
> Negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution between the institution and a person, bargaining agent or party to a proceeding or an anticipated proceeding.

[18] The university submits that the records are used by the university in connection with collective bargaining with the appellant and other bargaining agents representing employees of the university. It describes the records as the full, itemized, line-by-line expense budgets of the university for the requested years, representing the greatest possible breakdown of expenditures in all aspects of the university's operation. The university states that the records meet the three criteria for exclusion under section 65(6)2—namely, that:

1. the records were collected, prepared, maintained or used by the university;

2. the maintenance and use of the records was in relation to negotiations or anticipated negotiations relating to labour relations; and

3. these negotiations or anticipated negotiations took place or were to take place between the university and bargaining agents including the appellant.

Both the university and the appellant agree that the records were collected, prepared, maintained or used by the university. They disagree on whether the records satisfy the remaining two conditions for exclusion. The parties provided representations in support of their different views.

Representations of the parties

[19] The university takes the position that one of the purposes of the maintenance and use of the records is to engage in labour relations negotiations, and as such the records qualify for exclusion under section 65(6)2. Employees of the university are represented by a number of different bargaining agents certified in accordance with the *Labour Relations Act*. Pursuant to that statute, the university is required to meet with and engage in collective bargaining with bargaining agents such as the appellant.

[20] The university describes the process of collective bargaining as one that involves making proposals, including monetary proposals, which are based on the university's sense of its financial position, the costs of the various provisions of the collective agreement in question, and the cost or cost savings of any proposals under contemplation. Such proposals must also reflect the budgetary envelope which the university has set for any pay increases and other improvements in collective bargaining.

[21] The university explains in some detail how budget information at the line-item level (like the information contained in the records at issue in this appeal) is developed. Its description of the budget process is relevant to the university's alternative claims, and I will review these submissions under the appropriate heading below. Of relevance to its claim for exclusion of the records is the university's description of the line-item information at issue here as projections and approved envelopes for key expenditures (such as salaries for each department), which are used by the university's labour relations and finance staff to cost various proposals under contemplation and to make informed decisions on them. University staff compare proposals received from the bargaining agents against the approved envelopes for expenditures contained in the records.

[22] The university acknowledges that there are many purposes for which the records are collected and prepared, including non-labour relations aspects of the governance of the university. In the university's submission, the section 65(6)2 exclusion does not require that the university show that the records are used exclusively or even primarily for the purpose of labour relations negotiations; it need only demonstrate that there is "some connection" between the maintenance and use of the records and the negotiations. For this reason, the university asserts, the exclusion applies to the records despite the fact they may be put to many uses besides labour relations negotiations. It also proposes that the exclusion applies to the records in their entirety, despite the fact that only portions may be used for labour relations negotiations.

[23] In the case of the records at issue in this appeal, the university reports that information in them was used by the university in collective bargaining negotiations with the appellant during a defined period in 2013 and 2014. The university refers to a complaint filed by the appellant to the Ontario Labour Relations Board in relation to this round of bargaining as evidence of the central role this information plays in negotiations toward a new collective agreement. In particular, the university notes that as part of its complaint, the appellant specifically requested access to the detailed budget information at issue in this appeal. In the university's submission, this demonstrates that the appellant clearly views the records as necessary for use in such negotiations. Therefore, based on the university's "active use" of the information in the records for use in negotiations, and as demonstrated by the appellant's request for access to the records for negotiations purposes, there is a clear and intimate connection between the records and labour relations negotiations.

[24] The appellant accepts that the information contained in the records may be referenced by the university in the course of collective bargaining, and may assist the university in preparing bargaining proposals and in bargaining effectively. It disputes, however, that this is sufficient to meet the "in relation to" element of the section 65(6)2 exclusion.

[25] First, the appellant notes that the university is a public institution and that the records contain a broad array of information touching on all aspects of the university's operations. Given this, the appellant argues that the records were prepared in accordance with the university's public responsibilities, including the duty to develop and implement an institution-wide budget, and not by the university acting as employer. In the appellant's view, the fact that the records contain information to which university staff may refer in the course of collective bargaining is insufficient to bring the records as a whole within the scope of the exclusion; the appellant asserts that to find otherwise would be to categorically exclude from the *Act* a significant volume of information collected and maintained by the university, and to interpret the labour relations exclusion in a manner inconsistent with the purposes of the *Act*.

[26] The appellant also notes that its identity as the requester, and the purpose for which it seeks access to the records, is not relevant to the issue of whether the records are excluded by virtue of section 65(6)2.

[27] In reply, the university clarifies that it claims the exclusion on the basis of the actual use of information in the records in connection with collective bargaining, and not merely their potential use for this purpose. For the university, this is an answer to the appellant's concerns about overbreadth in the application of the exclusion.

[28] The university also makes submissions in support of its view that section 65(6)2 only requires that the collection, preparation, maintenance or use of a record be in relation to labour relations negotiations, and not that the actual content or subject matter of the record be labour relations negotiations.

[29] In short, the university argues that whatever the content of the records, and whatever the other purposes for which the records were created or used, the university's actual use of some of the information in them for labour relations negotiations is sufficient to exclude the records, in their entirety, under section 65(6)2.

Analysis and findings

[30] Section 65(6)2 applies to records collected, prepared, maintained or used by the university "in relation" to negotiations or anticipated negotiations "relating to" labour relations between the university and bargaining agents.

[31] The phrases "relating to" and "in respect of" in the context of a different subsection of the *Act* have been interpreted by the Divisional Court as meaning "some connection."[1] This office has applied this judicial interpretation to analogous phrases ("in relation to," "relates to") appearing in section 65 of *Act* and the equivalent section in the *Act*'s municipal counterpart.[2] On this basis, this office has held that for the collection, preparation, maintenance or use of a record to be "in relation to" the subjects mentioned in the paragraphs listed under section 65(6), it must be reasonable to conclude that there is "some connection" between them.

[32] For section 65(6)2 of the *Act* to apply, therefore, there need only be "some connection" between the collection, preparation, maintenance or use of a record and negotiations or anticipated negotiations, and only "some connection" between the negotiations and labour relations or employment involving the university.

[33] In this appeal the parties agree, and I accept, that the records were collected, prepared, maintained or used by the university. I also accept that the university's negotiations with the appellant and other bargaining agents qualifies as negotiations relating to labour relations. The university submits and the appellant does not appear to dispute that certain information in the records was actually used in connection with these negotiations. I accept that this is the case, whatever the other purposes for the records' creation, and whatever the other uses to which the records are put. However, I conclude that the records, as a whole, do not qualify for exclusion under section 65(6)2. This is because I do not accept the university's submission that section 65(6)2 excludes a record in its entirety simply because some information in the records is or was used for an excluded purpose.

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[1] *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.) ("*Toronto Star*"), in which the Divisional Court considered the exclusion at section 65(5.2) of the *Act*. Section 65(5.2) provides that the *Act* does not apply to a record "relating to" a prosecution if all proceedings "in respect of" the prosecution have not been completed.

[2] Section 52(3) of the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA*). See Orders MO-2537, MO-2589, MO-3088 and many others applying the interpretation in *Toronto Star*.

[34] This office has consistently taken the position that the exclusions at section 65(6) of the *Act* (and the equivalent section in *MFIPPA*) are record-specific and fact-specific.[3] This means that in order to qualify for an exclusion, the record is examined as a whole. The question of whether the exclusion applies to a whole record, based on the inclusion in the record of an excluded portion, has been addressed in previous orders. In those orders, this office has applied the record-specific and fact-specific analysis to consider whether the record, as a whole, qualifies for the claimed exclusion.

[35] This approach was recently affirmed in Order MO-3163. In that case, the adjudicator considered an internal police training video that contained, as examples of inappropriate officer behaviour, two discrete clips for which the police claimed certain exclusions. The evidence did not support a finding that the collection, preparation, maintenance or use of the video, as a whole, was connected in some way to proceedings or anticipated proceedings or to labour relations or employment-related matters of interest to the police. The question of whether the clips contained in the video would themselves qualify for exclusion in another context was not before the adjudicator. Instead, the record at issue was the training video, including the clips, and it was examined as a whole. As the record did not qualify for any of the claimed exclusions, the police were required to make a decision on access to it. In making a decision on access, the police would have recourse to the statutory exemptions available in *MFIPPA* to deny access to all or parts of the record as appropriate.

[36] Order MO-3163 follows a line of older orders applying the same whole-record-based approach to the consideration of exclusions. In Order PO-2613, this office held that a database of job positions, job descriptions, classification standards and evaluations was not excluded, as a whole, under sections 65(6)1 or 65(6)2 of the *Act*. Although the institution indicated that portions of the database were regularly used for the excluded purposes in paragraphs 1 and 2, it failed to satisfy the adjudicator that the complete database was used in connection with these excluded purposes. On the institution's 65(6)2 claim, the adjudicator noted that although portions of the database may have been used in labour relations or employment-related negotiations, this was insufficient to bring the record as a whole within the scope of the exclusion. He noted that many different types of records, including portions of the database, may ordinarily be used to prepare for or assist in various negotiations. Section 65(6)2 requires, however, that the record as a whole be examined to determine whether it was collected, prepared, maintained or used in connection to those negotiations. The record as a whole failed to meet the test for exclusion under this section.[4]

[37] The records at issue here are similar to the complete database of job-specific

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[3] See Orders M-797, P-1575, PO-2531, PO-2632, MO-1218, PO-3456-I and many others.

[4] In the result, the database was found to be excluded under section 65(6)3, based on the different wording of that section and the evidence provided by the institution.

information at issue in Order PO-2613. The university in this appeal does not claim that each of the approximately 10,000 line items comprising each record was maintained or used for labour relations negotiations; it acknowledges that only portions of the records were maintained or used for that purpose. Its exclusion claim for the records is based on the proposition that once any information in the records is used for a labour relations negotiations purpose, the exclusion applies. As shown above, however, this office applies a whole-record-based approach to the application of exclusions. The university's actual use of some line items in the records for labour relations negotiations is not sufficient bring the records as a whole within the exclusion.

[38] The university devotes a considerable part of its representations to the argument that section 65(6) does not require that records be used exclusively or even primarily for excluded purposes, and, as such, can qualify for exclusion despite the fact they may also be collected or used for various, non-excluded, purposes in addition to an excluded purpose. This office has held that even where a record is collected, prepared, maintained or used for a non-excluded purpose, it may still qualify for exclusion where there exists the required degree of connection to an excluded purpose—as, for example, when a record originally created for a non-excluded purpose is later used or maintained for an excluded purpose.[5] This office has also recognized that where there are multiple purposes for a record's collection, preparation, maintenance or use, the question of whether the excluded purpose is a predominant or primary purpose is relevant.[6]

[39] These orders do not assist the university, however, because in each of these cases the question remains whether the collection, preparation, maintenance or use of the record as a whole is sufficiently connected to an excluded purpose. Where there are multiple purposes for the collection, preparation, maintenance or use of a record, this office has considered whether the record, as a whole, is collected, prepared, maintained or used primarily for an excluded purpose, or primarily for other, non-excluded, purposes.

[40] I recognize that some of the orders referred to above pre-date the Divisional Court's articulation of the "some connection" test. This has no bearing on the analysis relied upon in this order. Before *Toronto Star*, this office applied a more stringent test of connection between a record's collection, preparation, maintenance or use and an excluded subject matter; the superseded test was still applied to the record as a whole. As is evident in the orders before and after *Toronto Star*, this office examines the degree of connection between an excluded subject matter and the collection, preparation, maintenance or use of the record as a whole. The exclusions do not apply where only part of a record is connected in this way.

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[5] Orders PO-2105-F, M-1107, MO-1654-I, MO-2428 and others.

[6] Orders MO-1654-I, MO-2332, PO-3549 and others.

[41] The university also spends some time urging a distinction in the interpretation of sections 65(6)2 and 65(6)3 of the *Act*, referring to a Divisional Court decision that considered the latter section.[7] I find it unnecessary to address these arguments here. Section 65(6)3 is not at issue in this appeal. More importantly, there is no suggestion in the orders mentioned above or in this order that section 65(6)2 requires that the content or the nature of a record be about labour relations or employment-related negotiations, only that there be some connection between an excluded subject matter and the collection, preparation, maintenance or use of the record as a whole. I also note here that the identity of the appellant and the purpose for which the request was made had no bearing on my finding on this issue.

[42] In this appeal, the question is whether the collection, preparation, maintenance or use of each record, as a whole, has some connection to labour relations negotiations. This requirement can be satisfied where a primary purpose for the maintenance or use of the records is labour relations negotiations. The university does not make this claim for either record, and there is no other evidence from which to conclude this is the case.

[43] Based on all the above, I find that section 65(6) has no application to the records. As they are subject to the right of access in the *Act*, I will next consider the university's exemption claims made for the same records.

Issue B: Does the discretionary exemption at section 18(1) apply to the records? Did the university exercise its discretion?

[44] In the alternative to its exclusion claim, the university relies on the exemptions at sections 18(1)(c) and (e) to withhold the records in full. These sections 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;
> >
> > (e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution or the Government of Ontario[.]

[45] The purpose of section 18 is to protect certain economic interests of institutions. Generally, it is intended to exempt commercially valuable information of institutions to the same extent that similar information of non-governmental organizations is protected

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[7] The university cites *Ontario (Ministry of Community and Social Services) v. John Doe*, 2014 ONSC 239.

under the *Act*.[8]

[46] I will begin by considering the application of section 18(1)(c) to the records.

Section 18(1)(c) – economic interests or competitive position

[47] 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.[9]

[48] For section 18(1)(c) to apply, an institution must provide evidence of the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative, although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.[10]

[49] The university provided extensive representations in support of its exemption claim. Some of its representations met this office's confidentiality criteria, and I will only refer to those portions in a general way here.

Representations of the parties

[50] The university provides a detailed explanation of the budget process that yields the sort of line-by-line expense information contained in the records. The process begins with the base budget for the previous year. University staff make budgetary assumptions about expected revenues, based on projections for enrollment growth, grant and tuition fee income and other sources.

[51] University staff also prepare budgetary assumptions about salary increases, employee benefits and salary expenditures. The university explains that some of these projections—for example, of increases in salary based on existing collective agreements—are easier to make than others. Budget assumptions that are more challenging include increases to benefit premiums that might be sought by its insurer, and improvements in terms and conditions of employment likely to be sought in collective bargaining In either case, these budget assumptions are prepared on the

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[8] Toronto: Queen's Printer, 1980.

[9] Orders P-1190 and MO-2233.

[10] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

basis of the university's approved envelope, if any, for increases, and reflect the university's best estimates of the amounts the university will ultimately be required to pay. Notwithstanding these estimates, the university says, its staff still attempt to negotiate the best deal possible for the university in every category of spending.

[52] These steps result in a preliminary budget and three-year projection, which are presented to the university's administration committee for revision. The university's FPS office then works with each faculty and service within the university to develop and allocate their portion of the budget. Each faculty and service prepares its own estimate of the probable costs of its needs in the coming year. In addition to costs for staff salaries, this may include items such as purchases of new equipment, costs for maintenance and upkeep of existing equipment, and rental and interest costs on properties. The university reiterates that these estimates do not reflect the university's desired costs for expenditures, but instead the "reasonable limit" of the expense or the price to be borne if necessary—the amount the faculty or service is prepared and able to pay for the expense in question. In every case, the faculty or service will still strive to obtain the best possible deal below this amount.

[53] The university reports that this budget process is done in confidence within each faculty and service, in order to ensure that information about the amount the university is prepared to or able to pay for a given expense does not become public. It says that detailed budget information at the line-item level, like that contained in the records, is not shared between the various faculties and services, and that even within each faculty and service, this information is treated with the utmost confidentiality.

[54] The budget process concludes with the receipt of each faculty's and service's confidential budget submissions by the FPS office. The FPS office validates the results and compiles them into a high-level summary budget. The high-level budget is presented to the university's board for approval. The university maintains that the budget process is conducted in as transparent and consultative a manner as possible while preserving the confidentiality of the budget envelopes within which the university will operate in the coming year. The high-level budget for approval is posted online and remains publicly available, along with summary and associated documents for current and past years.[11]

[55] The university provides examples of how the more detailed, line-item information contained in the records is used in various scenarios, like procuring goods and services through open or invitational competitive processes and in negotiating with bargaining agents. The university makes confidential representations on the application of this information to salary and benefit expenditures, which I have considered but cannot describe beyond that.

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[11] The university provides this link to publicly-available budget information: http://www.uottawa.ca/financial-resources/financial-planning/budget.

[56] Finally, the university submits that the passage of time does not reduce the risks of harm from disclosure. In many cases, it says, the line-item amounts represent recurring purchases. It suggests that suppliers can compare historical line budget information against amounts actually paid by the university to determine where suppliers can increase prices while retaining the university's business. For these reasons, the university maintains that line-item budgets are just as confidential in respect of prior years as in respect of the current year.

[57] The university also made more general submissions on the broader risks from disclosure of the records, including the potential for misunderstanding the university's financial picture and the consequences that could flow from that. Based on my findings below, it is unnecessary to canvass these arguments in greater detail.

[58] The appellant was provided with the university's representations, less confidential portions. It takes the position that the university has not met the evidentiary test for showing that section 18(1)(c) applies to the records. In the alternative, it says the exemption does not apply to the records in their entirety, and that non-exempt information can be severed from exempt information and disclosed.

[59] On the topic of section 18(1)(c), the appellant states that the university's evidence fails to establish a reasonable basis for believing that the harms described in this section will result from disclosure, which is the test confirmed by the Supreme Court.[12] The appellant says the university has not provided any specific or concrete examples of how its economic or competitive interests would be harmed by disclosure.

[60] The appellant emphasizes that the requested information is from previous academic years. It characterizes the line items as global amounts spent over the course of those previous years on various procurement activities and processes, and not the specific amounts spent on specific procurements in those years. In the absence of information about the actual sums spent on specific items in those years (which is not contained in the records), the appellant disputes that disclosure of the records would assist suppliers and other parties dealing with the university in their present and future negotiations with the university. In particular, the appellant disputes that by comparing historical data to amounts actually paid by the university in past years, suppliers of goods and services to the university would be able to increase their prices.

[61] In sum, the appellant characterizes the university's representations on the potential harms from disclosure as mere speculation that does not meet the evidentiary standard established in past orders and affirmed by the courts.

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[12] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31.

Analysis and findings

[62] On the facts of this appeal, I am satisifed that the unversity's evidence establishes a reasonable basis for believing that its economic interests or competitive position will be harmed by disclosure of the records.

[63] I accept the general assertion that sound negotiations are only possible where a counterparty does not know how much the university is willing and able to pay for the goods and services it seeks. I accept the university's evidence that detailed expense information of the sort contained in the records is maintained in confidence by the university and is not shared with the external parties with which the university transacts, or even between the various faculties and services within the university.

[64] The university's submissions on the potential harms from disclosure are persuasive. Considering the nature of the information contained in the records—each line item reflecting the top limit for each category of expenditure, allotted during the confidential budget process—I find reasonable the university's claim that disclosure of the records risks harm to its negotiations with suppliers of the goods and services the university expects to need in a given year. I accept that the confidentiality of this information is essential to the university's ability to protect its economic interests both in competitive procurements and in other negotiations. The fact that the budget envelope in a particular category of spending may reflect multiple purchases or a single major purchase in a given year does not eliminate the risk of harm from disclosure, although I agree the degree of risk may differ.

[65] The university provided examples of some transactions (software purchases, salary negotiations, service contracts) to illustrate the importance of maintaining the confidentiality of the budget envelopes allotted to those categories. It also acknowledges that the need for confidentiality of other line items (amounts allocated to printing and duplication services and to professional fees, for example) may not be so obvious; it says, however, that knowledge of the operational context of a particular faculty or service can make this information sensitive for the same reasons.

[66] Although the particular harms from disclosure of the university's budget envelopes in some categories of spending may not be clear on their face, I accept as a general proposition that disclosure of the amounts the university is ultimately prepared to pay in a given year in thousands of different categories of spending, broken down to the greatest level of detail maintained by the university, could reasonably be expected to hinder its ability to obtain the best value for money in the expenditure of public funds. This relates to my conclusion below that the records are not reasonably severable for the purposes of the *Act*.

[67] I also accept that detailed line-item budget information from prior years is worthy of the same protection. Although the records at issue are from 2012-2013 and 2013-2014, I accept the university's evidence that many of the line items in the records

reflect recurring expenses, and that disclosure of records revealing the university's approved budget envelopes in past years could reasonably be expected to prejudice its ability to negotiate effectively for those same items in future years. This is particularly the case where the university purchases from or contracts with the same counterparties from one year to the next, and where the historic records are of recent vintage. Consistent with its submission about the continued sensitivity of line-item budgets, I observe that the university does not publish any line-item information from past years, and only makes available to the public high-level budget information for the current year and for past budget years dating back to 2006-2007.

[68] For these reasons, I am satisfied that the records are exempt under section 18(1)(c).

[69] I am also satisfied that the university exercised its discretion under section 18(1)(c), and that it committed no error in exercising its discretion to withhold the records. In deciding to withhold the records in full, the university determined that the harm to its economic interests (and thus to the public interest in obtaining value for money in spending public funds) outweighed the benefits of transparency from disclosure. As the university notes, the public interest is already addressed through budget information made publicly available on its website, and the additional information disclosed to the appellant in the course of this freedom-of-information process.

[70] I therefore uphold the university's decision to withhold information in the records under section 18(1)(c). Given this finding, it is unnecessary for me to consider the university's claim under section 18(1)(e) for the same records. However, the appellant made an argument for severance of any exempt records, and I will this consider next.

Severance

[71] Section 10(2) of the *Act* obliges an institution to disclose as much of a responsive record as can reasonably be severed without disclosing exempt information. In this inquiry, the university was asked to consider whether there is any information in exempt records that ought to be disclosed pursuant to section 10(2).

[72] The university says that severance of non-exempt information from the 10,000-odd line items comprising each record is not reasonably possible. Although it says some line items, on their face, clearly qualify for exemption under section 18(1)(c) (such as allotted amounts for capital purchases, negotiated items), it acknowledges that the risks of harm from disclosure of other line items (such as amounts allotted for professional fees in a particular faculty or service) may be less obvious on their face, or may be lesser risks. To determine the degree of risk (and the possibility of disclosure) of any of these latter items, the university would need to consult with its financial resources department and staff in the various faculties or services. As the university says there is no reasonable way to automate or expedite this process, its conservative estimate,

based on an assumption that 2,000 line items in each record would require consultation of about one hour each, is that one year of full-time work would be needed to properly assess the records for severance at the line-item level. Given these circumstances, the university submits that the records cannot be reasonably severed at the line-item level.

[73] The university says it also considered whether severance by some means other than at the line-item level might be possible. It submits that no broader severances can be applied while still producing a record that is responsive to the appellant's request. It concludes that any reasonably achievable severance would yield records that are "worthless" and "meaningless" with respect to the information sought by the appellant.

[74] The appellant notes that the university's submissions on this topic focus on the practical difficulties of severing information in the records, and do not explain why broader severances would yield records that are worthless to the appellant. The appellant argues that the concept of reasonable severability in section 10(2) does not refer to difficulties encountered by an institution in severing a record, but rather to the comprehensibility of a record after severance. Even if the difficulties identified by the university were relevant, the appellant objects to the university's characterization of the work required in order to sever the records, calling its estimate excessive in the circumstances. The appellant contends that the process of severing portions of an Excel document should not be onerous, and that this office can provide the university with guidance to assist it in this process as necessary.

[75] In considering the nature of the information contained in the records, which reflect the approved budget envelopes at the line-item level for thousands of anticipated purchases, rentals or contracts, I found, above, that the information in the records qualifies for exemption under section 18(1)(c). I made this finding while noting that the particular harms from disclosure of the university's budget envelopes in some categories of spending may not be clear on their face.

[76] On the issue of whether the records can reasonably be severed, I have considered the representations of the parties both on the section 18(1) claim and on the possibility of severance. In the circumstances, based on the nature of the records and the level of detail contained in them, and on the nature of the harms contemplated by section 18(1), I am satisfied that the records are not reasonably severable at the line-item level. I accept the university's position that this severing exercise would require an inordinate amount of staff time and resources. I am also satisfied that, even if some small portions of the records could be severed and disclosed, disclosure would in many instances yield only disconnected snippets of information. As affirmed on many previous occasions, such records are not reasonably severable, and are not required to be disclosed.[13]

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[13] See IPC Orders PO-1735 and PO-1663, PHIPA Decision 17, *Ontario (Minister of Finance) v Ontario (Information and Privacy Commissioner)* (1997), 102 OAC 71 (Div Ct), and many others.

[77] Accordingly, in these circumstances, I am satisfied that the records at issue cannot reasonably be severed.

Issue C: Did the university conduct a reasonable search for records?

[78] In its request to the university, the appellant indicated that it seeks a full breakdown of the university's operating budget allocated to various expenses, including employee benefits, for two specific years. The appellant takes issue with the university's claim that detailed budget information relating to employee benefits does not exist. In its decision letter, the university explained that it has a central budget for employee benefits, and that this expense is not divided by faculties or services.

[79] The appellant disputes the university's claim on the basis of a telephone conversation that a coordinator with the appellant union reports having had with the university's director of compliance in its access to information and privacy unit. The union coordinator says that in this conversation, the director told him that the various faculties and services are reimbursed from the central budget for their expenses incurred relating to employee benefits, and that these reimbursements would therefore be known or categorized by the faculty or service that requested them. The union coordinator provided an affidavit to support the claim that his understanding, based on this conversation, is that a breakdown of employee benefit expenses already incurred is available to the university.

[80] The university states that in order to respond to the appellant's request, it conducted several searches of its budget records and compiled summary documents containing the requested information. The most recent disclosure to the appellant contains a detailed budget breakdown under the specific categories of expenditures sought by the appellant, and is summarized at the faculty, department and/or office level, as well as by employee group or category level for salary information. After receiving clarification from the appellant about the further breakdown it seeks, the university conducted a further search and compiled the line-by-line records at issue in this appeal, denying access to them in full. The university says it determined that no new record responsive to the appellant's request could be usefully created and disclosed to the appellant.

[81] The university explained to the appellant that employee benefits information is not broken down to the same level of detail as the other budget information in the records. It reports that it does not track information regarding employee benefits in this way, but rather manages them through its central funds; it quotes from its budget management policy[14] and its procedure regarding budget management[15] in support.

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[14] The university refers to Policy 55, Budget Management Policy, at paragraph 14: "Units managing a global, regular, or restricted budget are not responsible for covering employee benefits."

[82] It also addresses the appellant's evidence. The university provides an affidavit from the director of compliance with whom the union coordinator spoke. In it, the director denies she told the appellant that employee benefit information is available in the form he seeks. The university also provided an affidavit from its director of financial planning, who describes the search she conducted specifically for employee benefit information. In this affidavit, the director of financial planning explains that faculties and services do not have to budget for employee benefits, because this expenditure is centrally funded. She also reports having explained this to the director of compliance who spoke to the union coordinator. The university suggests that the union coordinator may be mistaken in his recollection of the conversation.

[83] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24.[16] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.[17]

[84] In this case, I am satisfied the university has conducted a reasonable search for information responsive to the appellant's request. The affidavits provided by the university describe the efforts undertaken by the university to locate and to compile information responsive to the appellant's request. They also provide an answer to the appellant's question about the detailed employee benefit information it seeks. I am satisfied with the university's explanation that such information does not exist, and I do not find the appellant's evidence establishes a reasonable basis for concluding otherwise. I note here that the records compiled by the university in response to the appellant's clarified request consist of thousands of line items, and that the university has always sought to deny access to these records in full. I see no basis to believe that in conducting its searches to identify responsive information, and in compiling all this information into the two records at issue, the university failed to search for this particular expense item and to include it in its compilation.

[85] In the absence of evidence from the appellant to support an opposite finding, I am satisfied that the university's searches were reasonable.

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[15] The university refers to Appendix 2 of Procedure 3-7 regarding Budget Management, which indicates that "Annual Employee Benefits" are managed through the university's central funds.

[16] Orders P-85, P-221 and PO-1954-I.

[17] Order MO-2246.

Issue D: Should the university's fee be upheld?

[86] The appellant objects to the university's fee issued in relation to the disclosure made with its first supplementary decision. In that decision, the university disclosed two new records containing information compiled during an additional search for records after clarification from the appellant. The university granted full access to the two records, charging a fee of $270 for nine hours' search time and $10 for the CD-ROM on which the records were provided.

[87] The appellant objects to the $270 charge for search, based on its view that nine hours is an excessive claim. It reports that only about half the 18 pages provided to it in the supplemental disclosure contain new information that would have required new search efforts, with the remaining pages containing information already disclosed to it with the university's initial decision, or repeating information contained in other pages. It notes that the university only claimed two hours of search time in relation to the first disclosure.

[88] The appellant also asserts that the information contained in the records is information that already exists and that should have been readily available to the university from general budget and accounting records kept for its own internal use. It maintains that a trained employee of the university should have been able to locate and access such records with little time or effort. It submits there is no reasonable explanation why searches conducted under the direction of the FPS office should have taken nine hours.

[89] In her affidavit, the director of financial planning for the university describes the two different searches corresponding to the university's initial and supplemental decisions.

[90] The first search was conducted after receiving the appellant's original request for "a full breakdown of the operating budget allocated to" seven categories of expenditures for the requested years, "including, but not limited to, by faculty, by job classification (i.e., job title), salary and wages, and hours or percent of time for each position..." The director reports that a search for that information took two hours, and involved a determination of which accounting key codes to use to extract the information from the finance system. Using those codes, her team executed 12 requests (six for each of the two budget years sought), exported the results in Excel, made additions, added descriptions for the codes and formatted the files for disclosure.

[91] The supplemental search was conducted after receiving an email from the appellant indicating its dissatisfaction with the two records produced through the initial search. The email specified that the requested information was sought "in full detail, including all budget categories and sub-categories, of the operating budget allocated" for the requested years, with the breakdown according to the categorization employed by the university.

[92] The director describes the more complex process necessary to compile the more detailed information described in the appellant's email. She reports that this supplemental search required identifying more accounting key codes to extract more detailed information from the finance system, and that using more codes required a more complicated determination of the ORGN/Account combination to use. Using these codes and combinations, her staff executed more than 60 requests (more than 30 for each of the two budget years sought). As an example, she explains that compiling the relevant information on 2012-2013 academic salaries required the execution of 21 requests. The results of all these requests were exported into Excel, regrouped and formatted, and checked for quality and completeness of data. A reconciliation procedure was performed to correct errors uncovered during the process and to ensure accuracy. The director reports that this second search took nine hours. The result of this process was the creation of two new records, which were disclosed to the appellant.

[93] The university's supplemental decision on these records indicates a search fee of $270, based on nine hours of search time charged at a rate of $30 per hour. This is the only component of the fee at issue in this appeal.

[94] Section 57(1) requires an institution to charge fees for requests under the *Act*. That section reads:

> A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,
>
> (a) the costs of every hour of manual search required to locate a record;
>
> (b) the costs of preparing the record for disclosure;
>
> (c) computer and other costs incurred in locating, retrieving, processing and copying a record;
>
> (d) shipping costs; and
>
> (e) any other costs incurred in responding to a request for access to a record.

[95] Specific fees for access to records of general information are set out in section 6 of Regulation 460 to the *Act*. The relevant portions of section 6 state:

> 6. The following are the fees that shall be charged for the purposes of subsection 57(1) of the *Act* for access to a record:
>
> 2. For records provided on CD-ROMs, $10 for each CD-ROM.

> 3. For manually searching a record, $7.50 for each 15 minutes spent by any person.
>
> 4. For preparing a record for disclosure, including severing a part of the record, $7.50 for each 15 minutes spent by any person.

[96] The evidence of the director of financial planning indicates that the nine hours of work was required to extract the information responsive to the appellant's request from an electronic system, compile that information into a presentable form and check for quality, accuracy and completeness of information.

[97] Previous orders of this office have determined that these types of tasks performed in electronic systems do not qualify as "manual searches" within the meaning of section 57(1)(a); they may, however, qualify as costs of "preparing the record for disclosure" under section 57(1)(b).[18] This office has accepted that the time spent by any person on activities to generate reports from electronic systems, including the time spent to run searches and to export data, qualifies as "the costs of preparing the record for disclosure."[19] Not allowed under this section is a fee for the time spent by the electronic system to compile the data or to print the information, or for the use of material and equipment involved in this process.[20]

[98] In this case, I accept that the activities described by the director of financial planning are allowable costs of preparing the records for disclosure. The nine hours claimed include the time for executing a large number of requests in an electronic system and of exporting, compiling and verifying the resulting data. It does not include the time taken by the system to return the results of the request, or any other unallowable costs.

[99] I do not find relevant the appellant's arguments about the similarities between the records disclosed to it with the university's first decision and the second. The supplemental disclosure consists of records produced as a result of running a greater number of more detailed searches in the university's finance system, to respond to the appellant's request for a greater degree of detail in respect of the same information extracted in the first search. Some duplication in the data contained in the first and second set of records produced in these circumstances is not unexpected. In any event, I do not accept that the content of the resulting records has a bearing on the allowable costs of preparing the records for disclosure.

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[18] Among others, see Orders M-1083, MO-1854 and MO-2913, addressing the equivalent sections with identical wording in *MFIPPA*.

[19] Order MO-1854.

[20] M-1083.

[100] Finally, I accepted above the university's evidence that a detailed breakdown of all its operating expenses (as sought by the appellant) is not contained in records regularly maintained by the university. I am satisfied that significant efforts were required in order to compile this information into records responsive to the appellant's request.

[101] In the result, I allow the university to charge for nine hours of preparation time under section 57(1)(b), while disallowing its claim for the same time under section 57(1)(a). The fee for preparation time under Regulation 460 is identical to the fee for manual search time. Thus the fee under the appropriate heading is $270, the same amount that was charged by the university under the wrong heading in its supplemental decision letter.

[102] It is my understanding that the appellant has already paid the fees set out in the supplemental decision. Assuming this is the case, it is unnecessary for the university to take any action as a result of my finding under this heading.

ORDER:

1. I do not uphold the university's decision under section 65(6).

2. I uphold the university's decision to withhold the records in full under section 18(1)(c).

3. I uphold the university's search for records.

4. I do not uphold the university's fee of $270 for manual search. I allow the university to charge a fee of $270 for preparing the records for disclosure.

Original Signed by: January 28, 2016

Jenny Ryu
Adjudicator