

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3737-F

Appeal PA12-261-2

University of Ottawa

June 7, 2017

Summary: This final order deals with the remaining issues arising from a request for records relating to a professor in his role as Goldcorp Chair in Economic Geology. The university withheld records under the mandatory exemptions in sections 17(1) (third party information) and 21(1) (personal privacy) and the discretionary exemption in section 18(1) (economic or other interests). The adjudicator upholds the university's decision in part under section 18(1) and 21(1) but orders disclosure of the remaining records.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 2(1) (definition of personal information), 17(1), 18(1)(c), 21(1).

OVERVIEW:

[1] This is the final order from an appeal of a decision of the University of Ottawa (the university) to deny information relating to records for an identified professor in his role as Goldcorp Chair in Economic Geology between March 1, 2007 and the date of the request made by the requester under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The university denied information on the basis of the research exclusion in section 65(8.1), the employment-related and labour relations exclusion in section 65(6), the mandatory third party information exemption in section 17(1) and the discretionary exemption in section 18(1). The requester, now the appellant, appealed the university's decision.

[2] After conducting an inquiry, I issued Order PO-3464-I where I partially upheld the university's decision. Specifically, I found that the research exclusion did not apply

to the records for which it was claimed. I found that the employment-related and labour relations exclusions applied to the records for which it was claimed. I remained seized of the appeal to deal with any outstanding issues arising from my finding that the exclusion did not apply.

[3] Following Order PO-3464-I, the university issued a revised decision where it advised the appellant that it had decided to withhold portions of the records that remain at issue on the basis of sections 17(1), 18(1) and 21(1) of the *Act*. The appellant confirmed that he remained interested in pursuing access to these records.

[4] This office sought and received representations from the university, the appellant and affected parties (individuals and organizations whose interests may be affected by the outcome of the appeal). One of the affected parties consented to the disclosure of information in Record 34. Another affected party also consented to the disclosure of its information contained in the records at issue.

[5] In this order, I uphold the university's decision in part.

RECORDS:

[6] The records at issue are indicated in the index of records in the appendix to this order that will be provided to the parties to this appeal. The records are comprised primarily of emails and attachments.

[7] The appellant indicated that he is not interested in pursuing information withheld from those records where only section 17 was claimed. Accordingly, I have removed these records from the scope of the appeal. Further, the appellant clarified that he does not seek access to images of students' faces or generic personal information contained in the records. The appellant noted that he only seeks access to the information withheld under section 21 that relates to financial or professional activities of the university. Therefore, the only information withheld under section 21 that remains at issue is that in Records 15 – 18 and 111.

ISSUES:

- A. Does the discretionary exemption at section 18 apply to the records?
- B. Was the university's exercise of discretion under section 18(1) proper in the circumstances?
- C. Does the mandatory exemption at section 17 apply to the records?
- D. Do the records contain "personal information" and, if so, to whom does it belong?

- E. Does the mandatory personal privacy exemption in section 21(1) apply to the records?

DISCUSSION:

Issue A: Does the discretionary exemption at section 18 apply to the records?

[8] The university submits that sections 18(1)(a) and (c) apply to the records for which it was claimed. These sections state:

A head may refuse to disclose a record that contains,

(a) Trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Ontario or an institution and has monetary value or potential monetary value;

(c) information where disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution.

[9] 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 under the *Act*.¹

[10] For section 18(1)(c) to apply, the university must provide detailed and convincing evidence about 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.²

[11] The failure to provide detailed and convincing evidence will not necessarily defeat the university's claim for exemption where harm can be inferred from the surrounding circumstances. However, parties should not assume that the harms under section 18 are self-evident or can be proven simply by repeating the description of harms in the *Act*.³

Representations

[12] The university submits that its interest in securing private donations would be harmed by disclosure of the records for which it claims section 18(1)(c). For the

¹ Toronto: Queen's Printer, 1980

² *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-54.

³ Order MO-2363.

purposes of its representations, the university categorized the types of records and provided the following description of them:

- First category of records: Internal university communications regarding the payment of the endowment by Goldcorp to the university to fund the Goldcorp Chair in Economic Geology. These records reveal details of the structure of the payment plan the university accepted in order to secure funding for the Chair; the operating budget for the Chair, and the manner in which the university communicates with the Donor with respect to the funds provided.
- Second category of records: Records that reveal information related to the university's strategies in soliciting and securing donations on a general basis. These include both communications with external third party funders, and various applications for funding to support work currently under the purview of the Chair. As the university solicits donations for its geology programs generally, these records reveal details surrounding the university's strategies for soliciting and securing donations from organizations involved in the mining industry or the earth sciences broadly.
- Third category of records: Records which address the purchase of equipment with the funds provided through the donation. These records reveal the strategies behind the purchase of such equipment, the technological and project considerations, along with the fee for service initiative explored by the university. To disclose these records would allow other groups who provide the use of such equipment on a fee for service basis to learn how fees are set by the university and what other institutions are paying to use the same equipment.

[13] The university further notes that section 18(1)(a) may also apply to the third category of records. However, the university's submissions do not specifically reference this exemption and as it is a discretionary exemption, I make no finding on its application to the records at issue.

[14] The university cites Orders PO-2619 and PO-2794 in support of its position that this office has upheld the application of section 18(1)(c) to withhold portions of records where the institution has provided evidence of a reasonable expectation that disclosure of the information could negatively impact its competitiveness in securing future donations. Moreover, the university submits that disclosure of the records would also prejudice its ability to get future donations from the named donor in the records.

[15] The university submits that it is in constant competition for private donations as it is one of several major universities in Canada offering studies in Economic Geology. It states:

Faced with ongoing government restraint, the university has had to explore other sources of funding in order to continue delivering on its mandate of providing excellence in research and education.

Private donations are a critical part of this fundraising strategy, but in the current economic environment, competition for sizeable donations is fierce. Potential donors can choose between many worthy institutions or causes, creating an intense climate of competition to obtain vital support. The university's relationship with existing donors in these circumstances is of critical importance.

[16] The university submits that its competitive position would be harmed in the following ways:

- Other universities would gain valuable insight into the university's strategies for soliciting and securing donations from organizations including the relationships with the staff of these organizations.
- Strategies for approaching and seeking donations from organizations would be revealed.
- Organizations would be privy to the university's strategic communications around the solicitation of donations and management of endowments which may prejudice the university's relationship with these organizations.

[17] With respect to the third category of the records, the university submits that it provides the use of equipment to other institutions, organizations and individuals on a fee for service basis. The fees charged help defray the costs to the university of the purchase and operation of the equipment and supports the university's ability to fulfill its mandate. The university states:

Just as in the case of private donations, the university relies on revenue of this sort to supplement its public funding. As public funding of universities has come under ever greater strain, the university is forced to rely more and more on these alternative sources of revenue generation. They are now critical to its success. If these sources of funding are prejudiced, the university's ability to deliver on its commitment to research and high education will be impacted.

[18] Finally, the university submits that it is not the only institution and organization that offers the equipment use for fee service and, therefore, it competes with other organizations for this business. Disclosure of the information in the third category of records would permit other organizations to undercut the university's pricing and result in diminished revenue for the university.

[19] The appellant submits that Order PO-3243 is relevant in the circumstances of this appeal and, as the records in the current appeal are over a year old, it is unreasonable to expect that disclosure of the records will harm the university's economic interests.

[20] The appellant further submits that in Order PO-2681 the adjudicator found that reference to financial matters pertaining to financial dealings alone did not establish the

harm in section 18(1).

Analysis and Findings

[21] The university submitted specific representations with respect to some of the records at issue and I will refer to these submissions in my findings. Moreover, I have considered in my analysis the university's submissions in light of the age of the records at issue. The university also notes that it considered the age of the records when it exercised its discretion in applying section 18.

[22] The university submits that Records 7 – 9, 35, 36, and 53 are records relating to proposals made by the department in order to obtain additional funding and support for various research initiatives. The university submits that disclosure of this information would provide competitors with insight into how the university applies for funding, its overall strategy for securing donations, and the initiatives it plans to engage. The university states

These proposals must be detailed in order to secure funding and support – accordingly, their release would provide an extensive review of the university's strategy. It is noteworthy that in academic and scientific circles, such proposals are treated as confidential due to their detail and contents.

[23] Based on my review of these records, I find that Records 7, 8, 9, and 53 consist of detailed proposals for funding and emails exchanged regarding proposals for funding. I accept that disclosure of this information could reasonably be expected to prejudice the university's competitive position. I find that the detail of description in the records including timelines, backgrounds, scope of the projects and initiatives would provide competitors to the university information about these projects in a manner that would prejudice the university's economic interests. I considered whether the age of these records would lessen any potential harm argued by the university and I find that the information in the records is so detailed that the passage of time would not lessen the effect of its disclosure. Accordingly, I find that this information is exempt, subject to my finding on the university's exercise of discretion.

[24] However, Records 35 and 36 consist of information where I find that the harm in disclosure is not established. Record 35 consists of an email and attached press release. The email discusses the potential for a funding proposal in general terms. Furthermore, I find the press release is not information whose disclosure could reasonably be expected to result in the section 18(1)(c) harm. Similarly, I find that the email in Record 36 which responds to the email in Record 35 is not information whose disclosure will result in the harm set out in section 18(1)(c). As no additional exemptions have been claimed for these records and no mandatory exemptions apply, I will order the university to disclose these parts of the records.

[25] The university submits that Record 44 contains information regarding the budget for donations for the research chair in economic geology. Disclosure of this information,

the university argues, would prejudice its ability to secure future funding as it would reveal the funding breakdowns and manner which donations are provided and obtained. Record 44 contains an earlier email that I withheld in Record 51 in Order PO-3464-I. I found that Record 51 contained information whose disclosure could reasonably be expected to prejudice the university's economic interests. I find that for the same reasons Record 44 is also exempt under section 18(1)(c) as it contains a detailed budget summary for the chair.

[26] For Records 65 and 66, the university submits that these records contain its strategy for securing donations and strategic planning. The university submits that disclosure of these records would reveal the strategic choices made to appeal to different funders and would prejudice its ability to compete with other universities for donations. I have reviewed Records 65 and 66 which are comprised of an email and a response. I find that disclosure of the information contained in these records could not reasonably be expected to prejudice the university's competitive position. These records list factual information and a discussion of how to approach other potential donors. I find that section 18(1)(c) does not apply to these two records.

[27] For Records 68 to 73, the university submits that these records detail the amount being sought from candidate donor organizations and other fundraising strategies, and that disclosure of this information would reveal the university's strategy in seeking donations and prejudice its competitive position in seeking future donations. Record 68 contains the same information as Records 65 and 66. For the same reasons set out above, I find that Record 68 is also not exempt under section 18(1)(c). I find that the university has not established that disclosure of this information could prejudice its competitive position. However, I find that Records 69 – 73 contain detailed proposal and budgeting information relating to the seeking of donor funding. I accept the university's position that disclosure of this information could prejudice its competitive position and/or its economic interests.

[28] The university submits that Record 74 is exempt under section 18(1)(c) as it contains scientific and technical information the university must disclose in order to get the comparison between various vendors. The university states:

The discussion surrounding the acquiring of this equipment involves the disclosure of the University's current technology, its growing needs, and its prospective use for these new pieces of equipment.

[29] I find that Record 74 does not contain technical or scientific information relating to the university. The record relates to a request for documentation and a quote from a vendor. On my review of this record, I find that its disclosure could not reasonably be expected to prejudice the university's competitive position or its economic interests.

[30] The university submits that Records 104, 105, 114 – 126 contain information that would impact the university's competitive position if disclosed. The university submits that the records contain information relating to the implementation of various fee for service arrangements with respect to equipment acquired by the Department of

Earth Sciences. The university states:

As the university competes with other organizations to provide such services, disclosure of how they have chosen to set their fees would have a negative effect on the ability of the university to set competitive fees for its service and obtain clients, and thereby offset the costs of obtaining such equipment.

[31] With the exception of Records 122, 123, 124, 125, and 126 (in part), I find that the disclosure of Records 104, 105, 114 – 121, 126 (in part) would not prejudice the university's competitive position or its financial interests. Records 104, 105, 114 – 121, 126 (in part) consists of email chains discussing the possible rates for fee service arrangements. Based on the content of these emails, I find that the university has not established that these discussions could negatively affect its ability to set competitive fees. Moreover, these records are now over 6 years old. I find that the length of time and the content of the discussions do not establish the harm in section 18(1)(c). However, I find that Records 122, 123, 124, 125, and 126 (in part) contain the actual fees that were the basis for discussion and I accept that disclosure of this information may prejudice the university's competitive position.

[32] The university submits that records 15 to 17 and 20 contain the details of its relationship with donors. The university states that disclosure could reasonably be expected to prejudice its competitive position as competitors could use the information in these records to target donation relationships with these donors. Based on my review of these emails, I find that the university has not established that disclosure of these emails could reasonably be expected to result in its competitors seeking to establish their own relationships with the donor to unduly prejudice the university's competitive position. The emails contain the details of payment of the donation and it is not evident to me nor does the university explain how this information would allow competitors to more effectively compete with the university. As the university also claimed the application of section 17(1) for Record 20, I will consider the application of that exemption below.

[33] For records 18, 19 and 30, the university submits that these emails relate to its strategies in securing donations and strategic planning. The university states:

Disclosure of these records would reveal the strategic choices made to appeal to different funders. The university submits that revealing these choices would prejudice its ability to compete with other universities for donations.

[34] I find that Records 18 and 19 consist of email discussions and draft documents for approaching a donor including detailed financial information. I accept the university's submission that disclosure of this information would disclose the university's strategies for targeting various donors and could prejudice its competitive position. I am unable to find that Record 30 contains information relating to the university's strategic choices to appeal to donors. Instead, Record 30 is a discussion between university

employees about the success of a particular event. I find that disclosure of Record 30 could not reasonably be expected to prejudice the university's competitive position.

[35] For Records 22, 23, 25, 31, 32, 33 and 67, the university submits that disclosure of these records would also prejudice its competitive position because:

These records are connected to the short course and educational offerings by the department as part of its initiatives stemming from the use of funds attributed to various donations. These records are exempt from disclosure under *FIPPA* as they contain confidential commercial information with respect to the parties whose assistance is being sought in order to help fund and participate in the short course. To disclose this information would allow competing entities to determine who the university has chosen to approach in order to solicit assistance, participation and donations to run these types of events, and the unique request being made to each of the prospective donors.

[36] Based on my review of these records, I find that they are not exempt under section 18(1). The university has not established or demonstrated how disclosure of the information in these records including the attendees, donors and participants in the university's short course could reasonably be expected to result in prejudice to its competitive position.

[37] In summary, I have found that Records 7 – 9, 18, 19, 34, 44, 53, 69 – 73, 122, 123, 124, 125, and 126 (in part) are exempt under section 18(1) subject to my finding on the university's exercise of discretion below. For the remaining records, the university has claimed the application of the mandatory third party information exemption in section 17(1) and/or personal privacy exemption in section 21(1). I will consider whether the remaining records are exempt under these exemptions.

Issue B: Was the university's exercise of discretion in claiming section 18(1) proper in the circumstances?

[38] The section 18(1) exemption is discretionary, and permits 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.

[39] 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.

[40] In either case this office may send the matter back to the institution for an

exercise of discretion based on proper considerations.⁴ This office may not, however, substitute its own discretion for that of the institution [section 54(2)]⁵.

[41] The university submits that it properly exercised its discretion in applying section 18(1), considering the purposes underlying the *Act*, the interests which would be served by disclosure and the countervailing interests weighing against disclosure. While the university acknowledges that the records are several years old, the university submits that it is about to launch a major fundraising campaign. Disclosure of the records could prejudice the university's ability to raise funds and will materially impact on the university's finances.

[42] The appellant's representations do not address the university's exercise of discretion.

[43] Based on the nature of the records for which the university has claimed section 18(1) and the records I have found exempt under that exemption, I find that the university properly considered the interests sought to be protected by the section 18(1) exemption as well as the purposes of the *Act* that the necessary exemptions from the right of access should be limited and specific. I uphold the university's exercise of discretion in the circumstances of this appeal.

Issue C: Does the mandatory exemption at section 17 apply to the records?

[44] The university submits that section 17(1) applies to the information in Records 13, 20, 22, 23, 25, 28, 29, 31, 32, 33, 40, 43, 67, 74, and 90. This section states, in part

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

(a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

(c) result in undue loss or gain to any person, group, committee or financial institution or agency

[45] Section 17(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions.⁶ Although one of the central purposes of the *Act* is to shed light on the operations of government, section 17(1) serves to limit disclosure of confidential information of third

⁴ Order MO-1573.

⁵ Section 54(2).

⁶ *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.), leave to appeal dismissed, Doc. M32858 (C.A.).

parties that could be exploited by a competitor in the marketplace.⁷

[46] For section 17(1) to apply, the institution and/or third party must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 17(1) will occur.

[47] As stated above, several affected parties were given the opportunity to provide representations. The affected parties that responded did not submit representations on the application of section 17(1) so I will be relying on the university's representations only.

Part 1: type of information

[48] The university submits that the records for which section 17(1) is claimed contains commercial, financial, technical and labour relations information of the third parties. In particular, the university notes the following:

- Vendors provided technical and scientific information in respect of a piece of equipment and the records reveal detailed specifications of the equipment and its technical standards.
- The records contain discussions between the university and a museum to determine the parameters for the joint usage of a piece of equipment purchased by the university. These discussions contain technical, financial and labour relations information.
- Some of the records contain commercial and financial information with respect to third party organizations that partnered with the university in various endeavours.

[49] This office has defined the terms commercial, financial, technical and labour relations information in past orders. These terms are defined as:

Technical information is information belonging to an organized field of knowledge that would fall under the general categories of applied sciences or mechanical arts. Examples of these fields include architecture, engineering or electronics. While it is difficult to define technical

⁷ Orders PO-1805, PO-2018, PO-2184, MO-1706.

information in a precise fashion, it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing.⁸

Commercial information is information that relates solely to the buying, selling or exchange of merchandise or services. This term can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises.⁹ The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.¹⁰

Financial information refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples of this type of information include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs.¹¹

Labour relations means relations and conditions of work, including collective bargaining, and is not restricted to employee/employer relationships. Labour relations information has been found to include:

- discussions regarding an agency's approach to dealing with the management of their employees during a labour dispute¹²
- information compiled in the course of the negotiation of pay equity plans between a hospital and the bargaining agents representing its employees,¹³

but not to include:

- names, duties and qualifications of individual employees¹⁴
- an analysis of the performance of two employees on a project¹⁵
- an account of an alleged incident at a child care centre¹⁶

[50] I adopt these definitions for the purposes of this appeal.

[51] In order for the university to withhold the records under section 17(1), it must establish each part of the three-part test set out above. I find that information withheld

⁸ Order PO-2010.

⁹ Order PO-2010.

¹⁰ Order P-1621.

¹¹ Order PO-2010.

¹² Order P-1540.

¹³ Order P-653.

¹⁴ Order MO-2164.

¹⁵ Order MO-1215.

¹⁶ Order P-121.

by the university in the following records can not be characterized as any of the types of information protected under section 17(1): Records 13, 22, 23, 25, 28, 29, 31 – 33, 67, 74 and 90.

[52] Much of the information identified by the university as commercial information does not contain actual discussions regarding the exchange of services for money or goods. I find that discussions about levels of support or participation in joint activities or endeavours is not the same as a commercial arrangement. Moreover, information relating to participation in the short course or information relating to the success or turnout of the short course does not constitute commercial information for the purposes of section 17(1). Finally, I further find that the print outs of the cover pages for the short course notes in Record 67 is also not commercial information for the purposes of section 17.

[53] I also find that the information the university identifies as technical information does not actually contain technical information. The strategic information in Record 13 does not contain information belonging to an organized field of knowledge that would fall under the general categories of applied sciences or mechanical arts. Record 74 contains a reference to the exchange of further documentation regarding a piece of equipment but does not contain actual technical specifications or discussions about the technical aspects of the equipment.

[54] I find that Records 20, 40 and 43 contain financial information for the purposes of section 17(1). These email records contain funding and budget information and meet part 1 of the test for section 17(1).

[55] The university also claimed that Record 90 contains labour relations information pertaining to an employee of an affected party. I find that the withheld information relates to a named employee and a general discussion of his duties. I find this information does not constitute labour relations information under section 17(1) but may be the individual's personal information under section 2(1) of the *Act*.

[56] The rest of the records do not contain the types of information protected under section 17(1) and fail to meet part 1 of the test. As all three parts of the test must be met I will order them disclosed.

Part 2: supplied in confidence

Supplied

[57] The requirement that it be shown that the information was *supplied* to the institution reflects the purpose in section 17(1) of protecting informational assets of third parties.¹⁷

[58] Information may qualify as *supplied* if it was directly supplied to an institution by

¹⁷ Order MO-1706.

a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party.¹⁸

In confidence

[59] In order to satisfy the in confidence component of part two, the parties resisting disclosure must establish that the supplier had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided. This expectation must have an objective basis.¹⁹

[60] In determining whether an expectation of confidentiality is based on reasonable and objective grounds, it is necessary to consider all the circumstances of the case, including whether the information was

- communicated to the institution on the basis that it was confidential and that it was to be kept confidential
- treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the government organization
- not otherwise disclosed or available from sources to which the public has access
- prepared for a purpose that would not entail disclosure.²⁰

[61] The only records that I have found that meet part one of test are Records 20, 40 and 43. The university did not make specific representations as to whether the information was supplied by the affected parties to the university in confidence.

[62] Record 20 is an email attaching an annual report from the Goldcorp Chair to the affected party. The purpose of the section 17(1) is to protect the informational assets of third parties that are in the custody or control of an institution. In this record, the Goldcorp Chair (the university's representative) is providing an affected party with a report of the Chair's activities including the use of funding provided by the affected party's donation to the university. Based on my review, I find that Record 20 does not contain information that was supplied by an affected party to the university nor would its disclosure reveal any such information. I find that it does not meet part 2 of the test.

[63] Records 40 and 43 also consist of the annual report from the Goldcorp Chair. Like Record 20, I am unable to find that these records contain information that was supplied by an affected party to the institution nor would its disclosure reveal any such information. I find that these two records also do not meet part 2 of the test for the application of section 17(1).

¹⁸ Orders PO-2020, PO-2043.

¹⁹ Order PO-2020.

²⁰ Orders PO-2043, PO-2371, PO-2497.

[64] As Records 20, 40 and 43 do not meet part 2 of the test, I find that these records are not exempt under section 17(1).

[65] In conclusion, I find that the records for which the university has claimed section 17(1) are not exempt under that exemption.

Issue D: Do the records contain personal information within the meaning of section 2(1) of the *Act*?

[66] As stated above, the university has claimed the application of the personal privacy exemption in section 21(1) to a number of records, but the only records remaining at issue are Records 15 – 17²¹ and 111. I also found that Record 90 may include the personal information of an individual. The *Act* in section 2(1) defines personal information as record information about an identifiable individual including

(a) 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,

(h) the individual's name where 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;

[67] Section 2(3) also relates to the definition of personal information. It states

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.

[68] 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.²²

[69] 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.²³

[70] The university submits that the records contain the contact information about individuals including their email addresses; financial information about individuals and educational history of individuals (their registration in a particular course). As stated above, during the inquiry into the appeal, the submissions of the affected parties were sought but not received.

²¹ I have found Record 18 to be exempt under section 18(1) above.

²² Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

²³ Orders P-1409, R-980015, PO-2225 and MO-2344.

[71] Based on my review of the records remaining at issue, I find that Records 15 – 17 relate to the payment of funding for the Goldcorp Chair and that this funding was made by the Chairman of Goldcorp on behalf of that company and not as a personal donation. As stated above, this individual was given notice of the appeal and the records at issue and did not submit representations. I find that the information in these emails do not relate to the named individual in a personal capacity and as such is not information related to his financial transactions. As this information is not personal information for the purposes of the *Act*, it cannot be exempt under section 21(1). As I have found that Records 15 – 17 are also not exempt under section 18(1), I will order these records disclosed.

[72] I find that Record 90 contains an individual's name with other information about this individual and that this information constitutes his personal information within the meaning of paragraph (h) of the definition of that term in section 2(1).

[73] Finally, Record 111 is an email chain between a professor and other individuals at the university. The professor was contacted as an affected party and made representations on whether this record contains his personal information. He submits that the record contains personal financial information and his employment record. He further submits that the records do not relate to him in his official capacity.

[74] I find that Record 111 does not contain financial transaction information relating to the affected party. Moreover, I find that the information relates to the affected party in his official capacity as a professor at the university. In Order PO-2225, former Assistant Commissioner Tom Mitchinson set out the rationale for determining whether information relates to an individual in a personal context. Applying this rationale, I find that the information at issue in Record 111 appears in a professional context, namely an email to colleagues at the university informing them of certain information. Moreover, I find that this information, if disclosed, would not reveal something of a personal nature about the professor.

[75] Furthermore, I find that the information cannot be characterized as the professor's employment or educational history within the meaning of paragraph (b) of the definition of personal information in section 2(1). The information in Record 111 does not contain information relating to the professor's past employment or educational history. Instead, the information relates to his employment status and obligations.

[76] Accordingly, I find that Record 111 does not contain information that constitutes the personal information of the professor. As I have found that Record 111 does not contain personal information, the information in it cannot be exempt under the personal privacy exemption in section 21(1).

[77] As I have found that Record 90 contains the personal information of an individual, I will proceed to consider whether this information is exempt under section 21(1).

Issue E: Does the mandatory personal privacy exemption in section 21(1) apply to the personal information in Record 90?

[78] Where a requester seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies.

[79] If the information fits within any of paragraphs (a) to (f) of section 21(1), it is not exempt from disclosure under section 21(1). In the circumstances, it appears that only the exception in (f) may apply.

[80] The factors and presumptions in sections 21(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 21(1)(f). In the present appeal, I find that the presumptions in section 21(3) are not relevant.

[81] If no section 21(3) presumption applies, section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.²⁴ In order to find that disclosure does not constitute an unjustified invasion of personal privacy, one or more of the factors and/or circumstances favouring disclosure in section 21(2) must be present. In the absence of such a finding, the exception in section 21(1)(f) is not established and the mandatory section 21(1) exemption applies.²⁵

[82] The appellant's submissions on the application of section 21(1) relate to whether the information is professional rather than personal information about the individual. The appellant does not submit that any of the factors or considerations weighing in favour of disclosure in section 21(2) apply nor does he identify any other factors that may be relevant.

[83] Accordingly, I find that section 21(1) applies to exempt the personal information in Record 90. Section 10(2) of the *Act* obliges the university to disclose as much of any responsive record as can reasonably be severed without disclosing material which is exempt. I find that the rest of the information in Record 90 which I have found not exempt under sections 17 and 18 can be disclosed to the appellant.

ORDER:

1. I order the university to disclose the records which I have found not to be exempt under sections 17, 18 and 21 by providing the appellant with a copy of these records by **July 12, 2017** but not before **July 7, 2017**. For Records 90 and 126 which I order disclosed in part, I have provided a highlighted copy of those records with a copy of the university's order. To be clear, the information

²⁴ Order P-239

²⁵ Orders PO-2267 and PO-2733.

highlighted **should not** be disclosed to the appellant. My findings on the specific records are attached in the index to the order.

2. I uphold the university's decision to withhold the remaining records under section 18(1) and 21(1).
3. I reserve the right to require the university to provide me with a copy of the records disclosed to the appellant in compliance with order provision 1.

Original signed by _____
Stephanie Haly
Adjudicator

June 7, 2017 _____

APPENDIX

No.	Date	Description	Exemption applied	Finding
7	11/11/2007	Email	18	Withhold
8	11/13/2007	Email	18	Withhold
9	11/13/2007	Email	18	Withhold
13	12/11/2007	Email	17	Disclose
15	01/24/2008	Email	21, 18	Disclose
16	01/24/2008	Email	21, 18	Disclose
17	01/24/2008	Email	21, 18	Disclose
18	03/27/2008	Email	21, 18	Withhold
19	03/31/2008	Email	18	Withhold
20	06/30/2008	Email	17, 18	Disclose
22	01/24/2009	Email	17, 18	Disclose
23	02/09/2009	Email	17, 18	Disclose
25	02/23/2009	Email	21, 18	Disclose
27	02/26/2009	Email	21, 18	Disclose
28	02/28/2009	Email	17	Disclose

29	03/03/2009	Email	17	Disclose
30	03/05/2009	Email	18	Disclose
31	03/05/2009	Email	17, 18	Disclose
32	03/06/2009	Email	17, 18	Disclose
33	04/09/2009	Email	17, 18	Disclose
34	05/15/2009	Document	18	Disclose
35	05/27/2009	Email	18	Disclose
36	05/27/2009	Email	18	Disclose
37	06/26/2009	Email	17, 18	Withhold ²⁶
38	07/03/2009	Email	17, 18	Withhold ²⁷
39	07/08/2009	Email	17, 18	Withhold ²⁸
40	07/09/2009	Email	17, 18	Disclose
41	07/22/2009	Email	17, 18	Withhold ²⁹
42	07/23/2009	Email	17, 18	Withhold ³⁰
43	07/29/2009	Email	17, 18	Disclose
44	07/30/2009	Email	18	Withhold
47		Email	18, 21	Disclose
51	09/21/2009	Email	17, 18	Withhold ³¹
52	09/23/2009	Email	17, 18	Withhold ³²
53	10/01/2009	Email	18	Withhold
54	10/08/2009	Email	17, 18	Withhold ³³

²⁶ Record 37 was considered in Order PO-3464-I.

²⁷ Record 38 was considered in Order PO-3464-I.

²⁸ Record 39 was considered in Order PO-3464-I.

²⁹ Record 41 was considered in Order PO-3464-I.

³⁰ Record 42 was considered in Order PO-3464-I.

³¹ Record 51 was considered in Order PO-3464-I.

³² Record 52 was considered in Order PO-3464-I.

55	10/08/2009	Email	17, 18	Withhold ³⁴
65	01/20/2010	Email	18	Disclose
66	01/20/2010	Email	18	Disclose
67	01/27/2010	Email	17, 18	Disclose
68	02/03/2010	Email	18	Disclose
69	03/03/2010	Email	18	Withhold
70	04/09/2010	Email	18	Withhold
71	04/12/2010	Email	18	Withhold
72	04/14/2010	Email	18	Withhold
73	04/13/2010	Email	18	Withhold
74	05/11/2010	Email	17, 18	Disclose
81	09/16/2010	Email	17, 18	Disclose
90	01/21/2011	Email	17, 18	Disclose in part
104	03/28/2011	Email	18	Disclose
105	03/28/2011	Email	18	Disclose
111	05/31/2011	Email	21	Disclose
114	06/14/2011	Email	18	Disclose
115	06/14/2011	Email	18	Disclose
116	06/15/2011	Email	18	Disclose
117	06/15/2011	Email	18	Disclose
118	06/15/2011	Email	18	Disclose
119	06/15/2011	Email	18	Disclose
120	06/15/2011	Email	18	Disclose

³³ Record 54 was considered in Order PO-3464-I.

³⁴ Record 55 was considered in Order PO-3464-I.

121	06/15/2011	Email	18	Withhold
122	06/24/2011	Email	18	Withhold
123	06/24/2011	Email	18	Withhold
124	06/24/2011	Email	18	Withhold
125	06/24/2011	Email	18	Withhold
126	06/24/2011	Email	18	Disclose in part