Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4011

Appeal PA16-340

Ministry of Training, Colleges and Universities

November 29, 2019

Summary: The appellant submitted an access request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of Training, Colleges and Universities (the ministry) for program registration records that a specific private career college submitted to the ministry in 2015 or early 2016. The ministry located records that are responsive to the appellant's access request, including affiliation agreements between the college and various health care organizations, clinical placement agreements, correspondence relating to student placements, ministry records that provide an overview of the agreements, program assessment reports about the college prepared by two independent assessors, and the resumes and educational diplomas of these assessors. It denied access to 29 records under the mandatory exemptions in sections 17(1) (third party information) and 21(1) (personal privacy) of the *Act*. The adjudicator sought representations on the issues to be resolved in this appeal from the ministry, the college, the appellant, 18 health care organizations and the two independent assessors. In this order, the adjudicator finds that the records at issue are not exempt from disclosure under section 17(1) but some records and parts of the records contain personal information that is exempt from disclosure under section 21(1). He orders the ministry to disclose the 29 records to the appellant, except for the names and signatures of the college's students, the resumes of the two assessors, and the educational diplomas of one of these assessors.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of "personal information"), 2(3), 17(1) and 21(1); *Private Career Colleges Act,* S.O. 2005, c. 28, Sched. L.

Orders Considered: Orders MO-1194 and PO-3174.

Cases Considered: *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)* 2014 SCC 31 (CanLII).

OVERVIEW:

[1] The issues to be resolved in this appeal are whether certain records that a private career college (PCC) submitted to the Superintendent of PCCs at the Ministry of Training, Colleges and Universities (the ministry) are exempt from disclosure under the mandatory exemptions in sections 17(1) (third party information) and 21(1) (personal privacy) of the *Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] In Ontario, there are more than 400 PCCs, with approximately 91,000 students enrolled in programs at these colleges. Unlike Ontario's publicly funded universities and colleges, PCCs do not receive any operating or capital funding from the provincial government. They offer a wide variety of career training programs ranging from one month to 12 months in length in areas such as business, information technology, health care and various trades.[1]

[3] Under the *Private Career Colleges Act* (the *PCCA*)[2], a person cannot operate a PCC unless they have registered with the ministry's Superintendent, who is also responsible for approving any vocational programs that PCCs offer for a fee.[3] The *PCCA* also authorizes the Superintendent to require a PCC to provide him or her with information, including personal information.[4]

[4] This appeal arises from an access request that the appellant had submitted under the *Act* to the ministry for the following records:

> …a complete copy of the program registration (RICC entry) that appears to have been submitted by [a named private career college (the college)], at some date late in 2015 or early 2016 under the name "clinical Research". …
>
> The requested complete copy would include a photocopy of the entire submission binder for the "Clinical Research" program, including any pertinent correspondence or explanatory letters from [the college], and including the required placement site agreements, (where students go for their 3-month practicums) – as the placement site agreements are a required component of an application (RICC) that offers a placement/practicum.

[5] The ministry located records that are responsive to the appellant's access requests, including affiliation agreements between the college and various health care

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[1] Paragraphs 14-17 of the ministry's representations in this appeal.
[2] S.O. 2005, c. 28, Sched. L.
[3] *Ibid.*, sections 7(1) and 8(1).
[4] *Ibid.*, section 50(1).

organizations, clinical placement agreements, correspondence relating to student placements, ministry records that provide an overview of the agreements, program assessment reports about the college prepared by two independent assessors, and the resumes and educational diplomas of these assessors.

[6] The ministry notified the college under section 28(1)(a) of the *Act* that some of these records might contain information referred to in section 17(1) that affects its interests and invited the college to submit representations. In response, the college submitted representations to the ministry in which it claimed that these records are exempt from disclosure under section 17(1) and must not be disclosed to the appellant.

[7] The ministry then sent a decision letter to the appellant which stated that it was providing partial access to the records. It stated that it was withholding 29 records under section 17(1) and section 21(1) (personal privacy) of the *Act*.

[8] The appellant appealed the ministry's refusal to provide him with access to these 29 records to the Information and Privacy Commissioner of Ontario (IPC), which assigned a mediator, who attempted to resolve the issues in dispute between the parties.

[9] During mediation, the ministry sent a revised decision letter to the appellant which stated that it was applying section 21(1) to some records that it has previously withheld only under section 17(1). The appellant advised the mediator that he is not pursuing access to the names of any students contained in those records. In addition, he claimed that there is a compelling public interest in disclosing the records that clearly outweighs the purposes of the sections 17(1) and 21(1) exemptions. Consequently, the public interest override at section 23 of the *Act* might be at issue in this appeal.

[10] This appeal was not resolved during mediation and was moved to adjudication for an inquiry. I issued notices of inquiry identifying the issues to be resolved in this appeal to the ministry, the college (which is an affected party), the appellant and also 20 additional affected parties whose interests might be affected by the disclosure of the records. These additional affected parties include 18 health care organizations that reached affiliation agreements and clinical placement agreements with the college and two individuals who submitted program assessment reports about the college to the ministry.

[11] In response, I received representations from the ministry, the appellant, the college and some of the 18 health care organizations. I did not receive any representations from the two independent assessors.

[12] In this order, I find that the records at issue are not exempt from disclosure under section 17(1) but some records and parts of the records contain personal information that is exempt from disclosure under section 21(1). I order the ministry to disclose the 29 records to the appellant, except for the names and signatures of the college's students, the resumes of the two independent assessors, and the educational

diplomas of one of these assessors.

RECORDS:

[13] The 29 records at issue in this appeal are summarized in the chart that is attached as an appendix to this order. This chart is based on the indexes of records prepared by the ministry and my review of the records at issue.

ISSUES:

A. Does the mandatory exemption at section 17(1) apply to the records?

B. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

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

DISCUSSION:

A. Does the mandatory exemption at section 17(1) apply to the records?

[14] The ministry claims that most of the records are exempt from disclosure under section 17(1) of the *Act*. The college claims that all of the records at issue are exempt from disclosure under section 17(1). The appellant submits that none of the records at issue is exempt from disclosure under that provision. Finally, none of the 20 additional affected parties who provided representations claim that the records relating to them are exempt from disclosure under section 17(1).

[15] Section 17(1) states:

> 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,
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> > (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
> >
> > (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;

> (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
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> (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

[16] Under section 53 of the *Act*, where an institution refuses access to a record or part of a record, the burden of proof that the record or part of the record falls within one of the specified exemptions in the *Act*, such as section 17(1), lies upon the institution. Third parties who rely on the exemption provided by section 17(1) share with the institution the onus of proving that this exemption applies to the record or parts of the record.[5]

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

[18] For section 17(1) to apply, the institution and/or the 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.

[19] For the reasons that follow, I find that disclosing the information in the records at issue could not reasonably be expected to give rise to the harms specified in paragraphs (a) or (c) of section 17(1), which are the provisions raised by the ministry and the college. As a result, I find that the records at issue are not exempt from disclosure under section 17(1).

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[5] Order P-203.
[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.) (*Boeing Co.*).
[7] Orders PO-1805, PO-2018, PO-2184 and MO-1706.

Part 1: type of information

[20] To satisfy part 1 of the section 17(1) test, the parties resisting disclosure must show that the records reveal a trade secret or scientific, technical, commercial, financial or labour relations information.

[21] The contents of the records at issue in this appeal can be generally described as follows:

- Affiliation agreements between the college and various health care organizations, which set out the terms and conditions of the relationship between these parties, particularly relating to the provision of work placements for the college's students.

- Clinical placement agreements between the college, named students and various health care organizations, which set out the duties and obligations of each party with respect to the students' work placements.

- Letters and emails between the college and various health care organizations with respect to hosting students for work placements.

- Ministry records that provide an overview of the agreements between the college and various health care organizations.

- Records relating to two assessments of the college conducted by two independent assessors.

[22] The ministry claims that the records reveal the commercial information of both the college and the placement organizations (the health care organizations). The college claims that the records reveal the college's trade secrets, commercial information and financial information.

[23] Prior IPC orders have defined the types of information listed in section 17(1) in the following way:

> • "Trade secret" means information including but not limited to a formula, pattern, compilation, programme, method, technique, or process or information contained or embodied in a product, device or mechanism which:
>
> (i) is, or may be used in a trade or business,
>
> (ii) is not generally known in that trade or business,
>
> (iii) has economic value from not being generally known, and

> (iv) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[8]
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> • "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]

[24] The college states that the requested records reveal "key teaching methods, research development and curricula" " that meet the definition of a "trade secret." It further states it uses that these methods, developments and curricula in the education market to deliver competitive proprietary programs and service in the private career college/vocational training market. It submits that these specific curricula and what goes into curriculum development are not generally known by the public because they are kept under the blanket of "trade secrecy."

[25] I do not find these submissions to be persuasive with respect to whether the records reveal a "trade secret." I have reviewed the affiliation agreements, the clinical placement agreements and the other records at issue, and I do not see any information that would constitute, in a detailed way, "key teaching methods, research development and curricula," as claimed by the college. There may be other records that fit this description that the college has submitted to the ministry but if such records exist, they do not appear to be within the scope of the appellant's access request and are not at issue in this appeal. I find, therefore, that none of the information in the records at issue in this particular appeal falls within the definition of a "trade secret."

[26] The college also claims that the requested records reveal "financial information," because they contain information relating to "forecasts and proprietary spreadsheets," amongst other pecuniary information. Once again, however, I see no information in the affiliation agreements, the clinical placement agreements and the other records at issue relating to "forecasts and proprietary spreadsheets" that reveals "financial information." In some of the affiliation agreements, there are terms relating to insurance obligations

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[8] Order PO-2010.
[9] *Ibid.*
[10] Order P-1621.
[11] *Supra* note 8.

which contain a dollar amount. With the exception of this insurance information, I can see no other no information in the records that falls within the definition of "financial information."

[27] Both the ministry and the college claim that the records at issue reveal "commercial information." The ministry submits that the information in many of the records can be characterized as "commercial information" because each record pertains to a commercial-educational contract between each placement organization and the college. It submits that these contracts relate directly to the service sold by the college, which is targeted career education and practical experience.

[28] The college submits that the requested records reveal "commercial information" because they contain program information developed by the college that is ultimately sold and bought by students.

[29] As noted above, "commercial information" is information that relates solely to the buying, selling or exchange of merchandise or services. I accept that the affiliation agreements, clinical placement agreements and most of the other records reveal "commercial information," because they contain information that relates to the selling and exchange of services. In particular, they reveal that the college sells an educational service to students and that it exchanges services with those health care organizations that provide work placements for its students.

[30] However, some of the records clearly do not reveal "commercial information." For example, record 20 includes two staff referral forms, which are internal records created by a health care organization relating to individuals who volunteer. In addition, records 29 and 30 are records relating to assessments of the college that were conducted and sent to the ministry by two independent assessors. They include emails from the assessors to the ministry, the program assessment reports prepared by the assessors, the assessors' resumes, and one assessor's educational diplomas.

[31] In my view, the information in the two staff referral forms and the emails, the assessors' resumes and one assessor's educational diplomas, do not fall within the definition of "commercial information." With respect to the latter records, although the program assessment reports prepared by the assessors refers to various aspects of the college's programs, the information in these records is evaluative in nature rather than commercial. In these circumstances, I find that the two staff referral forms in record 20 and records 29 and 30 in their entirety do not reveal "commercial information." Because the college has not satisfied part 1 of the three-part section 17(1) test with respect to these records, I find that they are not exempt from disclosure under that provision. I will consider under Issues B and C below whether they contain "personal information," and if so, whether they are exempt from disclosure under the personal privacy exemption in section 21(1).

[32] However, I find that the ministry and the college have satisfied part 1 of the section 17(1) test with respect to the remaining records at issue because they reveal

"commercial information" and also a small amount of "financial information" relating to insurance obligations in the affiliation agreements.

Part 2: supplied in confidence

[33] The second requirement that must be met for section 17(1) to apply is that the information in a record must have been supplied to the institution in confidence, either implicitly or explicitly.

[34] With respect to the requirement that the information in a record be "supplied," the emails that are part of records 29 and 30 make it clear that it was the independent assessors, not the college, who supplied the program assessment reports, their CVs and a diploma to the ministry. I have already found that these records are not exempt from disclosure under section 17(1) because they do not reveal "commercial information." However, even if these records did contain "commercial information," they would still not be exempt from disclosure under section 17(1) because the college did not supply the information in these records to the ministry, as required by part 2 of the three-part test for that exemption.

[35] With respect to the other records at issue, I find below that the ministry and the college have failed to establish that at least one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 17(1) could reasonably be expected to occur if the records are disclosed, which means that they have not satisfied part 3 of the test. In these circumstances, I have decided that it is not necessary to determine whether the ministry and the college have also satisfied part 2 of the test for those records.

Part 3: harms

Introduction

[36] To satisfy part 3 of the section 17(1) test, the parties resisting disclosure must show that if the records at issue are disclosed, at least one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 17(1) could reasonably be expected to occur.

[37] The ministry submits that the harms set out in sections 17(1)(a) and (c) could reasonably be expected to occur if many of the records are disclosed to the appellant. The college cites the same paragraphs of section 17(1) as the ministry but submits that they apply to all of the records at issue. The appellant submits that neither of these provisions applies to the records at issue. None of the health care organizations who submitted representations objected to the ministry disclosing the records to the appellant but they asked that the names of the college's students be severed out.

[38] To establish that section 17(1)(a) or (c) applies to the records at issue, the ministry and the college must prove that disclosing the commercial information and the small amount of financial information in the records 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; or
>
> (c) result in undue loss or gain to any person, group, committee or financial institution or agency;

[39] The harms set out in sections 17(1)(a) and (c) are preceded by the words, "could reasonably be expected to . . ." In *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*,[12] the Supreme Court of Canada cited its previous decision in *Merck Frosst,* in which a unanimous Court addressed the meaning of this phrase and affirmed as correct the elaboration of this standard as a "reasonable expectation of probable harm." It stated the following:

> . . . As this Court affirmed in *Merck Frosst*, the word "probable" in this formulation must be understood in the context of the rest of the phrase: there need be only a "reasonable expectation" of probable harm. The "reasonable expectation of probable harm" formulation simply "captures the need to demonstrate that disclosure will result in a risk of harm that is well beyond the merely possible or speculative, but also that it need not be proved on the balance of probabilities that disclosure will in fact result in such harm": para. 206.[13]

[40] The Court further stated:

> This Court in *Merck Frosst* adopted the "reasonable expectation of probable harm" formulation and it should be used wherever the "could reasonably be expected to" language is used in access to information statutes. As the Court in *Merck Frosst* emphasized, the statute tries to mark out a middle ground between that which is probable and that which is merely possible. An institution must provide evidence "well beyond" or "considerably above" a mere possibility of harm in order to reach that middle ground: paras. 197 and 199. This inquiry of course is contextual and how much evidence and the quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and "inherent probabilities or improbabilities or the seriousness of the allegations or consequences": *Merck Frosst*, at para. 94, citing *F.H. v. McDougall*, 2008 SCC 53 (CanLII), [2008] 3 S.C.R. 41, at para. 40.[14]

[41] In short, to establish that disclosing the record at issue "could reasonably be

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[12] 2014 SCC 31 (CanLII).
[13] *Ibid.*, at para. 52.
[14] *Ibid.*, at para. 54.

expected to" lead the harms set out in the sections 17(1)(a) or (c), the ministry and the college must demonstrate a risk of harm that is well beyond the merely possible or speculative although they need not prove that disclosure will in fact result in such harm.

Analysis and findings

[42] For the reasons that follow, I find that the ministry and the college have failed to establish that disclosing the records at issue could reasonably be expected to lead to the harms specified in sections 17(1)(a) or (c) of the *Act*.

[43] At the outset, I acknowledge that PCCs such as the college operate in a competitive business environment in Ontario. There are more than 400 PCCs in the province and they do not receive any operating or capital funding from the provincial government. As a result, to remain economically viable, these PCCs compete with each other to recruit and retain students. In order to do so, they invest money in developing educational programs that aim to attract students, including negotiating work placements with various organizations relating to their students' fields of study.

Ministry's representations

[44] The ministry anchors its submissions on sections 17(1)(a) and (c) to a fundamentally similar argument. With respect to section 17(1)(a), the ministry submits that disclosing the affiliation agreements and clinical placement agreements could reasonably be expected to prejudice the college's competitive position in its industry, because the college's competitors could copy the terms found in the contracts and also contact the placement organizations directly to try and establish placements for their own students.

[45] With respect to section 17(1)(c), the ministry submits that those PCCs who conduct similar program placements, or who wish to conduct similar program placements in the future, would benefit from obtaining the placement organizations' names and contact staff, in order to conduct their own business. The ministry claims, therefore, that disclosing the records would result in "undue loss" to the college, and "undue gain" to its competitors under section 17(1)(c), because these competitors would use this information to modify their own business practices and take advantage of the college's previous negotiations with the placement organizations.

[46] I do not find these submissions to be persuasive for a number of reasons. I agree that the affiliation agreements, the clinical placement agreements and some of the other records at issue identify by name the 18 health care organizations with whom the college has arranged work placements for its students. In addition, these records identify the names and contact information for staff in various clinics and departments at these health care organizations who agreed to provide work placements for the college's students. They also reveal the terms and conditions that the college and these health care organizations agreed to through a negotiated process.

[47] If these records are disclosed to the appellant and end up in the public domain, it is certainly possible that the college's competitors might use the information in these records to contact the health organizations that provide work placements for the college's students and try to arrange placements for their own students. This, in turn, might result in negotiations between the parties with a view to reaching affiliation agreements and placement agreements, and the college's competitors might propose to copy the terms found in the contracts previously reached between the college and these health care organizations.

[48] In my view, however, it is speculative to argue that this series of possible events resulting from disclosing the records at issue could reasonably be expected to lead to the harms set out in section 17(1)(a) or (c). The college's ability to maintain work placements for its students at the 18 health care organizations listed in the records is presumably based on a number of factors, including how it manages its relationship with those organizations, whether it diligently complies with its obligations under the affiliation agreements and clinical placement agreements, and whether its students perform well in their work placements.

[49] Even if the college's competitors used the information in the disclosed records to contact the same health organizations or attempted in possible negotiations to copy the terms found in the contracts previously reached between the college and these health care organizations, it is purely speculative, in my view, to suggest that those health care organizations would accept those overtures and choose to displace the college's students in favour of students from other PCCs. The college may face enhanced competition from other PCCs if they gain access to the disclosed records, but this does not mean that such disclosure could reasonably be expected to "prejudice significantly" the college's competitive position, as required under section 17(1)(a), or result in an "undue loss" for itself or an "undue gain" for its competitors, as required under section 17(1)(c).

[50] The ministry further asserts that disclosing the records at issue could interfere with the contractual or other negotiations of the college with respect to future placement partners. This appears to be a reference to the harm set out in the second part of section 17(1)(a), which requires the ministry to withhold the records if disclosing the information in them could reasonably be expected to "interfere significantly with the contractual or other negotiations of a person, group of persons, or organization." I do not find this argument to be convincing, largely because it is vague and speculative. In particular, the ministry does not clearly explain how or why disclosing the existing agreements between the college and its placement partners could reasonably be expected to "interfere significantly" with contractual or other negotiations between the college and potential placement partners.

[51] In its representations on section 17(1)(c), the ministry makes the related argument that disclosing the records will erode the relationship of trust that the college has established with these health care organizations, making it harder to conduct

business in the future. It claims that this situation could conceivably persist for an indefinite time period.

[52] In my view, this submission is contradicted by the fact that none of the 18 health care organizations that responded to the notice of inquiry that I sent to them objected to the ministry disclosing the affiliation agreements, clinical placement agreements and other records to the appellant, as long as the personal information of the college's students was severed out. These health care organizations are parties to the agreements with the college, and if they thought that disclosing these records would erode the relationship of trust that the college has established with them, it is reasonable to expect that they would have objected to their disclosure.

[53] The ministry also argues that disclosing the records could reasonably be expected to result in an "undue loss" for the college, in accordance with section 17(1)(c), because if the appellant or other PCCs establish similar placement opportunities, there may be reasons for the students to attend those institutions instead of those offered by the college. I am also not persuaded by this argument. In my view, there are all kinds of reasons why students decide to attend a particular PCC and it is simply speculative for the ministry to argue that disclosing the records might cause students to attend competing PCCs that offer similar placement opportunities.

College's representations

[54] The college's arguments on whether the harms in sections 17(1)(a) and (c) could reasonably be expected to occur if the records are disclosed are found in various sections of its representations.

[55] For example, in its representations on whether the records reveal the types of information set out in the opening wording of section 17(1), the college states that the information that it is required to submit to the ministry sets out in depth the "new lesson plans" and the "new teaching methods" that have been developed for its student body. Once approved by the ministry, the college goes on to advertise and sell its developed curricula. It submits that if a competitor were to acquire any of the information in the records at issue in this appeal, that competitor could render moot the efforts of the college and free ride on the college's intellectual capital.

[56] Similarly, in a section of its representations entitled, "Prejudice to competitive position," the college states that if the information being requested were to be disclosed, the college's competitors would gain insight and a "serious competitive advantage" over it. In particular, it claims that competing colleges would gain access to its "educational testing process." The college submits that its competitors would be "unjustly enriched" by gaining access to this proprietary information and be able to rival the college's value proposition to students without having to expend any financial resources. It further submits that this benefit would be to the "corresponding deprivation" of itself, which financed all of the research to develop its program registration on the basis that it would remain confidential.

[57] The college also asserts that to provide this information to anyone would seriously undermine its position within the PCC sector. It submits that even if the appellant is not a competitor, there is no way to guarantee that its competitors would not gain access to the records. It submits that the development of all the materials that it was required to submit to the ministry took significant time, effort and resources to develop and disclosing them would mean that they could quickly, improperly and unfairly get into the hands of those competitors.

[58] These submissions amount to an argument that disclosing the records at issue could reasonably be expected to significantly prejudice the college's competitive position, as required under section 17(1)(a), or result in an undue loss for itself or an undue gain for its competitors, as required under section 17(1)(c).

[59] I am not persuaded by the college's submissions. As noted above, the information in the records at issue includes the identities of the health care organizations with whom the college has arranged work placements for its students; the specific terms and conditions of the agreements between these parties, particularly relating to the provision of work placements for the college's students; the specific duties and obligations of each party with respect to the students' work placements; and the names of the contact persons at those organizations. However, I do not see any information in these records that would constitute, in a detailed way, the college's "lesson plans," "new teaching methods," or "educational testing process," as claimed by the college. In such circumstances, I do not accept the college's argument that disclosing the records at issue could reasonably be expected to lead to the harms specified in sections 17(1)(a) or (c), because the information identified by the college in its representations is not found in those records.

Conclusion

[60] I find that the ministry and the college have not established that disclosing the affiliation agreements, the clinical placement agreements and the other records at issue could reasonably be expected to prejudice significantly the college's competitive position or interfere significantly with its contractual or other negotiations, as required under section 17(1)(a), or result in an undue loss for the college or an undue gain for its competitors, as required under section 17(1)(c). I conclude, therefore, that the records at issue are not exempt from disclosure under section 17(1).

B. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[61] Both the ministry and the college claim that several records, some in part and others in whole, are exempt from disclosure under the mandatory personal privacy exemption in section 21(1) of the *Act*. The section 21(1) exemption only applies to "personal information." Consequently, it must first be determined whether the information at issue is "personal information," because if it is not, it cannot be exempt from disclosure under section 21(1).

[62] The definition of this term in section 2(1) states:

> "personal information" means recorded information about an identifiable individual, including,
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> > (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
> >
> > (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
> >
> > (c) any identifying number, symbol or other particular assigned to the individual,
> >
> > (d) the address, telephone number, fingerprints or blood type of the individual,
> >
> > (e) the personal opinions or views of the individual except if they relate to another individual,
> >
> > (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
> >
> > (g) the views or opinions of another individual about the individual, and
> >
> > (h) the individual's name 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;

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

[64] To qualify as personal information, it must be reasonable to expect that an

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[15] Order 11.

individual may be identified if the information is disclosed.[16]

[65] Sections 2(3) and (4) exclude certain information from the definition of "personal information." They state:

> (3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
>
> (4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[66] The ministry states that records 16 and 20-30 include email communications between the placement organizations' staff and the college's staff that include the names of staff employed with the college and the placement organizations, as well as email communications that include opinions of the students' work and whether they are recommended for the placements. It submits that these records contain personal information as defined in section 2(1) of the *Act*.

[67] It further states that records 29-30 contain the personal information, resumes, and certifications of individuals retained for their expertise in evaluating the college's program. It submits that this information contains the education and employment history of these individuals and, therefore, is personal information, as defined section 2(1) of the *Act*.

[68] The ministry also states that records 4, 6, 8-13, 15-16 and 19-20 are agreements containing the names of students who have entered into placements with the placement organizations. It submits that these records reveal those individuals' educational history by associating their names with the college and constitute their personal information.

[69] The college claims that the definition of "personal information" in section 2(1) is broad and encompasses the information in the records that identifies its students, its employees, and the health care organizations' employees, volunteers and interns.

[70] The appellant states that he is not interested in obtaining the names of the college's students. However, he submits that the names of the college staff and health care organization staff who signed the affiliation agreements and clinical placement agreements fall within section 2(3) of the *Act* and are not their personal information.

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

[71] I have reviewed the records at issue and find that they contain information relating to a number of individuals, including the names, job titles, contact information and signatures of the college's and the health care organizations' staff; the names and signatures of various students of the college; the names, contact information and signatures of the two independent assessors; the assessors' resumes; and one assessor's educational diplomas.

[72] At the outset, I note that because the appellant has clearly stated that he is not pursuing access to the names of any of the college's students, such information is not at issue in this appeal. As a result, it not necessary to determine whether the students' names and signatures constitute those individuals' personal information because I will not be ordering that they be disclosed to the appellant.

[73] As the ministry points out, there is an email communication in some records that include opinions of a student's work (e.g., record 20). However, once a student's name is severed from such records, it is no longer reasonable to expect that they can be identified. I find, therefore, that these opinions about students in the records do not constitute their "personal information" because once their names are severed from the records, this information is rendered non-identifiable.

[74] As noted above, section 2(3) of the *Act* clearly states that 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. In my view, the names, job titles and contact information of the college's staff, the health care organizations' staff and the two assessors identify these individuals in a business or professional capacity, not a personal capacity. As a result, this information falls within section 2(3) and does qualify as these individuals' personal information. Because this information is not their personal information, it cannot be exempt from disclosure under section 21(1).

[75] The records also contain some of these individuals' signatures. The IPC has found in previous orders that whether a signature is personal information depends on the context in which it appears. In cases where the signature is contained on records created in a business, professional or official context, it is generally not "about the individual" in a personal sense, and would not normally fall within the scope of the definition.[17]

[76] The college's and the health organizations' staff signed the affiliation agreements and the clinical placement agreements in their business/professional capacity, not their personal capacity. In addition, the two assessors signed the program assessment reports that they submitted to the ministry in their professional capacity, not their

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[17] Orders MO-1194 and PO-3174.

personal capacity. In such circumstances, I find that all of these signatures are these individuals' business or professional information, not their personal information, and such information cannot, therefore, qualify for exemption under the personal privacy exemption in section 21(1).

[77] The records at issue also include the assessors' resumes and one assessor's educational diplomas. I find that the information in these records relates to the education and employment history of these individuals and falls within paragraph (b) of the definition of "personal information" in section 2(1). I will now determine whether this personal information is exempt from disclosure under section 21(1).

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

[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. In the circumstances, it appears that the only exception that could apply is section 21(1)(f), which states:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> > (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

[79] The factors and presumptions in sections 21(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 21(1)(f). Also, section 21(4) lists situations that would not be an unjustified invasion of personal privacy.

[80] If any of paragraphs (a) to (h) of section 21(3) apply, disclosing the personal information is presumed to constitute an unjustified invasion of another individual's personal privacy. The Ontario Divisional Court has found that once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the "public interest override" at section 23 applies.[18] It cannot be rebutted by one or more factors or circumstances under section 21(2).[19]

[81] The ministry submits that the presumption in section 21(3)(d) applies to the personal information in the assessors' resumes and one assessor's educational diplomas. Section 21(3)(d) states:

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[18] *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).
[19] *Ibid.*

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> (d) relates to employment or educational history;

[82] Neither the college nor the appellant specifically addresses whether the personal information in the assessors' resumes and one assessor's educational diplomas are exempt from disclosure under section 21(1).

[83] I agree with the ministry that this personal information falls squarely within the presumption in section 21(3)(d) because it relates to the assessors' employment and educational history. I find, therefore, that disclosing this personal information is presumed to constitute an unjustified invasion of the two assessors' personal privacy.

[84] Given that I have found that the section 21(3)(d) presumption applies to the assessors' personal information in their resumes and one assessor's educational diplomas, I find that this presumption cannot be rebutted by any of the factors in section 21(2). In addition, I find that none of the circumstances listed in paragraphs (a) to (d) of section 21(4) applies to this personal information.

[85] The section 21(3)(d) presumption can be overcome if the public interest override in section 23 of the *Act* applies to the assessors' personal information in those records. In his representations, the appellant makes a number of arguments about why he believes that the public interest override applies to various records, but he does not specifically address whether it applies to the assessors' personal information in their resumes and one assessor's educational diplomas. In these circumstances, I find that there is insufficient evidence before me to find that the public interest override in section 23 applies to this information.

[86] In short, I find that disclosing the assessors' personal information in their resumes and one assessor's educational diplomas to the appellant would constitute an unjustified invasion of their personal privacy. Therefore, the section 21(1)(f) exception is not made out, and this information is exempt from disclosure under section 21(1) of the *Act*.

ORDER:

1. The appeal is allowed in part.
2. I order the ministry to disclose records 1 to 6 and 8 to 28 to the appellant, except for the names and signatures of the college's students, which must be severed from the records.

3. I order the ministry to disclose records 29 and 30 to the appellant, except for the independent assessors' resumes and one assessor's educational diplomas, which must be withheld in full.

4. I order the ministry to disclose the records set out in order provisions 2 and 3 to the appellant by **January 13, 2020** but not before **January 8, 2020.**

5. I reserve the right to require the ministry to provide me with a copy of the records that I have ordered it to disclose to the appellant.

Original signed by
Colin Bhattacharjee
Adjudicator

November 29, 2019

ADDENDUM:

The purpose of this addendum is to note an apparent error in paragraph 34 of this order. In paragraph 34, I examined whether the information in records 29 and 30 was "supplied" to the ministry for the purposes of section 17(1) of the Act. I had already found that these records are not exempt from disclosure under section 17(1) because they do not reveal "commercial information" or any of the other types of information listed in the exemption.

However, in paragraph 34, I went on to note that the emails that are part of records 29 and 30 make it clear that it was the independent assessors, not the college, who supplied the program assessment reports, their CVs and a diploma to the ministry. Consequently, I noted that even if these records did contain "commercial information," they would still not be exempt from disclosure under section 17(1) because the college did not "supply" the information in these records to the ministry.

In fact, the IPC has found in previous orders that information relating to a third party in a record may qualify as having been "supplied" to the institution for the purposes of section 17(1) even if it was provided to that institution by another third party.[20] In the circumstances of this appeal, therefore, the fact that the independent assessors (rather than the college) provided the information in records 29 and 30 to the ministry may be sufficient to meet the meaning of "supplied" for the purposes of section 17(1). However, given that I found that these records are not exempt from disclosure under section 17(1) because they do not reveal "commercial information" (or any of the other types of information listed in the exemption), my comments about whether the information was "supplied" were obiter and did not affect the outcome of the order.

[20] Orders MO-3708 and P-179.

APPENDIX – RECORDS AT ISSUE[21]

Record number	General description	Ministry's decision	Exemption(s) claimed by ministry and/or college
1	Ministry note to accompany host agreements	Withheld in full	s. 17(1)
2	Ministry spreadsheet re host agreements	Withheld in full	s. 17(1)
3	Name of health care organization	Withheld in full	s. 17(1)
4	Affiliation agreement between college and health care organization	Withheld in full	s. 17(1) s. 21(1)
5	Affiliation agreement between college and health care organization	Withheld in full	s. 17(1)
6	Clinical placement agreement between college, student and health care organization	Withheld in full	s. 17(1) s. 21(1)
8	Three clinical placement agreements between college, students and health care organization	Withheld in full	s. 17(1) s. 21(1)
9	Letter from health institution to college Three clinical placement agreement between college, students and health care organization	Withheld in full	s. 17(1) s. 21(1)
10	Affiliation agreement between college and health care	Withheld in full	s. 17(1) s. 21(1)

[21] There is no record #7 at issue in this appeal.

	organization Former of learner acknowledgment Clinical placement agreement between college, student and health care organization		
11	Four clinical placement agreements between college, students and health care organization	Withheld in full	s. 17(1) s. 21(1)
12	Letter from health institution to college Four clinical placement agreement between college, students and health care organization	Withheld in full	s. 17(1) s. 21(1)
13	Affiliation agreement between college and health care organization Seven clinical placement agreement between college, students and health care organization	Withheld in full	s. 17(1) s. 21(1)
14	Two letters from health institution to college Affiliation agreement between college and health care organization	Withheld in full	s. 17(1)
15	Clinical placement agreement between college, student and health care organization	Withheld in full	s. 17(1) s. 21(1)
16	Clinical placement agreement between college, student and health care organization	Withheld in full	s. 17(1) s. 21(1)
17	Affiliation agreement between college and health care organization	Withheld in full	s. 17(1)

18	Affiliation agreement between college and health care organization	Withheld in full	s. 17(1)
19	Name of health care organization Blank page	Withheld in full	s. 17(1)
20	Two staff referral forms Email from health care organization to college	Withheld in full	s. 17(1) s. 21(1)
21	Email from health care organization to college	Withheld in full	s. 17(1)
22	Email from health care organization to college	Withheld in full	s. 17(1)
23	Email from health care organization to college	Withheld in full	s. 17(1)
24	Email from health care organization to college	Withheld in full	s. 17(1)
25	Email from health care organization to college	Withheld in full	s. 17(1)
26	Email from health care organization to college	Withheld in full	s. 17(1)
27	Email from health care organization to college	Withheld in full	s. 17(1)
28	Email from health care organization to college	Withheld in full	s. 17(1)
29	Email from assessor to ministry re assessment of college's clinical research associate program Program Assessment Report Assessor's resume	Withheld in full	s. 17(1) s. 21(1)
30	Email from assessor to ministry re assessment of college's clinical research associate program Program Assessment Report	Withheld in full	s. 17(1) s. 21(1)

	Assessor’s resume and diplomas		