Information and Privacy Commissioner,
Ontario, Canada

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

# ORDER PO-4376

Appeal PA20-00154

University of Toronto

March 31, 2023

**Summary:** The appellant sought access to the university's records relating to him. The university located hundreds of responsive records and granted the appellant access to most of them. The university withheld certain records and information it claimed were exempt from disclosure under the discretionary exemptions in sections 49(a) (discretion to refuse requester's own information) with section 19 (solicitor-client privilege), 49(b) (personal privacy) and 49(c.1)(ii) (right of access to one's own personal information/evaluative or opinion material). The appellant challenged the university's decision and the reasonableness of its search for responsive records.

In this order, the adjudicator determines that one record is not exempt from disclosure under section 49(b) and orders the university to disclose it to the appellant. She upholds the balance of the university's decision and the reasonableness of its search for responsive records, and she dismisses the appeal.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, sections 2(1) (definition of "personal information"), 19, 21(3)(b), 49(a), 49(b) and 49(c.1)(ii).

**Cases Considered:** *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.); *Canada (Ministry of Public Safety and Emergency Preparedness) v. Canada (Information Commissioner)*, 2013 FCA 104.

## OVERVIEW:

[1] This order resolves an appeal regarding a student's right of access to various records related to his graduate studies and, with one exception, upholds the university's decision to grant the appellant partial access to them.

[2] The appellant submitted an access request to the University of Toronto (the university) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records related to his graduate studies at the university, including his:

1. First PhD Qualification Exam
2. Second PhD Qualification Exam
3. Appeal (Departmental and SGS) against PhD Termination
4. Recommendation of Master Transfer
5. Graduate Funding records
6. Graduate Award records
7. Workplace Investigation Reports/Records deducing "complicated academic/work relationship" on supervisor side
8. Comments from relevant faculty members on all the above, and his graduate program/thesis in general

[3] In his request, the appellant wrote that the requested records include "book notes, email records, statements, investigation report/notes, committee discussion records, meeting minutes, contact information, comments/inputs for decision-making, or any material presented on the case." The appellant also provided the university with a list of staff members and offices he believed may have responsive records. This request followed a prior request the appellant made to the university for access to records that were addressed in another appeal the appellant filed with the Information and Privacy Commissioner of Ontario (the IPC), Appeal PA19-00123, which was resolved by Order PO-4187.

[4] The university located over 600 pages of records responsive to parts 1-6 and 8 of the request, and advised the appellant that it had no records responsive to part 7. It issued a decision letter pertaining to part 7, dated January 13, 2020, in which it confirmed that no workplace investigation report exists and explained that the statement referring to a "complicated academic/work relationship" was made in the context of the appellant's various capacities at the university, where he was a student who transferred between academic programs and an employee. The university then issued a decision letter, dated January 29, 2020, for parts 1-6 and 8 of the request,

granting the appellant complete access to 562 pages of the records and partial access to 20 pages. In its decision, the university noted that it was exercising its discretion to disclose 86 pages of records to the appellant even though those pages were excluded from the application of the *Act* under section 65(8.1) (records respecting or associated with research). The university relied on the discretionary exemptions in section 49(b) (personal privacy), section 49(a) (discretion to refuse requester's own information) with section 19 (solicitor-client privilege), and section 49(c.1)(ii) (right of access to one's own personal information/evaluative or opinion material) to withhold the remaining records and information.[1] The university also issued a supplementary decision, dated February 12, 2020, advising the appellant that it had located 13 more pages of responsive records, and disclosing these additional 13 pages to him.

[5] The appellant was not satisfied with the university's decision and appealed it to the IPC. The IPC attempted mediation of the appeal. During mediation, the appellant asserted that additional records should exist. In response, the university conducted a further search for responsive records. The university located 87 pages of additional records and issued a revised decision, dated January 29, 2021, granting the appellant partial access to these additional responsive records. It relied on section 49(b) to withhold the remaining records and information. The university also provided an index of records.

[6] The appellant maintained that additional responsive records should exist and he requested a further search for specific records that he believed certain individuals and entities at the university had. In response, the university conducted a second further search for records that included all of the individuals named by the appellant in his request for a further search. The university located 16 pages of additional responsive records and granted the appellant partial access to them, withholding one full page and portions of four other pages under section 49(b) of the *Act*.

[7] After receiving the additional disclosure and the university's second revised access decision, dated April 6, 2021, the appellant confirmed that he seeks access to the withheld information and that he believes additional records responsive to his request exist. A mediated resolution was not possible and the appeal was moved to the adjudication stage of the appeal process.

[8] I conducted an inquiry and received representations from the parties on the issues set out below. I shared the university's representations with appellant; however, I did not share the appellant's representations with the university. The appellant asked that I impose certain conditions on the university before sharing his representations. I determined that it was not necessary in the interests of fairness to share the appellant's representations with the university. I advised the appellant that I would not share his

[1] The university's decision also relied on the exclusion in section 65(6) (employment or labour relations) to withhold some records; however, the university subsequently withdrew this exclusion claim, which is not an issue in this appeal.

representations with the university, but I would summarize them in my order, as needed.

[9] Although I have reviewed the appellant's and the university's complete representations, I refer here only to the parts of those representations that are relevant to my analysis and findings.

[10] In this order, I uphold the university's decision that the records are exempt from disclosure under sections 49(a), (b) and (c.1), except for one record, which I order disclosed due to the application of the absurd result principle. I uphold the balance of the university's decision and the reasonableness of its search for responsive records.

## RECORDS:

[11] Most of the records at issue are email communications among university faculty that the university disclosed in part. The remaining records are letters, spreadsheets and a motor vehicle accident report.

[12] The university withheld information from the following emails under the personal privacy exemption in section 49(b): records 1, 2, 4, 5, 13, 14, 15, 16, 17 and 18 from the January 29, 2020 decision; records 1 and 2 from the January 29, 2021 decision, and records 1 and 2 from the April 6, 2021 decision.

[13] The university also withheld information from the following emails and correspondence under section 49(c.1)(ii): records 7, 8, and 10, and all of records 9 and 12 from the January 29, 2020 decision. Records 4 and 14 are duplicates, as are records 9 and 12. Accordingly, I will address only records 4 and 9 in this order.

[14] Finally, the university withheld the following emails on the basis that they are exempt from disclosure under section 49(a) with section 19 because they contain solicitor-client privileged information: part of records 6 (pages 6-7), 8 (page 15) and 11 (pages 20-21).

[15] During the inquiry, the university confirmed that the IPC has already addressed access to certain records in Order PO-4187. These records are: record 5 and record 6 (pages 8-13) from the January 29, 2020 decision and record 2 from the January 29, 2021 decision. Because the IPC has already addressed these records and the appellant's right of access to them, I do not consider them in this order.

## ISSUES:

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

B. Does the discretionary exemption at section 49(b) (personal privacy) apply to the information at issue in records 1, 2, 4, 13, 15, 16, 17 and 18 (of the January 20, 2020 decision), record 1 (of the January 29, 2021 decision) and records 1 and 2 (of the April 6, 2021 decision)?

C. Does the discretionary exemption at section 49(a) (discretion to refuse access to one's own personal information) read with section 19 (solicitor-client privilege) apply to the information at issue in records 6 (pages 6-7), 8 (page 15) and 11 (pages 20-21)?

D. Does the discretionary exemption at section 49(c.1)(ii) (right of access to one's own personal information/evaluative or opinion material) apply to the information at issue in records 7, 8 (pages 16-17), 9 and 10?

E. Did the university exercise its discretion under sections 49(a), (b) and (c.1) appropriately?

F. Did the university conduct a reasonable search for records, in accordance with the appropriate scope of the request?

## DISCUSSION:

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

[16] In order to determine which sections of the *Act* may apply to the records at issue, I must first decide whether the records contain "personal information," and, if so, to whom the personal information relates. Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual." Information is "about" an "identifiable individual" when it refers to the individual in a personal capacity, revealing something of a personal nature about them, and it is reasonable to expect that the individual can be identified from the information alone or combined with other information. Section 2(1) lists examples of personal information at paragraphs (a) through (h), and most of these paragraphs are engaged in this appeal.[2]

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[2] These paragraphs read:

> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
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> (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,

[17] The records all concern or mention the appellant, and they relate to his time at the university as a student and an employee. There is no dispute, and I find, that all of the records at issue contain personal information about the appellant. The personal information includes the appellant's name and other personal information relating to him, which qualifies as personal information under paragraph (h) of the definition of that term in section 2(1) of the *Act.*

[18] In addition, some of the records at issue also contain personal information belonging to other individuals (the affected parties), including their names and other personal information relating to them, within the meaning of paragraph (h) of the definition. These are the records for which the university has claimed the section 49(b) exemption. Some of these records contain details of the affected parties' university programs, degrees, academic awards and funding, which qualify as personal information under paragraph (b) of the definition. I find that these records contain the appellant's personal information and the personal information of the affected parties, and I will consider whether the withheld information in these records is exempt under the discretionary exemption in section 49(b) of the *Act.*

[19] Because the records withheld as solicitor-client privileged by the university contain the appellant's personal information, I will consider whether the withheld information in these records is exempt under the discretionary exemption in section 49(a) read with section 19 of the *Act*.

**B. Does the discretionary exemption at section 49(b) (personal privacy) apply to the information at issue in records 1, 2, 4, 13, 15, 16, 17 and 18 (of the January 20, 2020 decision), record 1 (of the January 29, 2021 decision) and records 1 and 2 (of the April 6, 2021 decision)?**

[20] Section 49 of the *Act* provides a number of exemptions from individuals' general right of access, under section 47(1), to their own personal information held by an institution. The university relies on section 49(b) to withhold some information from

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

records 1, 2, 4, 13, 15, 16, 17 and 18 of the January 29, 2020 decision, record 1 (of the January 29, 2021 decision) and records 1 and 2 (of the April 6, 2021 decision). All of this withheld information relates to other individuals – affected parties – and not to the appellant. The university has disclosed all of the appellant's personal information that is contained in these records to him.

[21] Under the section 49(b) exemption, if a record contains the personal information of both the requester and another individual, the institution may refuse to disclose the other individual's personal information to the requester if disclosing that information would be an "unjustified invasion" of the other individual's personal privacy. The section 49(b) exemption is discretionary, meaning that the institution can decide to disclose another individual's personal information to a requester even if doing so would result in an unjustified invasion of the other individual's personal privacy. If disclosing another individual's personal information would not be an unjustified invasion of personal privacy, then the information is not exempt under section 49(b).

[22] Sections 21(1) to (4) provide guidance in deciding whether disclosure would be an unjustified invasion of the other individual's personal privacy. The parties do not rely on sections 21(1) or 21(4) in their representations, and I find that these sections are not relevant in this appeal. Accordingly, I will consider sections 21(2) and 21(3) in deciding whether disclosure of the information at issue would be an unjustified invasion of personal privacy under section 49(b). As noted in the Notice of Inquiry I provided to the parties, in deciding whether disclosure of the withheld personal information in the records would be an unjustified invasion of personal privacy under section 49(b), I must consider and weigh the factors and presumptions in sections 21(2) and 21(3) and balance the interests of the parties.[3]

[23] The university submits that the factors in sections 21(2)(e), (f), (h) and (i), apply and weigh against disclosure of the information withheld under section 49(b), and that the factor in section 21(2)(d) does not weigh in favour of disclosure. These sections read:

> (2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
>
> > (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
> >
> > (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
> >
> > (f) the personal information is highly sensitive;

[3] Order MO-2954.

> (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
>
> (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

[24] Regarding the section 21(2)(d) factor, the university asserts that the appellant has had full recourse to robust and fair processes at the university, and there has been no abrogation of his rights; therefore, disclosure would not be relevant to a fair determination of the appellant's rights because there is no withheld information that could materially affects the appellant's rights. As well, the university submits that the requirements for the application of section 21(2)(d) are not met since there is no existing or contemplated proceeding that has not been completed and the withheld personal information is not required to prepare for any proceeding or to ensure an impartial hearing. The university states that it released records to the appellant confirming that any future admissions decisions would be based on standard academic criteria and that the allegations against him, which are the subject of this request, would not be a factor.

[25] The appellant relies on most of the factors in section 21(2) – (a), (b), (d), (e), (f), (h) and (i) – and argues that they weigh in favour of disclosure of the withheld information. The appellant's representations misconstrue the factors at sections 21(2)(e), (f), (h) and (i), which all would weigh in favour of protecting the privacy of the affected parties whose personal information has been withheld, if they were found to apply. Only the factors in sections 21(2)(a), (b) and (d) would weigh in favour of disclosure if they were found to apply to the withheld information. Sections 21(2)(a) and (b) require an institution to consider whether: disclosure of personal information is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny [21(2)(a)] or access to the personal information may promote public health and safety [21(2)(b)]; clearly, these factors do not apply in this appeal. The factor in section 21(2)(d) requires an institution to consider whether disclosure is relevant to a fair determination of the rights of the requester. I address this factor below.

[26] The appellant also submits that he is aware of the information in some of the records, and that that information should be disclosed to him in accordance with the absurd result principle, which I raised in the Notice of Inquiry. I explained the IPC's application of the absurd result principle as follows: where the requester originally supplied the information in the record, or is otherwise aware of it, the institution may not be able to rely on the section 49(b) exemption because withholding the information might be absurd and inconsistent with the purpose of the exemption.[4]

[27] Regarding the absurd result principle, the university acknowledges that the

[4] Orders M-444 and MO-1323.

withheld information in the motor vehicle accident report may be within the appellant's knowledge as he may have received a copy of it in another context or process. However, it submits that because it does not know whether the appellant has the accident report, it decided to withhold the information of the other driver, whose privacy interests outweigh the access interest of the appellant.

[28] I have reviewed and considered all of the appellant's representations. They focus mainly on the appellant's various allegations about the university's conduct in admissions, academic and disciplinary matters involving him, and they also refer to other events the appellant refers to as "scandals" in which he alleges the university was implicated. The appellant's allegations of university misconduct are not supported by the evidence he provides and, in an event, are not relevant to my determination of his access rights, and I will not repeat them here.

[29] Most of the withheld information, as explained further below, is personal information of other individuals the disclosure of which is presumed to be an unjustified invasion of personal privacy under section 21(3)(d), and therefore, this presumption weighs in favour of privacy protection under section 49(b). However, the appellant has established that the absurd result principle applies to the motor vehicle accident report, which I order disclosed, below. I am not satisfied that the absurd result principle applies to the remaining information at issue. I have considered the appellant's arguments; however, I am not convinced that the records are clearly already within his knowledge, or that withholding them would be absurd and inconsistent with the purpose of the section 49(b) exemption.

[30] The appellant's representations do not establish the application of the section 21(2)(d) factor he relies on or any unlisted factor that may weigh in favour of disclosure of the withheld information. The appellant has not established that disclosure of the withheld personal information about other students is relevant to a fair determination of his rights as required for the application of the factor in section 21(2)(d). I reject the appellant's arguments because, as is evident from the explanation below of the type of personal information the university has withheld, the affected parties' withheld personal information has nothing to do with the appellant and is not relevant to a fair determination of rights affecting him.

[31] The presumption in section 21(3)(d) covers several types of information connected to employment or education history, including information contained in resumes,[5] work histories,[6] and information about students' enrolment and academic performance in a course.[7] Although the university does not rely on the presumption in section 21(3)(d) in its representations, the presumption applies to some of the withheld information in the records. Specifically, the information the university has withheld in

[5] Orders M-7, M-319 and M-1084.
[6] Orders M-1084 and MO-1257.
[7] Order PO-3819.

records 1, 2, 13, 15, 16, 17 and 18 (of the January 29, 2020 decision), and records 1 and 2 (of the April 6, 2021 decision). The withheld information in these records consists of university students' academic (level of study) and funding status, their candidacy for courses and academic awards, and their appointments as teaching assistants. All of this withheld information relates to the educational history of those students and some of it also relates to their employment history. I find that the section 21(3)(d) presumption applies to the information at issue in records 1, 2, 13, 15, 16, 17 and 18 (of the January 29, 2020 decision), and records 1 and 2 (of the April 6, 2021 decision). This presumption weighs in favour of a finding that disclosure is an unjustified invasion of personal privacy of those students.

[32] The withheld information in record 1 (of the January 29, 2021 decision) consists of personal information about an affected party, specifically, vacation plans. This withheld information was supplied by the affected party in confidence, engaging the factor in section 21(2)(h), and weighing in favour of not disclosing it to the appellant.

[33] Having found that the presumption in section 21(3)(d) – which weighs in favour of privacy protection – applies to most of the withheld information, and that the factor in section 21(2)(h) – which weighs in favour of privacy protection – applies to an affected party's vacation plans, I am also satisfied that, balancing the interests of the parties as required under section 49(b), the presumption and this one factor are sufficient to establish that disclosure of the withheld affected parties' personal information would be an unjustified invasion of their personal privacy. The appellant has been granted access to all of his personal information that could be severed from the personal information of others in records 1, 2, 13, 15, 16, 17 and 18 (of the January 29, 2020 decision), record 1 (of the January 29, 2021 decision) and records 1 and 2 (of the April 6, 2021 decision), and, since there are no factors favouring disclosure of the withheld information, his right of access must yield to the privacy interests of the affected parties under the section 49(b) exemption, which protects against unjustified invasions of the affected parties' personal privacy.

[34] I find that disclosure of the affected parties' withheld personal information in these records would be an unjustified invasion of their personal privacy and I uphold the university's decision to deny the appellant access to that personal information under section 49(b) of the *Act*. Under Issue E below, I consider the university's exercise of discretion in deciding to rely on this discretionary exemption.

[35] However, I am satisfied that it would be absurd to withhold the personal information of an affected party that is contained in record 4, the motor vehicle accident report. The appellant, who was involved in the accident, is aware of the information in this record as he was present when the accident occurred and was given a copy of record 4, which he attached to his representations. I will order the university to disclose record 4 to the appellant.

**C. Does the discretionary exemption at section 49(a) (discretion to refuse access to one's own personal information) read with section 19 (solicitor-client privilege) apply to the information at issue in records 6 (pages 6-7), 8 (page 15) and 11 (pages 20-21)?**

[36] The university has also withheld information in the emails found in records 6 (pages 6-7), 8 (page 15) and 11 (pages 20-21) under the discretionary exemption in section 49(a) of the *Act*, read with section 19.

[37] Section 49(a) gives the university the discretion to refuse to disclose the appellant's personal information to him where section 19 would apply to the disclosure of that personal information. I have found above that the records contain the appellant's personal information.

[38] Section 19(a) states that an institution may refuse to disclose a record that is subject to solicitor-client privilege. Section 19(a) is based on common law, and encompasses solicitor-client communication privilege. This privilege exists to ensure that a client may freely confide in their lawyer on a legal matter.[8]

[39] In support of its claim of the solicitor-client privilege exemption, the university provides an affidavit sworn by its legal counsel. In this affidavit, the university's legal counsel describes the contents and context of the withheld information and records. He confirms that he provided legal advice on various issues to the university, in his capacity as legal counsel, and that his legal advice is contained in records 6 (pages 6-7) and 8 (page 15). He also confirms that pages 20 and 21 of record 11 contain a discussion of his solicitor-client privileged advice by university administrators and faculty. He states that this discussion, and all of the records withheld as solicitor-client privileged information, directly related to the seeking of, provision of and discussion of the legal advice he provided and are part of the continuum of communications between him and his client, the university.

[40] The appellant challenges the university's solicitor-client privilege claim. He also argues that, if the records are subject to solicitor-client privilege, they are nonetheless compellable by a court due to what he alleges is the university's fraudulent conduct. The appellant argues that the solicitor-client privilege claim only applies to the advice in the communications and not the "facts laid out in the communications."

[41] For the reasons that follow, I find that all of the records at issue are subject to solicitor-client communication privilege under the common law privilege at section 19(a). The solicitor-client communication privilege protects direct communications of a confidential nature between lawyer and client, or their agents or employees, made for the purpose of obtaining or giving legal advice.[9] Contrary to the appellant's submission, the privilege covers not only the legal advice itself and the request for advice, but also

[8] Orders MO-1925, MO-2166 and PO-2441.
[9] *Descôteaux et al. v. Mierzwinski*, 1982 CanLII 22 (SCC), [1982] 1 SCR 860.

communications between the lawyer and client aimed at keeping both informed so that advice can be sought and given.[10] I accept the affidavit evidence provided by the university's lawyer that records 6 (pages 6-7) and 8 (page 15) contain his direct communications of a confidential nature with his client, the university, made for the purpose of obtaining or giving legal advice. I am satisfied that records 6 (pages 6-7) and 8 (page 15) qualify for exemption under section 19(a).

[42] Having reviewed the parties' complete representations and the records themselves, I am also satisfied that the withheld information in record 11 (pages 20-21) falls within the "continuum of communications" between a solicitor and client regarding matters about which the solicitor is providing advice; specifically, the emails exchanged between the university administrators and faculty in pages 20 and 21 form part of the continuum of communications between the university's legal counsel, who provided legal advice, and his client, the university. There is no evidence before me to suggest that the university has waived the privilege attached to these records. Having found that the records fall within the solicitor-client privilege exemption in section 19, I am satisfied that they qualify for exemption under section 49(a). I consider the university's exercise of discretion in claiming section 49(a) under Issue E, below.

**D. Does the discretionary exemption at section 49(c.1)(ii) (right of access to one's own personal information/evaluative or opinion material) apply to the information at issue in records 7, 8 (pages 16-17), 9 and 10?**

[43] Under section 49(c.1), the university may refuse to disclose evaluative or opinion material in certain circumstances. The university claims that the withheld information in records 7, 8 (pages 16-17), 9 and 10 is exempt under section 49(c.1)(ii), which reads:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > (c.1) if the information is supplied explicitly or implicitly in confidence and is evaluative or opinion material compiled solely for the purpose of,
> >
> > > (ii) determining suitability, eligibility or qualifications for admission to an academic program of an educational institution[.]

[44] The university explains that it has withheld a reference letter (record 9) written by the appellant's academic supervisor containing personal information of the appellant that fits within paragraph (ii) of section 49(c.1) – the supervisor's opinion of the appellant's academic work merit and eligibility for graduate studies – and references to, excerpts of, and discussion of the reference letter (in records 7, 8 and 10) in the

[10] *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.); *Canada (Ministry of Public Safety and Emergency Preparedness) v. Canada (Information Commissioner)*, 2013 FCA 104.

context of the School of Graduate Studies' assessment of the appellant's admission to a Master's program and his eligibility for admission to a PhD program. The university adds that record 10 also contains an additional statement from the appellant's supervisor. The university submits that the reference letter was provided explicitly or implicitly in confidence, consistent with the long-standing and vital practice of universities treating such records as highly confidential, as were the excerpts and references to the letter that reveal the substance of the original opinions and provide additional evaluative commentary in the discussion of the letter. It further submits that the letter and the withheld information were compiled solely for determining the appellant's eligibility, suitability and qualifications for transfer into a Master's program, which is one of the university's graduate level academic programs.

[45] The appellant submits that the withheld letter and information should be disclosed to him based on the absurd result principle. He argues that it is absurd to withhold the reference letter because his supervisor copied him on the letter and, in doing so, waived any confidentiality in the letter. The appellant explains that he also participated in discussion and review of the information in the letter with his academic supervisor. The appellant asserts that the university should abide by the supervisor's intent to share the reference letter with him.

[46] Having reviewed the records at issue and the parties' representations, I agree with the university. The reference letter and the related withheld information fall squarely within the exemption at section 49(c.1)(ii); they contain precisely the type of evaluative or opinion material compiled solely for the purpose of determining suitability, eligibility or qualifications for admission to an academic program of an educational institution that section 49(c.1)(ii) is intended to protect. The fact that the appellant's supervisor provided the appellant with a copy of the reference letter does not affect the application of section 49(c.1)(ii), which the university is entitled to claim. Whether the appellant is aware of the withheld information is irrelevant to the application of this exemption, and the absurd result principle does not apply. I find that the withheld information in records 7, 8 (pages 16-17), 9 and 10 is exempt from disclosure under section 49(c.1)(ii). I consider the university's exercise of discretion in deciding to rely on this discretionary exemption, below.

## E. Did the university exercise its discretion under sections 49(a), (b) and (c.1) appropriately?

[47] The section 49(a), (b) and (c.1) exemptions are discretionary, and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so. In addition, the IPC 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, or
- it fails to take into account relevant considerations.

[48] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.[11] The IPC cannot, however, substitute its own discretion for that of the institution.[12] Relevant considerations in the exercise of discretion in this appeal are the purposes of the *Act*, including the principles that individuals should have a right of access to their own personal information, exemptions from the right of access should be limited and specific, and the privacy of individuals should be protected.

[49] Also relevant in this appeal are the following considerations:

- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his own personal information
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the historic practice of the institution with respect to similar information.

[50] In its representations, the university submits that it carefully considered the purposes of the *Act*, including the principles that the appellant should have a right of access to his own personal information, exemptions from this right should be limited and specific, and the privacy of affected parties should be protected. The university adds that it also considered all factors relevant to its exercise of discretion including:

- the wording (intent and meaning) of the exemptions at sections 49(a), 49(b) and 49(c.1)(ii) and the important interests they seek to protect
- whether the appellant is seeking his own personal information
- the relationship between the appellant and the affected parties
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the historic practice of the institution with respect to similar information.

[51] The university states that in deciding to grant the appellant access to most of the responsive records, it disclosed as much information as possible from the records in recognition of the important fact that the appellant was seeking access to his own

[11] Order MO-1573.
[12] Section 54(2).

personal information. It explains that it only withheld information if the disclosure of that information would be an unjustifiable invasion of the personal privacy of affected parties. It states that it also withheld solicitor-client privileged information to protect the confidentiality of legal advice that it received, and it notes that solicitor-client privilege has been held to be all but absolute by the Supreme Court of Canada.[13] Finally, it states that it withheld confidential reference materials supplied in admissions processes under section 49(c.1)(ii), which exists to support fully frank and candid evaluative or opinion material so that academic admissions processes are based on true and accurate information about candidates.

[52] The appellant asserts that the university abused its discretion and is in a conflict of interest in this appeal. He alleges that disclosure of the records could put the university in jeopardy, in various ways, and this led the university to exercise its discretion inappropriately and for an improper purpose. The appellant's representations on this issue repeat many of his unfounded claims about the university's conduct and motives, and I will not repeat them.

[53] Having considered the parties' representations, I am satisfied that the university exercised its discretion under sections 49(a), (b) and (c.1) in denying access to the withheld information that I have found exempt under those sections. The university considered the appellant's request for his own personal information, the nature of the information at issue, the wording of the exemptions and the important personal privacy, solicitor-client privilege and evaluative material for admission to an academic program interests that the section 49(a), (b) and (c.1) exemptions aim to protect. The university followed its historic practice with similar information and protected the privacy of affected parties. In doing so, the university disclosed a significant amount of information to the appellant – many hundreds of pages worth – including almost all of his personal information in the records. I am satisfied that the university's considerations in exercising its discretion were relevant ones and that the university did not exercise its discretion in bad faith or for an improper purpose. I do not accept the appellant's various bald allegations about the university's conduct and motives as evidence that the university exercised its discretion in bad faith or for an improper purpose, or took irrelevant considerations into account. I uphold the university's exercise of discretion under sections 49(a), (b) and (c.1). I also uphold the university's decision to withhold the information at issue.

## F. Did the university conduct a reasonable search for records, in accordance with the appropriate scope of the request?

[54] Because the appellant claims, generally, that additional records exist beyond those found by the university, I must decide whether the university has conducted a

[13] The university cites *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23 (CanLII).

reasonable search for records as required by section 17 of the *Act*.[14] Previous IPC orders have found that a reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are reasonably related to the request.[15] As well, previous IPC orders have found that a requester claiming that additional records exist must provide a reasonable basis for concluding that such records exist.[16]

[55] The university provides detailed representations on the multiple searches it conducted for responsive records, including information on who performed searches when, which offices and staff record holdings were searched, and the results of those searches. The appellant, in response, provides detailed representations on the university's searches and why he alleges that additional responsive records exist. The appellant's representations repeat the claims about the university's conduct and motives that he makes in response to the other issues in this appeal. I am not persuaded by these bald allegations and I will not repeat them here.

[56] For the reasons that follow, I find that the university has made a reasonable effort to identify and locate responsive records,[17] that is, records that are "reasonably related" to the request.[18] The university had experienced employees knowledgeable in the subject matter of the request make reasonable efforts, repeatedly, to locate records that are reasonably related to the request. The university explained why it located no records responsive to part 7 of the appellant's request. However, the appellant, who accuses the university of having ulterior motives for conspiring to keep records from him, does not accept the university's explanation. The appellant's refusal to accept the university's explanation is not reasonable. Nothing in the appellant's representations provides a reasonable basis for me to believe that additional records responsive to the request that is the subject of this appeal exist. In addition, the appellant does not provide any reasonable basis for me to conclude that further searches will yield more responsive records.

[57] The university's representations and its actions throughout the inquiry – conducting multiple searches for responsive records, locating over 600 pages of responsive records, issuing revised and supplementary decisions addressing additional responsive records that it located, and granting the appellant access to most of the almost 700 pages of responsive records it located through its multiple searches – lead me to conclude that it conducted a reasonable search. I find that the university's search for responsive records was reasonable and in accordance with the appropriate scope of the request, and I uphold it.

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[14] Orders P-85, P-221 and PO-1954-I.
[15] Orders M-909, PO-2469 and PO-2592.
[16] Order MO-2246.
[17] Orders P-624 and PO-2559.
[18] Order PO-2554.

## ORDER:

1. I order the university to disclose record 4 to the appellant by **May 5, 2023**.

2. I uphold the university's decision in all other respects and dismiss the remainder of the appeal.

Original Signed By: March 31, 2023

Stella Ball
Adjudicator