

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-4442

Appeal PA22-00029

University of Toronto

September 26, 2023

**Summary:** The requester sought access under the *Act* to the titles of books contained in receipts for books purchased over several years by the Political Science Department at a campus of the University of Toronto. The university issued a decision denying access pursuant to the research exclusion in section 65(8.1)(a) of the *Act*. In this order, the adjudicator finds that the records are not excluded and orders the university to issue an access decision on the information at issue, the book titles.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, section 65(8.1)(a).

**Orders Considered:** Orders MO-3537, PO-2693, and PO-3084.

### OVERVIEW:

[1] The requester sought access to information about books purchased by the Political Science Department at one of a university's campuses. In response, the university claimed that this information was excluded from the application of the *Act*.

[2] Specifically, the University of Toronto (the university) received a request under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) that was clarified as follows:

Copies of receipts or equivalent purchase records for the books purchased by the St. George campus Department of Political Science [the department] professors/school equivalent [the professors] from the start of 2019 to the date this request [August 24, 2021] is received.

[3] The university issued a decision denying access to the responsive records, the receipts for the books purchased, pursuant to the research and teaching exclusions in sections 65(8.1)(a) and 65(8.1)(b) of the *Act*.

[4] The requester (now the appellant) appealed the university's access decision.

[5] During the course of mediation, the appellant advised that it would narrow the request to the titles of all the books purchased and the total purchase price of these books.

[6] The university advised that this narrowing of the request would not change the access decision.

[7] The appellant advised that it would like the appeal moved to the adjudication stage to pursue access to the information responsive to its narrowed request.

[8] As mediation could not resolve the appeal, the appeal was moved to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry. I decided to conduct an inquiry and I sought the representations of the parties. These representations were shared in accordance with the IPC's *Practice Direction 7*.

[9] In its representations, the university agreed to disclose the total purchase price, therefore, this information is not at issue in this appeal and I will order it disclosed.

[10] In this order, I find that the records are not excluded by reason of section 65(8.1)(a) and I order the university to issue an access decision to the appellant on the responsive information in the records, the book titles.

## **RECORDS:**

[11] In its representations, the university describes the 1015 pages of responsive records as being:

...receipts and similar documents submitted for reimbursement by faculty members in the Department [of Political Science purchased from January 1, 2019 to August 24, 2021]. The responsive records identify faculty members by name and include information about books purchased, books purchased together, and books purchased at various points in time. The receipts also include vendor and cost information.

## **DISCUSSION:**

[12] In this order, the sole issue before me is the possible application of the exclusion in section 65(8.1)(a) to the book titles in the records at issue.<sup>1</sup>

[13] Section 65(8.1) of the *Act* excludes certain records relating to research and teaching from the *Act*. As a result, the *Act's* access scheme does not apply to them. The purpose of this provision is to protect academic freedom and competitiveness.<sup>2</sup>

[14] Section 65(8.1) states, in part:

(8.1) This Act does not apply,

(a) to a record respecting or associated with research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution; or

[15] The university describes the original 1015 pages of records as all being related to the research process concerning faculty member reading choices during the exploratory aspect of the research process. It submits that disclosure will enable faculty surveillance and potentially chill the conduct of research, and pose a threat to academic freedom. It says that the object of the section 65(8.1) research records exclusion is plainly engaged given this threat.

[16] The university submits that the words "respecting or associated with" in section 65(8.1)(a) do not require a particular quality of connection between the records at issue and qualifying research. It submits that the exclusion in 65(8.1) does not require that the records at issue disclose information regarding the research being conducted.<sup>3</sup>

[17] The university states that funding for reimbursement of book purchases by faculty comes from three sources, each of which requires that eligible book purchases be related to research being undertaken by faculty members.

[18] The university relies on Order PO-3084 regarding a request for expense reports (with attached receipts) submitted by two McMaster University professors. According to the university, in that order, McMaster University established that the professors' expenses were reimbursed only from research accounts that required eligible expenditures to be related to research. It states that even though eligible expenditures could include unrevealing expenditures (such as meals and accommodation), the IPC held in Order PO-3084 that the records had "some connection" to research.

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<sup>1</sup> The university did not provide representations on the application of section 65(8.1)(b).

<sup>2</sup> Order PO-2693, *Carleton University v. Information and Privacy Commissioner of Ontario and John Doe, requester*, 2018 ONSC 3696.

<sup>3</sup> Order PO-3161

[19] Responding to the university's representations, the appellant reiterates that it had narrowed its request to only the book titles and the total price. In its representations it merely states:

We are not asking for documents created by faculty after reading the books. Nor are we even asking for the names of the faculty to be linked to each purchase of books. We are asking for a list of the books purchased and the total price.

No individual faculty member need [be] identified as having been reimbursed. This negates the concern over academic freedom.

[20] The university then provided reply representations stating that the book purchase records identify books purchased by faculty for which the faculty received reimbursement.

[21] It states that the university's policy is to reimburse for either book purchases related to approved research projects or for purchases made under a policy that requires a book purchase to be directly related to research. It states that this is the university's means of ensuring that research expenditures are worthy of reimbursement and attributable to "specific and identifiable" research. It states that the university considers that academic freedom gives university faculty the right to autonomously conceive of and define their research projects.

[22] It states that the "receipts or equivalent purchase records" for the books are the only university records that contain the list of books at issue. It states that the university does not enter this data into any database or other kind of record and, therefore, there are no other university records from which to obtain information about the responsive information, being the books purchased by faculty in the Department of Political Science at the University of Toronto St. George Campus.

[23] It submits that if a record is excluded, there is no right to access the information it contains. As such, it submits that the responsive purchase records are excluded and the appellant's narrowing of its request does not change the analysis.

[24] The university relies on Order MO-3537, where the IPC held that a list of names and salaries of employees making over \$100,000 constructed by the Toronto Parking Authority (TPA) was excluded from *FIPPA* because the source records used to create the list were stored in the TPA's human resources information system and were employment-related.

[25] The university submits that its academic freedom concern is not negated, nor is the purpose of *FIPPA* served by giving the public access to any information about faculty member readings. It states:

Faculty will be identified by department. Most faculty in the department publish biographical information with information about their research areas. Disclosure will invite a risk of indirect identification, departmental targeting and intimidation and the same risk of chilling and harm to the research process...

While *FIPPA* creates a means to hold institutions accountable for the expenditure of public funds, a reading list (even compiled on a departmental basis) is a list of reading choices by faculty that are purposely beyond institutional control. [Faculty] reading choices are personal and not dictated by the university...

Based on the principle of academic freedom, neither the university nor any member of the public can rightly judge the value for money of a book purchase by a faculty member. Disclosure of the sought-after list would only shed light on choices that the Legislature has specifically insulated from the potential negative effects of the right of public access in *FIPPA*.

[26] The appellant did not provide further representations, although being provided with an opportunity to do so.

## Findings

[27] Section 65(8.1)(a) provides that the *Act* does not apply to a record respecting or associated with research conducted or proposed by an employee or a person associated with an educational institution.

[28] Research is "... a systematic investigation designed to develop or establish principles, facts or generalizable knowledge, or any combination of them, and includes the development, testing and evaluation of research." The research must be able to be linked to specific, identifiable research projects conducted or proposed by a specific faculty member, employee or associate of an educational institution.<sup>4</sup>

[29] The research exclusion is to be narrowly construed, and legislative intent must be kept in mind when interpreting the meaning of the word "research" in section 65(8.1)(a). Universities were made subject to the *Act* in 2005 to make them more transparent and accountable to the people of Ontario, but section 65(8.1)(a) protects academic freedom because of the importance of research and innovative study programs in universities.<sup>5</sup>

[30] This section applies where there is "some connection" between the record and the specific, identifiable "research conducted or proposed by an employee of an

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<sup>4</sup> Order PO-2693.

<sup>5</sup> *Carleton University v. Information and Privacy Commissioner of Ontario and John Doe, requester*, 2018 ONSC 3696.

educational institution or by a person associated with an educational institution.”<sup>6</sup>

[31] In order for section 65(8.1)(a) to apply, there needs to be “some connection” between the records at issue and a specific, identifiable “research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution.”

[32] Legislative intent must be kept in mind when interpreting the meaning of the word “research” in section 65(8.1). In my view, the requirement that the research must relate to specific, identifiable research projects respects the intent of the exclusion (protecting hospital and educational institutions’ research)<sup>7</sup> while also respecting the purposes of the *Act*.

[33] As Senior Adjudicator John Higgins stated in Order PO-2693:

...the meaning of “research” in the context of section 65(8.1)(a) is informed by the remaining words of the section. In particular, the section requires that the research be “conducted or proposed by an employee of an educational institution or a person associated with an educational institution.” Seen in the context of the purpose of this provision, that is, to protect academic freedom and competitiveness, the use of the words, “conducted or proposed”, and the inclusion of specific references to employees or persons associated with the University, leads me to conclude that “research” must be referable to specific, identifiable research projects that have been conceived by a specific faculty member, employee or associate of the University.<sup>8</sup>

[34] The issue then for me to decide is whether the records, and specifically, the information at issue from the records, being the titles of the books listed in the records, are records respecting or associated with research referable to specific, identifiable research projects conducted or proposed by an employee of an educational institution or by a person associated with an educational institution or hospital. That is, whether there is some connection between the records and identifiable research conducted or proposed by an employee of or by a person associated with the institution.

[35] As indicated above, there are 1,015 pages of receipts for book purchases by the Political Science Department professors over a period of over two and a half years. Contained in these records are the titles of the books purchased. In my estimation, there are hundreds of books listed in the 1,015 pages of records.

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<sup>6</sup> Order PO-2942; see also *Ontario (Attorney General) v. Toronto Star*, 2010 ONSC 991 (Div. Ct.).

<sup>7</sup> The legislative intent of section 65(8.1)(a) has been found in past IPC orders to protect academic freedom and competitiveness while creating a general right of access to information held by universities (see Orders PO-2693, PO-2825, PO-2942, and PO-2946 for example).

<sup>8</sup> In Order PO-2693, the university was McMaster University.

[36] Based on my review of the records and the university's representations, I find that the records are not referable to specific, identifiable research projects that have been conceived by a specific faculty member, employee or associate of an educational institution.<sup>9</sup> Instead, I find that the records are merely receipts for books purchased by department professors over a period of more than two and a half years.

[37] In making this finding, I have taken into account that the university has indicated that the three sources of funding are for expenditures related to approved research projects or directly related to research. Nevertheless, in my view, the university has not demonstrated how the records at issue, being 1,015 pages of receipts for book purchases for more than a two and a half-year period for an entire department are connected to specific, identifiable research projects. Therefore, I find that disclosure of the records would in no way indicate the purpose of research being conducted at the department.

[38] In making the finding that the records (receipts for books purchased) and the information at issue from the records (the titles of the books purchased) are not excluded by reason of section 65(8.1)(a), I have considered the university's arguments and specifically the orders referenced in its representations.

[39] The university refers to Order MO-3537, where the IPC held that a list of names and salaries of employees making over \$100,000 constructed by the Toronto Parking Authority was excluded from *FIPPA* because the source records used to create the list were stored in the Toronto Parking Authority's human resources information system and were employment-related. Subsequently, other orders of the IPC have reached different conclusions in relation to similar information.<sup>10</sup>

[40] In any event, it is my view that Order MO-3537 has little relevance to the issue before me. To begin, a different exclusion was at issue: section 52(3)3 of the *Municipal Freedom of Information and Protection of Privacy Act*, the municipal equivalent of section 65(6)3 of *FIPPA*, which reads:

Subject to subsection (4), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:

Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest

[41] Unlike the exclusion at issue in this appeal, the section 65(6)3 exclusion concerns labour relations or employment records. The university has not claimed the application of section 65(6)3, nor in my view does that exclusion apply.

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<sup>9</sup> See Order PO-4393.

<sup>10</sup> See Order PO-4250.

[42] The purpose of the section 65(6) exclusion is to protect some confidential aspects of labour relations and employment-related matters. The type of records excluded from the *Act* by section 65(6) are those relating to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue.<sup>11</sup> Section 65(6) is not relevant to the application of the section 65(8.1)(a) research exclusion in this appeal.

[43] The university also relies on Order PO-3084 regarding a request for expense reports (with attached receipts) submitted by two McMaster University professors. In that order, the university established that two named professors' expenses were reimbursed only from research accounts that required eligible expenditures to be related to research. In contrast to this appeal, the records at issue included expense claim forms and receipts for research undertaken by two named professors that were reimbursed from specific research accounts.

[44] In this appeal, the receipts are not for records about specific research undertaken by named professors. Instead, the records are receipts for hundreds of books, which although they may be connected to the research process, they are not connected to specific, identifiable research projects. Nor is the information at issue in the records, the book titles, connected to specific, identifiable research projects.

[45] As I have found that the information at issue, the book titles, is not excluded by reason of the claimed exclusion in section 65(8.1)(a), there is no need for me to consider the exceptions to this section in section 65(9) and 65(10).<sup>12</sup>

[46] Therefore, as the exclusion in section 65(8.1)(a) does not apply to exclude either the records or the information at issue in the records, I will order the university to issue an access decision for the information sought by the appellant as I have found that this information is not excluded by reason of section 65(8.1)(a). For clarity, the appellant seeks only access to a list of the book titles purchased.

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<sup>11</sup> *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.). The CanLII citation is "2008 CanLII 2603 (ON SCDC)."

<sup>12</sup> These sections read:

(9) Despite subsection (8.1), the head of the educational institution or hospital shall disclose the subject-matter and amount of funding being received with respect to the research referred to in that subsection.

(10) Despite subsection (8.1), this Act does apply to evaluative or opinion material compiled in respect of teaching materials or research only to the extent that is necessary for the purpose of subclause 49(c.1)(i).

Section 49(c.1)(i) 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,

(i) assessing the teaching materials or research of an employee of an educational institution or a hospital or of a person associated with an educational institution or a hospital.



**ORDER:**

1. I order the university to disclose to the appellant by **October 27, 2023** the total price for books purchased by the St. George campus Department of Political Science from January 1, 2019 to August 24, 2021.
2. I order the university to issue the appellant with an access decision or interim access decision and fee estimate for a list of the book titles contained within the records, treating the date of this order as the date of the request for administrative purposes, in accordance with all applicable provisions of the *Act*.
3. I further order the university to provide me with a copy of the decision issued pursuant to order provision 2, above.

Original Signed By: \_\_\_\_\_  
Diane Smith  
Adjudicator

\_\_\_\_\_ September 26, 2023