Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4614

Appeal PA22-00033

University of Waterloo

February 26, 2025

Summary: A graduate of the University of Waterloo made a request, under the *Freedom of Information and Protection of Privacy Act*, for records related to an accommodation request that he made during a certain period of time. This appeal is about the university's decision to withhold one record completely on the basis that it contains advice and recommendations and a part of another record on the basis that it contains personal information of one or more university employees. The appeal is also about the appellant's challenge of the reasonableness of the university's search for records.

The adjudicator allows the appeal, in part. She finds that some of the information at issue is not personal information, so the personal privacy reason stated by the university does not apply. The adjudicator orders the university to disclose this information to the appellant.

The adjudicator upholds the university's decision to withhold the other record for the advice and recommendation reason (section 49(a), read with section 13(1)).

The adjudicator also upholds the university's search for records.

Statute Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.F.31, sections 2(1) (definition of "personal information"), 13(1), 13(2), 17, and 49(a), as amended.

Order Considered: Order PO-2225.

OVERVIEW:

[1] This order explains why a record containing views or opinions of an institution's employee cannot be withheld under a personal privacy exemption in the circumstances, and why a draft record containing advice or recommendations can be withheld under the *Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] The University of Waterloo (the university) received an access request under the *Act* for the following:

> Requesting communication or interactions with AccessAbility (emails, documents, memos, chats, meeting minutes, any other records, all requests regarding my profile, all information within my profile in the AccessAbility systems, any information in any of the AccessAbility systems etc.) related to or referencing [the requester's name] [student ID]. The request is pertaining to the following individuals: [two named individuals] and all individuals in AccessAbility department.
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> The time period for the records is January 1, 2017, to present.

[3] The university issued a decision granting access to 33 records in full and one record in part, withholding part under the discretionary exemption at section 49(b) (personal privacy) of the *Act*. One record was withheld under the discretionary exemption at section 13 (advice or recommendations) of the *Act*.

[4] The requester, now the appellant, appealed the university's decision to the Information and Privacy Commissioner of Ontario (IPC).

[5] The IPC appointed a mediator to explore resolution. During mediation, the parties did not reach a mediated resolution, and the appellant raised the issue of reasonable search.

[6] I conducted a written inquiry under the *Act* by sending a Notice of Inquiry, setting out the facts and issues on appeal, first to the university and then to the appellant (and later to the appellant's legal counsel). I shared the non-confidential portions of the university's representations and affidavit with the appellant (and his legal counsel).[1] The appellant's representations did not directly address the substantive issues on appeal, but instead, explained what happened (from the appellant's point of view) with the university and why the records are important to him. This context is only described below when it is relevant to the issues I need to decide. Later in the inquiry, I invited representations from a party whose interests may be affected by disclosure (the affected party). The affected party provided representations. I did not share these representations with the

[1] Portions of the representations and affidavit have been withheld pursuant to the criteria in section 6 of *Practice Direction Number 7* (which deals with the sharing of representations).

appellant because they raised issues that were already raised by the university.

[7] I allow the appeal in part. While I uphold the university's decision regarding the record withheld in full (record 1) and the reasonableness of its search and dismiss those issues in the appeal, I do not uphold the university's decision regarding the information withheld in part on one of the pages (record 2). I find that the information at issue in record 2 is not the personal information of a university employee, so it cannot be subject to the personal privacy exemption. As a result, I order the university to disclose that portion of record 2 to the appellant.

RECORDS:

[8] There are two records at issue in this appeal: record 1 ("draft document") and record 2 ("August 18 Communications").

ISSUES:

A. Do the records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?

B. Does the discretionary exemption at section 49(a), allowing an institution to refuse access to a requester's own personal information, read with the section 13(1) exemption, apply to record 1?

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

DISCUSSION:

Issue A: Do the records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?

[9] In order to decide which sections of the *Act* may apply to a specific case, the IPC must first decide whether the record contains "personal information," and if so, to whom the personal information relates. If a record contains a requester's own personal information, then access to it will be considered under different sections of the *Act*, in recognition of the special nature of requests for one's own personal information and the desire of the Legislature to give institutions the power to grant requesters access to their own personal information.[2] It is not disputed that both records 1 and 2 contain the personal information of the appellant; the question here is whether record 2 also contains someone else's personal information. For the following reasons, I find that it does not.

[2] Order M-352.

[10] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual."

Recorded information

[11] "Recorded information" is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.[3]

About

[12] Information is "about" the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. Generally, information about an individual in their professional, official, or business capacity is not considered to be "about" the individual.[4] See also sections 2(3) and 2(4), which 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.

[13] In some situations, even if information relates to an individual in a professional, official, or business capacity, it may still be "personal information" if it reveals something of a personal nature about the individual.[5]

Identifiable individual

[14] Information is about an "identifiable individual" if it is reasonable to expect that an individual can be identified from the information either by itself or if combined with other information.[6]

What are some examples of "personal information"?

[15] Section 2(1) of the *Act* gives a list of examples of personal information:

> "personal information" means recorded information about an identifiable individual, including,

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[3] See the definition of "record" in section 2(1).
[4] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[5] Orders P-1409, R-980015, PO-2225 and MO-2344.
[6] Order PO-1880, upheld on judicial review in *Ontario* (*Attorney General*) *v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

. . .

> (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 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.

[16] The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be "personal information."[7]

Whose personal information is in the record?

[17] It is important to know whose personal information is in the record. If the record contains the requester's own personal information, their access rights are greater than if it does not.[8] Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.[9]

[18] In order to decide which sections of the *Act* may apply to a specific case, the IPC must first decide whether the record contains "personal information," and if so, to whom the personal information relates.

Representations

Record 1

[19] There is no dispute that record 1 contains the personal information of the appellant. As a result, I must determine any right of access that the appellant may have to record 1 under the discretionary exemption at section 49(a), read with the section 13(1) exemption. I discuss section 49(a), which is an exemption that allows an institution

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[7] Order 11.
[8] Under sections 47(1) and 49 of the *Act,* a requester has a right of access to their own personal information, and any exemptions from that right are discretionary, meaning that the institution can still choose to disclose the information even if the exemption applies.
[9] See sections 21(1) and 49(b).

to refuse access to a requester's own personal information, under Issue B in this order.

Record 2

[20] There is also no dispute that record 2 contains the personal information of the appellant. However, the university and an affected party submit that the information at issue contains personal information of one or more other identifiable individuals.

[21] The university states that record 2 references a university employee or employees who the appellant indicated ought to have received information about his learning disability and need for accommodations and failed to follow up or send that information to the appropriate parties.

[22] The university states that several of the examples of personal information listed in the definition of that term in section 2(1) of the *Act* apply to record 2, specifically, at paragraphs (e), (f), and (g) of that definition, which cover:

- the personal opinions or views of the individual except if they relate to another individual,
- correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and
- the views or opinions of another individual about the individual.

[23] More specifically, the university states that the record contains information about its author and an individual or individuals who are employees of the university. The university submits that the information withheld contains the personal opinions or views of its author, that record 2 is correspondence sent to the university that is implicitly of a private or confidential nature and reveals something of a personal nature about the individual or individuals referenced.

[24] The university submits that it is reasonable to expect that an individual or individuals can be identified from the information withheld (either alone or by combining it with other information).

[25] The affected party's position is similar to that of the university, and my analysis below will address their positions.

Analysis/findings

Record 1

[26] There is no dispute that record 1 contains the personal information of the appellant. The university's only claim over record 1 is that it contains advice and recommendations (section 13(1)). Because record 1 contains the appellant's personal

information, I must determine any right of access that the appellant may have to record 1 under the discretionary exemption at section 49(a), read with the section 13(1) exemption, which I will discuss under Issue B in this order.

Record 2

[27] There is no dispute that record 2 as a whole contains the personal information of the appellant. The dispute is whether it also contains the personal information of other individuals. For the following reasons, I find that this portion of record 2 contains only the personal information of the appellant and no other individual.

[28] The fact that one or more individuals may be identified by the information withheld in record 2 is not enough to establish that this information is the "personal information" of any university employee(s).

[29] Even accepting without deciding that record 2 (or this portion of record 2) was not meant to be shared outside of the university's employees, does not change the *nature* of the information withheld in itself to make it "personal information" as that term is defined in the *Act*.

[30] Based on my review of the information withheld in record 2, I agree that it includes views or opinions of an individual and references one or more other individuals.

[31] The question is whether that information withheld identifies the university employee(s) in a personal capacity, and if not, whether the information may nevertheless qualify as "personal information" as that term is defined in section 2(1) of the *Act*. Order PO-2225 established a two-step analysis for determining whether information should be characterized as "personal" or "business, professional or official."[10] This two-step analysis, which the IPC has consistently adopted and applied in other orders, is:

1. In what context do the names of the individuals appear? Is it in a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere?

2. Is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?[11]

[32] I agree with the analysis and approach in these orders, and I adopt it here.

[33] Under step one of this analysis, I find that the context of expressing these views

[10] As noted by the adjudicator in Order MO-3420, the quote from Order PO-2225 refers to "official" as "official government," but the word "government" is not contained in the definition in the *Act*.
[11] The IPC's Notice of Inquiry, which was sent to both parties in the appeal, contains questions inviting parties to provide representations in this vein.

is entirely professional or official, not personal. The views or opinions expressed, even if in confidence, were done squarely within the context of carrying out professional or official responsibilities and/or refer to carrying out professional or official responsibilities as university employees.

[34] Under step two, I observe that all institutions operate through their employees, and that can involve expressing views or opinions related to those operations. I find that the information withheld relates to the author's and/or other university employee(s)' professional or official university matters and would not disclose something that is inherently personal in nature about any employee. This is different from information related to statements made in the context of allegations of misconduct, for example, which past IPC orders have found *do* cross over into the personal realm despite the employment context.[12]

[35] Therefore, since the information at issue is not the personal information of any university employee involved or otherwise referenced, none of that information can be withheld under a personal privacy exemption, as claimed by the university. Neither the university or the affected party makes any other alternative claim over this information. As a result, I do not uphold the university's decision to do so and will order the university to release the portions of record 2 that it withheld to the appellant.

Issue B: Does the discretionary exemption at section 49(a), allowing an institution to refuse access to a requester's own personal information, read with the section 13(1) exemption, apply to record 1?

[36] For the following reasons, I uphold the university's decision to claim section 13(1) over the draft document (record 1).

[37] Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides some exemptions from this general right of access to one's own personal information.

[38] Section 49(a) of the *Act* says:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > where section 12, 13, 14, 14.1, 14.2, 15, 15.1, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information.

[39] The discretionary nature of section 49(a) ("may" refuse to disclose) recognizes the special nature of requests for one's own personal information and the desire of the Legislature to give institutions the power to grant requesters access to their own personal

[12] See, for example, Orders PO-2778 and PO-3075.

information.[13]

[40] Here, the university has claimed section 49(a) read with section 13(1) over record 1.

[41] Section 13(1) of the *Act* exempts certain records containing advice or recommendations given to an institution. This exemption aims to preserve an effective and neutral public service by ensuring that people employed or retained by institutions are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policymaking.[14]

[42] Section 13(1) states:

> A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution, or a consultant retained by an institution.

What is "advice" and what are "recommendations"?

[43] "Advice" and "recommendations" have distinct meanings. "Recommendations" refers to a suggested course of action that will ultimately be accepted or rejected by the person being advised. Recommendations can be express or inferred.

[44] "Advice" has a broader meaning than "recommendations." It includes "policy options," which are the public servant or consultant's identification of alternative possible courses of action. "Advice" includes the views or opinions of a public servant or consultant as to the range of policy options to be considered by the decision maker even if they do not include a specific recommendation on which option to take.[15]

[45] "Advice" involves an evaluative analysis of information. Neither "advice" nor "recommendations" include "objective information" or factual material.

[46] Section 13(1) applies if disclosure would "reveal" advice or recommendations, either because the information itself consists of advice or recommendations or the information, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations.[16]

[47] The relevant time for assessing the application of section 13(1) is the point when

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[13] Order M-352.
[14] *John Doe v. Ontario* (*Finance*), 2014 SCC 36, at para. 43.
[15] See above at paras. 26 and 47.
[16] Orders PO-2084, PO-2028, upheld on judicial review in *Ontario* (*Ministry of Northern Development and Mines*) *v. Ontario* (*Assistant Information and Privacy Commissioner*), [2004] O.J. No. 163 (Div. Ct.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564; see also Order PO-1993, upheld on judicial review in *Ontario* (*Ministry of Transportation*) *v. Ontario* (*Information and Privacy Commissioner*), [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563.

the public servant or consultant prepared the advice or recommendations. The institution does not have to prove that the public servant or consultant actually communicated the advice or recommendations. Section 13(1) can also apply if there is no evidence of an intention to communicate, since that intention is inherent to the job of policy development, whether by a public servant or consultant.[17]

[48] The advice or recommendations contained in draft policy papers form a part of the deliberative process leading to a final decision and are protected by section 13(1).[18] This is the case even if the content of the draft is not included in the final version.

[49] Examples of the types of information that have been found *not* to qualify as advice or recommendations include:

- factual or background information,[19]
- a supervisor's direction to staff on how to conduct an investigation,[20] and
- information prepared for public dissemination.[21]

Analysis/findings

[50] The university provided representations relevant to the exemption claimed, but the appellant's counsel did not. The university submits that section 13(1) applies to record 1 because this record contains the advice and recommendations of a university employee. As noted, the university acknowledges that record 1 contains the appellant's personal information, so section 49(a) is relevant. Based on my review of the record and the university's representations, I agree and find that record 1 is exempt from disclosure under section 49(a), read with section 13(1) of the *Act*.

[51] Noting the purpose of the exemption at section 13(1), the university "underscores" the importance of its employees being able to explore all possible matters and approaches to an issue with candour and without feeling constrained by outside pressures.

[52] The university states that record 1 is a two-page draft letter that was prepared by a university employee but which was never finalized or sent. It explains that this draft letter is addressed to another university employee regarding the appellant's grievance (which was related to his accommodation request). The university further explains that in the withheld draft letter, the writer presents specific advice and recommendations, which the other university employee could accept or reject. The university explains that the remainder of the letter outlines opinion and analysis of the available information and

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[17] *John Doe v. Ontario* (*Finance*), cited above, at para. 51.
[18] *John Doe v. Ontario* (*Finance*), cited above, at paras. 50-51.
[19] Order PO-3315.
[20] Order P-363, upheld on judicial review in *Ontario* (*Human Rights Commission*) *v. Ontario* (*Information and Privacy Commissioner*) (March 25, 1994), Toronto Doc. 721/92 (Ont. Div. Ct.).
[21] Order PO-2677

provides the foundation for advice and recommendations. Based on my review of the record, I agree with the university's characterization of it.

[53] As a result, I accept the university's submission, and I find, that disclosure of the draft letter would reveal the nature of the advice and recommendations. The university submits, and I find, that revealing the university employee's recommendations would undermine the protections granted by the exemption at section 13(1) of the *Act*.[22]

[54] Sections 13(2) and (3) create a list of mandatory exceptions to the section 13(1) exemption. If the information falls into one of these categories, it cannot be withheld under section 13(1). The university submits that none of these exceptions apply. The appellant's legal counsel did not claim that any do. In the circumstances, I find no basis for concluding that any exceptions apply.

[55] For these reasons, I uphold the university's determination that section 13(1) applies to the record, read with section 49(a), given the presence of the appellant's personal information in the record.

Exercise of discretion

[56] As discussed, the discretionary nature of section 49(a) recognizes the special nature of requests for one's own personal information and the desire of the Legislature to give institutions the power to grant requesters access to their own personal information.[23] If the institution refuses to give an individual access to their own personal information under section 49(a), the institution must show that it considered whether a record should be released to the requester because the record contains their personal information. Based on the university's representations, I am satisfied that it did so here.

[57] In addition, I accept that the university considered other relevant factors such as the purpose of the *Act*, the wording of the section 13(1) exemption and the interests it seeks to protect, and the nature of the information and the extent to which it is significant and/or sensitive (to the university, the appellant, and any affected person). The appellant does not address the university's exercise of discretion, alleging the consideration of irrelevant factors or bad faith, for example.

[58] Based on my review of the record and the university's representations, I accept that the factors that the university considered are relevant in the circumstances and that the university did not consider irrelevant factors. I accept that this exercise of discretion was done in good faith; there is no basis for me to find that the university exercised its discretion in bad faith or for an improper purpose.

[59] Given my findings that record 1 is exempt from disclosure under section 49(a) read with section 13(1) and that the university exercised its discretion properly, I uphold the

[22] The university cites Order MO-4411, para. 29.
[23] Order M-352.

university's decision to withhold record 1 in full.

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

[60] If a requester claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 24 of the *Act*.[24] If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision. Otherwise, it may order the institution to conduct another search for records.

[61] The *Act* does not require the institution to prove with certainty that further records do not exist.[25] However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;[26] that is, records that are "reasonably related" to the request.[27]

[62] 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.[28] The IPC will order a further search if the institution does not provide enough evidence to show that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[29]

[63] The university provided representations and 16- page affidavit evidence regarding its search efforts, explaining who led the search efforts, which employees were called upon to conduct searches, the scope of the search, and the locations searched. It is not necessary to set these details out here because they were shared with the appellant and his representations did not include comment on the university's search efforts. The university's evidence included the names of the individuals who were asked to conduct searches, their position, and a search verification form containing details about their search efforts. Having reviewed the university's representations and affidavit evidence, I am satisfied that it had experienced employees, knowledgeable in the subject matter of the request make reasonable efforts to identify and locate responsive records.

[64] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.[30] Since the appellant did not address any points made in the university's representations or affidavit evidence on the issue of reasonable search, I find that the appellant has not provided a reasonable basis for concluding that additional responsive records exist.

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[24] Orders P-85, P-221 and PO-1954-I.
[25] *Youbi-Misaac* v. *Information and Privacy Commissioner of Ontario*, 2024 ONSC 5049 at para 9.
[26] Orders P-624 and PO-2559.
[27] Order PO-2554.
[28] Orders M-909, PO-2469 and PO-2592.
[29] Order MO-2185.
[30] Order MO-2246.

[65] In the circumstances, based on the university's detailed evidence and the lack of representations on the issue from the appellant, I uphold the university's search as reasonable, and I dismiss that aspect of his appeal.

ORDER:

1. I allow the appeal, in part. I do not uphold the university's decision to withhold portions of record 2 and I order the university to disclose the information it withheld in record 2 to the appellant by **April 2, 2025,** but not before **March 28, 2025**.

2. I uphold the university's decision to withhold record 1 in full.

3. I uphold the university's search for responsive records as reasonable in the circumstances.

Original Signed by: February 26, 2025

Marian Sami
Adjudicator