

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4647

Appeal PA23-00511

University of Toronto

April 25, 2025

Summary: The requester, a graduate student at the University of Toronto, requested, under the *Freedom of Information and Protection of Privacy Act*, records evaluating the research for her dissertation at the university. The university denied access to two responsive emails stating that it is evaluative or opinion material that is exempt under the *Act* (section 49(c.1)(i)).

In this order, the adjudicator finds that one of the two responsive email chains is evaluative or opinion material that is exempt under section 49(c.1)(i) and upholds the university's decision not to disclose it. She finds that the exemption does not apply to the other email chain and orders the university to disclose it to the appellant. The adjudicator upholds the university's search for records as reasonable.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, sections 24 and 49(c.1)(i).

OVERVIEW:

[1] The requester, a graduate student at the University of Toronto (the university), requested access under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) to records evaluating her research for her dissertation at the university. Specifically, she asked for the following:

1. Program Extension Request Records: I am interested in obtaining an all-encompassing collection of all documents, formal or informal, that are

directly or indirectly linked to my recent petition for an extension of my academic program at the university. This includes the initial extension application, all associated forms, the university's subsequent determinations, and all communication directly or indirectly relevant to this process, particularly those that have markedly or otherwise influenced the final resolution.

2. Annual Progress Report Records: Pursuant to the pertinent regulations, I hereby request comprehensive access to information pertaining to my annual progress reports for the year 2023. This includes, but is not limited to, the report composed subsequent to the committee meeting convened on April 20, 2023, and officially documented on May 12, 2023. My request encompasses all pertinent documents produced in the year 2023, encompassing the initial report, any and all preliminary drafts, and the resultant decisions elicited from each respective report. Furthermore, I seek disclosure of any and all forms of communication or correspondence linked to my persona and the progression of these reports, irrespective of the direct influence – or lack thereof - on the ultimate consensus or decision-making process within the University. This includes, but is not limited to, written and electronic communications such as emails, memos, minutes of meetings, notes, or any other form of correspondence related to the progression and development of these reports.

This application applies to all relevant documents, electronic data, and other record formats, formal or informal, directly or indirectly related to these categories at the university. It includes all data concerning me or created by me that has relevance to the outlined aspects of my academic journey.

[2] The university issued an access decision in which it indicated it had decided to disclose 1,170 pages of records. It also stated that it withheld 10 pages of records pursuant to the personal privacy exemptions in sections 21(1) or 49(b), because they contain the personal information of other individuals. As well, it withheld two pages in full and portions of three other pages pursuant to section 49(c.1)(ii) (evaluative or opinion material determining suitability, eligibility or qualifications for admission to an academic program of an educational institution).

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

[4] During mediation, the appellant advised that she does not seek access to the personal information of other individuals in the records that the university withheld pursuant to the personal privacy exemptions in sections 49(b) or 21(1) of the *Act*.¹ As a

¹ During mediation, the appellant also advised that the university had forged documents in her academic records. The university responded to the mediator that due to a clerical error in assembling the voluminous records, four document's attachments were mixed up. This was rectified and the appellant was provided

result, these exemptions are not at issue in the appeal.

[5] Also at mediation, the university clarified that it was claiming the exemption at section 49(c.1)(i) (assessing the research of a person associated with an educational institution) of the *Act* rather than the exemption at section 49(c.1)(ii). The appellant confirmed that she seeks access to the information withheld under that exemption.

[6] Finally, the appellant advised that she was not satisfied with the university's response to the concerns she raised about their search for responsive records.

[7] Further mediation was not possible, and the appeal moved to the adjudication stage of the appeals process where an adjudicator may conduct an inquiry. I decided to conduct an inquiry and sought the representations of the parties.²

[8] In this order, I uphold, in part, the university's decision to withhold the emails under section 49(c.1)(i). I find that one of the two responsive email chains is evaluative or opinion material that is exempt under section 49(c.1)(i) and I uphold the university's decision not to disclose it. I find that the exemption does not apply to the other email chain, and I order the university to disclose it to the appellant. Finally, I uphold the university's search for records as reasonable.

RECORDS:

[9] Two internal university email chains are at issue. They have been withheld under section 49(c.1)(i) of the *Act* (pages 5 to 9 of the records). Pages 5 and 6 are dated April 20, 2023, and have been withheld in full. Pages 7 to 9 are dated April 25, 2023, and have been withheld in part.³

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(c.1)(i) apply to the information at issue?

with the correct attachments. The appellant was also advised at mediation that the IPC does not have the jurisdiction under *FIPPA* to review documents to determine if they were forged.

² Representations were exchanged between the parties in accordance with the IPC's *Practice Direction 7*.

³ One email from the appellant, was disclosed to her. The appellant has received disclosure of over one thousand of pages of records. She provided extensive representations on the state of certain of these records, claiming forgery and alteration. These records are not at issue in this appeal.

C. Did the university exercise its discretion under section 49(c.1)(i)? If so, should the IPC uphold the exercise of discretion?

D. 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?

[10] The university has claimed section 49(c.1) applies to exempt information in the records. For that exemption to apply the records must contain the personal information of the requester, in this case, the appellant.

[11] Therefore, I must first decide whether the records contain “personal information,” and if so, to whom the personal information relates.

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

[13] 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

[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.⁵

[15] Section 2(1) of the *Act* gives a list of examples of personal information. In this case, paragraph (b) is relevant. It reads:

“personal information” means recorded information about an identifiable individual, including,

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or

⁴ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225. See also sections 2(3) and 2(4).

⁵ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

information relating to financial transactions in which the individual has been involved.⁶

[16] The university states that that the portions of the records that are at issue in this appeal contain the personal information of the appellant in a personal capacity as a graduate student at the university.

[17] The appellant does not dispute that the records contain her personal information.

[18] I agree that the records contain the personal information of the appellant. They discuss her educational qualifications for her graduate program at the university. The records are about the appellant in her personal capacity and contain her personal information being her education history in accordance with paragraph (b) of the definition of personal information in section 2(1) of the *Act*.

Issue B: Does the discretionary exemption at section 49(c.1)(i) (evaluative or opinion information) apply to the information at issue?

[19] Section 47(1) gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right.

[20] The university submits that section 49(c.1) applies to exempt the emails from disclosure. Under section 49(c.1), the institution may refuse to disclose evaluative or opinion material in certain circumstances. It 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 of a person associated with an educational institution.

Representations

[21] The university submits that section 49(c.1)(i) applies to the records at issue in this appeal, as the records are comprised of email exchanges between faculty members evaluating the quality of the appellant's academic research and providing opinions on the substantive and structural merits of the research. The university submits that these opinions were provided with an expectation of confidentiality, and with the explicit

⁶ 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." See Order 11.

purpose of producing a set of comments to be communicated to the appellant.

[22] The university did not specifically address the specific information in the two email chains from different dates, April 20 and 25, 2023.

[23] The university states that it is a longstanding established practice at the university, and at universities generally, for faculty members who supervise and evaluate research to communicate frankly with each other respecting the research of supervised individuals, so as to collaboratively develop and formulate an accurate assessment of their research. The university submits that some of this confidential assessment can then subsequently be used to produce the accurate and useful feedback ultimately be given to students.

[24] The university submits that in this instance, the appellant is acting in her personal capacity as a student conducting research under the supervision of faculty members, as part of an academic program administered by the university. It submits that the appellant as a graduate student was "a person associated with an educational institution", in this case the university, as intended in section 49(c.1)(i).

[25] The university further submits that the records at issue have no purpose other than the providing an assessment on the substantive and structural merits of the appellant's research.

[26] For these reasons, the university submits that the records at issue are eligible for exemption under section 49(c.1)(i), as they comprise information supplied explicitly or implicitly in confidence, which is evaluative and opinion material compiled solely for the purpose of assessing the research of a person associated with an educational institution.

[27] The appellant rejects the assertion that section 49(c.1)(i) applies to the records. She does not specifically refer to the five pages at issue in this appeal and instead refers to all of the disclosure she received from the university. She claims that in several instances, the records are inherently tied to the administrative processes of her academic activities and do not contain or pertain to sensitive information that would justifiably warrant an exemption under this section.

[28] The appellant submits that even if certain sections within the records were to be considered under section 49(c.1)(i), the proper procedure would be to release them in their entirety with precise and surgical redactions of only those specific words or sentences where the exemption is absolutely applicable.

Analysis and findings

[29] The university claims that section 49(c.1)(i) applies as the withheld information was supplied explicitly or implicitly in confidence to it and is evaluative or opinion material compiled solely for the purpose of assessing the research of the appellant, a graduate student at the university.

[30] The university's position is that it has withheld evaluations of the research of the appellant's dissertation. It states that these evaluations were provided with an expectation of confidentiality, and with the explicit purpose of producing a set of comments to be communicated to the appellant.

[31] Based on my review of the records and the university's representations, I find that section 49(c.1)(i) applies to some, but not all, of the information at issue in the records.

[32] I find that this exemption applies to the information withheld from pages 5 and 6 of the records. From my review, this information is evaluative or opinion material compiled solely for the purpose of assessing the research of the appellant, a graduate student associated with the university. In these pages, a professor at the university is evaluating the appellant's research and providing recommendations based on this evaluation.

[33] The information withheld from pages 7 to 9 is from a different date than those at pages 5 and 6. The information at pages 7 to 9, addresses the information provided by the appellant in her email sent to the university in response to the feedback the university provided her as a result of the evaluation at pages 5 to 6 of the records. It is not an assessment of the substantive and structural merits of her research.

[34] Therefore, I find that the information withheld from pages 7 to 9 is not exempt under section 49(c.1)(i) as it does not assess the appellant's actual research. It is not evaluative or opinion material about the appellant's research but essentially information about the next steps in the appellant's academic career. As no other exemptions have been claimed for the information at issue in pages 7 to 9, I will order it disclosed.

[35] In conclusion, of the information at issue in pages 5 to 9 of the records, I find that only pages 5 and 6 contain information that is evaluative or opinion material within the meaning of section 49(c.1)(i). I will consider below the university's exercise of discretion in deciding to withhold this information. I find that the remaining information at pages 7 to 9 of the records is not exempt under that section, and I will order it disclosed.

Issue C: Did the university exercise its discretion under section 49(c.1)(i) to the information withheld from pages 5 and 6 of the records? If so, should the IPC uphold the exercise of discretion?

[36] The section 49(c.1) exemption is discretionary (the institution "may" refuse to disclose), meaning that the institution can decide to disclose information even if the information qualifies for exemption. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[37] 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.

[38] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.⁷ The IPC cannot, however, substitute its own discretion for that of the institution.⁸

Representations

[39] The university provided extensive representations on its exercise of discretion. It submits that it considered the purposes of the *Act* and carefully considered the importance of disclosing personal information to the individual to whom it pertains. It submits that it recognizes that the information in question is the personal information of the requester, relates to her own research and is clearly of interest to her and gave this important factor as much weight as appropriate in deciding to disclose as much of the appellant's personal information as possible to her.

[40] The university submits that the information that it withheld pursuant to section 49(c.1)(i) is limited to that which is necessary to withhold in order to protect the confidential assessment and opinions of faculty members tasked with evaluating the appellant's graduate program research. In doing this, the university submits that it was careful to apply the exemption as precisely and carefully as possible, so as to disclose as much information as possible to the appellant.

[41] The university submits that it weighed the appellant's right to access against the purpose of the exemption at 49(c.1)(i), which is to protect evaluations of academic work so that the assessor can be frank and provide their full, uncensored opinion of the quality of the academic work under review.

[42] The university also submits that it considered the impact of disclosure of the information in the records in this instance on future evaluations of academic research. It submits that disclosure of this type of information could reasonably be expected to create a chilling effect, which would materially impair the provision of accurate, honest academic evaluations, which are essential to the integrity of research and pedagogy of advanced degree programs.

[43] The university also submits that it considered the appellant's stated reasons for making the request, which it states appear to result from a breakdown in the relationship between the appellant and her academic supervisor.

[44] Additionally, the university considered that the appellant was given feedback and commentary on her research, and disclosure of the records at issue would not provide

⁷ Order MO-1573.

⁸ Section 54(2).

significant new information to outweigh the potential harms to evaluation of research, to the freedom of faculty members to exchange their professional views regarding research, and to pedagogy in research.

[45] The appellant did not specifically respond to the university's submissions on its exercise of discretion.⁹

Analysis and findings

[46] Based on my review of the university's representations and the information that I found exempt under section 49(c.1)(i), pages 5 and 6 of the records, I find that the university exercised its discretion in good faith and for a proper purpose. I am satisfied that the university considered relevant factors and did not consider irrelevant factors in its exercise of discretion.

[47] The university considered the nature of the personal information at issue, being evaluative or opinion material compiled solely for the purpose of assessing the appellant's research, the significance of it to the appellant, and the wording of the exemption as well as the purposes of the *Act*.

[48] Accordingly, I uphold the university's exercise of discretion not to disclose the information on pages 5 and 6 under section 49(c.1)(i). These pages are exempt under this section.

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

[49] 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*.¹⁰ 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.

[50] 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.¹¹

[51] The *Act* does not require the institution to prove with certainty that further records do not exist. However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;¹² that is, records that

⁹ The appellant's representations primarily focus on other university records and her position that these were forged or altered.

¹⁰ Orders P-85, P-221 and PO-1954-I.

¹¹ Order MO-2246.

¹² Orders P-624 and PO-2559.

are "reasonably related" to the request.¹³

[52] 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.¹⁴ 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.¹⁵

Representations

[53] The university provided extensive representations on its search for responsive records, detailing the places searched and the numerous university staff that were asked to conduct searches. It provided two affidavits in support from the Freedom of Information Liaisons for the School of Graduate Studies and the specific faculty the appellant was associated with. It also states that there are no records that are reasonably expected to have been destroyed, or which exist but are not in the university's possession.

[54] The appellant did not provide any representations in response to those of the university and did not even mention the search issue in her representations.

Analysis and findings

[55] Based on my review of the university's representations, I find that it conducted a reasonable search for responsive records. I find that it has provided enough evidence to show that it has made a reasonable effort to identify and locate responsive records

[56] In not providing representations on the search issue, I find that the appellant has not provided a reasonable basis for me to conclude that additional responsive records exist.

[57] Accordingly, I uphold the university's search for records as reasonable.

ORDER:

1. I uphold the university's decision that section 49(c.1)(i) applies to pages 5 and 6 of the records.
2. I order the university to disclose pages 7 to 9 of the records to the appellant by **May 30, 2025**, but not before **May 26, 2025**.

¹³ Order PO-2554.

¹⁴ Orders M-909, PO-2469 and PO-2592.

¹⁵ Order MO-2185.

3. In order to verify compliance with order provision 2, I reserve the right to require the university to provide me with a copy of the records disclosed to the appellant in accordance with order provision 2.
4. I uphold the university's search for records as reasonable.

Original Signed by: _____
Diane Smith
Adjudicator

April 25, 2025