

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-4658

Appeal PA22-00161

University of Waterloo

May 26, 2025

**Summary:** A student made a request to the University of Waterloo under the *Freedom of Information and Protection of Privacy Act* for records relating to his own vaccine accommodation request, as well as general information for religion-based accommodation requests. The university withheld some of the responsive records citing the discretion to refuse a requester's own information (section 49(a)), read with the exemption for advice or recommendations (section 13) and the exemption for solicitor-client privileged information (section 19).

In this order, the adjudicator partially upholds the university's decision, finding that some of the records are wholly exempt under section 49(a), read with section 13, and others are partially exempt under section 49(a), read with sections 13 and 19. She orders the university to disclose the non-exempt information.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*. R.S.O. 1990, c. F.31, sections 2(1), 2(3), 13(1), 13(2), 19, and 49(a).

**Orders:** IPC Orders MO-1306, MO-3995, PO-2113, PO-3780, PO-4139, and PO-4473

**Cases Considered:** *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31; *Trillium v. Cassels Brock & Blackwell et al*, 2013 ONSC 1789; *Canada (Public Safety and Emergency Preparedness) v. Canada (Information Commissioner)*, 2013 FCA 104.

### OVERVIEW:

[1] The University of Waterloo (the university) received an access request under the

*Freedom of Information and Protection of Privacy Act* (the *Act*) from the appellant, seeking records related to his own vaccine accommodation requests, including the applications. The appellant also asked for general information regarding accommodation requests related to religion, stating as follows:

... [named individual] stated that “the University established robust and comprehensive processes for receiving and reviewing religion/creed-based accommodation requests.” I am requesting information and clarification as to what this process entails. Details requested include but are not limited to, the criteria against which applications are evaluated, members of the decision committee, and the general processes that are in place.

[2] The university issued a decision, in which it provided the appellant with full access to some records, withheld other records in part, and withheld other records in full. The records included two memos and two Excel sheets. The university claimed sections 21(1) and 49(b) (personal privacy) and section 49(a) (discretion to refuse a requester’s own information) read with sections 13(1) (advice or recommendations) and 19 (solicitor-client privilege) to the information it withheld.<sup>1</sup>

[3] The appellant appealed the university’s decision to the Information and Privacy Commissioner of Ontario (the IPC). A mediator was assigned to explore the possibility of resolution.

[4] During mediation, the university issued a revised access decision, in which it added section 13 as a discretionary exemption to the fully withheld Excel records for which it had not previously claimed this exemption. As this decision was issued after the deadline for claiming additional discretionary exemptions (as set out in the Notice of Mediation) had passed, the issue of the late raising of this discretionary exemption was added to the scope of the appeal.

[5] The appellant confirmed that he was no longer pursuing access to information withheld based on other individuals’ personal privacy. This removed the partially withheld records from the appeal, as that information was only withheld pursuant to the *Act*’s personal privacy provisions. It also removed the information within the fully withheld records that was withheld under section 49(b) read with section 21. As this information is not at issue, the university should continue to withhold this information from disclosure.

[6] As mediation did not resolve the appeal, it was transferred to the adjudication stage where an adjudicator may conduct an inquiry. I conducted an inquiry in which I sought and received representations from the parties.<sup>2</sup>

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<sup>1</sup> The university also referred the appellant to publicly available information regarding its general processes, including processes related to vaccine accommodation requests. The appellant did not raise this referral as an issue within his appeal.

<sup>2</sup> These representations were shared in accordance with the IPC’s *Code of Procedure*.

[7] During the adjudication process, the university located an additional record, a third Excel spreadsheet entitled Vaccine Exemptions. The university issued a supplementary access decision regarding that record, in which it stated that a portion of the spreadsheet was responsive to the request. The university stated that it withheld the responsive portions of the spreadsheet, pursuant to sections 49(a) read with sections 19 and 13.<sup>3</sup> In this appeal, I will consider the application of the exemptions to this record.

[8] In the discussion that follows, I partially uphold the university's decision. I uphold the university's decision to fully withhold the two memos under section 49(a) read with section 13 of the *Act*. I also find that some of the withheld information in the spreadsheets is exempt under section 49(a), read with sections 13(1) and 19. However, I find that that some of the withheld information in the spreadsheets is not exempt under section 49(a), read with either section 13(1) or section 19, and order the university to disclose that information.

## **RECORDS:**

[9] At issue are two memos and three multi-sheet Excel spreadsheets:

- November 30, 2021 Memo;
- January 7, 2022 Memo;
- November 30, 2021 Case Consult spreadsheet;
- January 6, 2022 Case Consult spreadsheet; and
- Vaccine Exemptions spreadsheet.

[10] The two memos are withheld pursuant to section 49(a) read with section 13(1) (discretion to refuse requester's own information/advice or recommendations).

[11] The spreadsheets are withheld under section 49(a) read with sections 13(1) and 19 (solicitor-client privilege).<sup>4</sup>

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<sup>3</sup> In its supplementary decision, the university also took the position that section 49(b) read with section 21 also applies to the record, stating that it contains personal information about other individuals. However, as noted, the appellant is not seeking information withheld based on other individuals' personal privacy, so the information withheld under section 49(b) read with section 21 is not at issue in this appeal.

<sup>4</sup> As noted above, some information in the spreadsheet is also withheld under section 49(b) read with section 21, but that information is not at issue in this appeal.

## ISSUES:

- A. Should the IPC permit the university to claim a new discretionary exemption for the two Case Consults outside of the 35-day window for doing so?
- B. Do any of the records contain “personal information” as defined in section 2(1) and, if so, whose?
- C. 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 for advice or recommendations, apply to the records?
- D. Does the discretionary exemption at section 49(a), read with the section 19 exemption for solicitor-client privilege, apply to the spreadsheet records?
- E. Did the university properly exercise its discretion under section 49(a), read with either section 13(1) or section 19?

## DISCUSSION:

### **Issue A: Should the IPC permit the university to claim a new discretionary exemption for the two Case Consults outside of the 35-day window for doing so?**

[12] As previously stated, during mediation the university issued a revised decision letter, in which it claimed that the discretionary exemption at section 13(1) (read with section 49(a)) applied to the information withheld in two Case Consult spreadsheets. The university had previously withheld the Case Consults in their entirety pursuant to solicitor-client privilege.<sup>5</sup>

[13] The appellant challenged the university’s application of section 13(1) to the Case Consults, stating that they were outside the permitted time to add that discretionary claim to those records.

[14] As will be described below, IPC procedure dictates that, as a general rule, institutions may only raise new discretionary claims within 35 days of being notified of the appeal. For the reasons that follow, I find that the university is permitted to raise section 13(1) in regard to the Case Consults, despite the fact that this exemption was raised in relation to these records outside of the 35-window for doing so.

[15] If an exemption is discretionary,<sup>6</sup> as section 13(1) is, the institution can choose to

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<sup>5</sup> The university had previously claimed section 13, but only in relation to the memos, not the Case Consults.

<sup>6</sup> The discretionary nature of exemptions is evidenced by the use of the language “may” in the provision, as in the head “may” refuse to disclose.

withhold the information, but it can also choose to disclose it.

[16] During the inquiry, the IPC issued a new *Code of Procedure for appeals under the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act* (the *Code*), which came into force on September 9, 2024. The Code provides basic procedural guidelines for parties involved in appeals before the IPC. Sections 12.01 and 12.02 of the Code address circumstances where institutions seek to raise new discretionary exemption claims during an appeal. Sections 12.01 and 12.02 of the Code state:

12.01 In an Appeal, an Institution may make a new discretionary exemption claim only within 35 days after the Institution is notified of the Appeal by the IPC. A new discretionary exemption claim made within this period shall be contained in a revised written decision sent to the person making the Request and to the IPC.

12.02 If the Appeal moves to Adjudication, the Adjudicator may decide in exceptional circumstances to consider a new discretionary exemption claim made after the 35-day period.

[17] The purpose of the 35-day rule is to provide an opportunity for institutions to raise a new discretionary exemption without compromising the integrity of the appeal process. Where an institution is aware of the 35-day rule, disallowing a discretionary exemption claimed outside the 35-day period is not a denial of natural justice.<sup>7</sup>

[18] In deciding whether to allow an institution to claim a new discretionary exemption outside the 35-day period, the adjudicator must also balance the relative prejudice to the institution and to the requester.<sup>8</sup> The specific circumstances of the appeal must be considered in making this decision.<sup>9</sup>

### ***Representations of the parties***

[19] The university states that the appellant would not be prejudiced by allowing it to apply the additional discretionary exemption to the Case Consults. The university states that the appellant had an opportunity to consider his stance regarding section 13(1), as this exemption had previously been applied to other records. The university states that allowing them to raise this exemption on the applicable records would not result any delay.

[20] The university also states that not permitting the application of this exemption

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<sup>7</sup> *Ontario (Ministry of Consumer and Commercial Relations v. Fineberg)*, Toronto Doc. 220/95 (Div. Ct.), leave to appeal dismissed [1996] O.J. No. 1838 (C.A.). See also *Ontario Hydro v. Ontario (Information and Privacy Commissioner)* [1996] O.J. No. 1669 (Div. Ct.), leave to appeal dismissed [1996] O.J. No. 3114 (C.A.).

<sup>8</sup> Order PO-1832.

<sup>9</sup> Orders PO-2113 and PO-2331.

would hinder its ability to present arguments. Finally, the university also submits that allowing it to raise the exemption would not undermine the integrity of the adjudication process but rather would ensure that all pertinent exemptions are considered.

[21] The appellant submits that permitting the late introduction of section 13(1) prejudices him by creating ambiguity regarding the university's rationale for withholding records, and introducing uncertainty as to how broadly this exemption will be applied. The appellant states that uncertainty around the grounds for withholding records undermines the fairness and efficiency of the adjudication process.

[22] The appellant states that, though he has had time to consider the exemption for other records, applying it to these additional records means that he will have to re-evaluate his own arguments, adding an increased burden on him. The appellant also states that the application of the additional exemption "further [obscures] the grounds for withholding information." He cites IPC Order PO-2113, stating that in that case the IPC recognized that "late changes in the grounds for exemption can create procedural complexities that hinder an appellant's ability to respond comprehensively to the institution's claims."

[23] The appellant states that disallowing the late raising of the section 13(1) exemption would not prejudice the university, as it is already relying on other exemptions to withhold the records and had ample opportunity to claim the application of the exemption within the 35-day time limit.

[24] The appellant also states that permitting the introduction of the exemption could lead to a longer-term issue of encouraging institutions to delay raising discretionary exemptions, which could erode trust in the appeals process.

### ***Analysis and finding***

[25] The appellant refers to Order PO-2113, in which the adjudicator reviewed a previous IPC order<sup>10</sup> that set out the reasoning behind placing a time limit on discretionary exemption claims. Cited among these reasons was that it may be more difficult to reach a mediated settlement, and that there could be some delay due to re-notification, if the exemption claim happened after the Notice of Inquiry was sent out. After reviewing this reasoning, the adjudicator in Order PO-2113 addressed the application of the time limit on the raising of new discretionary exemptions:

The objective of the 35-day policy established by this Office is to provide government organizations with a window of opportunity to raise new discretionary exemptions, but to restrict this opportunity to a stage in the appeal where the integrity of the process would not be compromised or the interests of the appellant prejudiced. The 35-day policy is not inflexible. The specific circumstances of each appeal must be considered individually in

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<sup>10</sup> IPC Order P-658.

determining whether discretionary exemptions can be raised after the 35-day period.

[26] Applying this view, the adjudicator in Order PO-2113 ultimately permitted the institution to raise the new discretionary exemptions.

[27] Since the time of the release of Order PO-2113, the IPC has modified its *Code*.<sup>11</sup> The previous version of the *Code* stated that “the Adjudicator may decide not to consider a new discretionary exemption claim made after the 35-day period.” Under the IPC’s current *Code*, the “the Adjudicator may decide in exceptional circumstances to consider a new discretionary exemption claim made after the 35-day period.”

[28] In deciding whether these circumstances warrant allowing the late raising of discretionary exemptions, I must consider whether doing so would prejudice the appellant in terms of delay. The appellant was able to fully participate in both the mediation and adjudication stages of this appeal. He was aware of the newly raised exemption claims during mediation, prior to providing representations at adjudication. No re-notification was required. The appellant was provided with a reasonable opportunity to attempt to mediate and, later, provide his views on the applicability of the newly raised exemption to the records for which they were claimed. Further, the addition of these discretionary exemptions did not delay any disclosure of the records to the appellant because the university had already made overlapping claims that other exemptions applied to the records.

[29] I appreciate that the appellant believes that the claim of the additional discretionary exemption increases confusion and uncertainty surrounding the application of the exemption. However, I do not find that the application of an exemption that the university already claimed to some records appreciably changed the appellant’s ability to address the application of that exemption to the remaining records.

[30] I give little weight to the appellant’s concern that allowing the exemption to be claimed in this case would lead to a long-term erosion in the trust in the appeals process. Each case must be evaluated individually, and the *Code* already only permits late raising of exemptions in extraordinary circumstances.

[31] I must also consider the potential prejudice to the university if I deny the late raising of these exemptions. The appellant asserts that there is no prejudice in part because the university already claimed other exemptions apply to the three records. However, this does not contemplate the possibility that I may find that the other exemption does not apply to the records.

[32] Regarding the importance and significance of the advice and recommendations exemption at section 13(1), the university states that confidentiality is essential for open

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<sup>11</sup> Both versions of the *Code* are available at <https://www.ipc.on.ca/en/access-organizations/code-of-procedure>.

and thorough advice and recommendations. It states that this particularly true when dealing with high-profile or novel matters, such as those associated with the COVID-19 pandemic that was occurring at the time the records were created. Considering the arguments before me, I find that the prejudice that might be caused by not allowing the university to claim this exemption outweighs any prejudice that might result from its late raising.

[33] Based on my reasoning above, and given the totality of the circumstances, I will exceptionally allow the university to raise the discretionary exemption at sections 13(1) to the Case Consults, despite the fact that this exemption, in relation to these records, was raised outside of the 35-day window for doing so. As a result, I will consider its application to the records for which it was claimed in this order.

**Issue B: Do the records contain “personal information” as defined in section 2(1) of the *Act*, and if so, whose?**

[34] The records at issue consist of the information withheld from three Excel spreadsheets and two memos. The university relies on the discretionary personal privacy exemption at 49(a), read with sections 13(1) and 19. Before I consider whether this exemption applies, I must first determine whether the records at issue contain the “personal information” and if so, whose.

[35] As noted, the appellant has stated that he is not seeking other individuals’ personal information. As such, the information subject to the discretionary personal privacy exemption at section 49(b) is not at issue in this appeal. While this information is no longer at issue, as the appellant is not seeking this information, the university’s description of the records relates to the records as a whole and does therefore refer to information relating to these other individuals that is present in the records.

[36] 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.<sup>12</sup>

[37] Section 2(1) of the *Act* gives a list of examples of personal information.<sup>13</sup> The list

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<sup>12</sup> Order PO-1880, upheld on judicial review in Ontario (*Attorney General*) v. *Pascoe*, [2002] O.J. No. 4300 (C.A.).

<sup>13</sup> Section 2(1) of the *Act* reads, in part:

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

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,



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.”<sup>14</sup>

[38] Section 2(3) also addresses the definition of personal information. This section states:

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.

[39] Both the university and the appellant agree that the records contain personal information relating to him and other students who requested vaccine accommodations.

[40] I find that the two Excel spreadsheets that the university describes as “Case Consults” and the Excel spreadsheet entitled “Vaccine Exemptions” all contain personal information belonging to the appellant and other individuals. The appellant’s personal information found within these spreadsheets includes his name, student ID number, contact information, and personal opinions or views including religious beliefs.

[41] The two memos, dated November 30, 2021, and January 7, 2022, also contain personal information belonging to the appellant, but do not contain personal information belonging to other individuals. The information relating to other identifiable individuals falls under the exception in section 2(3) which states that “[p]ersonal 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.”

**Issue C: 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 for advice or recommendations, apply to the records?**

[42] 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.

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- (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.

<sup>14</sup> Order 11.

[43] Section 49(a) of the *Act* reads:

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.

[44] 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 information.<sup>15</sup> Where access is denied under section 49(a), an institution must demonstrate that, in exercising its discretion, it considered whether it should release the record(s) to the requester because the record(s) contain his or her personal information.

[45] In this case, the university applied the exemption in section 49(a), read with section 13(1), to withhold the information at issue.

[46] 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 policy-making.<sup>16</sup> It 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.

[47] "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.

[48] "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.<sup>17</sup>

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

[50] Section 13(1) applies if disclosure would "reveal" advice or recommendations,

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<sup>15</sup> Order M-352.

<sup>16</sup> *John Doe v. Ontario (Finance)*, 2014 SCC 36, at para. 43.

<sup>17</sup> See above at paras. 26 and 47.

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.<sup>18</sup>

[51] 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 appellant asserts that of the exceptions at sections 13(2)(i), (j), (k), or (l) may apply to the records. These state:

(2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,

[...]

(i) a final plan or proposal to change a program of an institution, or for the establishment of a new program, including a budgetary estimate for the program, whether or not the plan or proposal is subject to approval, unless the plan or proposal is to be submitted to the Executive Council or its committees;

(j) a report of an interdepartmental committee task force or similar body, or of a committee or task force within an institution, which has been established for the purpose of preparing a report on a particular topic, unless the report is to be submitted to the Executive Council or its committees;

(k) a report of a committee, council or other body which is attached to an institution and which has been established for the purpose of undertaking inquiries and making reports or recommendations to the institution;

(l) the reasons for a final decision, order or ruling of an officer of the institution made during or at the conclusion of the exercise of discretionary power conferred by or under an enactment or scheme administered by the institution, whether or not the enactment or scheme allows an appeal to be taken against the decision, order or ruling, whether or not the reasons,

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<sup>18</sup> 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.

(i) are contained in an internal memorandum of the institution or in a letter addressed by an officer or employee of the institution to a named person, or

(ii) were given by the officer who made the decision, order or ruling or were incorporated by reference into the decision, order or ruling.

[52] The exceptions in section 13(2), paragraphs (h) to (l), may or may not contain advice or recommendations. Even if they do, section 13(2) ensures that they are not protected from disclosure by section 13(1).

[53] The word “report” appears in several parts of section 13(2). The IPC has defined “report” as a formal statement or account of the results of the gathering and consideration of information. Generally speaking, this would not include mere observations or recordings of fact.<sup>19</sup>

### ***Representations of the parties***

[54] The university says that the two memos relate to the appellant’s vaccine accommodation request submission and later re-submission. The university states that these memos contain recommendations from the university’s AccessAbility Services division to the individual who made the decision on whether a vaccine accommodation would be granted. The university says that under its student vaccine accommodation procedure, AccessAbility Services employees “conducted first level analyses of the accommodation requests and summarized and presented accommodation requests with advice and recommendations to the decision-maker for the final decision.” The university states that releasing these memos would reveal advisors’ recommendations and therefore undermine the protections that are intended to apply under section 13(1) of the *Act*.

[55] The remaining records are Excel spreadsheets – the Case Consults and the Vaccine Exemptions. The information that is at issue<sup>20</sup> in these records is:

- The column headings;
- Explanatory information regarding column headings;
- The appellant’s personal information located in the body of the spreadsheets; and
- Statistical information relating to vaccine accommodation requests.

[56] The university states that these spreadsheets are the evaluations of students’

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<sup>19</sup> Order PO-2681; Order PO-1709, upheld on judicial review in *Ontario (Minister of Health and Long-Term Care) v. Goodis*, [2000] O.J. No. 4944 (Div. Ct.).

<sup>20</sup> As previously discussed, other students’ personal information is not at issue, as the appellant is not seeking access to this information.

submissions and re-submissions for vaccine accommodation requests. While the university acknowledges that the advice and recommendations are “not explicit,” it states that “an accurate inference concerning advice and recommendations may be drawn from the information contained in the records.” The university draws a comparison to the situation in Order PO-4473, in which email correspondence between university employees was withheld under section 13(1).

[57] The university also states that none of the exceptions in section 13(2) apply to the withheld records. The university notes that for the exceptions set out in 13(2)(i), (j), (k), and (l), the records that qualify for such exemptions are a final plan or proposal, a report, or the reasons for a final decision.

[58] The appellant states that his belief is that the records he is seeking contain factual information about the evaluation of his accommodation requests, and that section 13(1) is not intended to protect factual information. He also states that the records are believed to reflect objective assessments rather than subjective advice, and as such, should be disclosed in the interests of transparency. The appellant says that the university’s position that an accurate inference regarding advice and recommendations may be drawn from the withheld information is speculative and not based on concrete evidence.

[59] Finally, the appellant states that the records meet the criteria for the 13(2)(i), (j), (k), or (l) exemptions, stating that these are “a report of a committee, task force, council, or similar body within the institution that has been established for the purpose of preparing reports of a particular topic or providing recommendations to the institution (in this case, student accommodation applications and decisions).”

### ***Analysis and findings***

#### *Application of section 13(1)*

[60] Based on my review of the information in the two memos, I agree with the university that the withheld information reveals recommendations that AccessAbility Services made to the decision maker with respect to the vaccine accommodation decision. This includes the reasoning behind a suggested course of action that would ultimately be accepted or rejected by the person being advised.

[61] Of the three Excel spreadsheets, the November Case Consult includes one sheet, the January Case Consult includes two, and the Vaccine Exemptions spreadsheet contains eight different sheets, though only four<sup>21</sup> of these contain information responsive to the complainant’s request. Due to confidentiality reasons, I will refer to these by the spreadsheet name and sheet number, rather than by the names of the individual sheets.

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<sup>21</sup> Sheets 5, 6, and 8 do not relate to the religious/creed-based vaccine exemption information that the appellant requested, while sheet 7 contains statistical information. None of these four sheets include the appellant’s personal information.

[62] Other than personal information belonging to other individuals, the November Case Consult includes column headings, explanatory information regarding the information included, a row filled out in relation to the appellant, and statistical information. The statistical information does not include any advice or recommendations and does not meet the criteria for the application of the section 13(1) exemption. Similarly, some of the column headings are clearly factual in nature, and do not reveal any advice or recommendations. The explanatory information also relates to the columns that I categorize as factual in nature and does not reveal advice or recommendations.

[63] The remaining column headings, if disclosed, would reveal some of the factors that AccessAbility Services evaluated prior to providing recommendations regarding vaccine exemptions. The university's position is that disclosing that information would meet the section 13(1) criteria for revealing advice or recommendations because it would permit an accurate inference to be drawn regarding the advice or recommendations provided.

[64] The university cites Order PO-4473 as authority for this position. The record at issue in that case was a back-and-forth email chain that the institution described as employees "consulting and advising each other, and discussing recommendations on possible approaches and actions." The adjudicator in that case found that the employees were providing suggested courses of action, and that these all qualified as recommendations for the purpose of section 13(1).

[65] Having reviewed these column headings, I find that they provide information as to what the AccessAbility Services considered when making recommendations. However, I do not find that the disclosure of these factors on their own would reveal advice or recommendations. While the factors were applied to the students' requests, the advice or recommendations varied depending on how students met or did not meet the factors to be considered.

[66] The appellant's personal information is located in one row of the sheet. This row contains both factual information supplied by the appellant and information that is more evaluative in nature that answers the questions posed by the column headings. This includes commentary on the application and an explicit recommendation. I find that the factual information, located in columns A through F, is not exempt under section 13(1). The remainder of the information relating to the appellant would reveal the advice or recommendations of AccessAbility Services.

[67] The two sheets of the January Case Consult contain similar information. I find that the column headings in both sheets do not reveal advice or recommendations and therefore do not meet the criteria for section 13(1). Only sheet 2 contains the appellant's personal information. Of this information, the appellant's information found in columns A through H is factual and does not meet the criteria in section 13(1). The information in the remaining columns does reveal advice or recommendations, under the same reasoning as discussed above in relation to the November Case Consult.

[68] Regarding the Vaccine Exemptions spreadsheet, the university provided the appellant with some of his personal information and the column headings for both sheets 1 and 4. Sheets 2 and 3 have been withheld in full and contain the appellant's personal information.

[69] As the appellant is not seeking other individuals' personal information, the information remaining at issue within the Vaccine Exemptions spreadsheet is:

- Sheet 1: Chart legend
- Sheet 2: Column headings, statistical information, chart information, and one row of the appellant's personal information
- Sheet 3: Column headings and one row of the appellant's personal information
- Sheet 4: The appellant's accommodation type and accommodation status

[70] The type of information in the Vaccine Exemptions spreadsheet is comparable to that found in the Case Consults, and the same reasoning applies to the information within. The statistical information, explanatory information, and column headings do not reveal advice or recommendations, such that the exemption in section 13(1) does not apply to them. The portion of the appellant's personal information that is purely factual likewise does meet the criteria of section 13(1). This information is located in rows A-F of sheet 2 and A-H of sheet 3. I also do not find that the information withheld under sheet 4's accommodation status and accommodation type column headings would reveal advice or recommendations.

[71] However, some of the appellant's personal information, if disclosed, would reveal advice or recommendations of AccessAbility Services. This information is located in columns G-BD of Sheet 2 and I-BO of Sheet 3.

#### *Application of 13(2)*

[72] As noted, section 13(2) creates a list of mandatory exceptions to the 13(1) exemption. If the information falls within one of these categories, it cannot be withheld under section 13. The appellant asserts that the exceptions in sections 13(2)(i), (j), (k), and (l) apply in the circumstances of this appeal. His reasoning for this application is that they were created by a body within an institution that was established "for the purpose of preparing reports of a particular topic or providing recommendations to the institution (in this case, student accommodation applications and decisions)."

[73] The exceptions at section 13(2) are intended to apply to specific record types. The qualifying record types are a final plan or proposal (paragraph (i)), a report (paragraphs (j) and (k)), or the reasons for a final decision (paragraph (l)).

[74] The records at issue in this case are memos to a decision-maker and the collation

of information regarding vaccine exemption applications. None of these records is a final plan or proposal or a report. As such, section 13(2)(i), (j), or (k) cannot apply to exempt the records.

[75] Similarly, the introductory wording of subsection 13(2)(l) states that the record must be “reasons for a final decision, order or ruling of an officer of the institution.” While the records do contain recommendations for student accommodation applications, neither the spreadsheets nor the memos are the reasons for the final decision. Accordingly, the exemption in 13(2)(l) also does not apply to the case at hand.

[76] In summary, I find that the entirety of the memos, and the non-factual information relating to the appellant in the three spreadsheets, are exempt from disclosure under section 49(a), read with section 13(1), because disclosing them would reveal the advice or recommendations of a person employed in the service of the university, and none of the exceptions in sections 13(2) apply. However, I find that the remaining portions of the three spreadsheets are not exempt from disclosure under section 49(a), read with section 13(1).

**Issue D: Does the discretionary exemption at section 49(a), read with the section 19 exemption for solicitor-client privilege, apply to the spreadsheet records?**

[77] The university applied section 49(a), read with section 19, to withhold the information at issue in the spreadsheet records. This includes column headings, both factual and evaluative, chart legends, statistical information, chart information, and factual information specific to the appellant. As I have already found that the non-factual information in the rows addressing the appellant is exempt under section 49(a), read with section 13(1), it is not necessary for me to address the application of section 49(a), read with section 19, to that already-exempt information.

[78] Section 19 exempts certain records from disclosure, either because they are subject to solicitor-client privilege or because they were prepared by or for legal counsel for an institution. Section 19 contains three different exemptions, which the IPC has referred in previous decisions as making up two “branches.”

[79] The university asserts that the first branch, based on common law and found in section 19(a) (“subject to solicitor-client privilege”)<sup>22</sup> applies. The onus is on the university to establish that the exemption applies.

[80] At common law, solicitor-client privilege encompasses two types of privilege: solicitor-client communication and litigation privilege. The university claims that solicitor-client communication privilege applies.

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<sup>22</sup> Section 19(a) of the *Act* states “[a] head may refuse to disclose a record ... that is subject to solicitor-client privilege”.



[81] Solicitor-client 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.<sup>23</sup> The rationale for this privilege is to ensure that a client may freely confide in their lawyer on a legal matter.<sup>24</sup> The privilege covers not only the legal advice itself and the request for advice, but also communications between the lawyer and client aimed at keeping both informed so that advice can be sought and given.<sup>25</sup>

[82] Confidentiality is an essential component of solicitor-client communication privilege. The institution must demonstrate that the communication was made in confidence, either expressly or by implication.<sup>26</sup>

### ***Representations of the parties***

[83] The university states that section 49(a), read with section 19, applies to the three spreadsheet records in full, stating that “[the] entire basis of these documents is legal advice, including legal opinion and recommendations about a legal issue, conferred by [the university’s] legal counsel.” The university also states that disclosure of its “detailed and specific religion/creed-based accommodation evaluation criteria” would reveal confidential legal advice.

[84] The university provided more detailed confidential representations on this matter, which have been withheld in accordance with the confidentiality criteria in IPC Practice Direction 7 and section 7 of the IPC’s Code of Procedure.

[85] The appellant states that solicitor-client privilege is limited in its application. He cites *Pritchard v. Ontario (Human Rights Commission)*<sup>27</sup> in stating that to be privileged, communication must meet the following criteria:

- The communication must be between a solicitor and their client;
- The communication must be made in the course of seeking legal advice; and,
- The communication must be made in confidence.

[86] The appellant notes that on the dates listed on the Case Consults, only non-legal staff were present, and states that the university cannot claim solicitor-client privilege if no solicitors were present.

[87] The appellant also states that solicitor-client privilege applies strictly to

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<sup>23</sup> *Descôteaux v. Mierzewski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).

<sup>24</sup> Orders PO-2441, MO-2166 and MO-1925.

<sup>25</sup> *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.

<sup>26</sup> *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.

<sup>27</sup> 2004 SCC 31.

communications and cannot apply to facts. The appellant asserts that solicitor-client privilege cannot apply to evaluation criteria:

Evaluation criteria should be fact, and once established remain in place so that all students' applications can be assessed against it. Although the development of the criteria, which involved communication with legal counsel, can be privileged, the finalized criteria itself cannot.

Once the criteria has been established, no further legal consult is required. Even if legal consult is required to determine whether a student's application meets the criteria, the criteria itself does not require legal consult. The criteria are fact. Hence, the University cannot claim solicitor-client privilege as the criteria are "fact" rather than "communication."

[88] In reply, the university asserts that the withheld records are part of a continuum of communication, as contemplated in IPC decisions such as Order MO-3995. The university also says that the IPC regularly finds records to be exempt under section 19 where disclosure would reveal the nature of a confidential communication in the context of solicitor-client communication, or where this would reveal substance of the confidential communication or legal opinion provided, citing Order PO-3780 for the latter.

### ***Analysis and finding***

[89] In order to find that the information at issue is exempt under section 49(a), read with section 19, I must be satisfied that the records comprise confidential communications between a solicitor and client made for the purpose of obtaining or giving legal advice.

[90] I have reviewed the records at issue and find that some of the responsive portions of these records are separate from any confidential communication between a solicitor and a client, including a compilation of statistical information found in sheet 2. There is no indication that these statistics reveal any confidential communication in the context of a solicitor-client relationship or would reveal the substance of the confidential communication or legal opinion. Section 19 does not apply to exempt this statistical information. Similarly, section 19 does not apply to column headings that contain demographic or other factual information, found in columns A-F of sheet 2 of the Vaccine Exemptions spreadsheet, and the two Case Consults.

[91] The other information that the university seeks to withhold as information that is solicitor-client privileged is the evaluation criteria largely present in the column headings of these records, on the basis that this would reveal confidential legal advice. In contrast, the appellant states that such criteria, as set out in documents of this nature, are a finished product and therefore fall into the realm of fact, rather than advice.

[92] The appellant raises the test from *Pritchard v. Ontario (Human Rights Commission)* in support of his position, noting that no legal staff were present on the dates of the spreadsheets. However, communication of legal advice as interpreted under the umbrella

of solicitor-client privilege is more expansive than direct conversation or correspondence. It can also encompass other types of documents, if those documents form part of the seeking or giving of legal advice.

[93] I find the reasoning set out by the adjudicator in Order PO-4139 instructive to this point. In that case, an individual had requested all records from the Ministry of Natural Resources and Forestry containing response, analysis, assessment or commentary regarding a Supreme Court of Canada decision regarding the Crown's duty to consult Aboriginal peoples in relation to land rights and claims. That ministry located a number of responsive records but withheld these in full under section 19. The adjudicator, in determining whether this exemption applied to a reference document, cited the following definition for legal advice as set out in *Trillium v. Cassels Brock & Blackwell et al*<sup>28</sup>:

...advice that is given with respect to the client's legal rights and duties and is given on the understanding that it may be followed. It depends on the individual circumstances of the recipient and consists of a much more personalized opinion on the way the law would apply in a particular case or about the particular decision that should be made in the circumstances.

Legal advice involves the interpretation of legal principles "to guide future conduct or to assess past conduct."

[94] In addition, the adjudicator in that case noted that not all information provided by legal counsel or subject to review by legal counsel is solicitor-client privileged. She referred to *Canada (Public Safety and Emergency Preparedness) v. Canada (Information Commissioner)*<sup>29</sup>, in which the court stated:

In some circumstances, however, the end products of legal advice do not fall within the [protected solicitor-client communication] continuum and are not privileged. For example, many organizations develop document management and document retention policies and circulate them to personnel within the organization. Often these are shaped by the advice of counsel. However, such policies are usually disclosed, without objection, because they do not form part of an exchange of information with the object of giving legal advice. Rather, they are operational in nature and relate to the conduct of the general business of the organization.

[95] Based on my review of the withheld information, it falls between the types of records described above. The evaluative criteria conveys information that assists AccessAbility Services in forming recommendations as to the decision on whether or not to grant a vaccine exemption. However, I do not view the withheld information to be entirely operational in nature, similar to the end product of policies shaped by advice of counsel. The criteria themselves, while present in spreadsheets utilized by AccessAbility

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<sup>28</sup> 2013 ONSC 1789.

<sup>29</sup> 2013 FCA 104.

Services, are a direct reflection of the content of legal advice.

[96] Moreover, the placement of the criteria within these spreadsheets is not determinative of whether it is or is not legal advice. In Order MO-1306, a municipality withheld a draft by-law, stating that it was subject to solicitor-client privilege. The solicitor stated that, as part of his legal advice, he created a draft by-law that incorporated the essence of his advice. The adjudicator in Order MO-1306 noted that there was no requirement that “legal advice” be in a particular format and stated that the question was whether it was a communication made for the purpose of giving legal advice.

[97] As set out in *Trillium v. Cassels Brock & Blackwell et al*, and followed by the adjudicator in Order PO-4139, legal advice involves the interpretation of legal principles “to guide future conduct or to assess past conduct.” The evaluative criteria in this case fall within the definition of legal advice, and placement within a spreadsheet does not remove the withheld information from this sphere.

[98] As such, I find that section 49(a), read with section 19, applies to the evaluative criteria within the three spreadsheets.

**Issue E: Did the university properly exercise its discretion under section 49(a), read with either section 13(1) or section 19?**

[99] The section 13(1), 19, and 49(a) exemptions are discretionary, meaning that the institution can decide to disclose information even if it qualifies for exemption. The institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[100] In addition, the IPC may find that the institution erred in exercising its discretion. This can occur, for example, if the institution does so in bad faith or for an improper purpose, takes into account irrelevant considerations, or fails to consider relevant ones. In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>30</sup> The IPC cannot, however, substitute its own discretion for that of the institution.<sup>31</sup>

***Representations of the parties***

[101] The university states that in withholding the information under section 49(a), read with sections 13(1) and 19, it considered the purposes of the *Act*, as well as the wording of specific exemptions and the interests they seek to protect. The university states that the purpose of section 13(1) is to preserve an effective and neutral public service, one which permits public servants to provide full, free, and frank advice. The university also states that the withheld information contains advice and recommendations, and that

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<sup>30</sup> Order MO-1573.

<sup>31</sup> Section 43(2) of the *Act*.

disclosing this would jeopardize the free flow of advice and recommendations.

[102] Regarding its application of section 19, the university states that it weighed the requester's right of access against the importance of keeping privileged communications between the university and its legal counsel confidential.

[103] The university also states that it exercised its discretion in good faith, considered relevant considerations, and did not take irrelevant considerations into account.

[104] The appellant states that the university failed to balance the appellant's right to their own information against any claimed exemptions, stating that the university did not provide adequate justification for why withholding the entirety of the records was necessary, rather than redacting them. The appellant states that the university previously released two records in part but then claimed that severance was not possible for a similar record.

[105] The appellant reiterates his stance that the university failed to prove that either section 13 or 19 applies to the information at issue. He states that the information withheld pursuant to section 13(1) is believed to reflect objective assessments, rather than subjective advice, and should be disclosed in the interest of transparency. The appellant also states that evaluation criteria and process documents are not legal advice, and that the university overextended solicitor-client privilege. In doing so, the appellant states that the university improperly exercised its discretion.

### ***Analysis and finding***

[106] Both parties addressed the exercise of discretion with respect to the entirety of the information withheld by the university. I have already found that there are portions of the withheld records that are not exempt under section 49(a), read with either section 13(1) or 19. I am only considering the university's exercise of discretion for the portions of the records that I have found are exempt under those provisions.

[107] Some of the appellant's representations essentially re-argue his position that neither section 13 nor 19 apply to the information at issue. These arguments have already been addressed in the discussions of the application of those exemptions, read with section 49(a), and are not relevant to the question of whether the university exercised its discretion in choosing not to disclose the information that I have found qualifies for exemption.

[108] The appellant also asserts that the university chose to withhold records in their entirety, rather than redacting them, and in doing so, did not adequately consider his right to his own information. I do not find this argument to be persuasive in relation to the information that I have already found is exempt under 49(a), read together with sections 13 or 19. In exercising its discretion, the university placed significant weight on maintaining both the free flow of advice and the confidentiality of solicitor-client privilege. Both of these are relevant and appropriate considerations to take into account in

responding to the access request. The university appropriately considered the nature of the information at issue and the purpose and importance of the section 13 and section 19 exemptions.

[109] I have reviewed the considerations relied upon by the university and I find that it properly exercised its discretion in response to the access request, in relation to the information that I have found exempt under those sections. Based on its representations, the university considered the purposes of the *Act* and sought to balance the appellant's interest in accessing the information at issue with the purposes of the section 13, 19, and 49(a) exemptions.

[110] While I appreciate that the appellant is dissatisfied with how the university responded to his request, I find that the university did not exercise its discretion to withhold the information for any improper purpose or in bad faith, and that there is no evidence that it failed to take relevant factors into account or that it considered irrelevant factors. Accordingly, I uphold the university's exercise of discretion in denying access to the information that I have not ordered disclosed.

## **ORDER:**

1. I order the university to disclose the factual or statistical information in the Case Consults and Vaccine Exemptions spreadsheet to the appellant by **June 26, 2025**. For ease of reference, together with this order I have provided the university with a copy of these spreadsheets, in which the information that is to be disclosed to the appellant is highlighted.
2. I uphold the university's decision to withhold the remaining information in the records.
3. In order to verify compliance with Order provision 1, I reserve the right to require the university to provide me with a copy of the records disclosed to the appellant.

Original Signed by: \_\_\_\_\_  
Jennifer Olijnyk  
Adjudicator

\_\_\_\_\_ May 26, 2025