Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4665

Appeal PA22-00495

Unity Health Toronto

June 11, 2025

Summary: The appellant made a request under the *Freedom of Information and Protection of Privacy Act* for the email records of an executive at Unity Health Toronto regarding its COVID-19 vaccination policies.

Unity Health located responsive records and granted the appellant partial access to them. Unity Health identified one record as excluded under the labour relations exclusion in section 65(6), and other records or portions of records as exempt because they would reveal advice or recommendations (section 13(1)), solicitor-client privileged information (section 19), and/or information which, if disclosed, would be an unjustified invasion of personal privacy (section 21(1)). Unity Health also identified some portions of the records as not responsive to the request.

The appellant appealed Unity Health's decision and claimed the application of the public interest override. The appellant also claimed Unity Health did not conduct a reasonable search for responsive records.

In this order, the adjudicator upholds Unity Health's decision, in part. She orders Unity Health to disclose a discrete portion of the records because it does not contain personal information within the meaning of section 2(1) of the *Act*. She upholds Unity Health's decision to deny the appellant access to the remainder of the records. The adjudicator also finds Unity Health's search was reasonable.

Statutes 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)(i), 13(2)(l), 19, 21(1), 21(2)(e), 23, and 24.

Orders Considered: Orders MO-1194 and MO-3798-I.

OVERVIEW:

[1] The appellant submitted an access request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to Unity Health Toronto[1] (the institution) for all emails recorded, sent, or received by an identified individual between June 1 and December 20, 2021. The appellant identified key words that would be contained in the responsive records. These key words include: policy, rules, requirement, mandate, mandatory, vaccinated, vaccine, and vaccination.

[2] The institution conducted a search and located 196 responsive records. The institution granted the appellant partial access to them, withholding 28 records in whole or in part. The institution advised the appellant some of the records were excluded from the scope of the *Act* under the labour relations exclusion in section 65(6)5. The institution also withheld portions of the record under the exemptions in sections 13(1) (advice or recommendations), 18.1 (information relating to closed meetings), 19 (solicitor-client privilege) and 21(1) (personal privacy). Finally, the institution withheld portions of the records because they were not responsive to the appellant's request.

[3] The appellant appealed the institution's decision to the Information and Privacy Commissioner of Ontario (the IPC).

[4] During mediation, the appellant confirmed his interest in pursuing access to the information and records the institution did not disclose. The appellant also challenged the reasonableness of the institution's search for records. Finally, the appellant raised the possible application of the public interest override in section 23 of the *Act* to the records. I note the public interest override can only apply to information withheld under section 13(1) in this appeal. Section 23 cannot apply to override the exemptions in sections 18.1 or 19.

[5] The institution provided the appellant with a revised Index of Records clarifying its access decision. The institution also provided the appellant with additional details about its search.

[6] The appellant maintained his interest in pursing access to information the institution withheld and continued to claim additional responsive records ought to exist.

[7] Mediation did not resolve the appeal and it was transferred to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry. In my inquiry,

[1] According to its website, Unity Health Toronto is "one of Canada's largest Catholic healthcare networks serving patients, residents and clients across the full spectrum of care, spanning primary care, secondary community care, tertiary and quaternary care services to post-acute through rehabilitation, palliative care and long-term care, while investing in world-class research and education." It is comprised of St. Joseph's Health Care Centre, St. Michael's Hospital, and Providence Healthcare.

I sought and received representations from the appellant and the institution. I also notified and received representations from an affected party. Representations were exchanged in accordance with the IPC's *Code of Procedure*.

[8] In the decision that follows, I uphold the institution's decision, in part. Specifically, I uphold the institution's decision that the exclusion in section 65(6)5 applies to remove record 17 from the scope of the *Act*.[2] In addition, I uphold the institution's decision to withhold portions of records 2 and 3 because they are not responsive to the appellant's request.[3] I also uphold the institution's decision to withhold portions of the records under sections 13(1), 19, and 21(1). However, I find portions of records 18 and 19 are not personal information within the meaning of section 2(1) and are therefore not exempt from disclosure. I order the institution to disclose these portions of records 18 and 19 to the appellant. Finally, I uphold the institution's search for records as reasonable.

RECORDS:

[9] The records are described in the Index of Records as follows:

Record No.	Description	Exemption(s) claimed
1.	Email dated October 13, 2021	Withheld in part under section 21(1) (personal privacy)
2.	Email dated June 14, 2021	Withheld in part under section 18.1 (information related to closed meetings) or not Responsive
3.	Email dated June 16, 2021	Withheld in part under section 18.1 or not responsive
4.	Email dated August 24, 2021	Withheld in part under section 13(1) (advice to government/public institution)
5.	Email dated August 23, 2021	Withheld in full under section 13(1)
6.	Email dated August 23, 2021	Withheld in part under section 13(1)
7.	Email dated August 23, 2021	Withheld in part under section 13(1)
8.	Email dated August 23, 2021	Withheld in part under section 13(1)

[2] As discussed below, the exclusions apply to an entire record, not only portions of records. In these circumstances, the disclosure the institution made would have occurred outside of the *Act*.
[3] Given this finding, I will not consider whether these portions are exempt under section 18.1 of the *Act*.

9.	Email dated December 16, 2021	Withheld in full under section 21(1)
10.	Email dated September 22, 2021	Withheld in part under section 21(1)
11.	Email dated August 22, 2021	Withheld in part under section 13(1)
12.	Email dated December 13, 2021	Withheld in part under section 21(1)
13.	Email dated August 20, 2021	Withheld in full under section 13(1)
14.	Email dated August 22, 2021	Withheld in part under section 13(1)
15.	Email dated December 16, 2021	Withheld in full under section 21(1)
16.	Email dated August 24, 2021	Withheld in part under section 13(1)
17.	Email dated November 5, 2021	Portions withheld, claimed to be excluded under section 65(6)5 (labour relations exclusion)
18.	Email dated October 15, 2021	Withheld in part under section 21(1)
19.	Email dated October 15, 2021	Withheld in part under section 21(1)
20.	Email dated August 23, 2021	Withheld in full under section 13(1)
21.	Email dated December 17, 2021	Withheld in full under section 13(1); portions withheld under section 21(1)
22.	Email dated September 22, 2021	Withheld in part under section 21(1)
23.	Email dated October 5, 2021	Withheld in part under section 21(1)
24.	Email dated August 24, 2021	Withheld in full under section 19
25.	Email dated December 17, 2021	Withheld in full under section 13(1); portions withheld under section 21(1)
26.	Email dated October 12, 2021	Withheld in part under section 21(1)
27.	Email dated August 12, 2021	Withheld in full under section 13(1)

28.	Email dated November 28, 2021	Withheld in part under section 13(1)

ISSUES:

A. Does the section 65(6)5 exclusion for records relating to labour relations or employment matters apply to the records?

B. What is the scope of the request for records? Which records are responsive to the request?

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

D. Does the mandatory personal privacy exemption at section 21(1) apply to the personal information at issue?

E. Does the discretionary exemption at section 13(1) for advice or recommendations given to an institution apply to the records?

F. Does the discretionary solicitor-client privilege exemption at section 19 apply to the records?

G. Did the institution exercise its discretion under sections 13(1) and 19? If so, should the IPC uphold the exercise of discretion?

H. Is there a compelling public interest in disclosure of the records that clearly outweighs the purposes of the exemptions in section 13(1) and 21(1)?

I. Did the institution conduct a reasonable search for records?

DISCUSSION:

Issue A: Does the section 65(6)5 exclusion for records relating to labour relations or employment matters apply to the records?

[10] The institution claimed a portion of record 17 is excluded from the scope of the *Act* under section 65(6)5. For the reasons below, I find the entire record is excluded from the scope of the *Act* due to the application of section 65(6)5. This section states,

> Subject to subsection (7), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to… [m]eetings, consultations, discussions or communications about applications for hospital appointments, the appointments or privileges of

> persons who have hospital privileges, and anything that forms part of the personnel file of those persons.

[11] Section 65(6) of the *Act* excludes certain records held by an institution relating to labour relations or employment matters. If the exclusion applies, the record is not subject to the access scheme in the *Act*, although the institution may choose to disclose it outside of the *Act*'s access scheme.[4]

[12] If section 65(6) applies to the record, and none of the exceptions found in section 65(7) applies, the record is excluded from the scope of the *Act*.

[13] If section 65(6) applied at the time the record was collected, prepared, maintained or used, it does not stop applying later.[5]

[14] In this case, the institution has claimed the application of the exclusion to one portion of record 17 but appears to have disclosed the remainder of the record to the appellant.

[15] I note the IPC has consistently taken the position that when determining whether the exclusions in the *Act* apply, including section 65(6) one must examine the record as a *whole* rather than looking individual pages or portions.[6] In Order MO-3798-I, the adjudicator cited a previous order she had issued and stated:

> I observed in Order PO-3642 that this whole-record-based approach is consonant with the language of the exclusions, which applies to "records" that meet the relevant criteria. It also corresponds to the legislature's decision not to incorporate into the public sector freedom-of-information statutes a requirement for the severance of excluded records, in contrast to their treatment of records subject to exemptions.[7] If the legislature had intended that the exclusions in the *Act* be applicable to records in part, it could have said so explicitly, as it did in its health sector-specific privacy and access legislation.[8]

[16] In the circumstances of this appeal, the institution appears to have disclosed the entire email record and attachment with the exception of one portion on the first page. In any case, the institution submits the record, as a whole, was prepared and used to support a Board of Directors meeting and the portion at issue was directly related to an employment-related matter (physician privileging) in which the institution has an interest. The institution submits the record does not fall within any of the exceptions listed in

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[4] Order PO-2639.
[5] *Ontario* (*Solicitor General*) *v. Ontario* (*Assistant Information and Privacy Commissioner*) (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 509.
[6] See, for example, Orders M-797, P-1575, PO-2531, PO-3572, OI-3642, and most recently MO-4659.
[7] Section 4(2) of the *Act* and section 10(2) of the provincial *Act*.
[8] Section 51(2) of the *Personal Health Information Protection Act, 2004*.

section 65(7).

[17] The appellant submits the subject line of the email suggests that it is "very unlikely" to be employment-related. The appellant submits that information that "just having to do with someone's employment isn't enough" because, if this was the case, no records would ever be released by an institution because "they'd somehow touch on someone's employment or relationship with other people's employment."

[18] For section 65(6)5 to apply, the institution must establish that,

> 1. the records were collected, prepared, maintained or used by an institution or on its behalf;
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> 2. this collection, preparation, maintenance or use was in relation to meetings, consultations, discussions or communications; and
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> 3. these meetings, consultations, discussions or communications are about applications for hospital privileges, the appointments or privileges of persons who have hospital privileges or anything that forms part of the personnel file of those persons.

[19] I have reviewed record 17 and find it is excluded from the scope of the *Act* under section 65(6)5. First, I find the information was collected, prepared, maintained or used by the institution, and this collection, preparation or use was in relation to meetings or discussions that will take place in the form of the Board of Directors meeting. As such, the first two parts of the test for section 65(6)5 have been met.

[20] I also accept the third part of the test has been met. It is clear from the text of the portion withheld from disclosure that the discussion in record 17 relates to the hospital privileges of a physician. Therefore, I am satisfied the information in the record relates to the physician's application or reappointment of privileges of the physician.

[21] In conclusion, I am satisfied that record 17 meets the three-part test for section 65(6)5 and is excluded under the *Act*. Based on my review, I also find this information does not fall within any of the exceptions to the exclusion in section 65(7)[9] because none of this information is an agreement or expense account.

[22] In light of this finding, record 17 is removed from the scope of the *Act* and I cannot decide whether the appellant has a right of access to it. As stated above, the fact that the *Act* does not apply to a record does not preclude the institution from exercising its discretion to disclose it in whole or in part, outside of the access scheme set out in the

[9] Section 65(7) says that the *Act* applies to three specified types of agreements (listed at paragraphs 1, 2, and 3 of section 67(7), as well as to an expense account (as described in paragraph 4 of section 67(7).

Act.[10]

Issue B: What is the scope of the request for records? Which records are responsive to the request?

[23] The institution takes the position that portions of records 2 and 3 are not responsive to the appellant's request.

[24] Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. Section 24 states, in part:

> (1) A person seeking access to a record shall,
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> (a) make a request in writing to the institution that the person believes has custody or control of the record;
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> (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort to identify the record;
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> …
>
> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[25] Previous orders of this office have found that an institution should adopt a liberal interpretation of the request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in a request should be resolved in the requester's favour.[11]

[26] To be considered responsive, the records must *reasonably relate* to the request.[12]

[27] The appellant sought access to all emails recorded, sent or received by the affected party between June 1 and December 2021. The appellant identified a number of key words that should be contained in the responsive records, including *policy*, *rules*, *requirement*, *mandate*, *mandatory*, *vaccinated*, *vaccine*, and *vaccination*.

[28] The institution takes the position that the redacted portions of records 2 and 3 relate to a patient's experience in the Emergency Department of one of the hospitals in its network. The institution submits these portions of records 2 and 3 do not relate to any of the key words identified by the appellant in his request. Further, the institution takes the position that this portion was intended to be part of the in-camera session of the

[10] Orders PO-2639 and PO-4052.
[11] Orders P-134 and P-880.
[12] Orders P-880 and PO-2661.

board meeting and therefore qualifies for exemption under section 18.1 of the *Act*.

[29] The appellant did not address the institution's submissions on the portions it withheld as not responsive in records 2 and 3.

[30] I have reviewed the portions withheld as not responsive in records 2 and 3 and find they are not responsive to the appellant's request. It appears from a reading of the appellant's request that he seeks access to records relating to COVID-19 vaccination, vaccination policies, and/or mandates relating to the COVID-19 vaccine. As the institution states, the portions at issue in records 2 and 3 do not relate to either the issues or key words identified by the appellant in his request. Accordingly, I uphold the institution's decision to withhold portions of records 2 and 3 from disclosure on the basis that they are not responsive to the appellant's request.

[31] Given this finding, it is not necessary for me to consider whether these portions are exempt from disclosure under section 18.1 of the *Act*.

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

[32] In order to decide which sections of the *Act* may apply, the IPC must first decide whether the records contain "personal information" and, if so, to whom it relates. It is important to know whose personal information is in the records. If the records contain the requester's personal information, their access rights are greater than if they do not.[13] Also, if the records contain the personal information of other identifiable individuals, one of the personal privacy exemptions might apply.[14] The term *personal information* is defined in section 2(1) as "recorded information about an identifiable individual."

[33] To qualify as *personal information*, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be *about* the individual.[15] However, information that relates to an individual in a professional, official or business capacity may still qualify as personal information if it reveals something of a personal nature about the individual.[16]

[34] To qualify as personal information, it must be reasonable to expect an individual will be identified if the information is disclosed.

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[13] 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.
[14] See section 21(1) below.
[15] See sections 2(3) and (4) of the *Act* and Orders P-257, P-427, P-1621, R-98005, MO-1550-F and PO-2225.
[16] Orders P-1409, R-980015, PO-2225 and MO-2344.

Parties' representations

[35] The institution describes the personal information at issue as follows:

- An individual's personal email address (records 1, 12, 23, and 26)
- An individual's "personal experience" and medical information (records 9 and 15)
- An individual's vaccination status (records 10 and 22)
- The image of an individual's signature (records 18 and 19)
- An individual's "personal experience" and medical information (records 21 and 25)

[36] The institution submits it is reasonable to expect these individuals would be identified as their names are included in the records. The institution also submits this information relates to these individuals in their personal capacities.

[37] The appellant submits the personal email address should be disclosed because it appears the address was used for business purposes and is therefore not "personal" to the identified individual (the affected party). The appellant questions why the personal email address of the affected party, who is an executive of the institution, is contained in numerous records. The appellant submits this is because they were using their personal email address for institution's business to potentially "dodge FIPPA requests."

[38] In response, the institution submits the affected party used their email address in an anomalous and limited way. The institution submits the affected party sent talking points from their business email address to their personal email address on four occasions to allow them to prepare for the next day's board meetings. The institution submits in each of these four cases, the communication was captured by the affected party's business account. The institution confirms the affected party advised they will refrain from this practice going forward. The institution also provided a sworn affidavit affirming these representations.

[39] The institution "categorically rejects" the appellant's suggestion that the affected party was attempting to evade their or the institution's recordkeeping or transparency duties under the *Act*. The institution submits there is no evidence to support this allegation, and it amounts to nothing more than speculation.

[40] The institution submits the IPC has consistently held that an individual's personal email address is their personal information. Referring to Order MO-4192, the institution submits this includes situations where the personal email address belongs to senior government officials.

[41] During the inquiry, I notified the individual whose personal email address is at issue as an affected party and provided them with an opportunity to submit

representations in response to a Notice of Inquiry. In their representations, the affected party submits their use of their personal email address in relation to the subject matter of the request was "anomalous and very limited in scope." The affected party submits they only used their personal email address for convenience in preparing for board meetings after work hours.

Analysis and findings

[42] In his representations, the appellant only addresses the issue of whether the affected party's personal email address is their personal information. The appellant argues the fact that the affected party used their personal email address in relation to their professional activities transforms their personal email address from personal information to professional or business information.

[43] I do not agree with the appellant that the affected party's personal email address is not their personal information. I do not dispute the affected party may have used their personal email address as a repository for records relating to their work on an infrequent basis. It does not appear the affected party used their personal email account to create new records; rather, they sent copies of official or business records to their personal email account for ease of access. Both the institution and the affected party have advised the affected party will refrain from this practice of forwarding records relating to official business to their personal email accounts going forward. I acknowledge this commitment and remind the institution and the affected party that official work should only be conducted through institution devices and accounts to ensure accountability and transparency in accordance with the *Act*.

[44] Despite the affected party's occasional use of their personal email account to hold records relating to their official business, I find the affected party's personal email address itself still qualifies as their personal information because its disclosure would reveal something of a personal nature about them.[17] I accept the affected party's evidence that they use their personal email address for personal matters for the most part and has now confirmed they will not use it to store official or business records in the future. There is no reason for me to doubt the institution and affected party's commitment to refrain from forwarding emails relating to official business to their personal accounts going forward. Given these circumstances, I find the affected party's personal email address found in records 1, 12, 23 and 26 is their personal information within the meaning of the *Act*.

[45] In addition to their personal email address, the institution withheld the affected party's signature from disclosure from records 18 and 19, claiming it is the affected party's personal information. I do not agree.

[46] The IPC has previously held that whether a signature constitutes personal information depends on the circumstances and context in which it appears.[18] In Order

[17] Orders P-1409, R-980015, PO-2225 and MO-2344.
[18] See, for example, Orders MO-1194, MO-2611 and PO-3230.

MO-1194, the IPC found that signatures appearing on records created in a professional or official government context are generally not "about the individual" in a personal sense and typically fall outside the definition of personal information. I agree with and adopt this reasoning. I find the affected party's signature found on records 18 and 19 relates to them in their professional or business capacity. Specifically, the affected party's signature was to be inserted into an official document. The context in which the signature was used was clearly a business or professional capacity, not a personal one. Accordingly, I find the disclosure of the signature on records 18 and 19 would not reveal something of a personal nature about the affected party, but would merely indicate the affected party provided their signature as part of their official role.[19]

[47] I find the affected party's signature is connected to their business or professional activities and does not qualify as personal information under the *Act*. Consequently, it cannot be exempt from disclosure under the personal privacy exemption. The institution did not claim any other exemptions apply to this information and I find no other mandatory exemption would apply to it. Accordingly, I will order the institution to disclose the affected party's signature to the appellant.

[48] In addition to the affected party's personal information, I find the records contain the personal information of identifiable individuals who are not the appellant. Specifically, I find records 9, 10, 15, 21, 22, and 25 contain information relating to these individuals' medical or employment history,[20] their personal views or opinions,[21] information that was provided in confidence to the institution,[22] and these individuals' names where they appear with other personal information relating to them.[23]

[49] Further, while the institution did not identify these records in their representations or index, I find records 13 and 20 also contain personal information relating to identified individuals. These records are part of the same email chain and there is a portion that contains the personal views or opinions of an identifiable individual, which is considered "personal information" under paragraph (e) of the definition of that term in section 2(1). While this individual is not named in the email, I find they could be identified if this portion was disclosed. Therefore, I will consider whether this portion is also exempt under section 21(1) of the *Act*, below.

[50] In conclusion, I find records 1, 9, 10, 12, 13, 15, 20, 21, 22, 23, 25, and 26 contain the personal information of identifiable individuals, including the affected party. I find the records do not contain the personal information of the appellant. Therefore, I will consider whether the personal information in the records is exempt under the mandatory personal privacy exemption at section 21(1) of the *Act*. I will order the institution to disclose the affected party's signature found in records 18 and 19 because it is not their personal

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[19] See Order MO-4612 in which the adjudicator takes a similar approach.
[20] Considered "personal information" under section 2(1)(b).
[21] Considered "personal information" under section 2(1)(e).
[22] Considered "personal information" under section 2(1)(f).
[23] Considered "personal information" under section 2(1)(h).

information.

Issue D: Does the mandatory personal privacy exemption at section 21(1) apply to the personal information at issue?

[51] One of the purposes of the *Act* is to protect the privacy of individuals with respect to the personal information an institution holds about them. Section 21(1) of the *Act* creates a general rule that an institution cannot disclose personal information about another individual to a requester. This general rule is subject to a number of exceptions.

[52] The sections 21(1)(a) to (e) exceptions are relatively straightforward. If any of those five exemptions exist, the institution must disclose the personal information. Neither party raised the application of any of the exceptions in sections 21(1)(a) to (e) and I find none apply.

[53] Under section 21(1)(f), an institution can disclose another individual's personal information to a requester only if this would not be an "unjustified invasion of personal privacy." If disclosure of the personal information at issue would not be an unjustified invasion of personal privacy, the personal information is not exempt from disclosure.

[54] Sections 21(2), (3), and (4) help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy. Section 21(3) should generally be considered first. Section 21(3) describes several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy. Neither the institution nor the appellant raised the application of any the presumptions in section 21(3) of the *Act*.

[55] Upon my review, I find the presumption in section 21(3)(a) applies to the personal information in records 9, 10, 13, 15, 20, 21, 22, and 25. Under section 21(3)(a), there is a presumed unjustified invasion of personal privacy where the personal information relates to the medical history, diagnosis, condition, treatment or evaluation of an identifiable individual. The personal information contained in these records relates to the individuals' medical histories and conditions, specifically their decisions regarding the COVID-19 vaccine. Given this information, I find the disclosure of the personal information in records 9, 10, 13, 15, 20, 21, 22, and 25 is presumed to be an unjustified invasion of these individual's personal privacy.

[56] I have considered the exceptions to the exemption in section 21(4). I find none apply. Given these circumstances, I find the personal information in records 9, 10, 13, 15, 20, 21, 22, and 25 is exempt under section 21(1) of the *Act*, subject to my consideration of the public interest override in Issue H, below.

[57] I have considered the presumptions in section 21(3) in relation to the affected party's personal email address and find none apply. As such, I will consider whether the factors set out in section 21(2) apply to determine whether disclosure would be an unjustified invasion of personal privacy. The institution and affected party raise the

application of the factor in section 21(2)(e), which weighs against disclosure where the individual to whom the information relates will be exposed unfairly to pecuniary or other harm. The affected party raised concerns that, if their personal email address is released, it could be used to commit identity theft, to harass them, or to send them unwanted messages. The institution submits the concern is "heightened by the fact that [they have] a high profile in the community on the basis of" their position at the institution.

[58] The appellant did not address any of the factors in section 21(2) of the *Act*.

[59] In order for section 21(2)(e) to apply, the evidence must demonstrate that the damage or harm envisioned by disclosure of the personal information is present or foreseeable, and that this damage or harm would be "unfair" to the individual involved.[24] Upon review of the parties' representations, I find the harms the institution and the affected party identified are foreseeable. Specifically, I am satisfied that disclosure of the affected party's personal email address is likely to expose them to unwanted contact or solicitation from the public. Therefore, I find the factor at section 21(2)(e) applies to the affected party's personal email address and weighs against disclosure.

[60] I have reviewed the factors that weigh in favour of disclosure in sections 21(2)(a) and (d) and find none apply. Overall, I find the factor at section 21(2)(e) weighs against disclosure of the affected party's personal email address. Given these circumstances, I find the affected party's personal email address is exempt from disclosure under section 21(1) of the *Act*.

[61] In conclusion, I find the personal information contained in records 1, 9, 10, 12, 13, 15, 20, 21, 22, 23, 25, and 26 is exempt under the personal privacy exemption in section 21(1) of the *Act*.

Issue E: Does the discretionary exemption at section 13(1) for advice or recommendations given to an institution apply to the records?

[62] The institution applied the discretionary exemption at section 13(1) to withhold portions of records 4 to 8, 11, 13, 14, 16, 20, 21, 25, 27, and 28.

[63] Section 13(1) of the *Act* exempts from disclosure 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.[25]

[64] Section 13(1) states:

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[24] Order P-256.
[25] *John Doe v. Ontario* (*Finance*), 2014 SCC 36, at para. 43.

> 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.

[65] "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.

[66] "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.[26]

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

[68] 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.[27]

[69] The relevant time for assessing the application of section 13(1) is the point when the public servant or consultant prepared the advice or recommendations. The institution does not have to prove the public servant or consultant actually communicated 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.[28]

[70] 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).[29] This is the case even if the content of the draft is not included in the final version.

[71] Section 13(2) contains a list of mandatory exceptions to the section 13(1) exemption. If the information falls into one of the categories listed in section 13(2), it cannot be withheld under section 13(1).

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[26] See above at paras. 26 and 47.
[27] 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.
[28] *John Doe v. Ontario* (*Finance*), cited above, at para. 51.
[29] *John Doe v. Ontario* (*Finance*), cited above, at paras. 50-51.

Parties' Representations

[72] The institution submits records 4 to 8, 11, 13, 14, 16, 20, 21, 25, 27, and 28 contain advice or recommendations within the meaning of section 13(1). Specifically, the institution describes the advice or recommendations contained in these records as follows:

- Record 4: briefing note providing advice on vaccination policies in response to Directive 6[30]
- Record 5: advice on application of Directive 6
- Record 6: presentation providing advice on Directive 6 and next steps
- Record 7: presentation providing advice on Directive 6 and next steps (duplicate of presentation in record 6)
- Record 8: presentation providing advice on Directive 6 and next steps (duplicate of presentation in records 6 and 7)
- Record 11: presentation providing advice on Directive 6 and next steps (duplicate of presentation in records 6 to 8)
- Record 13: internal advice relating to approach to mandatory vaccination
- Record 14: presentation providing advice on Directive 6 and next steps (duplicate of presentation in records 6 to 8, and 11)
- Record 16: briefing note providing advice on vaccination policies and Directive 6 (duplicate of record 4)
- Record 20: internal advice related to approach to mandatory vaccination
- Record 21: internal advice relating to availability of testing, boosters, and masks
- Record 25: internal advice relating to availability of testing, boosters, and masks (part of same email chain as record 21)
- Record 27: advice related to vaccination of staff
- Record 28: bulletin from institution's insurer regarding vaccination

[73] The appellant claims the institution did not provide sufficient evidence to support its section 13(1) claim. The appellant submits the institution cannot simply claim that "all

[30] Directive 6 was an Order of Ontario's Chief Medical Officer of Health that required hospitals to enact vaccination policies for their workers in response to the COVID-19 pandemic.

decisions and the information leading up to those decisions is covered by section 13(1)."

[74] The appellant also refers to the exceptions to the exemption in sections 13(2)(i) and (l), which state the institution shall not refuse records under section 13(1) where the record 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;
>
> (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[.]

[75] With regard to section 13(2)(i), the appellant submits Directive 6 was clearly a new program and any records relating to this new program should be disclosed due to their "significant impacts on the public" and "the public ought to know how new plans and polices have come about." With regard to section 13(2)(l), the appellant submits the institution did not explain why this exception to the exemption applies.

Analysis and findings

[76] I have reviewed the parties' representations and the records or portions of records the institution claims are subject to the section 13(1) exemption. Based on this review, I find section 13(1) applies to the information for which it has been claimed.

[77] I find the information subject to the institution's section 13(1) claim in records 4 to 8, 11, 13, 14, 16, 20, 21, 25, 27, and 28 qualifies for exemption. The information at issue in records 4 and 16 is a briefing note prepared to provide advice and/or recommendations to the institution. Similarly, records 6 to 8, 11, and 14 contain a PowerPoint presentation that was prepared to provide advice and/or recommendations to the institution. Based on my review, I find these records contain the requisite evaluative analysis required for exemption under section 13(1). I acknowledge there are small portions of these records that may contain factual or background information, which would qualify for disclosure pursuant to the exception to the exemption in section 13(2)(a). However, I find these portions would allow accurate references regarding the advice that was provided to the institution in the remainder of the briefing note and presentations if they were disclosed.

[78] Similarly, I find email records 5, 13, 20, 21, 25, and 27 contain advice or recommendations as contemplated by section 13(1) of the *Act*. Based on my review, these records clearly contain the requisite evaluative analysis of an employee of the institution regarding the COVID-19 vaccination policies and Directive 6.

[79] Finally, I find the attachment to record 28 qualifies for exemption under section 13(1) of the *Act*. The attachment is a bulletin prepared by the institution's insurer regarding the COVID-19 vaccination policies. The bulletin clearly contains the advice or recommendations provided to the institution regarding the issues under consideration.

[80] I have considered the exceptions to the exemption in sections 13(2)(i) and (l) and find they do not apply. With regard to section 13(2)(i), I find none of the records contain a final plan or proposal to change a program of an institution or for the establishment of a new program. Further, the records do not contain a budgetary estimate for a program. With regard to section 13(2)(l), I find the records do not contain the reasons for a final decision, order or ruling of an officer or an employee of an institution pursuant to the exercise of a discretionary power under an act or scheme administered by the institution.

[81] In conclusion, I find the information at issue in records 4 to 8, 11, 13, 14, 16, 20, 21, 25, 27, and 28 is exempt under section 13(1) of the *Act*, subject to my review of the institution's exercise of discretion, below.

Issue F: Does the discretionary solicitor-client privilege exemption at section 19 apply to the records?

[82] The institution takes the position that record 24 qualifies for exemption under section 19 of the *Act*.

[83] Section 19 of the *Act* 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. This exemption states, in part:

> A head may refuse to disclose a record,
>
> (a) that is subject to solicitor-client privilege,
>
> (b) that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation[.]

[84] There are two branches in section 19. The first branch, found in section 19(a) ("subject to solicitor-client privilege"), is based on common law. The second branch, found in section 19(b)[31] ("prepared by or for Crown counsel") contains statutory privileges created by the *Act*. The institution must establish that at least one branch applies.

[85] The institution did not provide me with a copy of record 24. Instead, it provided a detailed description of the record. According to this description, record 24 was sent by legal counsel to the institution to the affected party and other executives. According to the institution, record 24 contains bulleted points summarizing legal advice. The institution submits record 24 is subject to statutory and common law solicitor-client

[31] Also found in section 19(c), but that section is not relevant to this order.

privilege because it was prepared by its legal counsel with the purpose of providing legal advice.

[86] The appellant states he is not interested in obtaining access to record 24 if it contains solicitor-client privileged information. The appellant submits the "hospital's legal advice is of course off limits and ought not to be disclosed."

[87] Based on my review of the parties' representations, it is clear record 24 qualifies for exemption under section 19 of the *Act*. The institution has provided sufficient evidence to demonstrate record 24 was prepared by its legal counsel to provide legal advice to the affected party regarding COVID-19 vaccination and vaccination policy. I find this record forms part of the continuum of communications between institution staff and legal counsel for the purpose of giving or receiving legal advice. Therefore, I uphold the institution's decision to withhold record 24 in whole under section 19 subject to my review the institution's exercise of discretion, below.

Issue G: Did the institution exercise its discretion under sections 13(1) and 19? If so, should the IPC uphold the exercise of discretion?

[88] The exemptions in sections 13(1) and 19 are discretionary and permit an institution to disclose information, even though it could withhold it. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so. In addition, this office may find 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.

[89] While I may send the matter back to the institution for it to exercise its discretion based on proper considerations, I may not substitute the IPC's own discretion for that of the institution.[32]

[90] The institution submits that it exercised its discretion appropriately in withholding portions of the records under sections 13(1) and 19. The institution claims it limited the amount of information it withheld from disclosure to "only what was necessary to protect information held in confidence" because it contained advice or recommendations provided to the institution, or advice provided by its legal counsel.

[91] The appellant submits the institution did not exercise its discretion properly. He submits the institution withheld the information at issue because it is concerned about the negative reaction it may receive if this information is disclosed. The appellant submits the IPC should scrutinize the institution's exercise of discretion carefully because the institution's interests are not the same as the public interest.

[92] I have reviewed the parties' representations and find the institution considered appropriate factors, including the purposes of the *Act* and the interests the exemptions

[32] Section 54(2).

were created to protect. There is no evidence before me that the institution withheld information under the relevant exemptions due to concerns regarding the consequences of disclosure and increased scrutiny. Based on my review, I find the institution considered the purposes of the *Act* and applied the exemptions claimed in a limited and specific manner in accordance with the transparency purpose of the *Act*.

[93] Overall, I am satisfied the institution exercised its discretion to withhold a discrete amount of information from disclosure under sections 13(1) and 19. I find the institution considered the purposes of the exemptions claimed and applied them in a limited and specific manner. I am also satisfied the institution disclosed as much information as possible to the appellant. Therefore, I uphold the institution's exercise of discretion.

Issue H: Is there a compelling public interest in disclosure of the records that clearly outweighs the purposes of the exemptions in section 13(1) and 21(1)?

[94] Section 23 of the *Act*, the "public interest override," provides for the disclosure of records that would otherwise be exempt under another section of the *Act*. This section states,

> An exemption from disclosure of a record under sections 13, 15, 15.1, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[95] For section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

[96] The *Act* does not state who bears the onus to show that section 23 applies. The IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure that clearly outweighs the purpose of the exemption.[33]

[97] The information for which the public interest override could apply to in the context of this appeal is the advice or recommendations I found exempt under section 13(1) and the personal information I found exempt under section 21(1). The public interest override cannot apply to information found to be exempt under the solicitor-client privilege exemption.

[98] In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government.[34] In previous orders, the IPC has stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the

[33] Order P-244.
[34] Orders P-984 and PO-2607.

citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.[35]

[99] The IPC has defined the word "compelling" as "rousing strong interest or attention."[36] The IPC must also consider any public interest in *not* disclosing the record.[37] A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of "compelling."[38]

Parties' representations

[100] The institution submits there is not a compelling public interest in the disclosure of the information withheld under sections 13(1) and 21(1) that outweighs the purposes of those sections. The institution claims a "significant amount of information" has been disclosed and this disclosure is adequate to address any public interest considerations.

[101] The appellant submits there is a "tremendous" public interest in the records at issue because of the "highly consequential nature of the issue, and the impact on patients the [institution's] policies had" The appellant submits that hundreds of thousands of people were affected by the decisions made by the affected party and the institution. The appellant submits it is "hard to imagine an issue that more heavily weighs in favour of disclosure as a public interest issue." The appellant submits it is an understatement to say that "COVID vaccines and hospitals are something … 'rousing strong interest or attention.'"

[102] The appellant notes that the information he seeks access to is about a "past issue" because the institution has revoked these policies to some extent. The appellant submits this revocation makes the public interest more pressing because the institution enacted and reversed these policies in a short amount of time. The appellant submits there is a public interest in studying these decisions because they concern an "important public policy issue that continues to be debated and discussed in major newspapers, political debates, and public discourse."

[103] Finally, the appellant submits the institution is not correct in claiming that it has addressed the public interest by disclosing some records. The appellant submits the institution is accountable to the public and should not protect its staff's reputations or interests.

Analysis and findings

[104] I find the public interest override in section 23 does not apply to the information

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[35] Orders P-984 and PO-2556.
[36] Orders M-773 and M-1074.
[37] Order P-984.
[38] *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).

that I found exempt under sections 13(1) and 21(1).

[105] There are two types of information that I found exempt from disclosure under section 13(1) and 21(1). First, I found the institution properly withheld information on the basis that it would reveal the advice or recommendations of a public servant with respect to the institution's COVID-19 vaccination policies. Second, I found the personal information relating to identifiable individuals to be exempt because their disclosure would result in an unjustified invasion of their personal privacy.

[106] As stated above, in order for section 23 to apply, two requirements must be met: there must be a compelling public interest in the disclosure of the records, and this interest must clearly outweigh the purpose of either section 13(1) or 21(1).

[107] I accept the appellant's argument there is a public interest in the disclosure of records relating to COVID-19 vaccination policies. As the appellant submits, the institution's COVID-19 vaccination policies impacted members of the institution's community, both health providers and recipients of health care. Therefore, I agree with the appellant there is a public interest in the manner in which these policies were created and implemented.

[108] The next question is whether the public interest in disclosure of the information I found exempt is a compelling one, that is, whether it is the subject of "rousing strong interest or attention."[39] In answering this question, I considered the amount of information that has either been released to the appellant through this request and appeal or made available to the public through its website and announcements. Given these disclosures, I find the appellant has not established the public interest in the information that remains at issue is a compelling one under section 23. Further, as the appellant stated, the information he seeks is about a "past issue" in that these policies have now been revoked. Therefore, I find there is not a compelling public interest in the information at issue as it relates to the consideration and review of policies that are no longer in force.

[109] In addition, I have reviewed the content of the exempt portions of the records and am not convinced its disclosure would help the public to express its opinion or to make political choices in a more meaningful manner. I am also not persuaded the disclosure would increase public confidence in the institution's operations. I find this particularly true of the information I have found exempt from disclosure under section 21(1), which consists of personal information, some of which is deeply personal and relates to individuals' medical histories and vaccination status. I find there is no compelling public interest in this type of information.

[110] I accept the appellant's submission that there is a public interest in the rationale or development of public health policies such as the institution's COVID-19 vaccination policies. However, I am not convinced the disclosure of the information I found exempt

[39] Order P-984.

under section 13(1) would help inform the citizenry to allow the public to express its opinion or make political choices in a more meaningful manner; nor am I persuaded that its disclosure would increase public confidence in the institution's operations.

[111] In any case, even if I were to accept there is a compelling public interest in the disclosure of the information I found exempt under section 13(1), I find the interest does not clearly outweigh the purposes of the exemption. In my view, the information subject to the institution's section 13(1) exemption claim falls squarely within the type of information to be protected by that exemption. The purpose of section 13(1) is 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.[40]

[112] The appellant does not provide submissions explaining how the public interest in the records outweighs the purposes of the section 13(1) exemption. In any case, having regard to the purpose of the exemption, the type of information at issue, and the circumstances of this appeal, I find there is no compelling public interest in the information I found exempt under section 13(1) that would override the purpose of the exemption.

[113] For the reasons stated above, I find the public interest override does not apply to the records found exempt under section 13(1) and 21(1). I uphold the institution's decision to deny the appellant access to this information in records 1, 4 to 16, 20 to 23, and 25 to 28.

Issue I: Did the institution conduct a reasonable search for records?

[114] The appellant takes the position that the institution did not conduct a reasonable search for responsive records.

[115] If a requester claims additional responsive records exist beyond those found by the institution, the issue is whether the institution conducted a reasonable search for records as required by section 24 of the *Act*.[41] If the IPC is satisfied 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.

[116] Although a requester will rarely be able to indicate precisely which records the institution has not identified, they must still provide a reasonable basis for concluding that such records exist.[42]

[117] The *Act* does not require the institution to prove with certainty that further records

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[40] Order P-1398, upheld on judicial review in *Ontario* (*Ministry of Finance*) *v. Ontario* (*Information and Privacy Commissioner*), [1999] O.J. No. 484 (C.A.).
[41] Orders P-85, P-221 and PO-1954-I.
[42] Order MO-2246.

do not exist. However, the institution must provide sufficient evidence to show it made a reasonable effort to identify and locate responsive records.[43] Responsive records are records that are *reasonably related* to the request.[44]

[118] 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.[45] The IPC will order a further search if the institution does not provide enough evidence to show it made a reasonable effort to identify and locate all of the responsive records within its custody or control.[46]

Parties' representations

[119] To support its representations, the institution provided an affidavit sworn by its Manager, Privacy (the manager) describing the searches conducted in January 2022 in response to the appellant's request. The manager submits they confirmed the request would be interpreted literally because it was clearly written and contained all the information required to conduct the search, including well defined search terms. The manager submits they searched the electronic inbox and calendar of the affected party, applying the search parameters provided by the appellant. These parameters included the period of June 1 to December 20, 2021 and the following terms: "policy OR policies OR rule or requirement OR mandate OR mandatory AND (vacc* or vax*)." The manager submits they located 239 potentially responsive records and of those, 234 records were returned and identified as responsive. Due to duplication, the manager determined there were 196 responsive records, of which 168 were disclosed in full and 28 were withheld, either in whole or in part.

[120] In his representations, the appellant takes the position the institution did not conduct a reasonable search for records. The appellant raises three areas of concern:

1. The appellant submits the institution ought to have required the affected party to search their personal email account for responsive records. The appellant submits that by "constantly using [their] personal email [they] transformed it into an email address that is within the scope of *FIPPA*." The appellant submits that emails concerning official business are within the scope of the *Act*, whether or not they are stored off-site or outside the institution's system.

2. The appellant submits the institution ought to have searched the "backup drives" for responsive emails.

3. The appellant submits the institution failed to search Microsoft Outlook's entire system for responsive records. The appellant submits the institution unreasonably

[43] Orders P-624 and PO-2559.
[44] Order PO-2554.
[45] Orders M-909, PO-2469 and PO-2592.
[46] Order MO-2185.

limited its search to the affected party's inbox. The appellant submits the institution should have conducted an "organization-wide" search using Outlook. The appellant submits that searching only the affected party's current inbox "was bound to miss many responsive records, and this method of search invites people to delete emails they don't want to disclose."

[121] In response, the institution submits there is no reasonable basis for the appellant's belief that additional responsive emails exist in any organizational email accounts or in the affected party's personal email account.

[122] The institution submits the affected party's email has been subject to a legal litigation hold since July 20, 2018. Due to this hold, the institution submits that its January 2022 search of the affected party's email account would have located all relevant emails, including those that may have been deleted or archived. The institution submits the litigation hold ensures that any deleted or archived emails are placed in a "purges" folder that keeps those emails indefinitely. The institution further submits it conducted a specific additional search of this purges folder, and the only emails located were duplicates of those identified in its additional search.

[123] Given these circumstances, the institution submits it is not necessary for it to conduct a "system wide" search for responsive records.

[124] The institution also submits it would serve no useful purpose for the IPC to order the institution to conduct a search of the affected party's personal email account. The institution submits the affected party's personal email account does not contain responsive records. The institution also submits that compelling the institution to search the affected party's personal email account would result in an invasion of their personal privacy.

[125] In support of its representations, the institution submitted an affidavit sworn by its Director of Privacy and Information Access (the director). In their affidavit, the director affirms they discussed the circumstances of this appeal with the affected party and the affected party confirmed they used their personal email address on only four occasions to send their talking points to their personal email address to allow them to prepare for the next day's board meetings. The affected party advised the director they had no intention of evading their transparency and recordkeeping responsibilities. The affected party also advised they did not use their personal email account to send or receive any additional messages, beyond the four identified above, which were located in the initial search.

[126] In their representations, the affected party confirmed the information contained in the director's affidavit.

[127] The appellant reiterates the affected party's personal email address should be searched. The appellant submits the affected party's use of their personal email address

is "obviously a pattern of behaviour." The appellant submits that if there are four emails located in response to this request, there must be "tons" of emails that were improperly forwarded or stored in the affected party's personal email account.

Analysis and findings

[128] For the reasons that follow, I find the institution provided sufficient evidence to demonstrate it conducted a reasonable search of its record holdings for records responsive to the appellant's request as required by section 24 of the *Act*. Specifically, I find the institution engaged an employee knowledgeable in the subject matter of the request, the manager, and they expended a reasonable effort to locate records responsive to the appellant's request.

[129] The appellant raised three main concerns in his representations. The first is that the institution ought to have searched the affected party's personal email account for additional responsive records. The appellant takes the position that the affected party used their personal email address to conduct official business "constantly" and the four email records that were forwarded to their personal account is part of a pattern of conduct. The institution and affected party claim this is not the case. The institution and affected party submit the affected party forwarded these email records to their personal account for convenience to allow them to prepare for future board meetings. As stated above, it is expected for public servants to conduct their official business using their business accounts or devices and to store all business-related records on institution property, accounts or servers.[47] It is also expected that business records are located on institution property or in institution accounts and servers. Therefore, the IPC will generally not order searches of personal accounts or files unless there is clear evidence to demonstrate this to be necessary.

[130] In this case, it is undisputed that the affected party forwarded official emails to their personal email account. However, it appears the affected party used their personal email account to store official records and did not use their personal email account to create new records. The institution provided a sworn affidavit affirming these were isolated instances. Further, both the institution and the affected party have advised the affected party will refrain from this practice of forwarding records relating to official business to their personal email accounts going forward. I acknowledge this commitment and remind the institution and the affected party that official work should only be conducted through institution devices and accounts to ensure accountability and transparency in accordance with the *Act*.

[131] The appellant submits the affected party used their personal email account to store official documentation "constantly." However, there is no evidence to support this claim other than the four email records forwarded to the affected party's personal email address. I note these email records were located because they remained on the affected

[47] See Order PO-4638.

party's official account. There is no indication the affected party attempted to conceal records or evade transparency by deleting these records from their Sent or Archived folders in their official account; they merely forwarded these emails to their personal email account for ease of reference. Given these circumstances, I find there is insufficient evidence to demonstrate it is necessary to require the institution to ask the affected party to search their personal email accounts for further responsive records. It does not appear, and the appellant has not provided evidence to demonstrate, that additional responsive records would exist in the affected party's personal email account that do not also exist in their official business account.

[132] The appellant's second and third areas of concern relates to the breadth of the institution's searches. Specifically, the appellant claims the institution ought to have searched the affected party's "backup drives" and conducted an organization wide search to locate any records that the affected party may have deleted and archived. The institution has confirmed it did not limit its searches to the affected party's inbox. Rather, they searched the affected party's deleted and archived folders. Further, due to the litigation hold placed on the affected party's email account, the institution searched a "purges" folder that holds all deleted and archived emails. The appellant did not provide any further comment in response to the institution's description of its search for archived or deleted records. I find the institution has adequately addressed these concerns.

[133] Overall, I find the institution conducted a reasonable search for responsive records and will not order an additional search.

ORDER:

1. I order the institution to disclose the signature of the affected party found on records 18 and 19 to the appellant by July 16, 2025 but not before July 11, 2025.

2. I uphold the institution's decision to withhold portions of records 2 and 3 as not responsive to the appellant's request.

3. I uphold the institution's application of the exclusion in section 65(6)5 to record 17.

4. I uphold the institution's decision to withhold portions of records 1, 4 to 16, 20 to 23, and 25 to 28 under sections 13(1) or 21(1) of the *Act*.

5. I uphold the institution's decision to withhold record 24 under section 19 of the *Act*.

6. I uphold the institution's search for responsive records as reasonable.

7. In order to verify compliance with Order Provision 1, I reserve the right to require the institution to provide me with a copy of the records disclosed to the appellant, upon request.

Original Signed by: June 11, 2025

Justine Wai
Adjudicator