

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4795

Appeal PA23-00504

University of Windsor

March 11, 2026

Summary: The appellant sought access to information from the University of Windsor (the university) relating to The McDougall Street Corridor History Project. The university decided to deny access to any responsive records claiming that the research exclusion at section 65(8.1)(a) of the *Freedom of Information and Protection of Privacy Act* (the *Act*) applied.

In this order the adjudicator upholds the university's decision and dismisses the appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, sections 2(1) "personal information," 49(c.1)(i) 65(8.1)(a), 65(9) and 65(10).

Orders Considered: PO-2942, PO-3084 and PO-3713.

OVERVIEW:

[1] The McDougall Street Corridor in Windsor, Ontario is a historic Black community that emerged during the mid-nineteenth century as a refuge for freedom seekers and free people escaping enslavement and oppression through the Underground Railroad.¹ It is the subject of The McDougall Street Corridor History Project (the project) funded by the University of Windsor (the university), the Government of Canada and others.

[2] A requester sought access to information from the university about the project

¹ Sourced from a website associated with the project, which can be found at <https://windsorlawcities.ca/mcdougall-street-corridor>.

under the *Freedom of Information and Protection of Privacy Act* (the *Act*). As set out in the request, the requester sought access to:

...all records relating to the McDougall Street Corridor History Project funded by the Federal Government My Main Streets Grant (together with other funding sources).

In particular, I am seeking all records responsive to identifying all funds received by the University and all funds paid out by the University pursuant to this project.

In particular, I am seeking the following:

- All accounting records for the project, showing funds received by the University of Windsor and where the funds were paid.
- Any public postings for external consultants for the project, whether by RFP, EOI, tender or other means.
- All proposals received from external consultants.
- All communications with external consultants.
- All invoices received and payments made pursuant to the project.
- Any invoices from and/or payments made to media.
- Copies of all communications with and reports to the Federal Economic Development Agency for Southern Ontario or such other Federal Departments, Federal officials, politicians or staff responsible for administering the finances for the grants.
- Any records that would be responsive to the question of amounts paid to external consultants for project management and to whom funds were paid.
- Any records that would be responsive to the question of amounts paid for development of an App for the McDougall Street Corridor History Project, including who completed such work.
- Any records that would be responsive to the question of what portion of the grant funds, for what was promoted as a Black history grant/project, went to or were received by:

- o Black persons,

- o other equity seeking/deserving persons; and,
- o white persons

[3] The university issued a decision letter denying access to any responsive records, taking the position that they were excluded from the scope of the *Act* under the research exclusion in section 65(8.1)(a). The letter also provided a link where the University set out the scope of the project and disclosed that the university received \$250,000 in federal funding for the project.

[4] The requester, now the appellant, appealed the university's decision to the Office of the Information and Privacy Commissioner of Ontario (the IPC). A mediator was assigned to assist the parties in mutually resolving the matter; however, mediation was not successful and the file was then transferred to the adjudication stage of the appeals process.

[5] The adjudicator decided to commence an inquiry under the *Act* and representations were exchanged between the parties in accordance with *Practice Direction Number 7*.² The university decided not to conduct a search for responsive records because it took the position that all records responsive to the appellant's request would be excluded from the scope of the *Act* pursuant to section 65(8.1)(a).

[6] In this order, I uphold the university's decision and dismiss the appeal.

DISCUSSION:

[7] The sole issue before me is whether the section 65(8.1)(a) exclusion applies to the responsive records.

[8] I find that any records that are responsive to the request are excluded from the application of the *Act* under section 65(8.1)(a).

[9] Section 65(8.1) of the *Act* excludes certain records relating to research and teaching from the *Act*. As a result, the *Act*'s access scheme does not apply to them. The purpose of this provision is to protect academic freedom and competitiveness.³

[10] Section 65(8.1)(a) reads:

(8.1) This Act does not apply,

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

² Portions of the university's representations were withheld from the appellant because they met the confidentiality criteria identified in *Practice Direction Number 7*.

³ Order PO-2693, *Carleton University v. Information and Privacy Commissioner of Ontario and John Doe, requester*, 2018 ONSC 3696.

institution or by a person associated with an educational institution; or

[11] Sections 65(9) and (10) create exceptions to the exclusion found at section 65(8.1). These sections state:

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

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

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

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

[14] This section applies where there is "some connection" between the record and the specific, identifiable "research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution."⁶

[15] Section 65(9) creates an exception to the exclusion set out in section 65(8.1). It requires the institution to "disclose the subject-matter and amount of funding being received with respect to the research referred to in that subsection."

[16] Section 65(10) creates an exception to the exclusion set out in section 65(8.1), and provides that the *Act* does apply to the evaluative or opinion material referred to in section 49(c.1)(i).

[17] Section 49(c.1)(i) creates an exemption to the general right of access to an individual's own personal information held by an institution. Under section 49(c.1)(i), an institution may refuse to disclose evaluative or opinion material compiled to assess teaching materials or research.

⁴ Order PO-2693.

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

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

The university's representations

[18] The university submits that the appellant has requested all records relating to the McDougall Street Corridor History Project and the balance of the appellant's request simply contain examples and subsets of the records sought. The university submits that the appellant's request, as worded, is for records that are excluded from the *Act* under section 65(8.1)(a).

[19] The university explains that the McDougall Street Corridor History Project is a multi-faculty research project led by a graduate student. The university stated that information about the project can be found online.

[20] The university submits that the McDougall Street Corridor History Project fits within the scope of "research" because it was "an investigation into the historical influence that the Black community had on a specific neighborhood in the City of Windsor, and the impact that urban renewal and development projects had on that community."

[21] The university adds that it has satisfied the requirements of section 65(9) because it disclosed the subject-matter of the research and the amount of funding to the appellant.

[22] The university submits that the exception in section 65(10) does not apply because the records do not contain the personal information of the appellant, and section 49(c.1)(i) can only apply if the records contained his personal information.

The appellant's representations

[23] The appellant submits that his request concerns the underlying question of what a public sector institution did with public funds it received as a grant from the Federal government including the selection of, and payment to, a private, for-profit consultant to develop a public facing "App."

[24] The appellant adds that the request clearly seeks access to "financial records and communications rather than any type of research critiques, data, peer review, etc."

[25] The appellant asserts that a purposive approach should be taken to section 65(8.1)(a). He submits that:

The research exemption is meant to cover items like peer review, data collection and research critiques necessary to support the research process. It is not meant to cover what an institution did with public money ...

[26] The appellant takes the position that an institution "cannot hide behind the 'research exemption' to avoid accounting for public funds and producing records relating to its procurement process."

[27] The appellant submits that on its face, the matter at issue was a project to develop an App and Walking Tour from prior research. He submits that the project was to convert research into a public product, rather than conduct research.

[28] The appellant states that he seeks the communications that would reveal how the grant came into existence and how it was applied for.

[29] Moreover, he says, the accounting records he seeks may reveal who did the work and who ultimately benefited financially from the grant. He submits that these are questions relating to the accountability for public funds rather than research.

[30] The appellant asserts that the final product differs from how the project was proposed in records relating to the federal grant application. He submits that this raises the question of whether the institution is acting as a conduit for government monies to favoured parties. He submits that transparency in these types of situations is the reason access to information legislation exists.

The university's reply

[31] The university acknowledges that one of the purposes of the *Act* is to account for the expenditure of public funds, but submits that section 65(8.1)(a) carves out a core portion of an educational institution's activities from the scope of the *Act*. The university submits that:

As a result, if an expenditure is documented in a record that is genuinely, "...respecting or associated with research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution," then it will not be available under the *Act*, even if it involves the expenditure of public funds.

[32] The university submits that the legislative purpose of section 65(8) is to protect academic freedom and competitiveness. The university submits that the limit to the exception to the section 65(8.1)(a) exclusion is section 65(9) which imposes an obligation on an educational institution to disclose the subject-matter of the request and the amount of funding being received with respect to the research in question. The university submits that had the legislature intended to include other financial expenditures it could have inserted an obligation to account for the expenses incurred in furtherance of research.

[33] The university submits that the fact that some financial matters were carved out from section 65(8.1) confirms that the legislature only intended to capture the amount of funding being received with respect to the research in question and not other financial matters.

[34] The university submits that the use of displays, apps, or any other method does not detract from the activities in question still being research at their core. The university submits that:

The concept of "knowledge mobilization" (i.e. effectively communicating research results) is a core concern of modern research. The university refers to that term as set out in [website reference]. The university thus strongly disagrees with the appellant's position that the unconventional publication

of the research in question somehow pushes the records in question outside the realm of "research" such that the "research exemption" does not apply. Any such conclusion would result in the artificial exclusion of core components of the research process (i.e. the articulation, dissemination, and publication of findings) from the scope of the "research" exclusion.

[35] The university submits that, in any event, the test that is to be applied is whether the records are "respecting or associated with research," which only requires "some connection" with the underlying research to trigger the exclusion. The university submits that the records sought by the appellant satisfy that test.

[36] The university submits that the research in question must refer to specific, identifiable research projects that have been conceived by a specific faculty member, employee or associate of an institution, and the exclusion does not apply to research generally. The university submits that this effectively narrows the scope of the exclusion.

[37] The university adds that there is a genuine research project at issue in this appeal:

The "We Were Here: Bringing the Stories of Windsor's McDougall Corridor to Life" is a placemaking project (the project) funded by the University of Windsor and Fed Dev Ontario (Government of Canada). The project is a multi-faculty research project coordinated by the University's Centre for Cities and the research was grounded by oral interviews and archival research. The project findings were compiled and published on a website and mobile application. ...

[38] The university submits that the appellant does not deny that there was an underlying research project, and that even if the records are not "research" records in and of themselves, they are clearly (and by definition, given the wording of the appellant's request) records that are "respecting or associated with research." For example, the university takes the position that if a particular project required publishing services or cleaning services, then any such contract would fall within the scope of the section 65(8.1)(a) exclusion.

[39] The university submits that research projects incur expenses, some of which may require the researcher to contract with third parties, some of whom may provide goods and services on a for-profit basis. The university submits that this does not detract from the validity of the underlying research. In support of this submission the university points to Order PO-3713 where the university says a researcher's work with a private sector partner did not render the "research" exclusion inapplicable.

Analysis and finding

[40] I find that any records that are responsive to the request are excluded from the application of the Act under section 65(8.1)(a).

[41] I find that The McDougall Street Corridor History Project is a multi-faculty research

project linked to a graduate student who led the project. I accept that it was “an investigation into the historical influence that the Black community had on a specific neighborhood in the City of Windsor, and the impact that urban renewal and development projects had on that community.” I also find that the expansion and elaboration of original research conducted by the graduate student through the generation of the app as part of the McDougall Street Corridor History Project is part of that research project and falls within the scope of research under the section 65(8.1)(a) exclusion.

[42] As set out above, section 65(8.1)(a) applies where there is “some connection” between a record and the specific, identifiable “research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution.” The request at issue in this appeal is for records “relating to the McDougall Street Corridor History Project” which I have found to be research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution.” Therefore, the request as worded, is for records that would be excluded from the scope of the *Act* under 65(8.1)(a). I also agree with the university’s decision not to conduct a search for responsive records because I accept its position that all records responsive to the appellant’s request would be excluded from the scope of the *Act* pursuant to section 65(8.1)(a).

[43] Although the appellant argues that expenses have no connection to research for the purposes of the section 65(8.1)(a) exclusion, IPC decisions, which I agree with and find to be persuasive, have concluded otherwise.

[44] For example, in Order PO-3084, the former Commissioner found that section 65(8.1)(a) applies to expense reports submitted by two named professors of the University of Ottawa. In her order, she discussed in some detail the intent of the Legislature in enacting this section of the *Act*. As well, she discussed the relationship between funding information and the conduct of research. In concluding that the records at issue in that appeal are excluded from the jurisdiction of the *Act*, the Commissioner stated:

After reviewing the representations of all the parties in conjunction with section 65(8.1) and the purpose of the *Act*, I find that the records at issue fall within the scope of section 65(8.1)(a). Adopting the interpretation of the Ontario Divisional Court in [*Ontario (Attorney General) v. Toronto Star*⁷], I find that the documentation of the expenditure of research funds and grants in furtherance of research activities clearly has “some connection” to research. The records were created or compiled for the purpose of seeking reimbursement for, or justification of, expenses incurred as a result of conducting research, which is sufficient to meet the test of “some connection.”⁸

[45] The appellant also takes the position that since some of the project work was

⁷ 2010 ONSC 991 (Div. Ct.).

⁸ See also Orders PO-3161 and PO-4555.

performed by a party who was not associated with the university, the information relating to them should not be subject to exclusion under section 65(8.1)(a). Again, the IPC has concluded otherwise. In Order PO-2942, which I find to be persuasive, the adjudicator was satisfied that the involvement of a party who may not be associated with an educational institution did not affect their finding that proposal under consideration in that appeal qualified as “research” for the purpose of section 65(8.1)(a). In the adjudicator’s view, the role of the appellant in that appeal as the proponent of the proposed research is sufficient for the purpose of their determination under section 65(8.1)(a) of the *Act*. I agree.

[46] As set out above, section 65(9) creates an exception to the exclusion set out in section 65(8.1). It requires the institution to “disclose the subject-matter and amount of funding being received with respect to the research referred to in that subsection.” The university has provided that very information, being the subject-matter of the research project, and the total amount of the funding received. Accordingly, the section 65(9) exception does not apply.

[47] Finally, section 65(10) creates a second exception to the exclusion set out in section 65(8.1)(a) and provides that the *Act* does apply to the evaluative or opinion material referred to in section 49(c.1)(i). Section 49(c.1)(i) creates an exemption to the general right of access to an individual’s own personal information held by an institution.

[48] Personal information is defined at section 2(1) of the *Act* to mean recorded information about an identifiable individual. There is no suggestion that any responsive record would contain recorded information about the appellant. Accordingly, I find that the section 65(10) exception to the exclusion does not apply.

ORDER:

I uphold the university’s decision and dismiss the appeal.

Original Signed by: _____
Steven Faughnan
Adjudicator

_____ March 11, 2026