



Freedom of information requests for faculty records

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Matin Fazelpour, Dan Michaluk and Jiwan Sangha¹

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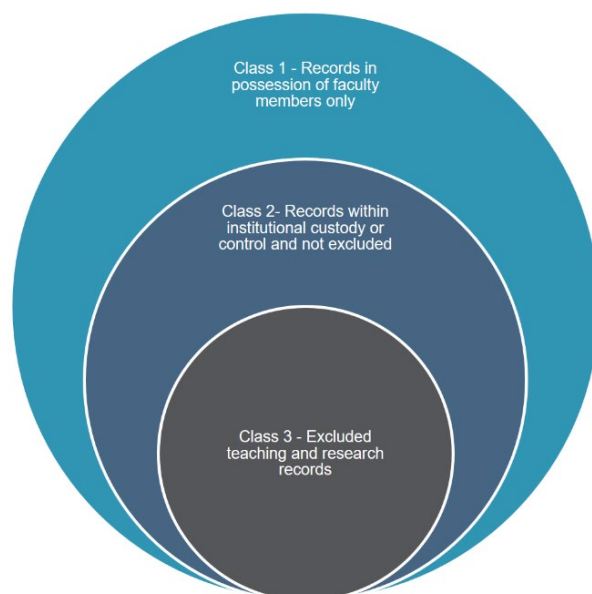
Freedom of information requests for records possessed by faculty members at Ontario universities, colleges and teaching hospitals raise a number of sensitivities and legal issues.

University faculty enjoy a significant measure of autonomy that arises out of custom and collective agreement terms that guarantee academic freedom – a concept fundamental to the mandate of universities to pursue the truth, educate students and disseminate knowledge and understanding. Faculty at Ontario colleges – who play an increasingly significant role in supporting research and innovation – also have academic freedom rights, though these rights are not necessarily identical to those at universities.²

To protect academic freedom and competitiveness, when Ontario brought universities under the *Freedom of Information and Protection of Privacy Act* (FIPPA) in 2006, it added a unique exclusion that carved out research and teaching records from the scope of FIPPA. In addition, there have been disputes between universities and faculty members that have led to a recognition that academic freedom may render some faculty records beyond institutional control. Collective agreement provisions unique to the post-secondary education sector that guarantee faculty privacy have aided the faculty association position in these disputes. Although these provisions cannot prevail over FIPPA, they have had influence.

The result is a scheme that is difficult to understand without some effort. We hope this document serves as a useful resource and provides conceptual clarity to FIPPA practitioners working at Ontario universities, colleges and teaching hospitals. Some records will not be subject to FIPPA because they are not in institutional custody or control (“Class 1” records). Other records will be excluded as teaching and research related records (“Class 3” records). That leaves a class of records subject to FIPPA that must be processed (“Class 2” records). Generally, “Class 2” records include information about faculty interaction with students, program administration and research administration that is not related to specific research projects.

Processing FIPPA requests despite claims to faculty autonomy has also proved challenging. The Information and Privacy Commissioner of Ontario has attempted to strike a balance that respects faculty autonomy, while protecting requesters’ right of access, which we outline in more detail below.



¹ Of Borden Ladner Gervais LLP.

² See *Humber College Institute Of Technology And Advanced Learning v Ontario Public Service Employees Union, Local 562*, 2022 CanLII 73395 (ON LA).

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1. Concepts and principles

A. Academic freedom

Ontario law recognizes that the right of access in FIPPA has the potential to interfere with academic freedom and the competitive elements of the research and research funding process. See below for how Universities Canada and Canadian Association of Universities define academic freedom and how academic freedom has been recognized in the Ontario colleges collective agreement.

Universities Canada Statement on Academic Freedom

Academic freedom is the freedom to teach and conduct research in an academic environment. Academic freedom is fundamental to the mandate of universities to pursue truth, educate students and disseminate knowledge and understanding.

In teaching, academic freedom is fundamental to the protection of the rights of the teacher to teach and of the student to learn. In research and scholarship, it is critical to advancing knowledge. Academic freedom includes the right to freely communicate knowledge and the results of research and scholarship.

Unlike the broader concept of freedom of speech, academic freedom must be based on institutional integrity, rigorous standards for enquiry and institutional autonomy, which allows universities to set their research and educational priorities.

Canadian Association of University Teachers Academic Freedom Statement

Academic freedom includes the right, without restriction by prescribed doctrine, to freedom to teach and discuss; freedom to carry out research and disseminate and publish the results thereof; freedom to produce and perform creative works; freedom to engage in service; freedom to express one’s opinion about the institution, its administration, and the system in which one works; freedom to acquire, preserve, and provide

access to documentary material in all formats; and freedom to participate in professional and representative academic bodies. Academic freedom always entails freedom from institutional censorship.

Ontario Colleges Academic Collective Agreement

13.04 Every faculty member is able to exercise academic freedom in the performance of his/her duties. Academic freedom at the College includes the right to enquire about, investigate, pursue, teach and speak freely about academic issues without fear of impairment to position or other reprisal.

13.05 The exercise of academic freedom is subject to the following responsibilities:

- (i) In exercising academic freedom, employees shall be responsible for adhering to legal parameters (such as but not limited to The Human Rights Code, Criminal Code of Canada, civil liability, collective agreement obligations), institutional regulations, Ministry Directives, requirements of accrediting bodies, and program and curriculum requirements.
- (ii) Academic freedom carries with it the duty to use that freedom in a manner consistent with the scholarly obligations to base research and teaching on an honest search for knowledge. In exercising such freedom, faculty have a responsibility to respect the academic freedom and rights of other members of the college community.
- (iii) The College affirms that faculty shall be free to act and speak in their capacity as public citizens provided they indicate they are speaking as individuals and not acting as representatives of the College

In May 2022, Arbitrator Parmar held that this provision does not incorporate the concept of academic freedom as it is generally understood in the university sector: [Humber College Institute Of Technology And Advanced Learning v Ontario Public Service Employees Union, Local 562](#), 2022 CanLII 73395 (ON LA).

B. Custody or control

A record is only subject to the right of access in FIPPA if it is in the “custody or control” of an institution. There have been disputes between universities and faculty members that have led to a recognition that some faculty records will simply be beyond institutional control.

Leading custody or control cases and principles

- [National Defense](#) test: (i) Do the contents of the document relate to a department matter; and (ii) Could the government institution reasonably expect to obtain a copy of the document on request?
- More than “bare possession”
- More than governance of the system or receptacle in which the records are stored - [City of Ottawa v. Ontario](#), 2010 ONSC 6835 (CanLII)

Leading case of custody or control of records possessed by faculty - [University of Ottawa \(Re\)](#), 2011 CanLII 74312

- The issue of custody and/or control is separate from the exclusions in section 65, which relate to whether records can be requested under the Act. Some categories of records that would otherwise be subject to sections 65(6) or 65(8.1) may be beyond the university’s custody or control, but this would be on the basis of customary practices intended to protect academic freedom that pre-dated the application of the Act to the university, and not because of sections 65(6) or 65(8.1) (para 157).

- Academic freedom will impact many records relating to teaching and research but in some cases the university must have access to them to carry out its mandate; where this is the case, such records are in its custody and control (para 174).
- A purposive approach to custody and control must consider the principle of transparency, which dictates that academic freedom only limit custody and control to the extent that it actually applies based on customary practice. The analysis of custody and/or control will turn, significantly, on the nature and purpose of the records. The question of academic freedom is vital to the whole analysis, and will have a significant impact on what records are found to be in the university's custody or control (para 128). The principle of academic freedom, and the practices that exist to protect it at the university and at other similar institutions, and the limits that this places on the university's ability to access and use particular records, must be considered as important factors in assessing the question of custody or control (para 129).
- The collective agreement can provide guidance as to the meaning of academic freedom and customary practices, but it is not definitive (para 153). The right of a university to regulate the contents of its electronic systems, while relevant, is not sufficient to support a finding of custody or control (para 168).

The “custody or control” test from [University of Ottawa \(Re\)](#), 2011 CanLII 74312

- records or portions of records in the possession of an association member that relate to personal matters or activities that are wholly unrelated to the university's mandate, are not in the university's custody or control;
- records relating to teaching or research are likely to be impacted by academic freedom, and would only be in the university's custody and/or control if they would be accessible to it by custom or practice, taking academic freedom into account; and
- administrative records are *prima facie* in the university's custody and control, but would not be if they are unavailable to the university by custom or practice, taking academic freedom into account.

C. Reasonable search

The IPC is generally pragmatic in addressing search issues, deferring to the search process chosen by an institution. As it pertains to records possessed by faculty, the IPC has given institutions wide latitude to “field filter” – allow faculty members to retrieve and compile records responsive to freedom of information requests subject to arms' length oversight. There are also signs, however, that institutions have done a good job in working together with faculty and faculty associations to support defensible search processes.

General principles regarding search requirement under FIPPA

- Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of *FIPPA*. Generally, ambiguity in the request should be resolved in the requester's favour [Orders P-134 and P-880].
- The Act does not require proof from an institution “with absolute certainty” that further records do not exist; however, the institution must tender sufficient evidence to demonstrate that a reasonable effort was made to identify and locate responsive records that are in its custody or under its control [Orders P-624 and PO-2559].
- The institution need only demonstrate the reasonableness of a search with respect to records within its custody or control. For a record to be considered responsive, it must be “reasonably related” to the request [Order PO-2554]. A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request [Orders M-909, PO-2469 and PO-2592].

- Although an appellant will rarely be in a position to indicate precisely which records the institution has not identified, the appellant still must provide a reasonable basis for concluding that such records exist [Order MO-2246].
- Organizations are recommended to document the individuals responsible for the search, and complete search forms completed setting out the location, records and amount of search time (for example: [University of Ottawa \(Re\)](#), 2014 CanLII 4469).

Reasonable search and records possessed by faculty

- The IPC has recognized the risk of “over-exclusion” but is deferential to an institution’s chosen search process: “some practical difficulties may arise, such as the potential over-exclusion of records from custody and control based on individual professors’ interpretation of academic freedom” – [University of Ottawa \(Re\)](#), 2011 CanLII 74312
- “Field filtering” is okay, but “should take a supervisory role and be aware of exactly what steps have been taken to locate record” - See [Edmonton Police Service v. Alberta \(Information and Privacy Commissioner\)](#), 2009 ABQB 593
- See [Queen’s University \(Re\)](#), 2022 CanLII 24345 for a case in which the IPC affirmed a university’s field filtering process, though Queen’s had special controls in place

D. Exclusion for research and teaching records

- Exclusion available to colleges, universities and hospitals in respect of work by employees and others who are “associated.”
- FIPPA does not apply to:
 - Records respecting or associated with conducted or proposed research; and
 - Records of teaching materials collected, prepared, or maintained for the institution.
- “The objective of section 65(8.1)(a) is to enhance disclosure about the activities carried on in universities subject to the protection of academic freedom because of the importance of research and innovative study programs in universities....” and “to be narrowly construed”: [Carleton University v. Information and Privacy Commissioner of Ontario and John Doe, requester](#), 2018 ONSC 3696 (CanLII).
- IPC relies on “research” definition in PHIPA: “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” - [McMaster University \(Re\)](#), 2008 CanLII 36902 (ON IPC).
- The research must have some connection to a specific, identifiable research projects that have been conceived by a specific faculty member, employee or associate of an educational institution – see [McMaster University \(Re\)](#), 2008 CanLII 36902 (ON IPC).
- The records must be “respecting or associated with” research being conducted by the affected parties. Thus, must be “some connection” between the record and specific, identifiable “research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution.” - [University of Ottawa \(Re\)](#), 2012 CanLII 31568 (ON IPC).
- The phrase “conducted and proposed” requires consideration of the facts and context to determine what stage research is in.

2. Case law digest

A. Control and search cases

Style of cause	Background	Records at issue	Finding
<i>University of Ottawa (Re)</i> , 2009 CanLII 63942	University determined that the responsive records are not in the custody or control of the University as they pertain to activities and communications undertaken under the jurisdiction of the SSHRC.	E-mail communications between a faculty member sitting on an SSHRC grant selection committee and other committee members.)	<p><u>Whether the records are in the Custody or Control of the University: Yes</u></p> <ul style="list-style-type: none"> The University’s argument that the SSHRC activity was not related to the University’s statutory duty/mandate must fail: The participation of a faculty member on a SSHRC committee is closely related to the University’s mandate, function, and statutory duty or power. Faculty participation in the SSHRC committee is provided for in the University’s enabling statute, and fits with the University’s mandate and core function. Any attempt to distinguish between a professor’s intra-University academic and scholarly activities and those engaged in externally with SSHRC is both artificial and unsustainable. The University has the right to regulate or access “@uottawa.ca” email accounts, which is the email address suffix identified in this request. The University’s ability to monitor its computer resources, network and servers under the terms of its <i>User Code of Conduct</i> accords it the corresponding right to regulate records on its computer system.
<i>University of Ottawa (Re)</i> , 2011 CanLII 74312	The University requested the Association of Professors of the University (APUO) of Ottawa to turn over responsive records so that it could make a decision under the Act.	Electronic and paper records created by professors at the university that mention the appellant student, including e-mails, correspondence, meeting notes, teaching-related	<p>Whether the records are in the Custody or Control of the University: Yes</p> <ul style="list-style-type: none"> The University is ordered to request that association members produce responsive records that are in the University’s custody or control so that it can assess those records to determine whether the exclusions or exemptions apply. <p>The IPC’s comments on the search:</p>

	<p>The APUO filed a successful grievance in response, and the matter also proceeded to the IPC.</p>	<p>materials and committee documents.</p>	<ul style="list-style-type: none"> • “some practical difficulties may arise, such as the potential over-exclusion of records from custody and control based on individual professors’ interpretation of academic freedom.” • “...without handing over the records or disclosing their specific contents, APUO members may wish to provide lists or indices of records or portions of records for which the question of custody or control may be in dispute, including a brief explanation of why a record or records would not be in the university’s custody or control.”
<p>York University (Re), 2011 CanLII 47527</p>	<p>University denied access to the records on the basis that they were not in its custody or control as Mr. Iacobucci was asked by the President to undertake an independent review of the Conference.</p>	<p>Copies of all submissions made to the Iacobucci Review in relation to a controversial conference hosted by the University titled “Israel/Palestine: Mapping Models of Statehood and Paths to Peace.”</p>	<p>Whether the records are in the Custody or Control of the University: No</p> <ul style="list-style-type: none"> • Mr. Iacobucci was free to conduct the review without any direction or influence from the University. The university did not have the authority to regulate the content, use and disposal of the submissions made. • The University had no statutory or contractual basis upon which to assert the right to possess or dispose of the submissions; nor is there any reasonable basis to conclude that the University has a property right in the submissions • The University is not, and has never been, in possession of the submissions made to Mr. Iacobucci. • The University’s creation of a temporary e-mail address and provision of administrative support for the review does not establish that it had custody or control over the records affiliated with the review. The e-mail account was set up to allow only Mr. Iacobucci and certain of his staff to have access and has since been deleted. Any submissions made to Mr. Iacobucci’s temporary email address were not sufficiently integrated into the university’s information management systems that they could be considered part of the university’s general record-holdings or be subject to its records retention policies.

<p>University of Ottawa (Re), 2013 CanLII 41283</p>	<p>University determined that the records sought were not within its “custody or control” as they related to personal matters or activities of the professor that are wholly unrelated to the university’s mandate.</p>	<p>Subject lines of emails between a named professor and three identified external email addresses</p>	<p>Whether the records are in the Custody or Control of the University: No</p> <ul style="list-style-type: none"> The appellant did not provide any evidence to challenge the university’s and professor’s position that the records, if found, would relate to personal matters or activities that are wholly unrelated to the university’s mandate (para 54) <p>The IPC’s comments on the (field) search:</p> <ul style="list-style-type: none"> “However, notwithstanding the above, I am satisfied that the named professor searched his faculty email account and found no responsive records. I am satisfied that in requesting that the named professor search his own records, the university was following the proper procedures in matters of this nature, as established by Adjudicator Smith in [<i>University of Ottawa</i>]”
<p>University of Ottawa (Re), 2013 CanLII 61849</p>	<p>University denied access to part of the responsive records, partially on the basis that it did not have custody or control over them as they related to two university professors holding clinical positions at the hospital where the appellant worked as a resident.</p>	<p>Records related to the requestor’s medical residency from a number of offices, including from two professors/physicians.</p>	<p>Whether the records are in the Custody or Control of the University: Yes</p> <ul style="list-style-type: none"> “... the two doctors identified by the appellant hold both faculty positions with the university and are doctors with the hospital. Although many of their records may not be in the university’s custody or control, they may potentially hold records relating to academic matters in which the university has an interest” (para 42) The physicians carry out academic duties to supervise and evaluate medical residents enrolled in the postgraduate medical training programs. Some of the records relating to the appellant could relate to the appellant’s academic performance during his residency. The university would have the right to request such records and regulate their use and disposal. The university could rely on those records in its determination of whether the appellant had successfully completed his postgraduate medical training. Therefore, the records relating to the appellant’s enrollment and performance in postgraduate medical

			<p>training provided by the university are <i>prima facie</i> under the university's control.</p> <p>IPC search order:</p> <ul style="list-style-type: none"> The university is required to request the named physicians to search for and provide records relating to the appellant's academic performance in the university's postgraduate medical training program.
<p>University of Ottawa (Re), 2013 CanLII 84019</p>	<p>University took position it was not in custody or control of faculty/physician records and records of hospital employees who dealt with student/medical resident.</p>	<p>Records related to the requestor's medical residency from a number of offices, including physicians' records and hospital employee records.</p>	<p>Whether the records are in the Custody or Control of the University: Split</p> <p><i>Physicians' Record</i></p> <ul style="list-style-type: none"> The physicians identified by the appellant have a faculty appointment with university and carry out academic duties to supervise and evaluate medical residents enrolled in the postgraduate medical training programs. Some of the records relating to the appellant could therefore relate to the appellant's academic performance during her residency. The university would have the right to request records relating to the appellant's academic performance during his medical residency and regulate its use and disposal. This factor is indicative of the university's control over this type of information. The university could rely on those records in its determination of whether the appellant had successfully completed her postgraduate medical training. The university is required to request the named physicians to search for and provide records relating to the appellant's academic performance in the university's postgraduate medical training program. <p><i>Hospital Employee Records</i></p>

			<ul style="list-style-type: none"> • The named hospital employee is not also a university employee. The circumstances surrounding the employee's creation of the record would relate to the appellant's clinical duties and the clinical setting. • The university would not have the right to regulate the records' content, use and disposal. The record is in the possession of the hospital who itself is an institution under the <i>Act</i>. • The university therefore does not have control over the records of the hospital employee. <p>IPC search order:</p> <ul style="list-style-type: none"> • "I order the university to request that the two named physicians search for and provide it with any records relating to the appellant's academic performance in the university's postgraduate medical training program."
<p>University of Ottawa (Re), 2013 CanLII 38366</p>	<p>University denied the responsive records on the basis of 65(8.1) and other exemptions in sections 18 and 21(1).</p>	<p>Requester sought records from the university about herself for a specified time period.</p>	<p>Whether the search was reasonable: No</p> <ul style="list-style-type: none"> • The appellant submits that she did not receive most of the records she requested, including emails between certain individuals. She identified several university staff by name, including professors, in her request. • The university has not provided evidence that it specifically asked individuals to conduct searches for the specific records sought by the appellant. Further, there is no evidence that the university actually communicated the exact particulars of the appellant's request to the university staff named in her request (paras 30, 33) • The university should have sought responsive records from the named professors, as well as the other university staff named in the request, in order to determine whether any records in the custody or control of these individuals were also in the university's custody or control (para 35)

<p><u>Wilfrid Laurier University (Re)</u>, 2021 CanLII 134202</p>	<p>University position: no custody or control emails relating to professors' status as members of a union and relating to business of the union.</p>	<p>Records relating to the requestor/professor's personal information and all general records that referenced or directly referred to her – these records included emails, handwritten notes, letters, draft letters and typed notes.</p>	<p>Whether the records are in the Custody or Control of the University: No</p> <ul style="list-style-type: none"> Records held by professors that relate to their status as members of a professional union, or relating to the business and affairs of that union, would generally be outside the university's custody and control <p>Whether the search was reasonable: Yes</p> <ul style="list-style-type: none"> The coordinator notes that the communication included technical information about performing a search in the university's email archive system. The coordinator submits that she and the university's general counsel also met with several faculty members to answer questions about the search. The coordinator notes that in some cases clarification was sought from the record holders as to the nature of the records to confirm that the record was a responsive record in the university's custody or control, or to request the attachment associated with an email if it was not provided. The coordinator reviewed the responsive records to determine if records were missed. The coordinator submits that the records provided by faculty and staff were consistent with what she expected.
<p><u>Queen's University (Re)</u>, 2022 CanLII 24345</p>	<p>Challenge to reasonableness of search. Argues that University IT department should have carried out search.</p>	<p>Request by student for communications about them and a specific course.</p>	<p>Whether the search was reasonable: Yes</p> <ul style="list-style-type: none"> "She submits that the access procedure and the collective agreement are not barriers to the Act, and that faculty members understand that some of the records they hold are subject to the Act. She states that as an additional safeguard to ensure faculty members comply with requests, each Faculty has one or more "FIPPA Contacts" who are administrative staff and serve as a liaison between the director's office and faculty to ensure that faculty members conduct a reasonable search."

			<ul style="list-style-type: none"> • University policy (and collective agreement) rendered IT searches exceptional – IPC says that is “consistent with other like institutions” • Evidence of filling gaps in collection – “After being alerted to the possible existence of further email communications between Persons A and E in mediation, the director took steps to find these records and disclosed them to the appellant”
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B. Research record cases (universities)

McMaster University (Re) , 2008 CanLII 36902	IPC’s investigation of sample records disclosed by the University to determine whether 65(8.1) applies	Annual Progress Report to Research Ethics Board (REB) Suspect Adverse Reaction Report to REB Local (or Non-Local) Serious Adverse Event Report to REB Study Completion Report to REB Application form for review by REB Database of Studies	Whether 65(8.1)(a) Applies: Yes <ul style="list-style-type: none"> • The responsive records are “respecting or associated with research” as they deal with the initial approval of the project/study, events of interest to the REB that occur during the project/study, and ongoing reporting: <ul style="list-style-type: none"> ○ Most of the records are submitted to the REB in relation to a particular trial or study ○ The completed forms in relation to clinical trials are an integral part of conducting a particular research project or study, and are therefore “substantially connected to” research. Examination of the sample records indicates that they set out highly textured details of actual research and the manner in which it has proceeded in a particular clinical trial. ○ Other records contain details regarding ongoing research projects. For example, “[t]he application form submitted to the REB contains extensive details about the research project and the methodology to be used. The database of studies is maintained by the REB, and contains
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			<p>details such as the REB number, the sponsor, and the name of each study.”</p> <ul style="list-style-type: none"> • The research in question is conducted or proposed by individuals who are all “associated with” the University.
<p>University of Western Ontario (Re), 2008 CanLII 36903</p>	<p>University denied records on the basis of 65(8.1)</p>	<p>Records relating to the proposal to build a hypobaric climatic wind tunnel, such as:</p> <ul style="list-style-type: none"> • Request for quotation • Conceptual design of tunnel • Grant application • Emails and other correspondence • Proposals • Letter of intent • Meeting minutes 	<p>Whether 65(8.1)(a) Applies: No</p> <ul style="list-style-type: none"> • “It is evident that these records are substantially connected to the research projects themselves, since they deal with the initial approval of the project or study, events of interest to the REB that occur during it, and ongoing reporting. They are clearly distinguishable from records about the design or construction of laboratories or other tools to be used in a multiplicity of research projects, such as the records at issue in the appeal before me.” • “I have reviewed the University’s submissions, the affidavit and all of the records, in detail. I find that the records lack the substantial connection required for me to find that they are “respecting or associated with” research, within the meaning of section 65(8.1)(a). The records were not prepared for the purpose of conducting a specific research project, nor do they result from such a project. Significantly, as well, they do not disclose, either directly or by inference, the particulars or even the broad objectives of any specific proposed research project or projects.” • Note that the “substantial connection” test has been replaced with the “some connection” test since a 2010 Divisional Court decision – see Ontario (Attorney General) v Toronto Star, 2010 ONSC 991 (CanLII).
<p>University of Guelph (Re), 2009 CanLII 50531</p>	<p>University denied the responsive records on the basis of 65(8.1).</p>	<p>Requester sought a negative report, or “peer review for scientific merit” (the report) concerning the proposal he had submitted, including the name and</p>	<p>Whether 65(8.1)(a) Applies: Yes</p> <ul style="list-style-type: none"> • The appellant’s proposal was to conduct “research” per section 65(8.1)(a) because it was a proposal to conduct “a systematic investigation designed to develop or establish principles, facts or generalizable knowledge, or any combination of them.”

		signature of the author of the report.	<ul style="list-style-type: none"> The research was specifically identifiable and was proposed by a specific faculty member or employee of the University, namely, the appellant. The record is a record “respecting or associated with” research as it is a peer review analysis, which comments on the scientific merit of a research proposal. This document is an integral part of the conduct of a particular research project or study because without the peer review of the research proposal and the AUP, the appellant would not be entitled to proceed with the research. Further, the report includes detailed and technical reviews of the proposed research on the basis of its originality, justification for the use of animals and its experimental design.
Carleton University (Re) , 2011 CanLII 3432	University denied the responsive record on the basis of 65(8.1).	An e-mail message in which the appellant’s name is mentioned, sent from/received to the institutional accounts used by [a named individual] (e.g., [specific email address]) during the period of his service at the Social Sciences and Humanities Research Council of Canada (SSHRC) adjudication committee.	<p>Whether 65(8.1)(a) Applies: Yes</p> <ul style="list-style-type: none"> The record is related to the appellant’s SSHRC application for grant funding to assist him in carrying out an identifiable cross-comparative research study, or systematic investigation, intended to establish facts or generalizable knowledge within a specific subject area. This falls within the definition of “research” for section 65(8.1)(a). There is some connection between the records created by the SSHR adjudication committee members in carrying out their peer evaluations and the peer evaluation of the appellant’s proposed research. Therefore, the records are “respecting or associated with” the appellant’s proposed research for the purpose of section 65(8.1)(a).
University of Western Ontario (Re) , 2011 CanLII 3365	University denied the responsive records on the basis of 65(8.1).	10 emails, with attachments, exchanged between the identified Western faculty member and a Social Sciences and Humanities Research Council of	<p>Whether 65(8.1)(a) Applies: Yes</p> <ul style="list-style-type: none"> The records are related to the appellant’s SSHRC application for grant funding to assist him in carrying out an identifiable cross-comparative research study, or systematic investigation, intended to establish facts or generalizable knowledge within a specific subject area.

		Canada (SSHRC) program officer	<p>This falls within the definition of “research” for section 65(8.1)(a).</p> <ul style="list-style-type: none"> • The records were created through the SSHRC peer review process, including the evaluation of grant applications and the awarding of research grants; therefore, there is some connection between the records and the peer evaluation of the appellant’s proposed research. Therefore, the records are “respecting or associated with” the appellant’s proposed research for the purpose of section 65(8.1)(a). • The research is “... proposed by an employee of an educational institution or a person associated with an educational institution,” as contemplated by section 65(8.1)(a).
<u>Wilfrid Laurier University (Re)</u> , 2011 CanLII 1316	University denied the responsive records on the basis of 65(8.1).	Emails and other documents which were sent between Social Sciences and Humanities Research Council of Canada (SSHRC) staff and the university faculty member named in the request	<p>Whether 65(8.1)(a) Applies: Yes</p> <ul style="list-style-type: none"> • The appellant was seeking funding through SSHRC for an identifiable cross-comparative research study, or systematic investigation, which was intended to establish facts or generalizable knowledge within a specific subject area. Accordingly, the appellant’s SSHRC proposal, and the evaluation of it, fits within the definition of “research” for the purpose of section 65(8.1)(a). • All of the responsive records were created through the SSHRC peer review process, including the evaluation of grant applications and the awarding of research grants. It is reasonable to conclude that there is some connection between the records and the peer evaluation of the appellant’s proposed research. Therefore, the records are “respecting or associated with” the appellant’s proposed research for the purpose of section 65(8.1)(a).
<u>University of Ottawa (Re)</u> , 2012 CanLII 31568	University determined that pursuant to section 65(8.1), the <i>Act</i> did not apply to the requested expense records as they were records	Records relating to the expenditure of research funds and grants	<p>Whether 65(8.1) Applies: Yes</p> <ul style="list-style-type: none"> • Records relating to 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,

	respecting or associated with research conducted or proposed by an employee of the University.		<p>or justification of, expenses incurred as a result of conducting research.</p> <ul style="list-style-type: none"> Exception in section 65(9) does not apply – the records do not refer to the amount of funding received by either affected party
University of Ottawa (Re) , 2013 CanLII 54723	University denied access to two identified records on the basis of section 65(8.1)(a) of the Act.	Two emails from the offices of specified officials and departments of the University of Ottawa that related to the Western Woodlark Basin in Papua New Guinea	<p>Whether 65(8.1) Applies: Yes</p> <ul style="list-style-type: none"> “[t]he records are associated with research conducted or proposed by an employee of the university, namely, research on the Western Woodlark Basin in Papua New Guinea conducted or to be conducted by one of the university’s professors. The emails both contain details about the nature of the research, specific research activities to be conducted and a corresponding timeline for these activities, along with other information about the researcher; this information satisfies the requirement that the research be specific and identifiable” (para 25)
University of Ottawa (Re) , 2013 CanLII 54704	University denied access to part of the responsive records on the basis of 65(8.1) and 18(1)(c).	Emails from the offices of specified officials and departments of the University of Ottawa that related to two named associations	<p>Whether 65(8.1)(a) Applies: No</p> <ul style="list-style-type: none"> The records are e-mail communications to organize the preparation of future research project proposals in compliance with certain timelines. They discuss possible research initiatives, potential research partnerships and prospective avenues of funding. While they refer to academic disciplines and relate to research funding options, they do not refer to any “specific, identifiable research projects that have been conceived” (para 21).
University of Western Ontario (Re) , 2013 CanLII 8117	University denied access to part of the responsive record on the basis of 65(8.1).	A one-page document entitled “University of Western Ontario Research Grant Detail”.	<p>Whether 65(8.1)(a) Applies: Yes</p> <ul style="list-style-type: none"> The record at issue documents the “expenditure of research funds and grants in furtherance of research activities,” and accordingly, has some connection to research (para 29).

<p>McMaster University (Re), 2014 CanLII 14106</p>	<p>Records for expenditures from a general research expense account</p>	<p>Expense claim forms containing information that is also found an internal auditor's report</p>	<p>Whether 65(8.1) Applies: No</p> <ul style="list-style-type: none"> “Although the faculty member may have used funds that were held in a general research expense account, the records do not refer to any specific identifiable research projects that have been conceived. Therefore, I conclude that the records do not satisfy the requirement that the research be “conducted or proposed” in order to qualify for exclusion under section 65(8.1)(a).”
<p>McMaster University (Re), 2014 CanLII 14101</p>	<p>University denied access to the responsive record on the basis of 65(8.1)(a) and 65(6)(3).</p>	<p>Internal audit follow up report prepared by the university's Chief Internal Auditor concerning the expenditures of the faculty member.</p>	<p>Whether 65(8.1)(a) Applies: No</p> <ul style="list-style-type: none"> The record is an audit of the expenses of a particular university faculty member. Although the faculty member may have used funds that were held in a general research expense account, the record does not refer to any specific identifiable research projects (para 25). As the record does not reveal any specific, identifiable and conceived research project, 65(8.1)(a) does not apply.
<p>University of Ottawa (Re), 2015 CanLII 10862</p>	<p>University withheld records based partially on 65(8.1). Appellant raised the issue of the reasonableness of the University's search of records.</p>	<p>Emails between a professor who acts as the research Chair for the [named company] and other individuals within the University of Ottawa.</p> <p>Draft letters concerning possible partnerships for research Chair initiatives.</p>	<p>Whether 65(8.1) Applies: No</p> <ul style="list-style-type: none"> The records are not excluded under section 65(8.1) as the records do not refer to any “specific, identifiable research project”. There is “insufficient connection” between them and any research (para 21).
<p>Carleton University (Re), 2016 CanLII 10088</p> <p>Upheld in Carleton University v</p>	<p>University denied access to some records on the basis of the research exclusion in</p>	<p>Committee meeting minutes and raw data/results of surveys that were conducted among students, faculty, and staff by a</p>	<p>Whether 65(8.1)(a) Applies: No</p> <ul style="list-style-type: none"> The Sub-Committee's survey of Jewish students and university faculty does not constitute “research” for the purposes of section 65(8.1)(a) of the <i>Act</i>.

<p>Information and Privacy Commissioner of Ontario and John Doe, requester, 2018 ONSC 3696</p>	<p>section 65(8.1)(a) of the Act.</p>	<p>subcommittee of the university's Commission on Inter-Cultural, Inter-Religious and Inter-Racial Relations on Campus</p>	<ul style="list-style-type: none"> The purpose of the survey—to measure the level of satisfaction of Jewish students and faculty on the university campus with respect to university services – is not referable to the establishment of generalizable knowledge or principles as required by the definition of “research” (para 34). This is akin to “market research” as it was conducted to measure the level of satisfaction of a particular religious and cultural group with the services being offered by the university and to identify areas for improvement (para 36).
<p>University of Guelph (Re), 2017 CanLII 21454</p>	<p>University determined that some of the requested records were excluded from the Act under section 65(8.1)(a) and 18(1)(c) and (e).</p> <p>The appellant argued the records related to technical and scientific consulting.</p> <p>The appellant appealed the university's decision to deny access to these records and parts of records and also claimed that the university had not conducted a reasonable search for records.</p>	<p>Records relating to growing and maintaining natural turfgrass at the Rogers Centre in Toronto:</p> <p>Copy of the final agreement entered into by the university and Toronto Blue Jays/Rogers Inc., for the purpose of providing the Blue Jays with advice/guidance relating to growing and maintaining turfgrass at the Rogers Centre</p> <p>Email correspondence between [university] staff/faculty and the Toronto Blue Jays/Rogers, the subject matter of which deals with (either peripherally or centrally)</p>	<p>Whether 65(8.1) Applies: Yes</p> <ul style="list-style-type: none"> The work on the project is being conducted by a professor in the university's Department of Plant Agriculture who is examining the feasibility of establishing, growing and maintaining natural turfgrass at Rogers Centre. The records document discussions between the university and the Blue Jays that are mainly about issues such as the planning, structuring and timing for the natural turfgrass project and a possible additional phase for this project. There is clearly “some connection” to the research that Dr. Lyons is conducting on the feasibility of growing and maintaining natural turfgrass in the Rogers Centre.

		<p>the timing of when turfgrass can be installed in the Rogers Centre.</p> <p>Records reflecting meeting details (such as attendees, times, locations and agendas); and, any notes taken by university faculty and/or staff attendees during meetings with Rogers or Blue Jays staff and any of their representatives.</p>	
<p>Lakehead University (Re), 2018 CanLII 121442</p>	<p>University denied access to responsive records on the basis of 65(8.1)(a) and several other provisions.</p>	<p>Email correspondence and attachments relating to requester as a doctoral student.</p> <p>Records where section 65(8.1)(a) was asserted include emails and an attachment related to editorial comments on a doctoral dissertation.</p>	<p>Whether 65(8.1)(a) Applies: Yes</p> <ul style="list-style-type: none"> • The two records are a “record respecting research” and relate to a specific, identifiable research project as they contain an affected party’s comments relating to the applicant’s PhD dissertation. • The exception in section 65(10) does not apply, since the records do not evaluate the actual dissertation and instead are comments relating to the external review process
<p>University of Ottawa (Re), 2019 CanLII 75831</p>	<p>University withheld certain responsive records under section 65(8.1)(a) and other exemptions in FIPPA.</p>	<p>Emails between a professor at the university and other individuals regarding the development of a new graduate program.</p>	<p>Whether 65(8.1)(a) Applies: No</p> <ul style="list-style-type: none"> • The emails between a professor at the university and other individuals regarding the development of a new graduate program; these do not relate to a specific, identifiable and conceived research project (para 24). • Record 53 consists of an email, cover letter, draft memorandum of understanding and a brief regarding the

		An email, cover letter, draft memorandum of understanding and a brief regarding the affected party's activities.	affected party's activities; it relates to the relationship between the affected party and the university, in general. It does not relate to a specific, identifiable and conceived research project (para 25).
York University (Re) , 2019 CanLII 35754	University withheld certain responsive records under section 65(8.1)(a) and other exemptions in FIPPA.	<p>Documents produced as a result of the 2015-16 cyclical review of the undergraduate Criminology programs offered at York University, specifically:</p> <p>Record 1: Self-Study Report of the Criminology Program</p> <p>Record 2: Review of the Agenda of Concerns raised in Record 1</p> <p>Record 3 - Evaluation Conducted by the External Review Committee</p> <p>Record 4 - Criminology Program's Response to Record 3</p>	<p>Whether 65(8.1)(a) or 65(8.1)(b) Applies: No</p> <ul style="list-style-type: none"> The OIPC has always taken a "record-by-record" approach; therefore, the entire record (as opposed to portions of the record) needs to be examined to determine whether the exclusion applies (para 16). Record 1 contains course syllabi – it is not a research record within the meaning of section 65(8.1)(a) (para 29).
University of Waterloo (Re) , 2020 CanLII 64015	University identified four responsive records ("Record 1, Record 2, Record 3, Record 4"),	Research agreements and related documents between the university and five entities (Hydro One and four named companies) regarding	<p>Whether 65(8.1)(a) Applies: Yes</p> <ul style="list-style-type: none"> All four agreements concern research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution (paras 32 – 36).

	but denied access on the basis of 65(8.1)(a).	the Waterloo Institute for Sustainable Energy (WISE).	
Ryerson University (Re) , 2020 CanLII 75846	University denied access to the four responsive records under 65(8.1)(a).	<p>Record 1: core funding to the Centre for Urban Energy (CUE) in the university's Faculty of Engineering, Architecture and Science (FEAS) and sets out the relationship between the University and Hydro One Networks Inc. (HONI)</p> <p>Record 2: research collaboration agreement.</p> <p>Record 3 is an amendment to Record 2</p> <p>Record 4 is associated with Record 2, being a memorandum of understanding relating to the specific research project that is the subject matter of Record 2.</p>	<p>Whether 65(8.1)(a) Applies: Yes</p> <ul style="list-style-type: none"> The records are connected to research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution (paras 35 – 39): Record 1 involves university faculty members who conduct the research, Record 2 relates to research performed by a named faculty member who is an employee of the university (which extends to Records 3 and 4 as they relate to the same research project in Record 2).
McMaster University (Re) , 2020 CanLII 64005	University withheld one responsive record under section 65(8.1)(a).	Sponsored research agreement between the university and a number of named parties, which provides for the funding	<p>Whether 65(8.1)(a) Applies: Yes</p> <ul style="list-style-type: none"> Appellant argues that the intent of his request is not to obtain <i>research</i> results and that he is trying to access <i>research</i> agreements (para 20).

		of research in the area of nuclear safety.	<ul style="list-style-type: none"> The Appellant’s “intent” behind a request is not relevant to whether the exclusion at section 65(8.1)(a) applies. The record relates to specific, identifiable research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution; in this case, it was research under the direction of a faculty member in the university’s Department of Engineering Physics (para 25).
<i>University of Western Ontario (Re)</i> , 2020 CanLII 85020	University denied access to certain responsive records on the basis of section 65(8.1)(a) and the other mandatory exemption in section 17(1).	Records 1, 2, 3, 5, and 6 are collaborative or collaboration research agreements between the university and named companies regarding the university’s Institute for Chemicals and Fuels from Alternative Resources Records 4 and 7 are technical service agreements.	Whether 65(8.1)(a) Applies: Yes <ul style="list-style-type: none"> Records 1, 2, 3, 5, 6 are excluded The records relates to specific, identifiable research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution (para 25) Records 4 and 7 are exempt from disclosure under section 17 of the Act.
<i>University of Toronto (Re)</i> , 2022 CanLII 35608	University granted access to some records, but withheld others on the basis of various exemptions, and the section 65 (8.1)(a) exclusion.	Email correspondence between faculty members regarding the requestor’s/appellant’s dissertation and research The appellant’s research proposal that contains faculty member’s comments.	<u>Whether 65(8.1)(a) Applies: Yes</u> <ul style="list-style-type: none"> Records are excepted from the exclusion based on section 65(1), but the information is nonetheless exempt under section 49(c.1)(i) (para 63). “The net effect of this set of legislative provisions is that if a record qualifies for exemption under section 49(c.1)(i), then it remains subject to the Act even if it otherwise meets the requirements for exclusion from the scope of the Act under section 65(8,1). The effect of section 65(10) is, therefore, to preserve the application of the Act to records that are subject to this discretionary exemption.”

C. Research record cases (hospitals)

Style of cause	Background	Records at issue	Finding
<p>University Health Network (Re), 2019 CanLII 17534</p>	<p>The UHN withheld all three responsive records pursuant to the exclusion in section 65(8.1)(c).</p>	<p>Record 1: Letter from a doctor to a drug company.</p> <p>Record 2: Spreadsheets including individuals' names and data related to their use of a particular medication, and a list of information related to the spreadsheets</p> <p>Record 3: Spreadsheets and a graph containing dates and numerical data; spreadsheets including individuals' names and data related to their use of a particular medication; a list of information related to the spreadsheets</p>	<p>Whether 65(8.1)(c) Applies: Yes</p> <ul style="list-style-type: none"> All three records are records respecting or associated with research, including clinical trials, conducted or proposed by an employee of a hospital or by a person associated with a hospital; therefore, they either are, or would be, excluded from <i>FIPPA</i> pursuant to section 65(8.1)(c). The records relate to "research" as they contain information collected during the "Compassionate Use Program" about the patients' use of the drug. Specifically, they record the patients' reactions to a specific drug were being monitored and the results were being analyzed for the purpose of understanding the effects of the drug (paras 30-32) All 3 records are associated with research conducted by an employee, or a person associated with, the UHN (in this case, the Doctor) (para 36)

<p>Unity Health Toronto (Re), 2020 CanLII 78461</p>	<p>Unity Health Toronto (UHT) denied access to the responsive records on the basis of 65(8.1)(c), 14(1)(e) (endanger life or safety), 14(1)(i) (endanger security) and 20 (endanger to safety or health).</p>	<p>5 annual reports from 2014 to 2018 summarizing the number and species of animals used at UHT.</p>	<p>Whether 65(8.1)(c) Applies: No</p> <ul style="list-style-type: none"> UHT has not identified (and it was not obvious to the Adjudicator) the specific research to which the records relate. The records do not provide any details about the use of animals, nor do they refer to specific research; instead, the records relate generally to the use of animals. This does not meet the requirement of 65(8.1)(c).
<p>Ottawa Hospital (Re), 2020 CanLII 89961</p>	<p>The hospital withheld the records under section 65(8.1)(c)</p>	<p>Research Ethics Board application and/or annual renewal letters between two physicians identified as the lead researchers (re: stem cell project).</p> <p>Data sharing agreements, and related documents including a renewal letter (re: young adults cancer therapy project)</p>	<p>Whether 65(8.1)(c) Applies: Yes</p> <ul style="list-style-type: none"> The stem cell project records are associated with specific, identifiable research conducted or proposed by an employee of the hospital; further, the stated purpose of the project – to establish facts and data to be used to develop and support further research projects – fits within the definition of “research” (para 47). The young adult cancer therapy project records are related to research within the meaning of section 65(8.1)(c).

D. Teaching materials cases

Style of cause	Background	Records at issue	Finding
<p><u>St Joseph's Healthcare Hamilton (Re)</u>, 2016 CanLII 18703</p>	<p>Request made to Windsor Police Service for a variety of records, including the Crisis Outreach and Support Team (COAST) training materials. This component of the request was transferred to St. Joseph's Healthcare Hamilton, who denied access to responsive records per section 65(8.1)(d) (hospital teaching materials) and section 20 (danger to health or safety).</p>	<p>Crisis intervention team training materials</p> <p>Crisis intervention and support program training materials</p>	<p>Whether 65(8.1)(d) applies: No</p> <ul style="list-style-type: none"> • the “records consist of teaching materials designed to educate individuals about the various types of mental illnesses, and to teach them strategies to de-escalate those with mental illnesses who are in crisis” (para 33). • Records were prepared by one of the hospital employees, in specific one of its mental health professionals • 65(8.1)(d) applies to records relating to a hospital's internal training programs – its purpose is not to protect a hospital's teaching materials that are widely disseminated to individuals not affiliated with the hospital, or to those beyond the hospital's own internal educational programs. • The records do not qualify as being “for use at the hospital”. The records were used to train hospital employees and police officers (who are not employees or independent contractors of the hospital). The records were used as part of the CIT training program, which is a

			<p>community-based program not specific to the hospital itself, and includes various individuals who do not work for the hospital as employees or independent contractors (para 35). Some of the trainees included teams from other municipalities “wholly outside the catchment area of the hospital” (para 35).</p> <ul style="list-style-type: none"> • “...extending this exclusion to teaching materials that are used at least as much by individuals who are not hospital employees or independent contractors, as by those affiliated with the hospital, would be an unduly broad interpretation of this provision that is contrary to the spirit and the intention of the Act that information should be available to the public.” (para 38)
<p>York University (Re), 2019 CanLII 35754</p>	<p>University withheld certain responsive records under section 65(8.1)(a) and other exemptions in FIPPA.</p>	<p>Documents produced as a result of the 2015-16 cyclical review of the undergraduate Criminology programs offered at York University, specifically:</p> <p>Record 1: Self-Study Report of the Criminology Program</p> <p>Record 2: Review of the Agenda of Concerns raised in Record 1</p>	<p>Whether 65(8.1)(b) Applies: No</p> <ul style="list-style-type: none"> • “I find that the record, although it may contain teaching materials in the form of course syllabi, is not a “record of teaching materials” for the purposes of section 65(8.1)(b). It is a report on a review of the entire Criminology program.”

		<p>Record 3 - Evaluation Conducted by the External Review Committee</p> <p>Record 4 - Criminology Program's Response to Record 3</p>	
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3. University faculty agreement provisions regarding access to faculty records

Brock University

- 37.01 The Parties agree that members and employees of the Union have a right to privacy in their personal communications and files, whether on paper or in electronic form, and the Parties undertake to respect that right to the fullest extent possible.

Carleton University

- 16.12 The parties agree that employees of Carleton University and employees of the Association have a right to privacy in their personal communications and files, whether on paper or in electronic form, and the parties undertake to respect that right to the fullest extent possible. Personal files mean those which are not maintained for university purposes or business, and personal communications includes those that are stored or transferred electronically on university computer systems. Personal files and communications do not include the official file of employees of Carleton University, materials pertaining to students, or official records of university committees and are intended to include files respecting or associated with research conducted or proposed by an employee except where governed by rules of disclosure. Nothing herein shall interfere with the employer's rights and responsibilities including the need to guard against illegal activities, the need to meet concerns about liability, the need to comply with the law or an order of a court, or the need to protect the security or health of individuals.

University of Guelph

- 17.7 The Parties agree that Members have a reasonable right to privacy in their personal and professional communications and files, whether on paper or in an electronic form. The University of Guelph shall maintain a system of internal controls and procedures designed to provide reasonable assurance that information systems established, supported, or used by the University are secured against loss and unauthorized use, access, destruction, or modification.

Lakehead University

- 16.01.03 The Board agrees that members have a reasonable right to privacy in their personal and professional communications and files, whether on paper or in electronic form. The Board and/or its delegates shall not intentionally or with malice violate a member's privacy.

Laurentian University – Note: this is from 2016 – 2020

- 3.10.6: The Parties agree that Members have a right to privacy, consistent with the traditions of Academic Freedom and the provisions of this Article.

Nipissing University

- 15.2 The parties agree that Members have a right to privacy in their personal communications and files whether on paper or in electronic form.
- 15.3 The Employer will, whenever possible, provide clear notification of its intention to examine the Member's communications and files in accordance with this Agreement, together with reasons for such action.
- 15.4 The Employer will not inspect a Member's paper communications and files or engage in electronic monitoring or other scrutiny of the hard drive of computer(s) designated for a Member's use or of a Member's internet or e-mail beyond the need to guard against illegal activities, the need to meet concerns about liability, the need to comply with the law or an order of a court, the need to protect the security and health of individuals, or the need to assess volume of usage for the purpose of maintaining system integrity.
- 15.5 Notwithstanding the provisions of Article 15.4, the Employer will have access to Members' files for the operational requirements of the University when Members are unable to provide or consent to access.

Northern Ontario School of Medicine

- 6.1 The Parties agree that Members have a right to privacy in their personal and professional communications and files, whether on paper or in an electronic form.
- 7. Custody and Control

The Board shall have custody and control of documents in possession of Bargaining Unit Members with respect to the following categories of documents and other items which may be recognized by the Parties as being under the custody and control of the Board consistent with existing practices, whether in hardcopy or electronic format.

 - (i) Administrative duties: documents held by Members acting in an administrative roles and which are related to those administrative, not teaching duties, but excluding any personal notes or annotations;
 - (ii) Committees within the School regarding general policies: documents received by a Member acting in the Member's capacity as a members of a Unit, School or University committee when the committee plays an official role in the School, such as the Research Committee but excluding any personal notes or annotations added by the Member;
 - (iii) Personnel or peer review committees: documents received or consulted by a Member in the Member's capacity as a members of a Unit, School or University Committee, such as a search committee, personnel committee, excluding any personal notes or annotations added by the Member;
 - (iv) Career path and performance evaluation: documents submitted to the School (e.g. to the Personnel Committee, immediate supervisor, Dean) by the Member, such as an application for tenure, promotion, or sabbatical leave. These documents, once sent by a Member to the Board in order to obtain those rights, are in the custody and control of the Board.
 - (v) General School communications: documents sent to all Members or a large group of Members, the original is in the custody or control of the Board;
 - (vi) Learner Exam Marks and Appeals are in the custody or control of the Board, however draft exams, and annotated copies kept by Members are not in the custody or control of the Board;
 - (vii) Exam copies that are submitted to the School by the Member: where exam copies are maintained in a "bank" or are used for accreditation purposes those copies are in the custody and control of the Board (note that the issue of custody and control is separate from the issue of copyright of exam materials, which is not being addressed in this Article);
 - (viii) Learner Affairs Officers' Learner case notes and Learner accommodation plans. The Employer shall protect the confidentiality under Article 2.3 (Rights, Responsibilities and Duties of Professional Staff) section 3.

University of Ontario Institute of Technology

- 13.06 The Parties agree that Faculty Members have a reasonable right to privacy in their personal and professional communications and files, whether on paper or in an electronic form.

University of Waterloo

- 4. The Employer shall not inspect a Member's paper files, including Files as defined in Clause 3 above, or engage in electronic monitoring or other scrutiny of any mass storage device(s) of a Member's computer(s) or of a Member's Internet, phone, photocopier data, or e-mail usage in a manner that in any way divulges, either to the Employer or a third party, the contents of the paper files or the files in any form or on the mass storage device(s), the electronic mail communications of Members, or details of Internet usage patterns, beyond the need to guard against illegal activities, the need to meet concerns about liability, the need to comply with the law or an order of a court, the need to protect the security or health of individuals, or the need to assess volume of usage for the purpose of maintaining system integrity.

University of Western Ontario

- 3. Subject to the provisions of Clauses 1, 1.1, 3.2, 3.3, 3.4 and 4 of this Article, the Employer shall neither examine nor utilize the content of a Member's or former Member's Files without the Member's or former Member's written consent. For the purposes of this Article, Files are defined as:
 - a) records of teaching materials collected, prepared or maintained by a Member;
 - b) records respecting or associated with research conducted or proposed by a Member; and
 - c) records relating to a Member's Service activities

in any form, under a Member's control and stored on University property.

Such Files do not include the Official File of a Member, materials pertaining to students, or official records of University committees.

University of Windsor

- 5:63 The University acknowledges that a member's files, by which is meant files which are not maintained for University purposes or business, and personal communications, including those that are stored or transferred electronically on University computer systems are private, and that the University does not have a right to examine or to utilize the content of such files and communications.

Queens University

- 23.2.1 Members have the right to privacy in their personal and professional communications and files, whether on paper or in electronic form, subject to the Freedom of Information and Protection of Privacy Act (FIPPA) and any other legal requirement. The Provost and Vice-Principal (Academic) may authorize access to a Member's computing and network account(s) with the University only if there are reasonable grounds to believe that the Member may be threatening the security and integrity of the computing or network facilities, violating any software licensing agreement, or attempting to access another user's account or data without that user's permission.

Key Contacts



Daniel J. Michaluk
Partner
DMichaluk@blg.com
416.367.6097



Matin Fazelpour
Associate
MFazelpour@blg.com
416.367.7098



Jiwan Sangha
Articling Student
JiSangha@blg.com
416.367.7235

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