



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
for British Columbia

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Order F12-03

UNIVERSITY OF BRITISH COLUMBIA

Jay Fedorak, Adjudicator

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Summary: A citizens' organization made a series of requests for records relating to research at UBC involving animals. UBC responded that the records were outside the scope of FIPPA because they contained research information of UBC employees in accordance with s. 3(1)(e). The adjudicator found that most of the records contained the research information of UBC researchers. However, some of the records did not contain research information of UBC researchers. The adjudicator ordered UBC to continue processing the requests with respect to the records that did not contain research information of UBC researchers.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 3(1)(e).

Authorities Considered: **B.C.:** Order F10-42, [2010] B.C.I.P.C.D. No. 63; Order 00-36, [2000] B.C.I.P.C.D. No. 39; Order F10-37, [2010] B.C.I.P.C.D. No. 55; Decision F07-03, [2007] B.C.I.P.C.D. No. 14; Decision F08-02, [2008] B.C.I.P.C.D. No. 4; Order F11-21, [2011] B.C.I.P.C.D. No. 27. **Ont.:** Order PO-2825, [2009] O.I.P.C. No. 151; Order PO-2693, [2008] O.I.P.C. No. 133.

INTRODUCTION

[1] This case concerns a citizens' organization challenging a decision of the University of British Columbia ("UBC") to withhold records on the grounds that they contain the research information of UBC researchers. Stop UBC Animal Research ("citizens' organization") describes itself as a Vancouver-based organization concerned about the welfare of animals used at UBC. It made a series of requests relating to animals that were the subjects of academic research. UBC denied access

because it takes the position that the records are outside the scope of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) under s. 3(1)(e). This provision excludes research information of the employees of post-secondary education institutions.

ISSUE

[2] The question I must decide is whether the records contain research information of employees of UBC.

DISCUSSION

[3] **Background**—In response to two of the requests of the citizens’ organization, UBC responded with fee estimates. The citizens’ organization requested that UBC waive the fees, but UBC declined. The citizens’ organization requested a review of this decision from the Office of the Information and Privacy Commissioner (“OIPC”). During the mediation phase of the review, UBC changed its position and decided to deny access on the grounds that the records were outside the scope of FIPPA under s. 3(1)(e).

[4] **Records in Dispute**—The citizens’ organization requested a variety of different types of records. Three of the four requests include subsets of several categories of records. UBC has applied a number to each request and subset that I reproduce below. This list covers all of the requests at issue.

- 1.1 UBC Animal Care Committee protocols for nine research projects
- 2.1 - 2.3 Methods and protocols for three research projects
- 2.4 - 2.5 Inspection reports relating to 2.1 and 2.2
- 2.6 Animal Use Data Form submitted by UBC to the Canadian Council on Animal Care
- 2.7 Tables listing number of animals subject to category of invasiveness
- 2.8 Inspection reports conducted by Canadian Council on Animal Care
- 2.9 Reports of inappropriate animal care
- 2.10 List of third parties contracted with UBC to conduct animal research
- 2.11 Records clarifying the sourcing of cats
- 3.1 - 3.4 Photographs and videos relating to four research studies
- 4.1 Statistics on research causing animal pain without using pain relief
- 4.2 Statistics on animals restrained longer than 4 hours without pain relief
- 4.3 Statistics on animals to be used for research but not yet used
- 4.4 Statistics on non-human primates used for research
- 4.5 Source of non-human primates used for research
- 4.6 Names and affiliations of members of the ACC
- 4.7 Whether there has been any research on dogs
- 4.8 ACC approvals for experiments by UBC faculty at other institutions
- 4.9 Blank copy of animal use protocols

[5] **Preliminary Issue**—In its initial submission, the citizen’s organization tried to raise a new issue: the application of s. 25 of FIPPA. It argued that disclosure of the information was in the public interest in accordance with s. 25. This was the first time the citizen’s organization raised this issue.

[6] Past orders and decisions of the OIPC have said parties may raise new issues at the inquiry stage, only if they request and receive permission to do so.¹ The citizen’s organization had an opportunity during mediation in which to raise s. 25 of FIPPA. It did not explain why it did not raise the issue prior to its initial submission or why it should be permitted to raise s. 25 at this late stage. I have decided, therefore, not to permit the citizens’ organization to raise s. 25 in this inquiry.

[7] **Do the Records Contain the Research Information of UBC Researchers?**—FIPPA excludes from its scope the research material of researchers at post-secondary education institutions. Previous orders have considered the application of s. 3(1)(e) of FIPPA and established its principles.² Order 00-36 described the purpose of the provision as:

Section 3(1)(e) is intended to protect individual academic endeavour. It will protect the intellectual value in teaching materials or research information developed by an employee of a post-secondary educational body, for her professional purposes, by protecting it from disclosure to those who might exploit it to her disadvantage.

[8] For s. 3(1)(e) of FIPPA to apply the information must:

1. Constitute research information; and
2. Belong to employees of a post-secondary educational body.

Does the information constitute “research information”?

[9] I considered the meaning of “research” for the purpose of s. 3(1)(e) in Order F11-21.³ I reviewed the definitions of “research” used in other orders and reference materials and concluded that the investigation into the pursuit of knowledge needed to incorporate two elements. The first is that it must be scientific or systematic and the researcher must take a critical approach to their evidence. The second is that the evaluation of the evidence must derive something meaningful, such as new knowledge, principles, theories or facts. I also observed that submitting research proposals to the scrutiny of a Research Ethics Board (or other body of professionals with expertise in evaluating the theoretical and methodological soundness of

¹ See for example, Order F10-37, [2010] B.C.I.P.C.D. No. 55; Decision F07-03, [2007] B.C.I.P.C.D. No. 14, and Decision F08-02, [2008] B.C.I.P.C.D. No. 4.

² See for example, Order F10-42, [2010] B.C.I.P.C.D. No. 63 and Order 00-36, [2000] B.C.I.P.C.D. No. 39.

³ [2011] B.C.I.P.C.D. No. 27, paras. 32-46.

research proposals and their potential for creating new knowledge) is a means of ensuring that proposals meet the criteria of “research” under FIPPA.⁴

[10] UBC submits that the research projects at issue in this inquiry have been approved after rigorous scrutiny by independent panels of experts appointed by funding agencies. UBC’s Animal Care Committee (“ACC”) has also evaluated and approved each of the projects. I find these panels of experts to be Research Ethics Boards in function, if not in name. Their approvals of these projects satisfy me that the projects meet the standards of critical examination and the creating of new knowledge necessary for the projects to constitute research under s. 3(1)(e) of FIPPA. I also note that the citizens’ organization does not dispute that the projects at issue constitute research.

[11] Having found this to be research, it is also necessary to determine whether the records constitute “research information”. Adjudicator McEvoy found in Order F10-42 that the following types of information constituted “research information”:

The purpose of the applicant’s research, the question or hypothesis he intends to test and the methodologies he intends to employ in conducting the research.⁵

[12] Therefore, records containing these types of information will meet the criteria for s. 3(1)(e) of FIPPA.

Does the information belong to UBC researchers?

[13] The second criteria for the application of s. 3(1)(e) is that the information must belong to employees of a post-secondary educational body. UBC meets the definition of “educational body” under FIPPA, as it is designated under the *Universities Act*, and it provides post-secondary education. The citizens’ organization does not take issue with this.

[14] As noted above, Order 00-36 emphasized that the purpose of s. 3(1)(e) is to protect individual academic endeavour. It also held that one of the key indicators of its application includes whether the information was “generated by identifiable individuals for use in research”. This is consistent with Ontario Order PO-2825, which held that:

The research must be referable to specific, identifiable research projects that have been conceived by a specific faculty member, employee or associate of the University.⁶

⁴ At paras. 95-99.

⁵ At para. 23.

⁶ Ontario Order PO-2825, [2009] O.I.P.C. No. 151 at p. 7. See also Ontario Order PO-2693, [2008] O.I.P.C. No. 133.

[15] Therefore, information about the research projects identifiable as belonging to specific UBC researchers will meet the criteria for s. 3(1)(e) of FIPPA.

[16] I will now apply these criteria to the categories of records at issue. As some of the requests were originally subject to fee estimates, UBC has not retrieved all of the records. UBC has produced complete records for some of the requests or subsets. In other cases, UBC has provided a sample of the kinds of records that would be responsive. In the remaining cases, UBC has not retrieved any records at all.

1.1 UBC Animal Care Committee (“ACC”) protocols for nine research projects

I have reviewed a sample of these documents. They consist entirely of information about research projects identifiable as belonging to specific UBC researchers, including a detailed description of the project methodology.

I find that s. 3(1)(e) of FIPPA applies to these records.

2.1-2.3 Methods and protocols for three research projects

This request is for specific information on three of the nine research projects and covers information similar to that of request 1.1.

I find that s. 3(1)(e) of FIPPA applies to these records.

2.4-2.5 Inspection reports relating to 2.1 and 2.2

I have reviewed a sample of these documents. They consist of information about animals used in research projects identifiable as belonging to specific UBC researchers.

I find that s. 3(1)(e) of FIPPA applies to these records.

2.6 Animal Use Data Form submitted by UBC to the Canadian Council on Animal Care

I have reviewed a sample of these documents, which consists of Animal Use Data Form reports (“AUDF”) in the form of spreadsheets. These reports include information on animal research. They consist entirely of information about research projects identifiable as belonging to specific UBC researchers, including name of researcher, project title and details about the research.

I find that s. 3(1)(e) of FIPPA applies to these records.

2.7 Tables listing number of animals subject to category of invasiveness

UBC submits that no separate document exists containing only this information. The information is included in the Animal Use Data Form reports responsive to request 2.6 above.

I have found that s. 3(1)(e) of FIPPA applies to these records.

2.8 Inspection reports conducted by Canadian Council on Animal Care

I have reviewed a sample report. UBC states that information in the report relates to the research facilities and practices of its researchers. It submits that this report includes research information in the form of a description of research, types of procedures being performed and the identification of specific strains of mice.

I disagree with UBC. While the information concerns animals and facilities that UBC researchers employ, it does not reveal anything about any particular research study. I have cross referenced the information that UBC highlights with other records describing individual research projects. The information in the report does not satisfy me that it relates directly to any of these studies. This report concerns animal care generally and in aggregate, not specific research projects. The purpose of the s. 3(1)(e) provision is to protect individual academic endeavour. I do not see how the disclosure of any information in the report would have an impact on any individual endeavour.

I find that s. 3(1)(e) of FIPPA does not apply to these records.

2.9 Reports of inappropriate animal care

I have reviewed a sample letter. It clearly identifies a specific research project and discusses aspects of its methodology.

I find that s. 3(1)(e) of FIPPA applies to these kinds of records, which include the information about research projects identifiable as belonging to specific UBC researchers.

2.10 List of third parties contracted with UBC to conduct animal research

UBC submits that it does not have a copy of such a list and to compile one would take considerable time.

As the record does not exist, I am unable to make any finding. Whether s. 6(2) of FIPPA requires UBC to create such a record is another issue that is not before me. Nevertheless, it is an issue that UBC will have to consider when completing the

processing of the requests with respect to records that I find are not subject to s. 3(1)(e).

2.11 Records clarifying the sourcing of cats

UBC submits that no cats were acquired for research purposes during the timeframe of the request. All cats currently at UBC had been acquired prior to 2007, and it would take a substantial amount of time to locate records relating to their source.

I have not been able to review any of the records, and I have insufficient information to determine whether s. 3(1)(e) applies. The fact that UBC has not acquired any cats during the timeframe of the request, does not mean that cats acquired previously were not the subject of research undertaken during the period subject to the request. Therefore, I am unable to make a finding or to determine whether there are in fact any records in existence that are subject to this request.

3.1-3.4 Photographs and videos relating to four research studies

UBC submits that all photographic records were created by the researchers for the purpose of documenting their research projects.

I find that s. 3(1)(e) of FIPPA applies to these records.

4.1 Statistics on research causing animal pain without using pain relief

UBC submits that the only means of creating a record containing this information is to run a report of all experiments that involve “surgical procedures where the appropriate anaesthetic or postoperative analgesic is contraindicated.” I have reviewed a sample of such a report and can confirm that it consists of information about research projects identifiable as belonging to specific UBC researchers, including ACC identifiers and details of the research methodology.

I find that s. 3(1)(e) of FIPPA applies to these records.

4.2 Statistics on animals restrained longer than 4 hours without pain relief

UBC has identified a report that contains this information. I have reviewed the report. It consists entirely of information about research projects identifiable as belonging to specific UBC researchers, including name of researcher, project title and details about the research methodology.

I find that s. 3(1)(e) of FIPPA applies to this record.

4.3 *Statistics on animals to be used for research but not yet used*

UBC submits that it does not have a copy of such a record and to compile one would take considerable time.

As the record does not exist, I have no information to determine whether s. 3(1)(e) applies. Therefore, I am unable to make a finding. Whether s. 6(2) of FIPPA requires UBC to create such a record is another issue that is not before me. Nevertheless, it is an issue that UBC will have to consider when completing the processing of the requests with respect to records that I find are not subject to s. 3(1)(e).

4.4 *Statistics on non-human primates used for research*

UBC submits that the only record that contains this information is the AUDF Report responsive to request 2.6. I have already determined that I find that s. 3(1)(e) of FIPPA applies to this record.

4.5 *Source of non-human primates used for research*

UBC has not provided an explanation as to how s. 3(1)(e) of FIPPA applies to these records. I have reviewed the records and cannot see any information relating to any particular research endeavour.

I find that s. 3(1)(e) of FIPPA does not apply to these records.

4.6 *Names and affiliations of members of the ACC*

UBC has produced a list containing the members of the ACC. It submits that this information is the research information of UBC researchers because the research process could not operate effectively if the names are released. I disagree that this consideration makes the names of the members the “research information” of UBC researchers, as this and previous orders have interpreted the term. UBC argues that the individuals on the ACC must remain anonymous to preserve the integrity of the compliance approval process. However, the record at issue does not contain information that identifies any particular research endeavour.⁷

I find that s. 3(1)(e) of FIPPA does not apply to this record.

⁷ I note that, in the case of Ontario Order PO-2825 mentioned above, the adjudicator found that a record containing the identity of the author of a Peer Review Report on a research proposal was properly excluded. However, in that case, the record at issue was a report on an identifiable research proposal, which contained information about that proposal.

4.7 *Whether there has been any research on dogs*

UBC submits that this is a question, rather than a request for records. I agree. UBC has provided an answer to this question in its submission.

I find that FIPPA does not apply to this question, in any respect.

4.8 *ACC approvals for experiments by UBC faculty at other institutions*

UBC submits that there is no feasible way to locate these records. It notes, however, that all ACC approvals contain details about individual research projects.

Although I am unable to view responsive records, if such records existed, they would contain information about research projects identifiable as belonging to specific UBC researchers. Therefore, I see no reason for UBC to conduct a further search.

4.9 *Blank copy of animal use protocols*

I have reviewed a blank copy of the protocols. It does not contain any information about research projects identifiable as belonging to specific UBC researchers.

I find that s. 3(1)(e) of FIPPA does not apply to this record.

CONCLUSION

[17] For the reasons noted above, under s. 58 of FIPPA, I make the following order:

1. I find that s. 3(1)(e) of FIPPA applies to the records of the following requests: 1.1; 2.1-2.7; 2.9; 3.1-3.4; 4.1; 4.2; 4.4; and 4.8. UBC is not required to respond with respect to these records.
2. I find that s. 3(1)(e) of FIPPA does not apply to the records of the following requests: 2.8; 2.10; 2.11; 4.3; 4.5; 4.6; and 4.9. I require UBC to complete the processing of these requests.
3. I find that FIPPA does not apply in any respect to request 4.7.
4. UBC retains the right to charge any fees applicable under s. 75 of FIPPA and is not required to create records where none exist, except in accordance with s. 6(2) of FIPPA.

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5. I require UBC to respond to the citizens' organization within 30 days of the date of this order, as FIPPA defines "day", that is, on or before March 12, 2012 and, concurrently, to copy me on its cover letter to the citizens' organization.

January 30, 2012

ORIGINAL SIGNED BY

Jay Fedorak
Adjudicator

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F11-44749
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