

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2009-016**

October 9, 2009

**UNIVERSITY OF CALGARY**

Case File Number F4412

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** Under the *Freedom of Information and Protection of Privacy Act* (the “Act”), the Applicant asked the University of Calgary (the “Public Body”) for documents relating to a committee’s examination of his allegations against a professor. The Public Body refused access to some of the requested information, on the basis that disclosure would be an unreasonable invasion of a third party’s personal privacy under section 17 of the Act. The Applicant requested a review of the Public Body’s decision.

The Adjudicator concluded that the Public Body had improperly withheld non-personal information under section 17. He also found that disclosure of the personal information of the members of the committee, and other third parties besides the professor, would not be an unreasonable invasion of their personal privacy, as the information merely revealed that they acted in a representative or work-related capacity.

The Adjudicator concluded that disclosure of some of the personal information of the professor would not be an unreasonable invasion of his personal privacy, despite the applicable presumptions against disclosure (personal information relating to employment history and name plus other personal information) and relevant circumstances weighing against disclosure (unfair damage to the professor’s reputation and his refusal to consent to release of his personal information). In particular, section 17 did not apply to the substance of the allegations against the professor, as the Applicant originally provided that information. Section 17 also did not apply to information about the fact that the committee had been struck to investigate the allegations, and about its overall decision, as

the Public Body had already disclosed virtually identical information to the Applicant (and the previous disclosures did not unreasonably invade the professor's personal privacy).

The Adjudicator concluded that disclosure of other personal information of the professor would be an unreasonable invasion of his personal privacy, as the foregoing circumstances in favour of disclosure did not apply. The Adjudicator also found that circumstances relating to public scrutiny and a fair determination of the Applicant's rights were not relevant in this case.

The Adjudicator ordered the Public Body to disclose the information that had been improperly withheld under section 17, and confirmed its decision to withhold the information that had been properly withheld.

**Statutes Cited:** **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(h)(ii), 1(n), 1(n)(i), 1(n)(vii), 2(e), 17, 17(4), 17(4)(b), 17(4)(d), 17(4)(g), 17(5), 17(5)(a), 17(5)(c), 17(5)(e), 17(5)(f), 17(5)(h), 17(5)(i), 24, 40, 67(1)(a)(ii), 71(1), 71(2), 72, 72(2)(a) and 72(2)(b).

**Authorities Cited:** **AB:** Orders 96-019, 97-002, 97-011, 98-008, 99-027, 99-028, 2000-005, 2000-019, 2001-002, F2003-004, F2003-005, F2004-015, F2004-026, F2005-016, F2006-008, F2006-030, F2007-013, F2007-021, F2007-025, F2007-029, F2008-009, F2008-012, F2008-017 and F2008-020; *University of Alberta v. Pylypiuk*, 2002 ABQB 22. **BC:** Order 71-1995.

## I. BACKGROUND

[para 1] In correspondence dated January 23, 2008, the Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the "Act") to the University of Calgary (the "Public Body"). He requested – in relation to a committee that had been struck to examine allegations that he had made against a professor – “access to the committee's decision as well as to any documents related to the formation of the committee and the execution of their duties, including communication with the dean, [the professor], and the university's general counsel.” (I will refer to the committee in this Order as the “Committee”.)

[para 2] By letter dated March 3, 2008, the Public Body provided the Applicant with access to some of the requested information. It withheld the remaining information under section 17 of the Act, on the basis that disclosure would be an unreasonable invasion of a third party's personal privacy.

[para 3] In correspondence dated March 5, 2008, the Applicant requested a review of the Public Body's decision to refuse access to the information that it withheld. Mediation was authorized but was not successful. The matter was therefore set down for a written inquiry.

[para 4] In the course of the inquiry, I arranged for the individual against whom the Applicant had made his allegations (who I will call the “Professor”) to be notified as an affected party under section 67(1)(a)(ii) of the Act because, in my opinion, he was affected by the Applicant’s request for review. The submissions of the Applicant, the Public Body and the Professor were exchanged so that each party had an opportunity to respond to the submissions of the other two parties.

## **II. RECORDS AT ISSUE**

[para 5] The Public Body submitted 12 pages of records *in camera*, which it considered responsive to the Applicant’s access request. The records at issue consist of information withheld on seven of those pages, being pages 2, 3, 4, 5, 8, 9 and 12. The other information was disclosed to the Applicant.

[para 6] The records at issue consist of correspondence between representatives of the Public Body, or from representatives of the Public Body to the Applicant or Professor. They do not include any written material submitted by the Professor to the Public Body during its review of the allegations against him, apparently because this was not considered to be within the scope of the Applicant’s access request. No question regarding responsive records was set out as an issue in this inquiry.

## **III. ISSUE**

[para 7] The Notice of Inquiry, dated June 2, 2009, set out the single issue of whether the Public Body properly applied section 17 of the Act to the records at issue.

## **IV. DISCUSSION OF THE ISSUE**

[para 8] Section 17 of the Act requires a public body to withhold personal information if disclosure would be an unreasonable invasion of a third party’s personal privacy. It reads, in part, as follows:

*17(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party’s personal privacy.*

...

*(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party’s personal privacy if*

...

*(b) the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation,*

...

- (d) *the personal information relates to employment or educational history,*  
...
- (g) *the personal information consists of the third party's name when*
  - (i) *it appears with other personal information about the third party,*  
*or*
  - (ii) *the disclosure of the name itself would reveal personal information about the third party,*  
...
- (5) *In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether*
  - (a) *the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny,...*  
...
  - (c) *the personal information is relevant to a fair determination of the applicant's rights,*  
...
  - (e) *the third party will be exposed unfairly to financial or other harm,*
  - (f) *the personal information has been supplied in confidence,*  
...
  - (h) *the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and*
  - (i) *the personal information was originally provided by the applicant.*

[para 9] Under section 71(1) of the Act, the Public Body has the burden of proving that the Applicant has no right of access to the information that it withheld. In the context of section 17, the Public Body must establish that the severed information is the personal information of a third party, and may show how disclosure would be an unreasonable invasion of the third party's personal privacy. Having said this, section 71(2) states that, if a record contains personal information about a third party, it is up to the Applicant to prove that disclosure would not be an unreasonable invasion of the third party's personal privacy. Because section 17 sets out a mandatory exception to disclosure – and section 2(e) of the Act provides for independent reviews of the decisions of public bodies – I must also independently review the information in the records at

issue and determine whether disclosure would or would not be an unreasonable invasion of personal privacy.

### **1. Is there personal information of third parties?**

[para 10] Section 17 applies only to personal information, which is defined in section 1(n) of the Act. I find that some of the records at issue contain the personal information of the Professor, being his name under section 1(n)(i), information about his employment history under section 1(n)(vii), and other recorded information about him as an identifiable individual. In particular, there is information about the allegations made against the Professor and the Committee's findings regarding them.

[para 11] The records at issue also contain the personal information of other third parties. This consists of the names and job titles of the members of the Committee, and the names and job titles of various representatives of the Public Body who are mentioned in the text of correspondence or who sent, received or were copied on correspondence. There are also signatures, business addresses and business telephone numbers of some of the foregoing individuals, which constitute personal information under section 1(n)(i).

[para 12] I find that other information in the records at issue is not anyone's personal information. This consists of the dates on letters as well as information about the Public Body's policies and procedures relevant to the Committee's examination of the allegations against the Professor, which are found on the lower portions of pages 2 and 4. I considered whether the policies and procedures were the personal information of the Professor, to the extent that they reveal the process surrounding the examination of the allegations against him. I concluded otherwise, as the policies and procedures presumably apply in general fashion and were not unique to the matter involving the Professor. I therefore did not consider the policies and procedures to be information "about" the Professor under section 1(n) of the Act.

[para 13] Because section 17 can apply only to personal information, the Public Body had no authority to withhold the dates or the information regarding its policies and procedures under that section.

[para 14] Finally, I considered the extent to which the Applicant's own personal information appears in the records that were withheld from him. Section 17 normally does not permit a public body to withhold an applicant's own personal information, as he or she is not a third party for the purpose of the section. However, in this inquiry, the Applicant's personal information (e.g., the fact that he made allegations) is intertwined with the Professor's personal information (e.g., the fact that he was the subject of allegations). Where personal information is intertwined, a public body must make an "all or nothing" decision regarding disclosure by weighing the applicant's right of access to information against the third party's right to protection of privacy (Order 98-008 at para. 35; Order 99-027 at para. 134). I have borne this principle in mind when reaching my conclusions in this Order, which are to the effect that the Applicant's intertwined personal information should be disclosed, as further discussed below.

[para 15] As also discussed below, there is one instance where I find that the Applicant's personal information is sufficiently distinct and separate from that of the Professor, meaning that it cannot be construed as simultaneously being third party personal information. The Public Body therefore did not have the authority to withhold it under section 17.

**2. Would disclosure of the personal information of third parties other than the Professor be an unreasonable invasion of personal privacy?**

[para 16] As indicated above, the records at issue contain the names and job titles of the members of the Committee that was struck to examine the Applicant's allegations against the Professor. The records also contain the names, job titles and, in some cases, signatures and business contact information of other representatives of the Public Body.

[para 17] Where personal information of third parties exists as a consequence of their activities as staff performing their duties, or as a function of their employment, this is a relevant circumstance weighing in favour of disclosure under section 17(5) of the Act (Order F2003-005 at para. 96; Order F2004-015 at para. 96). It has also been stated that records of the performance of work responsibilities by an individual is not, generally speaking, personal information about that individual, as there is no personal dimension (Order F2004-026 at para 108; Order F2006-030 at para. 10; Order F2007-021 at para. 97). Absent a personal aspect, there is no reason to treat the records of the acts of individuals conducting the business of a public body as "about them" (Order F2006-030 at para. 12). Further, where a name (which constitutes personal information) appears only with the fact that an individual was discharging a work-related responsibility (which is not personal information), the presumption against disclosure under section 17(4)(g) (name plus personal information) does not apply (Order F2004-026 at para. 117).

[para 18] Consistent with the foregoing statements, several orders of this Office have found that disclosure of the names, job titles and/or signatures of individuals acting in a formal or representative capacity is generally not an unreasonable invasion of their personal privacy (Order 2000-005 at para. 116; Order F2003-004 at paras. 264 and 265; Order F2005-016 at paras. 109 and 110; Order F2006-008 at para. 42; Order F2008-009 at para. 89). The fact that individuals were acting in their official capacities, or signed or received documents in their capacities as officials, weighs in favour of a finding that the disclosure of information would not be an unreasonable invasion of personal privacy (Order F2006-008 at para. 46; Order F2007-013 at para. 53; Order F2007-025 at para. 59; Order F2007-029 at paras. 25 to 27). Finally, several orders of this Office have found that the fact that a third party's personal information is merely business contact information, or of a type normally found on a business card, is a relevant circumstance weighing in favour of disclosure (Order 2001-002 at para. 60; Order F2003-005 at para. 96; Order F2004-015 at para. 96).

[para 19] Given the foregoing well-established principles, I conclude that disclosure of almost all of the personal information of third parties in the records at issue, other than that of the Professor, would not be an unreasonable invasion of their personal privacy.

The fact that the records at issue merely reveal that these individuals were carrying out representative or work-related functions sufficiently weighs in favour of disclosing their personal information. The records at issue reveal no personal dimension to the activities of the members of the Committee or other representatives of the Public Body, such as personal comments or points of view about the allegations against the Professor. Only the general decision to examine the allegations, various procedural steps, and the overall conclusion of the Committee are revealed. Accordingly, the Public Body did not have the authority, under section 17, to withhold almost all of the names, job titles, signatures and business contact information of its various employees and representatives. I make an exception with respect to the names of the Committee members that are intertwined with the personal information of the Professor on one page of the records. I will explain this later in this Order, when I discuss disclosure of the Professor's personal information.

[para 20] Because the Professor's personal information in the records at issue reveals more than merely the fact that he carried out a work-related activity, the relevant circumstance regarding the performance of work-related activities does not apply to his personal information and therefore does not favour its disclosure. Where there is associated information suggesting that an individual performing work-related responsibilities was acting improperly, there are allegations that the work-related act of an individual was wrongful, or disclosure of information is likely to have an adverse effect on the individual, the record of the act or activities and information about the individual potentially has a personal dimension, and thus may be the individual's personal information (Order F2006-030 at paras. 12, 13 and 16). In this inquiry, the fact that allegations were made against the Professor adds a personal dimension to his work-related activities that gave rise to the allegations, and adds a personal dimension to his activities in the course of the Committee's review, so that it must be further considered whether disclosure of the recorded activities would be an unreasonable invasion of his personal privacy.

**3. Would disclosure of the personal information of the Professor be an unreasonable invasion of personal privacy?**

(a) Presumptions and relevant circumstances

[para 21] Both the Public Body and the Professor argue that there is a presumption against disclosure of the Professor's personal information because the information is an identifiable part of a law enforcement record under section 17(4)(b) of the Act (and disclosure is not necessary to dispose of the law enforcement matter or to continue an investigation). They submit that the Committee was conducting an administrative investigation in relation to the Professor within the meaning of the term "law enforcement" set out in the Act.

[para 22] Under section 1(h)(ii) of the Act, "law enforcement" means, among other things, "an administrative investigation, including the complaint giving rise to the investigation, that leads or could lead to a penalty or sanction". However, in order to meet this definition, the penalty or sanction must be one resulting from the violation of

a “law” – being a statute or regulation – and not merely the breach of a policy or a term of employment (Order 2000-019 at paras. 66 and 67; Order F2003-005 at para. 68). Here, neither the Public Body nor the Professor has cited any statute or regulation that was allegedly violated by the Professor. Rather, the Committee’s investigation was into whether the Professor had contravened an internal policy on Integrity in Scholarly Activity. I accordingly find that the definition of “law enforcement” is not met in this inquiry and that the presumption against disclosure under section 17(4)(b) does not apply.

[para 23] The Public Body and Professor additionally submit that there is a presumption against disclosure of the Professor’s personal information because the information relates to his employment history under section 17(4)(d) of the Act. I find that section 17(4)(d) applies in this inquiry. The term “employment history” describes a complete or partial chronology of a person’s working life such as might appear in a personnel file (Order F2003-005 at para. 73). The results or conclusions of an investigation may be part of a personnel file and therefore of a person’s employment history (Order F2004-015 at para. 83). Here, the Committee’s review was of the conduct of the Professor in the course of his employment, and the Public Body states that the documents created in establishing the mandate and composition of the Committee, and then in relaying the findings of the Committee, have been retained in a file under the Professor’s name. As all or parts of these documents are those at issue in this inquiry, I find that all of the records at issue relate to the employment history of the Professor.

[para 24] The Applicant argues that public bodies should not be able to assert that information relates to the employment history of a third party, and therefore shield it from disclosure, simply by placing it in a file with the third party’s name on it. I agree. In order for information to relate to employment history on the basis of its placement in a file, the information must be of a kind typically or properly placed in a personnel or human resources file. While I do not know whether the Professor’s personal information is actually in what the Public Body considers his personnel or human resources file, I find that the documents in question may typically and properly be placed in a personnel or human resources file. The file with the Professor’s name on it is sufficiently akin to such a file, as it contains a record of information in the context of what was clearly an employment-related matter involving the Professor.

[para 25] The Professor submits that the presumption against disclosure under section 17(4)(d) also applies because his personal information in the records at issue relates to his educational history. I disagree. The fact that the Professor is employed by an educational institution does not make the records about his educational history. Personal information may relate to an individual’s educational history insofar as it is about the individual’s studies or training, not the fact that the individual is or was teaching. While there may be times where an academic is both studying and teaching at the same time, there is no suggestion in the submissions of the parties that the Professor is still pursuing education. I find that the records at issue reveal nothing about his educational history.



[para 26] Although not cited by the Public Body or the Professor, I find that there is a presumption against disclosure of the Professor's personal information under section 17(4)(g) of the Act, as his name in the records at issue appears with other personal information about him, or would reveal personal information about him (i.e., the fact that there were allegations made against him, the fact that the Committee was struck to examine them, and the nature of the Committee's conclusions).

[para 27] In determining whether a disclosure of personal information would constitute an unreasonable invasion of a third party's personal privacy – even where there are presumptions against disclosure under section 17(4) of the Act – all of the relevant circumstances must be considered, as required by section 17(5). I will now review the circumstances that are relevant in this inquiry, both enumerated and non-enumerated.

(i) *Refusal to consent to disclosure*

[para 28] The Public Body states that the Professor refused to consent to the release of his personal information, and the Professor confirms in his submissions that he objects to disclosure of his personal information to the Applicant. A third party's refusal to consent to the disclosure of his or her personal information is a factor weighing against disclosure (Order 97-011 at para. 50; Order F2008-017 at para. 149).

(ii) *Information supplied in confidence*

[para 29] Both the Public Body and the Professor argue against disclosure because the Committee proceeded with its examination in “complete confidentiality”, in accordance with the policy on Integrity in Scholarly Activity. I further note that the records themselves ask all parties participating in the process to keep the matter strictly confidential. I therefore turned my mind to the possible relevance of the circumstance under section 17(5)(f) of the Act, which is the fact that personal information was supplied in confidence. In particular, I considered whether the overall request for, or state of, confidentiality of the matter involving the Professor meant that virtually everything in the records at issue was subject to the relevant circumstance under section 17(5)(f).

[para 30] I find that section 17(5)(f) is not applicable in this inquiry, as it requires a particular item of personal information to have been *supplied* in confidence. It is not sufficient that the overall process of the Committee was intended to be confidential, or that its decision is its “confidential property”, as the policy puts it. Here, the records at issue do not actually reveal the content of any information supplied by anyone in confidence. First, the records at issue do not consist of any of the written material that the Professor apparently submitted to the Committee. Second, I have no evidence that the allegations against the Professor, as set out in the records at issue, were made by the Applicant in confidence. I construe the confidentiality policy as taking effect *after* the allegations were made. Third, although the records contain information about the process that took place and the Professor's involvement, I do not consider any of this information to have been supplied in confidence. In particular, I find that the information withheld on pages 8 and 9 was not supplied by the Professor in confidence, as it consists of his

requests and actions in relation to process, rather than the substance of his defence or his views regarding the allegations. Fourth, the Committee's decision was not treated as confidential vis-à-vis the Applicant, as he was also informed of it.

(iii) *Unfair damage to reputation*

[para 31] The Public Body submits that the circumstance under section 17(5)(h) of the Act is relevant in this inquiry, as disclosure of the records at issue may unfairly damage the reputation of the Professor. It submits that even the accusation of an infraction could have grave consequences for an academic's career, and that the Applicant would not be required to maintain the confidentiality of the severed information if it were released to him. The Professor also alludes to the potential for unfair damage to his reputation if the records at issue were disclosed.

[para 32] Disclosure of unsubstantiated allegations may unfairly damage reputation (Order 97-002 at para. 85, citing B.C. Order 71-1995). There may be unfair damage to reputation where allegations are contained in a "preliminary" or "interim" report, as opposed to one following a full process (Order 97-002 at paras. 86 and 87). Here, the Committee was asked to determine, in an expressly informal process, whether or not the Applicant's complaint against the Professor warranted a full investigation. The records at issue accordingly reflect this particular mandate, and do not make any final or definitive conclusions about whether the Professor was guilty of misconduct. Although the effect of the Committee's conclusions was the dismissal of the Applicant's complaint, this did not follow a full and formal process, as might have occurred had an investigation proceeded. The Committee also concluded that an examination of one of the Applicant's allegations against the professor fell outside its mandate. That particular allegation is therefore not at all addressed in the records at issue, whether in a final or preliminary way.

[para 33] Given the foregoing, I find that the reputation of the Professor may be unfairly damaged on disclosure of most of his personal information in the records at issue, such as the nature of the allegations against him, the fact that the Committee was struck to examine them, and information reflecting his participation in the process. However, I find that circumstance under section 17(5)(h) is not relevant to the first sentence of the second paragraph on page 12 or the third paragraph on that page, as this information does not harm the reputation of the Professor. Rather, it effectively exonerates him. Where an individual has been exonerated, there is less damage to reputation on disclosure of his or her personal information, as the allegations have not been proven and the individual has made a successful defence (Order F2008-020 at para. 90).

[para 34] The fact that the allegations against the Professor were not proven also diminishes (though it does not entirely negate) the damage to his reputation that may result on disclosure of the other information in the records at issue, including the substance of the allegations themselves. As a result, I accord less weight overall to the relevant circumstance under section 17(5)(h).

(iv) *Unfair harm*

[para 35] The Professor argues against disclosure of the records at issue on the basis that it will result in harm. He submits that disclosure would undermine the authority of the Public Body in that the Applicant is effectively seeking to have the merits of the Public Body's decision reviewed, would undermine the applicable policy and directives by compromising confidentiality, and would be contrary to the principles of deliberative secrecy and the finality of decision-making.

[para 36] Section 17(5)(e) of the Act requires a consideration of whether disclosure of a third party's personal information will unfairly expose the third party to harm. I find that the foregoing submissions of the Professor do not give rise to this relevant circumstance, as they assert harm to the Public Body and its processes rather than harm to the Professor himself. The issue in this inquiry is whether disclosure would be an unreasonable invasion of an individual's personal privacy, not whether disclosure would harm the ability of the Public Body to make decisions. The latter type of argument is more appropriately made, for instance, under section 24 of the Act (advice, etc.), which the Public Body did not apply in this case.

[para 37] To the extent that the Professor would himself be harmed if the records at issue were disclosed – in that his reputation would be damaged or his confidences would be breached – I have already reviewed these possibilities above, under the more appropriate provisions of section 17. The Professor further argues that the Applicant's access request has caused him to relive what he refers to as the unfortunate experiences of two years ago when he had to face the Applicant's false accusations. While the potential for this type of psychological harm can fall within section 17(5)(e) so as to be a relevant circumstance (Order F2008-009 at para. 45), my review of the actual content of the records at issue leads me to conclude that disclosure would not cause the Professor the psychological harm that he asserts. Apart from setting out the nature of the allegations, the records at issue do not go into any great detail about what the Professor was specifically alleged to have done, so I do not believe that disclosure would cause him to "relive" the previous experience.

[para 38] I find that section 17(5)(e) is not applicable in this inquiry. The possibility that the Professor may suffer adverse consequences if his personal information were disclosed is sufficiently accounted for by my earlier finding that section 17(5)(h) applies (unfair damage to reputation).

(v) *Fair determination of the Applicant's rights*

[para 39] The Public Body states that it considered whether or not the personal information in the records at issue was relevant to a fair determination of the Applicant's rights under section 17(5)(c) of the Act. It concluded that the Applicant's rights were not diminished or prejudiced because he did not obtain access to the severed information. It argues that the information in the records is only relevant to a fair determination of the rights of the Professor.

[para 40] Conversely, the Applicant argues that the information in the records at issue is relevant to a fair determination of his rights, given that his complaint concerned his own interests and he believes that he was wronged by the Professor's conduct. He further cites what he considers an unfair and non-transparent process carried out by the Committee, an incorrect decision reached by it, and a lack of reasons provided for the decision.

[para 41] In order for section 17(5)(c) to be a relevant consideration, all four of the following criteria must be fulfilled: (a) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; (b) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; (c) the personal information to which the applicant is seeking access has some bearing on or is significant to the determination of the right in question; and (d) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing (Order 99-028 at para. 32; Order F2008-012 at para. 55).

[para 42] The above test is not satisfied in this inquiry, as the Committee's review of the Applicant's complaint is complete and there is no other proceeding existing or contemplated. The Applicant himself points out that no appeal of the Committee's decision is available to him; that his lawyer advised him that he could not pursue judicial review because he had no standing; that the relevant policy expressly states that the Public Body's review of the allegations against the Professor are designed to preserve the integrity and reputation of the university and not to provide personal redress for aggrieved individuals; and that his only other avenue for holding the Public Body accountable, being an investigation by a Research Council, has been declined. I also question whether the Applicant's complaint against the Professor engages his *legal* rights, as opposed to simply his academic or professional interests, or what may be his interests under administrative policies and procedures. I find that the information in the records at issue is not relevant to a fair determination of the Applicant's rights under section 17(5)(c).

(vi) *Desirability of public scrutiny*

[para 43] The Applicant argues in favour of disclosure of the records at issue on the basis that it is desirable for the purpose of subjecting the activities of the Public Body to public scrutiny under section 17(5)(a) of the Act. For public scrutiny to be a relevant circumstance, there must be evidence that the activities of the public body have been called into question, which necessitates the disclosure of personal information in order to subject the activities of the public body to public scrutiny (Order 97-002 at para. 94; Order F2004-015 at para. 88).

[para 44] In determining whether public scrutiny is desirable, I may consider whether more than one person has suggested that public scrutiny is necessary; whether an applicant's concerns are about the actions of more than one person within a public body; and whether a public body has not previously disclosed sufficient information or

investigated the matter in question (Order 97-002 at paras. 94 and 95; Order F2004-015 at para. 88). However, it is not necessary to meet all three of the foregoing criteria in order to establish that there is a need for public scrutiny (*University of Alberta v. Pylypiuk* at para. 49). What is most important to bear in mind is that the desirability of public scrutiny of government or public body activities under section 17(5)(a) requires some public component, such as public accountability, public interest or public fairness (*University of Alberta v. Pylypiuk* at para. 48; Order F2005-016 at para. 104).

[para 45] With respect to the desirability of public scrutiny in this case, the Applicant submits that he wants to ensure that the sort of abuse that he says that he endured with the Professor is not repeated and experienced by other individuals, and that the Public Body is held to impartial and accountable procedures in determining whether there has been misconduct in scholarly activity. He argues that the Public Body's procedure did not allow him to speak to the panel reviewing his allegations, yet the Professor was able to respond to the Applicant's submissions, make unchallenged claims and address the panel in person. Whereas the Professor had the right to appeal the Public Body's decision in the matter, the Applicant points out that he did not, submitting that public scrutiny under the Act would contribute toward remedying this. He argues that the Public Body's policy on Integrity in Scholarly Activity is questionable, and requires public scrutiny, because it permits the Public Body to dismiss serious complaints in secrecy.

[para 46] The Applicant submits that others have had experiences similar to his, and therefore that more than person has called the activities of the Public Body into question. He submits that his concerns are about the actions of more than one person within the Public Body, as they extend not only to the conduct of the Professor but also the activities of the Committee that investigated his complaint and administrators who deal with the policy on Integrity in Scholarly Activity.

[para 47] Although the Applicant frames his arguments in reference to public scrutiny, I believe that his concerns really relate to his own interpersonal conflict with the Professor, rather than something larger on behalf of the general public. I see – in the Applicant's access request and his desire for disclosure – a component of accountability, interest and fairness, but these are in relation to the specific matter in which the Applicant was involved as a single individual, not in relation to *public* accountability, *public* interest or *public* fairness.

[para 48] Moreover, to the extent that there are public concerns about the transparency and legitimacy of the process of the Public Body when it investigates allegations of misconduct in scholarly activity, the process may be scrutinized by examining the policy on Integrity in Scholarly Activity itself. The Applicant's situation is an example of the process in action, but the fact that the Committee conducts itself in confidentiality or secrecy, complainants have a limited ability to participate in the process, or there is no avenue for them to appeal the Committee's decision, may already be judged by the public. Finally, given the actual content of the records at issue – which reveal very little additional detail about the workings of the Committee or the basis for its

conclusions – I do not believe that disclosure would assist in achieving public scrutiny, whether of the Committee’s processes or its decision in the Applicant’s particular case. I find that the relevant circumstance under section 17(5)(a) does not exist in this inquiry.

(vii) *Voluntary placement of personal information in the public domain*

[para 49] The Applicant argues in favour of disclosure of the Professor’s personal information because the Professor voluntarily placed written material that he submitted to the Committee in the public domain when he filed copies of the material in court. I find that this is not a relevant circumstance, as the written material submitted by the Professor to the Committee is not among the records at issue, and its content is not otherwise repeated or reflected in them. I also question whether an individual relinquishes any right to privacy by filing documents in court, which necessarily must be done for the purpose of the court action and which is done for that purpose only, not to reveal information more broadly to the public at large (even if that is an incidental effect because the public may access court records).

(viii) *Information originally provided by the Applicant*

[para 50] Under section 17(5)(i) of the Act, the fact that information was originally provided by an applicant is a relevant circumstance in favour of disclosure. Here, I find that that section 17(5)(h) weighs in favour of disclosing the substance of the allegations against the Professor, as framed in the records at issue, as the Applicant is the one who made them (Order F2003-005 at para. 87).

(ix) *Personal information previously disclosed without any unreasonable invasion of personal privacy*

[para 51] I find that there is a non-enumerated relevant circumstance in favour of disclosing some of the Professor’s personal information because it was already disclosed by the Public Body to the Applicant, and there has been no suggestion that the previous disclosure was an unreasonable invasion of the Professor’s personal privacy. I am referring specifically to the information reflecting the fact that the Committee was asked to examine the allegations against the Professor, the substance of those allegations and the Committee’s conclusions regarding them. The Applicant received virtually identical information in letters that were sent to him about the Committee’s review. In my view, where a public body itself has already disclosed, to a specific individual, the personal information of a third party – and there is no suggestion that the previous disclosure unreasonably invaded the third party’s personal privacy – then disclosure of virtually identical information in other records to the same individual would likely also not unreasonably invade the third party’s personal privacy.

[para 52] I note that previous orders of this Office have stated that whether an applicant knows a third party’s personal information is not a relevant consideration for disclosing that personal information (e.g., Order 99-027 at para. 175). However, I

distinguish the relevant circumstance that I have described in the preceding paragraph from situations where an applicant merely has a general sense of a third party's personal information, or knows the third party's personal information from another source. Here, it is the Public Body itself that has already disclosed virtually identical information to the Applicant. While one may go on to argue that there is nothing to be gained in disclosing the same information to the Applicant again, the Applicant in this case has requested access to specific documents and communications in a manner that suggests that he wishes to know what was conveyed to others regarding the formation of the Committee and the execution of its duties. In other words, he has an interest in knowing what was communicated to others, even if it is the same information that he already received.

[para 53] I also distinguish the relevant circumstance that I have described from situations where a public body has previously disclosed a third party's personal information in a manner that contravened the Act (i.e., in violation of section 40, which in turn refers to section 17). A public body should obviously not make a similar disclosure a second time. As already indicated, however, there is no suggestion in this inquiry – and I do not believe – that there was any contravention of section 17 or 40 when the Public Body disclosed to the Applicant the fact that the Committee had been struck to examine his allegations against the Professor, the substance of those allegations, and the Committee's conclusions.

(b) Weighing the presumptions and relevant circumstances

[para 54] On review of the presumptions and relevant circumstances under section 17 of the Act, I conclude that disclosure of most of the Professor's personal information in the records at issue would not be an unreasonable invasion of his personal privacy (exceptions noted below). Although the information relates to the Professor's employment history and the Professor's name appears with or would reveal other personal information about him, I find that the applicable presumptions against disclosure are outweighed by the fact that the Applicant originally provided the substance of the allegations as well as received virtually identical information about the allegations, about the Committee being struck to determine whether an investigation was warranted, and about the Committee's conclusions. Given that this information forms the content of most of the records at issue – including the correspondence from the Committee to the Professor himself – it would not be an unreasonable invasion of the Professor's personal privacy for the Applicant to have access to it. (I point out that, while the Professor's department is noted in the correspondence to him, his personal or full business address is not indicated so as to give rise to a possible invasion of privacy if such an address were disclosed.)

[para 55] I also find that the relevant circumstances in favour of disclosure outweigh the possibility of unfair damage to the reputation of the Professor and the fact that he refused to consent to the release of his personal information. Further, in the event that I am wrong above about the relevance of the circumstances regarding personal information supplied in confidence and unfair harm, I would have found that these are likewise outweighed by the circumstances in favour of disclosure.

[para 56] Given my conclusions in this Order, the Public Body did not have the authority to withhold from the Applicant any of pages 2, 3, 4, 5 and 12 of the records under section 17 of the Act. Disclosure of the information on these pages would not be an unreasonable invasion a third party's personal privacy essentially for one of three reasons: (1) it is no one's personal information or it is the Applicant's own personal information; (2) it is the personal information of individuals that merely reveals that they did something in a representative or work-related capacity; or (3) it is the personal information of the Professor and the relevant circumstances sufficiently weigh in favour of disclosure.

[para 57] Some of the information withheld from the Applicant on pages 2, 4 and 12 is his own personal information intertwined with that of the Professor (e.g., the Applicant's name, the fact that he had dealings with the Professor and the fact that he made a complaint about the Professor). As explained earlier, an applicant's own personal information may not be withheld under section 17 if his or her right of access essentially outweighs the third party's right to protection of privacy. In this inquiry, the relevant circumstances have led me to conclude that the Applicant's intertwined personal information should be disclosed, as it would not be an unreasonable invasion of the Professor's personal privacy.

[para 58] Conversely, with the exceptions discussed in the next paragraphs, the Public Body properly withheld the information that it severed on pages 8 and 9 of the records. This is because there are no relevant circumstances in favour of disclosing this information. The information withheld on these pages was not originally provided by the Applicant, and it is not information previously disclosed by the Public Body to the Applicant. I also found earlier that the information in the records at issue was not relevant to a fair determination of the Applicant's rights and that disclosure was not desirable for the purpose of subjecting the activities of the Public Body to public scrutiny. As only presumptions and relevant circumstances militating against disclosure remain, I conclude that disclosure of almost all of the severed information on pages 8 and 9 would be an unreasonable invasion of the Professor's personal privacy.

[para 59] Earlier in this Order, I concluded that disclosure of the personal information of all third parties other than the Professor would not be an unreasonable invasion of their personal privacy, on the basis that disclosure would merely reveal that they did something in a representative or work-related capacity. I mentioned an exception on one page of the records. Specifically, on page 9, the names of the members of the Committee are intertwined with the personal information of the Professor. While disclosure of the names, in isolation, would not be an unreasonable invasion of anyone's personal privacy – including the Professor's – I find that the Public Body justifiably withheld them because disclosure of the names in isolation would be meaningless to the Applicant, and the names of the Committee members were already disclosed to him elsewhere in the records so that there would be no added worth in disclosing them again. Where disclosure of information to an applicant would be meaningless or worthless, it may be construed that a public body reasonably severed the information (Order 96-019 at para. 47; Order F2007-013 at para. 115).



[para 60] There is an exception to the foregoing exception in that the identity of the university's legal counsel also appears on page 9, yet I found the name nowhere else in the records. Because disclosure of the name would merely reveal that the legal counsel acted in the course of the Committee's review in a work-related capacity, and disclosure of the name on page 9 would provide meaningful additional information to the Applicant, I conclude that the Public Body improperly severed the last four words of the tenth line of text on page 9, being the name and job position of the legal counsel.

[para 61] The other exception regarding my conclusion in relation to pages 8 and 9 is that the Public Body did not have the authority, under section 17, to withhold the last twelve words of the third-to-last sentence in the large paragraph on page 9 (these twelve words end with the Applicant's name). I find that this information is the Applicant's own personal information and that it is not intertwined with the Professor's personal information in such a way that it may be construed as third party personal information to which section 17 can apply.

## **V. ORDER**

[para 62] I make this Order under section 72 of the Act.

[para 63] I find that the Public Body properly applied section 17 of the Act to the information that it withheld on pages 8 and 9 of the records, with the exception of the last four words of the tenth line of text on page 9 (being the name and job position of the university's legal counsel) and the last twelve words of the third-to-last sentence in the same large paragraph on page 9 (these 12 words end with the Applicant's name). Under section 72(2)(b), I confirm the decision of the Public Body to refuse the Applicant access.

[para 64] I find that the Public Body did not properly apply section 17 of the Act to the remaining information in the records at issue (which includes the information noted as exceptions in the preceding paragraph). Under section 72(2)(a), I order the Public Body to give the Applicant access.

[para 65] I further order the Public Body to notify me in writing, within 50 days of being given a copy of this Order, that it has complied with the Order.

Wade Riordan Raaflaub  
Adjudicator