

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER FOIP2025-27

September 9, 2025

MOUNT ROYAL UNIVERSITY

Case File Number 015010

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Summary: The Applicant made a request for access under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to a letter written by faculty members entitled “Academic Freedom at Mount Royal University: A Letter from Concerned Faculty”, which the Applicant understood to have been sent to the President of the Public Body and to the Vice-President and Provost of the Public Body.

The head of the Public Body located the requested letter; however, the head severed substantial portions of the letter under section 17(1) (disclosure harmful to personal privacy).

The Adjudicator determined that the record contained personal information; however, she also decided that the names of the faculty members could reasonably be severed from the record. The Adjudicator determined that the head of the Public Body had a duty to sever the names from the record and to provide the remainder of the record to the Applicant.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 6, 17, 30, 72

Authorities Cited: **AB:** Orders F2013-36, F2024-14

Cases Cited: *Pridgen v. University of Calgary*, 2012 ABCA 139 (CanLII); *Pickle v University of Lethbridge*, 2024 ABKB 378 (CanLII)

I. BACKGROUND

[para 1] The Applicant made a request for access under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to a letter written by faculty members entitled “Academic Freedom at Mount Royal University: A Letter from Concerned Faculty”, which had been sent to the President of the Public Body and to the Vice-President and Provost of the Public Body.

[para 2] The Public Body located the requested letter; however, it severed substantial portions under section 17(1) (disclosure harmful to personal privacy).

[para 3] The Applicant requested review by the Commissioner of the head of the Public Body’s severing decisions.

[para 4] The Commissioner agreed to conduct an inquiry.

Preliminary Matter: Was the Public Body denied the opportunity to consult with faculty members?

[para 5] The head of the Public Body expresses concern in the Public Body’s submissions that disclosure of the information requested by the Applicant would suppress academic freedom. The Public Body also notes in its submissions that the faculty members who wrote or signed the letter were not consulted for the purposes of learning their views as to whether the letter and their names should be disclosed, or whether they thought disclosure of the letter would have any bearing on academic freedom. The head of the Public Body states:

Overall, the University initially processed the submitted access request by severing, or withholding, identifiable personal third party information under section 17(1) and 17(4)(g) of the Act prior to the release of the records at issue; therefore, the University did not take steps to notify the affected third parties at the time of processing in accordance with section 30 of the Act.

Notably, section 30(1) of the Act states the following regarding third party notices:

30(1) When the head of a public body is considering giving access to a record that may contain information ...

- (a) that affects the interests of a third party under section 16, or
- (b) the disclosure of which may be an unreasonable invasion of a third party's personal privacy under section 17,

The head must, where practicable and as soon as practicable, give written notice to the third party in accordance with subsection 30(4).

In short, the University arguably has not been provided an opportunity to seek consultation with the third parties; namely, the Faculty Signatories [30 Individuals], in regards to the possible disclosure of their academic opinions to the Applicant. This third party notice during the processing of the request would have been in accordance with section 30(1)(b) of the Act.

[para 6] In the foregoing submission, the head of the Public Body suggests the public body was not provided the opportunity to consult with faculty as to their views regarding disclosure of the letter. In my view, this is not arguable. Section 30 of the FOIP Act imposes a duty on the head of a public body to obtain the views of individuals when the head is considering disclosing the personal information of the individuals. In this case, the head decided not to disclose the information in the records without consulting the faculty members who wrote the letter and whose names are on it. The head of the Public Body had the opportunity to consult with the faculty members; the head of the Public Body elected not to do so. While the head is not required to consult when the head is not considering disclosing third party information, that is not the same thing as “not being provided an opportunity to consult.”

II. ISSUE: Does section 17(1) of the FOIP Act (Disclosure harmful to personal privacy) require the head of the Public Body to refuse access to the letter at issue?

[para 7] The letter that is the subject of the access request contains the views of several faculty members regarding academic freedom and who may assert it under the collective agreement between the Public Body and the Faculty Association. The letter was written by some, but not all, faculty members. The letter discusses the application of academic freedom at Mount Royal University. It is signed by faculty members at Mount Royal University. The letter contains views on academic freedom at Mount Royal University.

[para 8] The head of the Public Body refused access to the names, email addresses and opinions in the letter.

[para 9] Section 17 requires a public body to withhold the personal information of an identifiable individual when it would be an unreasonable invasion of the individual’s personal privacy to disclose his or her personal information.

[para 10] Section 1(n) of the FOIP Act defines personal information. It states:

1 In this Act,

(n) “personal information” means recorded information about an identifiable individual, including

(i) the individual’s name, home or business address or home or business telephone number,

(ii) the individual’s race, national or ethnic origin, colour or religious or political beliefs or associations,

(iii) the individual’s age, sex, marital status or family status,

(iv) an identifying number, symbol or other particular assigned to the individual,

(v) the individual’s fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,

(vi) *information about the individual's health and health care history, including information about a physical or mental disability,*

(vii) *information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,*

(viii) *anyone else's opinions about the individual, and*

(ix) *the individual's personal views or opinions, except if they are about someone else [...]*

[para 11] Information is personal information within the terms of the FOIP Act if it is recorded and is about an identifiable individual.

[para 12] Section 17 sets out the circumstances in which a public body may or must not disclose the personal information of a third party in response to an access request. It states, in part:

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

[...]

(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,

(b) the disclosure is likely to promote public health and safety or the protection of the environment,

(c) the personal information is relevant to a fair determination of the applicant's rights,

(d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people,

(e) the third party will be exposed unfairly to financial or other harm,

(f) the personal information has been supplied in confidence,

(g) the personal information is likely to be inaccurate or unreliable,

(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 13] Section 17 does not say that a public body must never disclose third party personal information. It is only when the disclosure of personal information would be an unreasonable invasion of a third party's personal privacy that a public body must refuse to disclose the information to an applicant (such as the Applicant in this case) under section 17(1). Section 17(2) (not reproduced) establishes that disclosing certain kinds of personal information is not an unreasonable invasion of personal privacy.

[para 14] When the specific types of personal information set out in section 17(4) are involved, disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. To determine whether disclosure of personal information would be an unreasonable invasion of the personal privacy of a third party, a public body must consider and weigh all relevant circumstances under section 17(5) (unless section 17(3), which is restricted in its application, applies). Section 17(5) is not an exhaustive list and any other relevant circumstances must be considered.

[para 15] As will be discussed in further detail below, section 6 of the FOIP Act imposes a duty on a public body to sever information that is subject to an exception if it can reasonably do so. Section 6 states, in part:

6(1) An applicant has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.

(2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record.

[...]

The foregoing provision establishes that an applicant has a right of access to records including records containing the applicant's personal information. The right of access is subject to exceptions to disclosure, but if a public body can reasonably sever information subject to an exception, such as the personally identifying information of a third party, and provide the remainder to the applicant, it must do so. Section 6 creates a right for an applicant and a corresponding duty in the head of the public body.

[para 16] The Applicant's position is that the letter should be disclosed in its entirety on the basis that it does not contain personal information. The Applicant argues that the faculty who created the letter were acting in a representative capacity and not as individuals when they did so:

The names of those who signed the secret letter also should not be redacted. The letter's signatories were members of a public bodies acting in their public body capacities (as "concerned faculty", not private individuals) and the letter quite obviously objected to a policy of a public body. Therefore, 17(1) is not available unless the faculty members were discussing issues of a personal nature – that is, matters wholly irrelevant to the public body's policies and the cancelled [...] talk. As well, it is noted in the FOIP Guidelines and Practices that an "established ... "test for confidentiality" is "that a third party must, from an objective point of view, have a reasonable expectation of confidentiality with respect to the information that was supplied." (p. 105) As the initiators of the letter distributed the document widely throughout MRU widely for signatures, there could have been no expectation of confidentiality.

[para 17] The head of the Public Body argues that the severed information is personal information. The Public Body also argues that it would be impossible to sever identifying information from the record. The Public Body also argues that the concept of academic freedom supports refusing access to the information in the records.

[para 18] The head of the Public Body submitted the collective agreement between the Board of Governors and the Faculty Association of Mount Royal University for my review. Article 23 of this agreement states:

23.1 The common good of society depends upon the search for knowledge and its free exposition. Academic freedom in educational institutions is essential to both these purposes in the teaching function of the institution as well as in its scholarship and research.

23.2 Academic freedom as a right belongs to the individual faculty member, not the Faculty Association or the University. Academic freedom does not confer legal immunity nor does it diminish the obligation to meet employment duties and responsibilities.

23.3 Academic staff shall not be hindered or impeded in any way by the institution or the faculty association from exercising their legal rights as citizens, nor shall they suffer any penalties because of the exercise of such legal rights. Academic members of the community are entitled, regardless of prescribed doctrine, to freedom in designing and carrying out research and in publishing the results thereof, freedom of teaching and of discussion, freedom to criticize the University and the faculty association, and freedom from institutional censorship.

23.4 Academic freedom does not require neutrality on the part of the individual. Rather, academic freedom makes commitment possible. Academic freedom carries with it the duty to

use that freedom in a manner consistent with the scholarly obligation to base research and teaching on an honest search for knowledge.

23.5 In exercising the freedom to comment and criticize, academic staff members have a corresponding obligation to use academic freedom in a responsible manner. This implies a recognition of the rights of other members of the academic community and a tolerance of differing points of view.

[para 19] Under the collective agreement, academic freedom is an individual right belonging to a faculty member that may be asserted by a faculty member. “Academic freedom” refers to the search for knowledge by a faculty member and the member’s right to communicate or share the findings of that search for knowledge. Academic freedom does not confer legal immunity on a faculty member but does protect the faculty member from institutional censorship.

para 20] In *Pridgen v. University of Calgary*, 2012 ABCA 139 (CanLII) (*Pridgen*) paragraphs 114 – 117, the Court of Appeal linked academic freedom to freedom of expression:

Academic freedom and freedom of expression are not conceptually competing values. Freedom of expression, of course, is guaranteed to all Canadians. Academic freedom is usually confined to the professional freedom of the individual academic in universities and other institutions of higher education; the freedom to put forward new ideas and unpopular opinions without placing him or herself in jeopardy within the institution. It has also been described as having an aspect of academic self-rule – the right of academic staff to participate in academic decisions of the university, and, more broadly, an aspect of institutional autonomy – the right of the institution to make decisions, at least with respect to academic matters, free from government interference: see Eric Barendt, *Academic Freedom and the Law* (Oxford: Hart Publishing, 2010) at pp 23-34.

Academic freedom and freedom of expression are inextricably linked. There is an obvious element of free expression in the protection of academic freedom, whether limited to the traditional conception of academic freedom as protecting the individual academic professional, or applied more broadly to promote discussion in the university community as a whole. Interestingly, the protection of free speech on campus is not universally seen as a threat to academic freedom. The United States Supreme Court has linked the two concepts, noting that:

... state colleges and universities are not enclave immune from the sweep of the First Amendment. ... the precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. ... The college classroom, with its surrounding environs, is peculiarly the ‘marketplace of ideas’, and we break no new constitutional ground in reaffirming this Nation’s dedication to safeguarding academic freedom.: *Healy v James*, 408 U.S. 169 (1972) at 180.

The United Kingdom has also recognized the obligation of universities to promote freedom of speech on campus. The Education (No. 2) Act 1986 imposes an obligation on universities and colleges to take the steps that “are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment, and for visiting speakers”: section 43(1), quoted in Barendt, 2005, at 501.

In my view, there is no legitimate conceptual conflict between academic freedom and freedom of expression. Academic freedom and the guarantee of freedom of expression contained in the Charter are handmaidens to the same goals; the meaningful exchange of ideas, the promotion of

learning, and the pursuit of knowledge. There is no apparent reason why they cannot comfortably co-exist. That said, if circumstances arise where these values actually collide, a section 1 analysis would be required to properly balance them. That circumstance does not arise in this case.

[para 21] From the foregoing, I understand that academic freedom protects the right of faculty members to discuss ideas publicly without fear of reprisal and to take part in academic decisions. Additionally, it protects academic institutions from government interference.

[para 22] The Public Body argues that the information in the records should not be disclosed, beyond what it chose to provide the Applicant. It argues that the content of the records at issue is the personal information of the faculty members who signed it and that this information could identify those members, even if their names are severed from the records. It argues that academic freedom required it to withhold the personal information of the faculty members.

Is the personal information of faculty members contained in the records?

[para 23] I find that the faculty members did not write the letter as representatives of the Public Body, or as part of their duties to the Public Body. The letter is intended to express a view that is critical of a public statement made by representatives of the Public Body regarding academic freedom. Under the terms of the collective agreement that the Public Body submitted, individual faculty members enjoy academic freedom while the Public Body, as employer, does not.

[para 24] The letter requested by the Applicant appears intended to present the personal views of individual faculty members as scholars. I am unable to infer from the letter that its authors wrote the letter as part of their duties as employees or representatives of the Public Body. The names of individual faculty members form part of the letter. The opinions presented in the letter are the personal opinions of the faculty members who signed the letter to express support for the views it presents. I find that section 17(4)(g) applies to the information in the letter as the letter contains the names of the individual faculty members in the context of other information about them (their opinions regarding academic freedom and interpretation of events at the university).

[para 25] As section 17(4)(g) applies to all the information in the letter not disclosed by the head of the Public Body, a presumption arises that it would be an unreasonable invasion of personal privacy to release the information in the letter. As discussed above, once the presumption arises, it is necessary to review the factors under section 17(5) to determine whether the presumption is rebutted by a relevant factor or factors.

What is the significance of academic freedom in this case?

[para 1] The Public Body argues the following:

Based on the above research, certain trends emerge particularly from the Information and Privacy Commissioner of Ontario's Office surrounding the concept of Academic Freedom and its

unique considerations within the aspect of processing Access-to-Information requests, which include the following:

- Academic Freedom allows for academic opinions that encourage the "critical debate" by Academics and/or their ability to speak freely; where, the positions might even be politically unpopular. The critical dialogue between Academics ultimately is a valuable contribution to our "democratic society" by allowing intellectuals to investigate, and debate, issues without the scrutiny of the government or the public.
- Factors relating to the University's ability to "access and use" specific records, or the information contained in the records, may be relevant when determining whether the information is in the custody or control of the public body or subject to access.
- One of the purposes surrounding access-to-information legislation is to ensure government accountability (Principle of (Government] Transparency), which arguably may not be furthered, or accomplished, by disclosing records that contain information that touches on Academic Freedom such as, opinions of academics, which critique the government or its other bodies.
- The employer-employee relationship between post-secondary institutions and their academic staff is unique due to the aspects of Academic Freedom. For example, it is possible to view a record containing an Academic's opinion criticizing the government under the auspices of Academic Freedom to not be within the Faculty Member's official capacity as an employee of the university.

In short, at times Academic opinions under the premise of Academic Freedom may arguably have a personal dimension or be of a personal nature.

As the above research certainly provides a detailed overview of Academic Freedom and what to possibly consider in respect to processing an access-to-information request, the following comprises of Mount Royal University's formal submissions in response to the Request-for-Review under the parameters of Part 1 of the FOIP Act.

[para 26] The head of the Public Body argues that academic freedom is a relevant consideration in this case. The head argues that disclosure of the opinions and identities of the authors of the letter could be reasonably expected to suppress or otherwise interfere with academic freedom.

[para 27] I accept that situations where academic freedom is a relevant consideration under section 17(5) of the FOIP Act are conceivable; however, I find that there is no evidence that academic freedom is a relevant consideration in this case or that rights to academic freedom could be infringed or affected by withholding or disclosing the personal information.

[para 28] Under the collective agreement between the faculty association and the Public Body, cited above, academic freedom applies both to the pursuit of knowledge and its exposition by a faculty member. Academic freedom may be asserted only by a faculty member under the collective agreement and not by the University or the faculty association.

[para 29] As noted above, the head of the Public Body did not contact the faculty members who signed the letter to seek their views on academic freedom or the disclosure of the letter. As a result, there is no evidence before me that the faculty members who signed the

letter considered their academic freedom would be affected by disclosure of the letter. It appears that the Public Body is asserting that academic freedom applies, which is not an authority assigned to it under the collective agreement. Moreover, the letter itself indicates that the authors anticipated that the letter would be shared with other areas of the Public Body and considered or discussed.

[para 30] There is no evidence before me that any of the faculty members who authored or signed the letter expressed concerns regarding suppression of academic freedom should the letter be made public through an access request. As a result, I find this factor irrelevant.

[para 31] In *Pickle v University of Lethbridge*, 2024 ABKB 378 (CanLII) the Court found that academic freedom is a right under the collective agreement, and as such, was within the jurisdiction of an arbitrator to decide and not the Court. The Court said at paragraphs 44 - 47:

In my view, the essential nature of the Respondent's complaints as they relate to unfair discrimination, censorship and academic freedom directly arise from breaches that fall within the ambit of the Collective Agreement. Indeed, this was effectively the Respondent's view, expressed in various passages of the Letter and in support of which he enumerated what provisions of the Collective Agreement he believed the Cancellation had breached. I agree with his view and find there is nothing to indicate that the conduct the Respondent complains of is not directly connected to the terms of his employment, his workplace issues, or the terms of the Collective Agreement. The reality, as he himself admitted in the Letter, is that his complaints engage the limits of his rights as a faculty member to engage in "scholarly activity" and to "perform service" for the benefit of other U of L faculty and staff, students, and the broader community (as per, for example, article 11.01.6) rather than his broader rights, grounded in the general law, as a member of the public. In the result, I conclude that his claims for which he seeks redress arise expressly or inferentially from the interpretation, application, operation, or alleged violation of the Collective Agreement.

I disagree with his argument that section 135 is not sufficiently robust to create an exclusive jurisdiction for labor disputes that fall within the ambit of collective agreements. At para 29 of *Young Estate*, the Court of Appeal explicitly addressed the purpose of the precursor to section 135 of the Code:

Section 133 must be taken as manifesting an intention by the Legislature to oust the jurisdiction of the courts in resolving disputes between employers and employees which the statute and the collective agreement have assigned to the grievance and arbitration procedure for a final and binding resolution. A policy of judicial deference to the dispute resolution procedure mandated by the labour legislation, agreed to by the parties, and detailed in the collective agreement is essential to protect the integrity of the collective bargaining system.

The interpretation of section 135 of the Code and its identical precursors has been judicially considered in cases such as *Strathcona Steel MFG Inc v Oliva*, 1986 ABCA 246, paras 23-25 and 28; *Fortier v Tyco International of Canada Ltd*, 1996 CanLII 10393 (AB KB), 39 Alta LR (3d) 366; *Young Estate*, para 29; *Lam v University of Calgary*, 2022 ABCA 211, paras 28-29; and *Prodaniuk*, where the Court considered an identically worded provision of the Police Officers Collective Bargaining Act RSA 2000, c P-18: *Prodaniuk* (QB), paras 101-102; and *Prodaniuk* (CA), para 32, and have been consistently interpreted to uphold the exclusive jurisdictional model articulated in *Weber*. While the Respondent may take the view that the Court of Appeal erred in overbroadly interpreting section 135 of the Code, I find that its decision in *Prodaniuk* is clear, is consistent with the courts' previous decisions, is applicable to the facts before me, and is binding on me.

I reject the Respondent's argument that when he booked the Event, he did not do so as a faculty member subject to the terms of the Collective Agreement, but as a member of the public. The Non-Academic Booking Policy requires that a member of the public who wants to book an event at the U of L must do so through campus space booking. Instead, the Respondent arranged the booking of the Event through his administrative assistant, who contacted the Registrar's Office. I find that in booking the Event through a U of L employee using a process that was not ordinarily available to the public, he acted in his capacity as a member of the faculty.

[para 32] From the foregoing, I conclude that when a faculty member's right of academic freedom is at issue, the matter may be grieved by the faculty member under the faculty member's collective agreement and the matter is within the exclusive jurisdiction of an arbitrator to decide. The Public Body has provided no evidence to support finding that a faculty member is concerned that academic freedom would be infringed if the Public Body were to disclose the contents of the letter to the Applicant. Moreover, if a faculty member asserts that a public body is infringing the faculty member's rights of academic freedom under the collective agreement, that is a matter for an arbitrator.

[para 33] It is not clear from the head's arguments whether the head of the Public Body means to assert academic freedom on behalf of faculty members or to speak about academic freedom in general terms. If the head is arguing that faculty members' rights could be infringed by disclosure, then that is a matter to be addressed under the collective agreement. If the head is arguing that the promotion of academic freedom is a relevant consideration under section 17(5), I accept that promoting academic freedom could be a relevant consideration under this provision should evidence establish that this consideration is relevant to the decision to be made. As discussed above, section 17(5) of the FOIP Act does not create an exhaustive list of factors, and any relevant factor may be considered.

[para 34] There is no evidence before me that academic freedom is a relevant consideration in this case, as the head of the Public Body has not established that refusing access to the letter requested by the Applicant would affect academic freedom. Again, academic freedom protects faculty members from institutional censorship; no explanation has been provided as to how refusing access to the letter would promote this objective. The Public Body has not established that there is any likelihood that the faculty members who wrote the letter would be less able to conduct studies or discuss matters should the Applicant be given access to the personal information in the letter. While the head of the Public Body argues that shielding the letter from public view would enable academic staff to freely debate and criticize the government, it is unclear how this outcome would promote academic freedom, given that academic freedom applies to protect against institutional censorship. Moreover, there is no evidence before me as to the likelihood that disclosure of the personal information in the record could reasonably be expected to result in the harms projected by the head of the Public Body – that faculty members could be reasonably expected to be less likely to discuss matters or criticize government.

[para 35] As discussed in *Pritchard, supra*, academic freedom protects faculty members from institutional censorship but also protects universities from censorship by the government. The Public Body has not established that either purpose would be engaged by disclosure of the content of the record at issue. There is no evidence that the Public Body would be likely to censor the work of the authors of the letter should the letter's content, of which the Public Body

is aware, be disclosed to the Applicant. Moreover, there is no evidence that the Government of Alberta would move to interfere with the Public Body's operations should the Applicant be given access to the information in the letter. Conceivably, the Applicant might disseminate the content of the letter to spark further debate; however, that is not the same thing as censoring or limiting academic freedom.

Confidentiality

[para 36] The Applicant argues that the authors of the letter distributed the letter to obtain support for their position and so there could be no expectation of confidentiality regarding the letter. There are some statements in the letter which indicate portions of the letter were intended to be shared within the Public Body beyond the named recipient. I base this conclusion on the fact that the letter contains commendations directed at parts of the Public Body other than the addressees. However, it is unclear that the authors intended the letter to be made public or distributed to all members of the Public Body. While I cannot conclude that the entire letter was intended to be made public, I agree with the Applicant that there are no clear indicia that the letter was intended to be confidential. As a result, section 17(5)(f) does not apply and confidentiality is not a relevant factor to be weighed under section 17(5).

The Public Interest

[para 37] The Applicant argues that the public interest would be served by disclosing the requested record. She states:

There is a need for transparency in this matter, and so the details of the secret letter [the record requested by the Applicant] should not have been redacted. They involve a university president's public comments and a number of faculty members' reaction to them. As this reaction from "concerned faculty" was designed to change the behaviour of a public body - Mount Royal University - it is a matter of public interest, not "personal privacy". The cancellation of the talk received substantial media coverage (<https://nationalpost.com/news/canada/calgary-university-cancels-event-by-ex-muslim-citing-sensitivity-after-new-zealand-attacks>) and [the President's] expression of regret led many faculty and staff to reinvigorate their support for academic freedom and freedom of expression (Attachment 4). A great deal of discussion has occurred about the possible contents of the letter, and the secrecy surrounding it has led to unhelpful speculation. The secret letter also is a matter of public interest because it influenced the actions of the Mount Royal Faculty Association (MRFA). After seeing the secret letter, the MRFA decided to publicly oppose [the President's] "improper use" of the concept of academic freedom "in the communication [MRU administration] shared with the campus community..." (Attachment 5).

When one looks at the amount of redaction in the secret letter, it is clear that no one applied the FOIP Act to the decision about what should be withheld. The instructions from the FOIP "Guidelines and Practices" make it clear that "[a] record cannot be withheld simply because it may contain sensitive or embarrassing information" and that "public bodies should interpret the exception provisions narrowly" (<https://www.servicealberta.ca/foip/documents/chapter4.pdf>, p. 95). Section 17(5) of the FOIP Act also asserts that the decision to release information must be subject to a "reasonableness test" that requires the consideration of a variety of factors. One consideration - Section 17(5)(a)- is whether or not "the disclosure is desirable for the purposes of subjecting the activities of the Government of Alberta or a public body to public scrutiny"

(<http://www.gp.alberta.ca/documents/Acts/F25.pdt>). The scrutinizing of a university involves examining the actions of its faculty when they are trying to change policy.

[para 38] The Public Body states:

The secondary argument is a matter of whether the disclosure of an opposing opinion from other Faculty Members by the Public Body will [aid] in the principle of transparency in order to align with one of the key purposes of the FOIP Act, which is government accountability. In other words, would having access to opposing Faculty Member's personal opinions under the auspices of Academic Freedom in regards to a decision that has already been made by the public body fulfill one of the purposes of the FOIP Act, which is to provide government accountability? The University believes that disclosing personal opinions that were received after the deliberation and/or decision-making process would not shed further light on why the event was cancelled as the decision had already been made based on the records before us. The disclosure arguably would instead hold other Faculty Members to account for their personal opinions, or positions, regarding the Public Body's operations under the Academic Freedom construct.

[para 39] The Applicant argues that it is in the public interest to disclose the substance of the letter she requested. The Public Body argues that the public interest does not support disclosing the personal information of the faculty members whose names are on the letter because the letter does not add any information as to why an event was cancelled.

[para 40] I agree with the Applicant that the public interest may be served by disclosure of the substance of the letter. The discussion of academic freedom contained in the letter presents a perspective regarding academic freedom at the Public Body that could inform further public debate. In that sense, disclosure of the content of the letter could serve the public interest.

[para 41] While I accept that the disclosure of the discussion of the concepts in the letter would serve the public interest, I am unable to say that disclosure of the *names* or *personally identifying information* of the faculty members who signed the letter would necessarily serve the public interest. If it were the case that the contents of the letter were inextricably connected to the names of the faculty members that appear on it, then the public interest might be a relevant consideration in support of disclosing personally identifying information. In this case, though, they are not inextricably linked. That is, disclosing the opinions in the letter may benefit the public interest, but it is not necessary to disclose the names of the authors / signatories to achieve that objective.

[para 42] I am unable to identify any factors weighing for or against disclosing the personally identifying information in the letter. As a result, the presumption that it would be an unreasonable invasion of personal privacy to disclose the personal information of the authors / signatories of the letter is not rebutted.

Can the personally identifying information of the faculty members be severed from the records and the remainder provided to the Applicant?

[para 43] As discussed above, the head of a public body has a duty under section 6(2) to consider whether information may be severed from a record and to provide the remainder to an applicant.

[para 44] In Order F2013-36, the Adjudicator said at paragraph 11:

Once the decision is made that a presumption set out in section 17(4) applies to information, then it is necessary to consider all relevant factors under section 17(5) to determine whether it would, or would not, be an unreasonable invasion of a third party's personal privacy to disclose the information. If the decision is made that it would be an unreasonable invasion of personal privacy to disclose the personal information of a third party, the Public Body must then consider whether it is possible to sever the personally identifying information from the record and to provide the remainder to the Applicant, as required by section 6(2) of the FOIP Act.

[para 45] In Order F2024-14, the Adjudicator said at paragraph 47:

While the personal information of witnesses is information to which section 17(1) can apply, in some instances the Public Body withheld information that is no longer about an identifiable individual once the names and other identifiers are removed. Where this information is severable from the identifiers, it is no longer about an identifiable individual and section 17(1) cannot apply (for example, discrete items withheld on the second half of page 63 and the top of page 64).

As the Adjudicator noted in Order F2024-14, the head must consider whether information will continue to fall within the terms of section 1(n) of the FOIP Act once identifying information such as names is removed from the records. If it is not possible to identify an individual from the remaining information in the record once identifying information has been removed, section 6(2) of the FOIP Act requires the remaining information to be provided to the applicant.

[para 46] The head of the Public Body states that it was decided not to sever the names of the faculty members from the records and provide the remaining information to the Applicant:

It is also the University's understanding that [the SIPM's recommendation], as received by the University, proposes that the Faculty Member's opinion alone, if released to the Applicant, might not be identifiable if the signatory names (or email addresses) were withheld and; therefore, not fall under section 17 as identifiable information. The University certainly did place the OIPC's proposal under consideration; however, the following Orders were also taken into account as part of the University's analysis on whether to release the records with the Faculty opinions with the Names and/or Email addresses severed.

In Order 97-002, the previous Commissioner (Alberta) considered the meaning of "personal information" as follows: "Personal information" also includes any recorded information that can identify an individual, including facts and events discussed, observations made, and the circumstances (context) in which information is given, as well as the nature and content of the information. (para 14)

Further, in an Ontario Order, the view was taken that when determining whether information is about an identifiable individual, one must look at the information in the context of the record as a whole and that, furthermore, information without personal identifiers (as here, given that the Name of the individual has also been severed) may not be truly non-identifiable.

[para 47] I understand the head of the Public Body to say that the head considered severing the names from the records but reviewed articles and cases that suggested that in some cases individuals may be identifiable from records even though their names have been removed. While I do not disagree that there are situations where such things as public

knowledge of events, or unique facts in a record may enable an individual to be identified even though the individual's name and other identifiers are removed, the likelihood of this outcome must be demonstrated with reference to the content of the records that this is the case. That is, it is not enough to argue that individuals could be identified; the public body must point to information in the records and explain why the individuals likely to be identifiable from disclosure of that information.

[para 48] The Public Body also argues that it considered faculty members might be identifiable from the style of writing in the letter. I am unable to conclude that the faculty members whose names are on the letter would be identifiable from the context of the letter, should their names and email addresses be removed. The faculty members come from different faculties and departments, and the letter does not contain the names of all faculty members. One might be able to speculate that certain faculty members contributed to the letter, if their views regarding academic freedom are public, but it would be impossible to say definitively who did and who did not contribute to or add their name to the letter. The Public Body's concern that faculty members would continue to be identifiable has not been explained with reference to the content of the records. The Public Body did not point to specific phrases or concepts in the letter to explain why it considered those to be sufficient to identify faculty members in the absence of their names or email addresses. Without this explanation, I am unable to agree with the Public Body that the faculty members would continue to be identifiable if their names and email addresses are severed from the record.

[para 49] To summarize, I find that the personal information of faculty members is contained in the records at issue and that this information is subject to the presumption created by section 17(4)(g). I also find that the presumption that it would be an unreasonable invasion of personal privacy to disclose the personal information of faculty members contained in the records; however, I also find that once the names and email addresses of the faculty members are removed from the letter as required by section 6(2) of the FOIP Act, the letter will cease to contain personal information. The remainder of the letter may then be provided to the Applicant without contravening section 17(1). I will therefore direct the head of the Public Body to meet the duty under section 6(2) and sever the personal identifiers of faculty members from the record and provide the remaining information to the Applicant.

III. ORDER

[para 50] I make this order under section 72 of the FOIP Act.

[para 51] I order the Public Body to give the Applicant access to all the information in the letter at issue except for the names and email addresses of faculty members.

[para 52] I further order the Public Body to notify me in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

Teresa Cunningham
Adjudicator
/rm