



ACCESS AND PRIVACY OFFICE

Frequently Asked Questions: Human Resources

Are personal records of an employee that are located on University property accessible under the Act?

Generally personal records of an employee are not covered by the Act. However, if the records of an employee relate to the operational functions of the University, then the records are the property of the University and are covered by the Act. If an employee's records are **used in decision-making or program activity**, then they are considered to be University records and thus, subject to the Act.

Does an applicant have the right to access confidential reviews about him or herself from peers concerning a tenure application?

Individuals have a general right of access to information about themselves under FOIP. However, Section 19 provides the University with the discretionary right to refuse to disclose evaluative information provided explicitly or implicitly in confidence by a third party. If the third party consents to the release of the information to the applicant, the University would release it.

Does a professor have access to a written evaluation of him/herself by a student?

Someone else's opinion about an individual is considered the personal information of the subject and again, individuals have a general right of access to information about themselves. However, Section 19 provides the University with the discretionary right to refuse to disclose evaluative information provided explicitly or implicitly in confidence by a third party. If information that would identify the student evaluator can be severed, the remaining information could be released.

Can an individual who has been accused of sexual harassment access a case advisor's notes from the Sexual Harassment Officer?

Records are not generally available while an active investigation is under way [Section 20(1)] or where disclosure could reasonably be expected to threaten anyone else's safety or mental or physical health. [Section 18] Records would also not be available where the

records are subject to any type of legal privilege, including solicitor-client privilege
[Section 27(1)]

Is the information contained in a job application submitted to Human Resources affected by the Act?

Yes. The application is being submitted in response to a request for applications. Staff will decide whether or not to short list or interview the applicant based on the information contained in the application. When personal information is used to make a decision about an individual, the information must be retained for a period of at least one year to allow the individual an opportunity to review the record and request corrections to it.
[Section 35(b)]

Can the University confirm, in response to a telephone inquiry, whether an individual is employed with the University?

It is not considered an unreasonable invasion of privacy to confirm employment status.

Can personal information (such as telephone number, timetable, address, etc.) of employees be released to a third party?

Disclosure of the business address and telephone number of a staff member is not considered an unreasonable invasion of privacy. The timetable of a staff member could be considered to be a part of that person's 'employment responsibilities' and would thus also not be considered an unreasonable invasion of privacy. [Section 17(2)(e)] However, it would be prudent to consult with the staff member involved to ensure that such release would not reasonably be harmful to his or her health or safety. [Section 18(1)(a)]

Can the University disclose salary information?

It is not considered an unreasonable invasion of privacy to disclose information about an employee's classification, salary range, discretionary benefits or employment responsibilities. The exact salary would not be released.

Can personal information, be disclosed to Revenue Canada for the purpose of a tax evasion investigation?

Yes. Section 40(1)(e) allows for disclosure to comply with another Act, and Section 40(1)(q) allows for disclosure for law enforcement purposes. In either case, the official from Revenue Canada would have to provide proof of identity and the specific authority under which the information is being requested.

Can an employee's own personal information be withheld by the University in cases where the employee has made a claim against the University?

Although individuals generally have a right to information about themselves, in limited circumstances information may be withheld. Section 25(1)(c) allows the University to refuse to disclose information that could reasonably be expected to harm its economic interests and specifically, result in financial loss to the University or interfere with negotiations to settle the case. The University may, therefore, refuse to release information that would have an adverse impact on an insurance claim or a suit against the University. Note that the University must be able to demonstrate the likelihood of harm to its interests.

If a severance document indicates that the parties will not release information and the University is forced to do so under FOIP, can the previous employee sue?

No. No proceedings may be brought against the University or any person acting for the University for damages resulting from the disclosure of, in good faith, all or part of a record or information. [Section 90] An agreement by the parties not to discuss the agreement in public is not the same as a confidentiality agreement. Whether or not the University can be forced to disclose severance agreements is not yet clear and will likely depend on the degree to which such an agreement is discretionary on the part of the signatories.

Can personal information be collected about an employee in an internal investigation without their permission?

Yes, in certain circumstances. An indirect collection of personal information is allowed under the following circumstances:

- when the information is collected for the purpose of law enforcement [Section 34(1)(g)]
- when the information is collected for the purpose of managing or administering personnel [Section 34(1)(n)]
- when the public body believes that compliance with collection rules would result in the collection of inaccurate information. [Section 34(3)]

What information can be withheld in the case of internal investigations of staff misconduct? Who has a right of access to this information?

Unless criminal charges are being contemplated or there are penalty provisions under another statute, law enforcement exceptions in the act cannot currently be used. Generally, information about such an investigation consists mainly of personal information about the parties involved and would only be available to the individuals

themselves. An individual's right to access his or her own information must be balanced against the possibility of harm to another person's health and safety and harm to investigative techniques. All records need to be carefully examined against the provisions of Section 17.

How long must application forms for unsuccessful candidates or unsolicited application forms be kept?

If the University uses the application form to make a decision about hiring or not hiring the individual, it must be retained for at least one year. Unsolicited applications or resumes would only be retained if they were considered in the process of a personnel search. Otherwise, they can be destroyed within six months.

Are notes taken in an evaluation process that will lead to a final summary report considered personal information and therefore accessible by the subject?

All records of the University are potentially accessible under the FOIP Act [Section 6(1)] whether or not they contain personal information about an applicant. If the notes are about a service provider and are not opinions or evaluative material about an identifiable individual they would not be personal information. Misinterpretation or hurt feelings are not exceptions under the Act. Care should be taken in writing notes to write in such a way that the contents cannot be misinterpreted. Notes should be factual or, where opinion is expressed, the person expressing the opinion should be qualified to do so and be prepared to defend that opinion.

Will internal memos that contain recommendations and refer to an individual by name be available to that individual?

Generally information about an individual is available to that individual, but this is not an unfettered right. Discretion exists to withhold information in the following circumstances:

- when, in the opinion of a qualified professional, the information could reasonably be expected to result in harm to the applicant's health or safety. [Section 18(2)]
- when the information consists of a confidential evaluation of the applicant compiled solely to determine suitability for employment. This would not usually apply to memos written by another staff member. [Section 19]
- when the information consists of advice or recommendations related to the applicant provided to someone who can implement an action. (e.g. disciplinary recommendations) [Section 24(1)(a)]
- when the information is contained in plans relating to the management of personnel or the administration of the University that have not yet been implemented (e.g. human resource plans or downsizing options). [Section 24(1)(d)]

Can the University disclose personal information about faculty members and non-academic staff to their respective employee associations?

Section 40(1)(e) authorizes the disclosure of certain information in order to comply with the terms of a collective agreement. The terms and conditions of those agreements would govern what and how much personal information must be disclosed. The collective agreements should also be reviewed (and amended through negotiation, if necessary) to ensure that the personal information disclosed is kept secure and confidential and only used for the purposes stated in the agreement. Section 40(1)(o) allows for additional disclosure to the representative of a bargaining agent who has been authorized in writing by an employee to make an inquiry about the employee's own information.

Is the University required to disclose to Advanced Education and Career Development the actual salaries and benefits of its senior officers (for the purposes of Public Accounts reporting)?

Yes. According to a Treasury Board Directive under the Financial Administration Act, Universities must disclose this information to Advanced Education and Career Development for reporting in Public Accounts. Since the Treasury Board Directive in this case is considered to be an "enactment", Section 40(1)(e) authorizes the disclosure in order to comply with the Directive.