

Freedom of Information and Protection of Privacy

Frequently Asked Questions

PLEASE NOTE: These Frequently Asked Questions are intended to provide general information only, not legal advice. Given the general nature of these questions, the materials herein cannot be entirely accurate, complete, reliable, or error-free in specific circumstances. Please refer specific questions in relation to your particular circumstances to the University Secretariat for specific responses.

GENERAL

1. Are all records at the University covered by FIPPA?

- a. FIPPA applies to all records in the custody or under the control of an institution unless, the record or the part of the record falls within one of the exemptions under sections 12 to 22; or
- b. the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious. A university, by legislative amendment, is now an "institution" within the meaning of FIPPA.

2. What exactly is personal information?

Personal information "means recorded information about an identifiable individual, including,

- a. information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- b. information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- c. any identifying number, symbol or other particular assigned to the individual,
- d. the address, telephone number, fingerprints or blood type of the individual,
- e. the personal opinions or views of the individual except where they relate to another individual,
- f. correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- g. the views or opinions of another individual about the individual, and
- h. the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual"

Personal information does not include information about an individual who has been dead for more than thirty (30) years.

3. How do I file a request for information in the custody and control of McMaster University?

Often you can obtain the information you want just by calling or visiting the appropriate office. If the office is unable to provide the information and you wish to file a formal request for access to information, the following steps apply:

Step 1:

Complete a request form, or write a letter stating that you are requesting information under FIPPA. This request must contain sufficient detail to enable an experienced employee, upon a reasonable effort, to identify the record;

Step 2:

Forward the completed request form or letter to the Freedom of Information and Privacy Officer (Ms Helen Ayre, University Secretary, Gilmour Hall 210). Please note: A \$5.00 application fee must accompany your request: cheques should be payable to "McMaster University".

No fees are charged for the time required to manually search records containing your personal information, or to prepare such records for disclosure. However, you may be charged certain other fees, including photocopying fees. For all other records, you may be charged fees for photocopying, shipping costs, the costs of manually searching the records you have requested and preparing them for disclosure, or any other costs incurred in responding to your request.

4. How will the University respond to a request after it has been received?

Once the University receives your request and the application fee, you are generally entitled to a response within 30 calendar days.

While FIPPA provides a general right of access to university-held records of information, certain exemptions may apply. Exemptions are provisions in the Act that either permit or require an organization to deny access to requested record, in whole or in part, if specific requirements are met. In view of this, you may not receive everything that you request.

5. Who will take responsibility for FIPPA compliance?

The President of the University ('the head' under FIPPA) has delegated responsibility for FIPPA compliance to the University Secretary, Ms Helen Ayre.

6. Who makes the final decision for release of information from the University?

Ms Helen Ayre, as Freedom of Information and Privacy Officer.

7. What are the consequences to the University if it does not comply with FIPPA legislation?

The adverse publicity surrounding the refusal of the University to comply with provincial legislation is likely the greatest public sanction. In addition, all decisions can be appealed to the Information and Privacy Commissioner (IPC) of Ontario.

In an inquiry, the Commissioner may require to be produced to the Commissioner and may examine any record that is in the custody or under the control of the University, and may enter and inspect any premises occupied by the University for the purposes of the investigation. The IPC may order part or full disclosure of the information at issue. Failure to comply with an IPC order is an offence and may result in a fine after charge, trial and conviction under the Provincial Offences Act.

8. Does the University have to indicate to a requester the provision and reasoning for excluding information from disclosure?

If the university denies you access to information that you requested under FIPPA, it must give you written notice of its decision along with reasons by reference to a section in FIPPA, and inform you of your right to appeal to the Information and Privacy Commissioner.

9. Under what circumstances may a head disclose personal information?

A head may disclose personal information:

- upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
- in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
- personal information collected and maintained specifically for the purpose of creating a record available to the general public;
- under an Act of Ontario or Canada that expressly authorises the disclosure;
- for a research purpose if,
 - the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,
 - the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and
 - the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or
- if the disclosure does not constitute an unjustified invasion of personal privacy.

10. What must a head consider when determining whether disclosure constitutes an unjustified invasion of personal privacy?

Subject to ss. 21(3)(invasion of personal privacy) and 21(4)(exceptions to personal privacy), a head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether:

- the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
- access to the personal information may promote public health and safety;
- access to the personal information will promote informed choice in the purchase of goods and services;
- the personal information is relevant to a fair determination of rights affecting the person who made the request;
- the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- the personal information is highly sensitive;
- the personal information is unlikely to be accurate or reliable;
- the personal information has been supplied by the individual to whom the information relates in confidence; and
- the disclosure may unfairly damage the reputation of any person referred to in the record.

11. What may a University ask for to determine whether fees charged to respond to an access request will cause 'financial hardship' for the applicant?

The University need not make such a request. It is the requester's responsibility to ask the University for a fee waiver. However, a request for a waiver need not be explicit, it may be implied. The party seeking a fee waiver also bears the responsibility of establishing his/her case.

For example:

If the requester does not supply sufficient information to convince the University that a fee waiver is justified, the University is not required to grant the waiver. What the University considers sufficient information will likely be influenced by the specific facts of the request.

12. Can access to a record be denied under the Act because the requester already has a copy of the requested record?

No, but the request can be denied if it is considered frivolous or vexatious. Under the regulations, a frivolous or vexatious request occurs where the request is part of a pattern of conduct that amounts to an abuse of the right of access or where responding to the request would interfere with the operations of the University. Therefore, if a requester has already received the record under a FIPPA request, this section might be invoked.

13. When do you notify third parties about information requests?

If the University is considering giving an applicant access to a record containing personal or business information of a third party, then notice must be given the relevant third party. A notice to an affected party gives that party an opportunity to make representations about the proposed disclosure of records that affect him/her.

14. Will records that have been accessible before the Act came into effect become inaccessible?

Records that were open previous to the implementation of FIPPA need to be reassessed under the Act in order to determine whether they can remain open or whether elements of personal privacy require some to become protected as such.

15. Is the University required to create a record from a record or data that is in electronic form, i.e. information contained in several databases rather than as one record?

There is no obligation to create a record in response to a request under FIPPA, except in certain circumstances involving information maintained on a computer.

For example:

An institution may generate a report in a certain format from data in a computer file. A requester under the Act may ask for a different kind of report using the same computer data sorted or presented differently.

According to s.2 (machine readable records) FIPPA Regulation 460, requests for machine readable records are subject to the ability of an institution to produce them without unreasonably affecting its day-to-day operations.

A request for access to hardcopy records must be for actual records that exist at the time a request is received. There is no requirement to compile information from a number of records to create a new hardcopy record in response to a request.

The Act does not require that records be translated into the language of the requester.

16. If records have been sent for destruction but not yet destroyed when an access request is received, does the University have to include such records in the request process?

Yes. When a request for records is received all records requested are “frozen” and no further actions may be taken to destroy the requested records if they have been designated for destruction.

A FIPPA request for records includes all records, which have not been destroyed at the time the request was received. Records can include e-mail records that have not yet been deleted from your e-mail system, and records that have been designated and sent for destruction but not yet destroyed.

17. How is e-mail affected by FIPPA?

Faculty and staff's communication on University matters is not considered private outside of the specific exemptions set out in FIPPA. The fact that the record is electronic does not change the application of the Act. It is not the mode of communication that is important as much as what is communicated and why. When faculty and staff use e-mail, it should be remembered that a record is being created that may be subject to the Act, and therefore care and professionalism should be exercised.

18. Is it appropriate to circulate a monthly listing of FOI requests, including the name of the requester, to internal departments?

No. The identity of a requester is protected personal information

19. Will a request for an individual's own personal information always be a formal FOI request under the Act?

Yes. Although an individual has a right of access to his/her personal information, the University has a responsibility to protect the privacy of third parties. It may be necessary, therefore, to sever third party information from an individual's file before granting access to that file.

20. How much will it cost to obtain information about myself?

A \$5.00 fee must accompany all formal requests for access to information under FIPPA.

21. Must supervisors retain files for a specific time?

Personal information that has been used by an institution must be retained for at least one year after use unless the individual to whom the information relates consents to its earlier disposal.

22. If the University is unable to guarantee the anonymity of grade lists, can they be posted?

Grade lists cannot be posted without the University being able to guarantee anonymity. Posting grades alongside student names OR full identification numbers is not permitted.

23. What happens if the University Secretary is in a conflict of interest? Does the authority to decide revert back to the President?

Yes, the authority would revert back to the President who may then exercise it or re-delegate.

24. Can photographs be taken at public events on the campus?

The taking, use or disclosure of photographs, videotapes or audiotapes recorded at public events or activities related to the University is not considered to be an unreasonable invasion of the personal privacy of the individuals photographed or recorded if the images simply indicate "attendance at" or "participation in" the event. Public events may include "a graduation ceremony, sporting event, cultural program or club, or field trip". In this case, there is no need to obtain consent for the use or disclosure of the photographs or tapes, however, it may be a good precaution to announce or post a notice that photographs are likely to be taken or that the event is likely to be recorded (taped).

Notwithstanding the above, if an individual attending such an event or, more likely, speaking or participating in the ceremony or event, explicitly requests that the information (in this case, photographs or tapes) not be disclosed, the University must abide by that request or advise the person not to participate.

25. We are required to keep personal information for a minimum of one year – is there a maximum time allowed for retaining personal information?

No, there's no prescribed maximum for retention of personal information.

26. In the athletics area, can we deny someone the right to participate in activities if they refuse to provide us with the personal information we have requested on a form?

Yes, where the information is necessary for participation, a right to participate may be denied.

27. How do offices such as Human Rights & Equity, Academic Integrity and the Ombuds fare under FIPPA? Much of the information in these offices must be seen to be held confidential. How much must be disclosed under FIPPA? If the Ombuds is acting as a lawyer (though not hired as such) can solicitor-client privilege be claimed?

Although it seems odd, strictly speaking, all of these offices are subject to FIPPA. While specific exceptions may apply to much of the information in the custody and control of these offices, there is no blanket exemption applying to any of them or a section restricting the application of FIPPA to those areas. There is considerable lobbying by province wide associations representing those groups to have blanket exemptions passed.

In regards to the s.19 solicitor-client privilege exemption under FIPPA, an Ombuds is not protected unless the party is in fact hired as counsel to the University and is acting as counsel. Generally, this exemption is reserved for outside counsel and actual in-house counsel of the University. Regardless of whether an individual is professionally trained as a lawyer, the exemption will not apply unless that individual is officially acting in the capacity of a lawyer.

28. When organizing conferences, certain information about the participants is often included on the conference website. Can this practice continue? What must be done to comply with FIPPA in this context?

If the information is personal information, notice should be given to the person to whom the information relates at the time of collection, namely submission of application and/or registration. Consent may also be obtained from this person at this time. However, if the information is gathered from a media such as the person's own publicly accessible website, then the information is publicly available information and may be posted without notice or consent.

29. Some of our first year students are quite young. What is the minimum age for giving consent for the use of personal information?

The minimum age for consent under FIPPA is sixteen (16) years.

30. Under FIPPA, what information can/must the institution share with a parent?

Parents are not entitled to the personal information of their children where a child is over the age of sixteen. Personal information may only be disclosed to a parent in accordance with the provisions of the Act which includes situations involving personal health or compassionate circumstances.

31. Is there a distinction made under FIPPA between the official minutes of a committee and the private notes of a member or informal emails circulated amongst members?

No there is not. In all cases, a record is created, which, subject to certain exemptions, shall be accessible by request; however in camera sessions of University committees of the Board and Senate and the information generated at those meetings is likely protected.

32. Are we obliged to put oral discussions/assessments in writing?

FIPPA contains no such requirement.

NOTICE AND COLLECTION

1. Can the University collect information about a third party from students (e.g. parent's education/date of birth)?

Apart from specific exemptions detailed in FIPPA s.39 (1)(collection of personal information), personal information should be collected from the individual to whom it relates, and not from a third party.

2. Can a faculty member ask a student for personal information?

Yes, but the faculty member must inform the student of the proposed use of the personal information.

3. Can student phone numbers and addresses be provided to instructors on class lists?

Not in the absence of consent. This information can be released only on a 'need to know' basis, not as a routine matter. An instructor may ask students for this information and outline the purpose for which it will be used.

4. In dealing with appeals, complaints and requests for refunds, information must be obtained on a student's attendance and/or performance. Can this collection from instructors continue under FIPPA?

Yes, personal information can be disclosed to those within the University who need it for the performance of their duties.

- 5. What about those students who registered this year, during the time frame when the Collection Notice has not indicated that student name, degree, Faculty and date of graduation would be public? Must their information be held confidential? [The normal registration period for the incoming first year students is the end of June. Fourth year students register at the beginning of June and the other years follow along throughout the month.]**

If notice has not been given to students, then the University may not disclose such personal information without the consent of the students; however, these collection notices are now posted on the website and other information services on a forward going basis.

- 6. The Research Office for Administration, Development & Support (ROADS) collects information from corporate websites etc. about people in the industry (contact person etc.). Is this allowed under FIPPA?**

Yes, such information is public information.

- 7. In other research contexts, the Research Office for Administration, Development & Support (ROADS) collects addresses and citizenship from participants. Is the general notice of collection sufficient to cover this or do we need individual signed consents?**

The general notice is only applicable if the notice properly states the purpose for which the information is to be used. If the proposed use of the information is not in the general notice, then specific notice must be given at the time of collection stating the purpose of the collection.

If information is to be used for a purpose other than that stated in the notice at the time of collection, consent is required.

PROCEDURES, ADMINISTRATION AND BUSINESS RECORDS

- 1. If a request is made for detailed legal invoices, what information on the invoices would be released?**

If a legal bill contains only basic information such as the dates the billing covers and the amount, it should be released. If the invoice contains material that falls under exemption in FIPPA s.19 (solicitor-client exemption), it can be severed. Any request for these invoices involves a potential irrevocable waiver of solicitor- client privilege. All such requests should be reviewed with legal counsel.

- 2. Can suppliers have access to evaluation documents of bidders' proposals?**

Once a decision has been made, the evaluation documents would be accessible, with the proviso that any material that would be exempt from disclosure under FIPPA s.17 (third party information) would be severed. The University would have to provide advance notice to any third party regarding the release of information.

- 3. Can copies of contracts with consultants, engineers, and contractors be released?**

Generally, copies of contracts will be released after they have been awarded. However, there is some information which may be contained in a contract which would not be released. If the contract details include unit pricing or proprietary information, this information could be severed according to FIPPA s.17 (third party information). If it contains competitive financial information of the University (s.18) it may also be withheld. The University would have to provide advanced notice to the third party regarding the release of information.

4. Is the University obliged under FIPPA to release examination questions and answers? If so, when and under what circumstances?

FIPPA s.18 (h)(exam/test questions) allows a head to refuse to disclose information "relating to specific tests or testing procedures or techniques that are to be used for an educational purpose, if disclosure could reasonably be expected to prejudice the use or results of the tests or testing procedures or technique".

5. What steps should the libraries take to protect the privacy of patron information displayed (for staff use) on computer screens at Circulation Desks in campus libraries?

The Library must ensure that screens are turned away from the general line of sight of library patrons and that all computers have password-protected screen- savers activated.

6. Are the student governments, MSU, MAPS, GSA, subject to FIPPA?

Strictly speaking, given that same are separately incorporated entities which do not specifically fall within the definition of "institution" under FIPPA, they are not. Information received by the University from any of them is however subject to FIPPA in the University's hands.

7. What needs to be done about permissions for video conferencing and archiving of same for later viewing on the web (participants are often in other countries, and there are often Q&A sessions where people get up and identify themselves)?

Notice must be given at the outset of the recording that the video conference is being recorded and will be available for general viewing afterwards. Thus, it may later be disclosed pursuant to section 42(c)(purpose for which it was obtained).

8. What is the status of non-disclosure agreements with Investment Fund Managers?

Such agreements are enforceable under sections 17(1)(c)(undue loss of gain) and 18(1)(c)(prejudice to economic interests).

9. Are we required to disclose information (i.e. applicant ranking and comments/opinions) to unsuccessful applicants to programs which require the completion of a supplementary application?

Subject to any exceptions in Part II of FIPPA which may apply, there is a general requirement to disclose such information to the unsuccessful applicant, so long as personal information of a third party is not improperly disclosed by doing so.

10. Whose responsibility is it to ensure that personal information on file is kept up to date?

There is no obligation under FIPPA for an institution to actively update personal information in its custody and control. An institution is generally required to update such information only at the request of the party to whom the information relates.

STUDENT / ALUMNI INFORMATION

- 1. Students often ask for a copy of documents they submitted in support of their application. This could be transcripts, medical information or reference letters. Does the University have to provide such information?**

Yes, students have a right of access to their own information, even if they initially supplied it. Care must be taken to ensure that other information in the student file, such as confidential letters of reference, are not released in error.

- 2. Students authorise the University to release a transcript to a sponsor. Can the University release the whole record?**

The University may only release the specific information for which the student has given written consent.

- 3. How should a University deal with telephone inquiries from students for information about their own record?**

The University must first be satisfied that the person calling is the person the information is about. This can be done through questions based on information in the student file that would not likely be known by others such as student number, courses taken, name of professor, etc. Asking for the student's address or even phone number would not be sufficient to confirm identity since this information may be commonly known by others.

- 4. Can the University provide students with identification cards that include photographs and other personal information?**

Yes, the student has custody of the information on the identification card and can control access to it. Students should not be required to relinquish their identification card to access University facilities or services except for the purposes of protecting the student's personal information.

- 5. Can high school counselors request information on the status of a student's application for admission?**

The information may only be provided if the student has given written consent. It would be preferable for the student to share such information directly.

- 6. Can a high school be provided with the names of students who have been admitted to the University?**

The University may not release this information without the written consent of the students. The Ontario Universities Application Centre may collect this written consent as part of the application process and may be in a position to release such information.

- 7. Can the University release a student's timetable?**

No, the student timetable may contain personal information, such as the student number and courses taken. Absent the permission of the student, this information can only be released in exceptional circumstances, such as an emergency.

8. Can the University release information on former students/graduates?

As of June 10, 2006, an institution may disclose personal information in its alumni records for the purposes of its own fundraising activities if the institution and individual receiving the information enter into a signed agreement and the personal information is reasonably necessary for the funding activities. The receiving party must agree in writing to comply with the requirement to give initial and periodic notice regarding an individual's right to request fundraising cease, to grant the individual to whom the information relates access to the information if requested and to cease using the personal information if requested by the individual to whom it relates. Please note that the University's general collection and use notice provides that the University has made some of this information a public record and may release same.

9. Can the University release student information to a collection agency when a student has outstanding accounts?

Yes, but the information released should be restricted to that required by the collection agency to carry out its function. FIPPA s.42 (g)(aiding an investigation) permits disclosure to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.

10. Can the University share information about students with the MSU, MAPS or the GSA?

Yes. When students first register at McMaster they are informed through the general collective notice that certain personal information will be shared with the relevant student group and are asked to agree to this disclosure.

11. Can the University disclose student phone numbers to third parties (people or organizations outside the University)?

No, unless the reason for the disclosure is covered under one of the exceptional circumstances outlined in FIPPA s. 42(permitted disclosure).

12. Can faculty and staff who have told students in the past that they would provide references continue to do so without formal consent from the student?

No. In the absence of an exceptional circumstance, formal consent is required for the disclosure of personal information to a third party. The third party requesting the reference should obtain the consent.

13. Can staff and faculty of the University provide information about students to potential employers for reference purposes?

Anyone providing a reference must ensure that the student has given written consent for the disclosure of personal information.

14. Can a professional body, foreign government, or Co-op placement force their clients to sign a blanket release so that they can have access to University records on students they sponsor at the University?

Where such an entity is providing any sort of benefit to its client pursuant to an agreement, there is generally nothing to prevent it from making the continued provision of such benefits conditional upon the individual consenting to access of such personal information pursuant to s.21(1)(a)(consent of individual to whom information relates).

15. Faculty members often retain files on graduate students they have supervised. Can a student request to see the content of the file?

Yes, an individual can request to see information the University has on file about him or her because such a file is considered a record under the control and custody of the University. However, some material that was supplied in confidence may be severed before disclosure.

16. Are personal notes, made by staff or faculty during an interview with a student, accessible to the student?

Yes. Any information about a student is that individual's personal information and, therefore, potentially accessible under the Act. There may be occasions when this type of information may not be or should not be disclosed:

- if the release could be harmful to someone's health or safety;
- if the release could be harmful to an investigation in a law enforcement matter;
- if the information could be construed as advice to a University official;
- if the notes contain information about a third party (this information would have to be severed).

17. Can students be asked to read work aloud in class?

Yes, this would not be an invasion of privacy.

18. Can students mark each other's work?

Normal group learning can still take place. A student acting as a Teaching Assistant would be bound by the protection of privacy requirements of FIPPA.

19. How can marked work be returned to students? Can it be left in a box in the hallway, or in the classroom so that students can retrieve it themselves?

No, marked work cannot be left unattended for student pick up. Every effort must be made to protect the privacy of the students. Tests and assignments should be returned directly to the students. Students should not be given access to the academic work of others, except in specific group learning situations that are part of a course.

20. How long are instructors required to keep papers, assignments, and tests that students have not picked up?

According to current University regulations, instructors are responsible for ensuring that all graded material not meant to be returned to students, and the instructor's record of how the final grades in a course were determined, are accessible to the Department Chair for a period of seven months following the end of the academic year in which the course was offered (i.e., March 31 of the following winter session).

Under FIPPA, personal information must be retained for a minimum of one year after its last use. Material that was intended to be returned to students but not picked up would, therefore, need to be kept for one year from its last use by the instructor. (This period can be shortened, but only with the consent of the individual to whom the information relates.)

21. If written final examinations need to be retained for one year after they are written, does this mean that students may appeal their final grades up to one year after the examination is written?

No. The FIPPA requirement to retain final examinations for one year is intended to allow an individual to examine this record and review the information used to make a decision about him or her. It does not affect the University's policy on appeal of grades which is clearly outlined in the Student Appeal Procedures.

22. What limitations are there on access to student records by faculty or staff?

Staff should only have access to information that they require to perform their stated duties as an employee of the University. For example, staff may access information for the purposes of academic planning, student advising, and other legitimate academic reasons which are deemed to be in the best interest of the student and the academic programs of the University.

23. What information/records can be withheld because a student owes the University money? Can the Registrar refuse to release an official transcript or diploma for a student who owes money to the University?

Yes. However, if there is a formal FIPPA request, the University cannot withhold personal information from the student based on money owed to the University however the form of that record need not be an official transcript. The Act provides an applicant with a right of access to any record in the custody or under the control of the University, including a record containing personal information about the applicant. In this case, the University is required to provide a statement of grades to the student. It can refuse to issue an official transcript or diploma unless the student settles the outstanding account.

24. Can a university continue to publish lists of graduates?

The McMaster University Statement on the Collection of Personal Information and Protection of Privacy states "The names of alumni, their Faculty and program, award information, degree(s) awarded and date of graduation is considered public information and may be published by McMaster University."

25. Could you please tell me whether this ban prohibits us from putting graduate student email addresses on our departmental webpage? This is quite a common practice, and this contact information is often useful for students looking to contact Teaching Assistants and for students from other universities looking for information from current grad students about our graduate program.

If the new guidelines do prohibit us from putting email contacts on our webpage, can this be overcome if we ask for permission from each student? Any advice is appreciated.

Obtaining consent from the students to disclose their email addresses is one option, but if the personal information was collected for the purpose of posting it on the webpage, no consent is required as the exception in section 42(1)(c)(purpose for which information was obtained) applies.

26. How should we have students verify their identity when they contact us by phone or e-mail?

Students should be asked to provide a piece of confidential information to which the University already has access (such as a student number, home address or telephone number) so that the University can confirm the identity of the student. This is consistent with the security and protection obligations under FIPPA.

27. Are we able to post information such as a comprehensive list of those students who were named to the Deans' Honour List for a particular session?

Disclosure of such personal information would be inappropriate without the prior consent of the individual to whom the information relates. Providing for such disclosure in a general notice prior to enrolment will suffice to permit such disclosure. This has been done.

28. Obviously, I need to have a written note on hand from a student before writing any letter of reference or answering any questions from prospective employers or schools.

a) Is there a suggested wording for this letter of permission?

Any generic wording will suffice so long as it states that you are permitted to disclose such personal information to a third party for the purposes of providing a reference.

b) In my letter of reference, may I invite the addressee to call with further questions?

While a generally worded consent would likely suffice, it is advisable for the consent to include a provision stating that you may invite the addressee to contact you with further questions.

c) If the addressee of a reference letter calls with further questions, may I still share information under the original agreement with the student?

While a generally worded consent would likely suffice, it is advisable for the consent to include a provision stating that you may answer further questions posed by addressee in addition to disclosing personal information in the letter of reference.

d) Same as #3, but what if someone else from the same organization calls?

The consent should state that the personal information may be disclosed to the addressee or any associate, co-worker or agent of the addressee. More importantly, and in connection with all of these types of reference letters, when the student requests it be sent, request that the student write to you requesting the reference letter and acknowledging the release of your opinion both in the reference letter and subsequent communications and correspondence.

e) Actual case (but pre-FIPPA!): a prospective employer calls me, wanting to know how this student would fare working in a foreign environment. I happen to know that the student grew up in another country/culture and therefore would do well. Am I allowed to divulge this information as evidence in the student's favour?

You may not divulge such personal information without the consent of the person to whom the information relates. Ask the caller if a consent was obtained. When receiving C.V.'s with references ensure a consent to call and obtain personal information is also provided.

29. For purposes of our Faculty Awards Assembly, we compile a booklet listing all of the award winners for scholarships, etc. Is this no longer appropriate?

Disclosure of such personal information would be inappropriate without the prior consent of the individual to whom the information relates. Providing for such disclosure in a general notice prior to enrolment will suffice to permit such disclosure. This has been completed.

30. Can we confirm if a person is here or is a graduate/former student within the department for employment reference purposes etc.?

References may not be provided without the prior consent of the individual to whom the information relates. A disclosure has been made in the general collection and use notice that general alumni information may be released.

31. Can announcements about thesis/project defenses be posted on hallway bulletin boards, department websites, emailed to the faculty and other graduate students within the department?

Disclosure of such personal information would be inappropriate without the prior consent of the individual to whom the information relates. However, in the context this does represent a disclosure for learning and educational purposes.

32. Can professors assign students to groups and give the group members each other's names?

Yes, professors may do this.

33. Can students within the department have access to our group email address (McMaster electronic distribution list) for all students? i.e. Dept. Graduate Student Representative wants to send out an email to all Civil Eng. Graduate students about a meeting/event that is going on, can the rep have the group email address?

Generally, such personal information may be disclosed in such circumstances, so long as this was one of the purposes for which the information was obtained or compiled. This has been disclosed in the University's general collection and use notice.

34. Can names of graduate students be placed on mailboxes that are in an area accessible to the public during working hours?

Yes, such information may be disclosed in this manner pursuant to section 42(1)(c)(purpose for which information was obtained).

35. If a student wins an award, can a congratulations notice be placed on a bulletin board or displayed on a website?

Disclosure of such personal information is inappropriate without the prior consent of the individual to whom the information relates. However, such disclosure and use has been described in the University's general collection and use notice.

36. A student needs to contact a Department Student Club representative, can we provide contact information?

Yes, so long as the person to whom the information relates was given notice that the contact information could be used for such a purpose.

- 37. Family Emergencies – if someone calls or comes into the office indicating that he/she is a family friend or is a family member of student X and they need to get in touch with them due to emergencies ~ what are we to do? Can we confirm that the person is or is not a student and try to reach them and have them call home or do we have to respond that we cannot confirm that they are a student in our program? What if it is a police officer with appropriate identification?**

Such personal information may be disclosed if the institution reasonably believes that the health or safety of an individual is at risk (section 42(1)(i)) or under compassionate circumstances (section 42(1)(j)). If the requester is a police officer, it may be disclosed under the law enforcement exemption as well.

- 38. Our Student Appeal Procedures and other Hearings Committees indicate that unless someone requests a closed hearing, all such hearings are open. Can we continue to do this or does this violate FIPPA?**

Yes, most policies require the tribunal to declare the hearing open or closed at the outset. Therefore, there is an implicit consent to disclosure where an open hearing is commenced. However, if the hearing includes the disclosure of personal information of another party or disclosure of personal information which the person to whom it relates is not entitled to access, then the hearing may have to be closed.

- 39. Can departments continue to display informal photos of students in offices, hallways and on websites? What about 'where are they now' information (that is not Alumni Association information)?**

Photos may be displayed so long as the person in the photo was notified of the purpose of the photo at the time it was taken. Such disclosure and use has been described in the University's general collection and use notice.

- 40. I frequently receive faxes from institutions requesting verification of MBA degrees. These requests are always accompanied by a signed release form. Under FIPPA, should I continue to provide these verifications as long as I have a signed release form from the student?**

Where a student has consented to such disclosure, the personal information may be disclosed pursuant to section 42(b)(consent to disclosure). The University's present collection and use notice provides for this.

- 41. We provide MBA students with letters for various reasons. Occasionally a student will ask if a friend/family member can pick the letter up from our office on their behalf. We have always received either a phone call or an email from the student verifying that this is permissible. Is this still the case under FIPPA?**

So long as you can reasonably confirm that the student was the person emailing or phoning with consent, it is permissible for a friend/family member to pick up the document pursuant to section 42(b)(consent to disclosure).

- 42. If an agency calls to verify information on a student such as did they graduate? did they complete these courses? What can we answer?**

Generally such information is not permitted to be disclosed because it is personal information. However, the general notice prepared by McMaster states that such information is collected as a public record and, therefore, disclosure of a student name, faculty/program and year of graduation shall be permissible.

- 43. CLASSLISTS: Some instructors who teach for us are outside consultants and at the beginning of class are given a classlist with student name, mailing address, home & business phone numbers and email address. On the classlist it is indicated only for instructor and “Do Not Circulate in class”.**

Such information may be disclosed to the instructor pursuant to section 42(c)(purpose for which information obtained), as the information is being disclosed in accordance with the purpose for which it was obtained or compiled.

- 44. CLASSLISTS: A second classlist is circulated with only the student’s name (first & last name) and email address for students to check that they are on the classlist. If not on list they are to add their name.**

Such a classlist must contain McMaster’s general FIPPA notice because personal information of students not on the list is being collected

- 45. If a student requests a mark over the phone, how should this be handled?**

So long as the student’s identity can reasonably be verified and none of the exceptions in section 49 (non-disclosure of information to person to whom it relates) apply, such information may be disclosed

- 46. Can we accept an email as written consent?**

Written consent requires the hand written signature of the party granting consent. However, sections 21 (personal information exemption) and 42 (permitted disclosure of personal information) of the Act simply require “consent”, not “written consent”.

Generally, if one can reasonably conclude that the consent is being granted by the party to whom the information relates email consent is appropriate. It would be reasonable to make this conclusion if the email is a McMaster email address because such emails are assigned by the University and password protected so only the student or employee to whom the email is assigned may use it. However, if the email is from a non-McMaster email address, one cannot reasonably conclude that the party sending the email is in fact the party granting consent without further inquiry.

- 47. If a Third Party pays for the student’s courses, can they request to know if the student is attending class and ask for their marks?**

Regardless of who is paying for the course, such information is personal information and protected by FIPPA. Unless consent is obtained from the student, such information may not be disclosed.

- 48. Is a written request from a former student asking for a reference sufficient consent to disclose personal information?**

Yes, so long as the University may verify that the student did in fact sign the written request. The student should also have specified to whom the personal information may be disclosed.

- 49. Can we ask students to identify themselves in a testing situation?**

Yes, you may.

50. How long must an instructor or a department keep essay sign-up sheets or class lists? If written consent is obtained for the use of such lists, how long must consent be kept?

Generally, personal information must be kept for one year prior to being destroyed. It may be destroyed earlier with the consent of the parties to whom the information relates.

Where consent is given permitting use of the personal information, the consent should be kept for as long as the information is being used for the purpose identified in the consent.

51. There is one course that every graduate student must take. The School of Graduate Studies produces a list of students, visually verifies the student's identity and has the student sign the sheet. Does this present a problem under FIPPA? Do we have to take steps to prevent students from seeing the names and/or student numbers of other students on the list?

So long as proper notice is given at the time of collection stating that the personal information will be used for this purpose, this practice may continue. Obtaining consent from the students would be a beneficial, but not a necessary safeguard.

52. Departments provide instructors with class lists – these lists are also shared with Teaching Assistants who are either graduate students or senior undergraduates. Can this practice continue? What safeguards must be in place?

So long as proper notice is given at the time of collection stating that the personal information will be used for this purpose, this practice may continue. Obtaining consent from the students would be a beneficial, but not a necessary safeguard.

53. Often at the beginning of the year, lists are posted outside of departmental offices telling students (particularly those enrolled in evening classes) which tutorial session they should attend. Can this practice continue? What safeguards must be in place?

So long as proper notice is given at the time of collection stating that the personal information will be used for this purpose, this practice may continue. Obtaining consent from the students would be a beneficial. The present collection notice attempts to deal with this issue.

54. Can we make public the names of winners of academic awards and prizes?

If notice is given to students stating that such information shall be considered public information. The collection notice now deems that to be a public record.

55. Some research contracts that involve US companies request information (name, address, other info) about students who may be working on the research contract. Presumably, we need to get student consent before providing this information. Who should collect the consent, the Office of Research Contracts or the student's supervisor?

If notice is given to the students at the time of collection of the personal information stating that such information may be disclosed upon request to such companies, no consent is required. If such notice has not been given, consent must be obtained. Any of the parties noted may collect the consents and such consents should be filed and kept for as long as the personal information is to be used for this purpose.

56. What happens when research contracts involving entities inside Canada request information about the immigration/citizenship status of students working on the research?

In regards to FIPPA, such information is personal information and may not be disclosed without consent (unless another exception applies). However, depending on the circumstances, one must be mindful of the potential application of the Ontario Human Rights Code to such circumstances.

EMPLOYMENT

1. What are the consequences for an employee of the University who destroys a record that is the subject of a request, with the intent of evading the request?

FIPPA does not expressly create an offence for the willful destruction of records for the purposes of evasion. However, under s. 61(1)(d) the destruction of a record would be an offence where it is done to willfully obstruct the Commissioner's performance of his or her functions under the Act. Such an offence is subject to a maximum fine of \$5000.

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

A head may refuse to disclose to the individual to whom the information relates personal information that is evaluative or opinion material compiled solely for the purpose of determining suitability, eligibility or qualifications for employment or for the awarding of an honour or benefit where the disclosure would reveal the identity of a source who furnished information to the University in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence.

3. Could an employee's own personal information be withheld by a University under s. 18 in cases where the employee has made a claim against the University?

An employee has a general right to access his or her own personal information held by the University under FIPPA s. 47(right of access), subject only to the exceptions in s. 49(exemption to right of access). Unless an exception under s. 49 applies, the University shall not withhold the personal information from the employee.

4. If a severance document indicates that the Employer/Employee will not release information and the Employer is forced to do so under FIPPA, can the previous employee sue?

Severance agreements are subject to FIPPA under s. 65(7)(application of the Act). Any remedy available to the Employee in such instances as described above will be determined as a matter of contract law. One may not contract out of a duty imposed by statute, but the terms of the severance document may contain an available remedy for the Employee should the Employer be forced to disclose such information. Regardless of what the severance document says, the Employee will not be able to prevent the disclosure of the information where such information must be disclosed pursuant to FIPPA.

5. Can an institution confirm, in response to a telephone inquiry, whether an individual is employed with the institution and their specific salary?

The legislation allows the head of an institution to release information voluntarily in the absence of a request, or in response to an oral request, provided that nothing in the Act prohibits the release of that information. A disclosure does not constitute an unjustified invasion of personal privacy if it discloses the classification, salary range and benefits, or employment responsibilities of an Individual who is or was an officer or employee of an institution governed by FIPPA. The specific salary of an individual would be protected personal information.

6. What personal information on an employee can be provided to a union and under what section of the Act would this occur?

Other than basic contact information and employment status, no other personal information can be provided to a union unless the individual has given written consent for the disclosure of specific personal information to the union [FIPPA s.21 (1) (a)(consent to disclose personal information)].

7. Can personal information be collected about an employee as part of an internal investigation without their permission?

FIPPA s.39 permits the indirect collection of personal information in certain circumstances, as described in the following subsections of s.39:

- a. the information is collected for the purpose of determining suitability for an honour or award to recognise outstanding achievement or distinguished service;
- b. the information is collected for the purpose of the conduct of a proceeding or a possible proceeding before a court or tribunal;
- c. the information is collected for the purpose of law enforcement.

8. What can be withheld regarding internal investigations of staff/faculty misconduct? Who has a right of access to this information?

Under s.65(6)(non-application of the Act), FIPPA does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to proceedings or anticipated proceedings before a court, tribunal or other entity relating to the employment of a person by the institution. Thus, any materials relating to such an investigation may be withheld if a proceeding is anticipated.

9. Can full details of a contract including personal information be disclosed to Revenue Canada for the purposes of tax evasion investigations?

FIPPA s.42(g)(law enforcement) permits disclosure of personal information where disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.

10. Can personal information be disclosed to the Unemployment Insurance Commission if they inquire about an employee?

FIPPA s. 42(g)(law enforcement) permits disclosure of personal information where disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.

Moreover, under s. 21(1)(d)(statutory authorization), a head may not refuse to disclose personal information where disclosure is expressly authorised under an Act of Ontario or Canada. As the Commission is authorised to demand documentary evidence pursuant to its powers under the Inquiries Act, Canada, this exception may also permit the disclosure of such personal information.

11. If a university is provided with an employee's consent to release their employee records to WCB, is the University expected to sever third party information?

Yes, the University has an obligation to protect third party information. If the third party information is requested, the University would have to notify the individual(s) of the request and determine if the third party consented to the release of the information.

12. Can a union agreement provide for union access to an employee's information without consent?

According to Section 42 (1) (k)(bargaining agent), an institution may disclose personal information in its custody and under its control to a member of the bargaining agent only with the specific authorisation of the employee (or the next of kin or legal representative in the case of incapacitation). All such requests for information beyond basic contact information would require consent therefore, and would need to be assessed on a case by case basis.

13. How will FIPPA affect the information available to unions involved in grieving a hiring decision?

Under s.65(6)(non-application of the Act), if the record was collected, prepared, maintained or used by or on behalf of an institution in relation to proceedings or anticipated proceedings before a court, tribunal or other entity relating to the employment of a person by the institution, the materials relating to such an investigation are not subject to FIPPA. Such records may be subject to disclosure under other statutory or regulatory regimes.

If the records were not collected, prepared, maintained or used in such a manner, such records will be subject to FIPPA. Moreover, such records will likely be classified as personal information and, because they likely include personal recommendations or evaluations, character references or personnel evaluations, disclosure of such will be presumed to constitute an unjustified invasion of personal privacy under s.21(3)(g)(unjustified invasion of privacy). While some information may nonetheless be provided, any personal information that is not subject to a further exception would be severed.

14. Can an employer contact anyone they want for a reference check without consent from the employee or job applicant?

In an employment situation, FIPPA s.39(1)(a)(authorised indirect collection) applies. Therefore, personal information can only be collected by an institution directly from the individual to whom the information relates unless the individual authorises another manner of collection.

15. How long must the University keep employment applications of unsuccessful candidates or unsolicited applications?

According to Regulation 460, s.5(1)(retention of personal information), personal information that has been used by an institution shall be retained by the institution for at least one year after use unless the individual to whom the information relates consents to its earlier disposal the minimum period of retention of personal information that is contained in a telecommunication logger tape in the custody or under the control of the institution is 45 days rather than one year. Given the difficulty of defining the term 'use', it is advisable to retain unsolicited applications for a period of one year, in accordance with s.5(1) of Regulation 460.

16. Should students be allowed to access evaluation forms completed by employers who accept students on placement?

No. FIPPA s.49 (c)(evaluative or opinion material) allows for the withholding of personal information that is supplied explicitly or implicitly in confidence, and is evaluative or opinion material compiled for the purpose of determining suitability, eligibility or qualifications for admission to an academic program of an educational institution.

17. What constraints, if any, does the new legislation place on the practice of giving references (written or verbal) to potential employers of former (or current) student workers and staff of the university?

Generally, FIPPA prohibits the disclosure of such personal information without the pre-authorized written consent of the individual to whom the information relates.

18. Does s.39(2) “Notice to individual” apply in the employment setting?

A review of the relevant case law, suggests that s.39(2)(notice of collection) is applicable in the employment setting. The application of s.39(2)(notice of collection) has been considered by the Information and Privacy Commission in a number of decisions involving employers. In each case, the Commission has determined that employer was under an obligation to comply with the provision.

19. Is it acceptable to request input from other university departments when undertaking performance appraisals of staff members who provide service to those other departments?

Yes it is. Collecting information from other University departments does not constitute indirect collection of information. This is more accurately described as use of information in the University’s custody and control.

20. In the context of someone applying for a non-academic position at the university, what information must be released as a result of an FOI request?

The person to whom personal information relates has a general right of access to any such personal information in the custody and control of an institution. However, this person is not entitled to information which would reveal personal information of another individual.

21. How do we address the tension between in camera deliberations about a potential new academic hire and the fact that the candidate can ask for that information under FIPPA? What about the academic evaluation component of such a file?

As FIPPA is currently drafted, such evaluative material relating to parties who are currently not University faculty or employees would likely have to be disclosed.

22. Currently, the Dean of Graduate Studies or his delegate interviews all candidates for academic positions and provides written comments back to the hiring department. Will such comments now be disclosed in the context of a Freedom of Information request?

As FIPPA is currently drafted, such evaluative material relating to parties who are currently not University faculty would likely have to be disclosed. However, for University faculty being considered for such positions internally, it would not have to be disclosed.

23. In the context of an academic promotion of an existing member of the faculty or student body, must the evaluations or any other material in the file be released under FIPPA?

As FIPPA is currently drafted, such evaluative material relating to University faculty or employees would presumably be exempt from disclosure.

24. In the context of someone applying from outside McMaster for an academic position, must assessments and references be released under FIPPA?

As FIPPA is currently drafted, such evaluative material relating to non-University faculty or employees would not appear to be exempt from disclosure.

SECURITY SERVICES

1. **As our officers are Special Constables, does this provide us with the distinction under the Act of being “law enforcement”?**

Such individuals are considered “law enforcement” under FIPPA.

2. **UTS currently compiles personal information on students and staff, which is maintained in a database. We use this database to auto fill our reports and for investigative purposes. Will this continue? Will we still have access to it?**

So long as the information is collected in accordance with FIPPA and is properly stored in a personal information bank, such collection and use of personal information is permissible.

3. **Does releasing information to another department on campus constitute releasing information to a third party?**

The University is considered a single institution and, therefore, this would not constitute release to a third party.

4. **Our officers gather evidence and personal information as part of an investigation. We have been disclosing this information to the following people (to name a few so they can do their jobs and act on our investigation). Can this continue?**

- Student Affairs – Student Code of Conduct violations
- Residence Life – Residence Discipline Code
- EOHSS – slips and falls and personal injury
- Human Resources – all employee related incidents

As these parties are all part of McMaster University, this does not constitute disclosure, but rather use of information. This information is permitted to be collected indirectly if it is authorised by the individual to whom the information relates (section 39(1)(a)), is being used for the purpose of law enforcement (section 39(1)(g) or for the purpose of conducting a proceeding or possible proceeding before a court or tribunal (section 39(1)(f)). In turn, any of the above parties, as part of McMaster, are permitted to use such personal information in their custody for the purpose for which the information was obtained or compiled, or for another consistent purpose.

When releasing the above information can this also include personal information of others involved i.e.: co- accused/witnesses?

Such information may be used in accordance with section 41(1)(b)(permissible use of personal information) of FIPPA because the information is being used for the purpose for which it was obtained or compiled.

5. **We regularly need to relay compassionate messages to students. (not always an emergency situation, such as the person has already died). As this is not specifically a law enforcement practice, can the Registrar’s office still release us a student’s schedule?**

Such use of the personal information is permitted. Since Security Services is not a third party, but rather part of the institution, this does not constitute disclosure.

- 6. A person is involved in an accident on campus, and the accident is investigated by us. One of the drivers involved requires a copy of the report for insurance purposes; can we release the other driver's vehicle and personal information?**

The Insurance Act of Ontario provides that if an automobile insured under a contract is involved in an incident that is required to be reported to the police under the Highway Traffic Act or in respect of which the insured intends to make a claim under the contract, the insured shall give the insurer written notice of the incident, with all available particulars. Thus, the disclosure is permitted pursuant to section 21(1)(d)(statutorily authorized disclosure) of FIPPA, which states that disclosure is permitted if an Act of Ontario or Canada expressly authorizes the disclosure.