QUEEN'S BENCH FOR SASKATCHEWAN

Citation: **2021 SKQB 40**

Date: **2021 02 08**
Docket: QBG 235 of 2019
Judicial Centre: Regina

BETWEEN:

DR. EMILY EATON

APPLICANT/
RESPONDENT

- and -

THE UNIVERSITY OF REGINA

RESPONDENT/
APPLICANT

Counsel:

Daniel S. LeBlanc	for the applicant, Dr. Emily Eaton
Erin M.S. Kleisinger, Q.C.	for the respondent, The University of Regina

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JUDGMENT
FEBRUARY 8, 2021

McCREARY J.

A. OVERVIEW

[1] Are members of the public entitled to know who funds research conducted at a public university, and what unit in the university receives that funding? That is the central question in this case.

[2] Dr. Emily Eaton is an associate professor in the Department of Geography and Environmental Studies at the University of Regina [University]. In late 2017, she submitted an access to information request to the University pursuant to s. 6 of *The Local Authority Freedom of Information and Protection of Privacy Act,* SS

1990-91, c L-27.1 [*LAFOIP*]. She asked for information respecting fossil fuel research being conducted at the University between 2006 and 2017. Her request was for:

> All external research funding (both private and public) to the University of Regina including but not limited to grants and contracts. I would like the dollar amount of the funding, the funding agency/company awarding the money, the title of the research project, and the unit (faculty or department or school) that received the funding. A spreadsheet would be sufficient format.

[3] After receiving Dr. Eaton's initial request, the University's Research Office communicated with Dr. Eaton on several occasions in order to narrow her request. Dr. Eaton ultimately agreed to limit her request to research projects related to petroleum. This generated 250 research files that were potentially relevant. The University's Research Office then produced a summary spreadsheet of these files containing categories of information about the research project, including, but not limited to, the project title, the department and faculty doing the research, and certain funding information [Database Query Spreadsheet].

[4] In early 2018, the University advised Dr. Eaton, in response to her request, that it would only disclose the title of the research project and the amount of funding being received with respect to the research project. This disclosure is required by s. 17(4) of *LAFOIP*. The University took the position that the identity of the funder of the academic research, and the department or unit of the University receiving that funding [Funding Identity Information], were "details of academic research", and not subject to disclosure pursuant to s. 17(3) of *LAFOIP*.

[5] Sections 17(3) and (4) of *LAFOIP* provide:

> 17(3) The head of the University of Saskatchewan, the University of Regina or a facility designated as a hospital or health centre pursuant to *The Provincial Health Authority Act* may refuse to disclose details of the academic research being conducted by an employee of the

> university, hospital or health centre, as the case may be, in the course of the employee's employment.
>
> (4) Notwithstanding subsection (3), where possible, the head of the University of Saskatchewan, the University of Regina or a facility designated as a hospital or a health centre pursuant to *The Provincial Health Authority Act* shall disclose:
>
> (a) the title of; and
>
> (b) the amount of funding being received with respect to; the academic research mentioned in subsection (3)

[6] On March 1, 2018, Dr. Eaton applied to the Office of the Saskatchewan Information and Privacy Commissioner [Commissioner] for a review of her request pursuant to s. 38(1) of *LAFOIP*. The Commissioner issued Review Report 038-2018 on November 28, 2018 recommending that the University: (1) regard the Database Query Spreadsheet as the record responsive to Dr. Eaton's request; (2) release to Dr. Eaton the project title, funding amount, funding agency, and unit receiving the funding; (3) comply with s. 17(4) of *LAFOIP*; and, (4) rescind its fee estimate for providing this information.

[7] The University considered the Commissioner's report and provided Dr. Eaton with its decision on December 24, 2018. It largely declined to follow the Commissioner's recommendations, but reiterated that it would disclose the title of relevant research projects and the amount of funding received for those projects. In addition, the University agreed to disclose Funding Identity Information if that information had already been made public. However, this did not satisfy Dr. Eaton's request as she also wants the Funding Identity Information that has not been made publicly available.

[8] As a result, Dr. Eaton appeals the University's decision to this Court. The fee estimate is not at issue at this appeal.

[9] In *Eaton v The University of Regina*, 2019 SKQB 127, I gave a preliminary decision respecting how this appeal would proceed, ordering that the matter would proceed in open court, with the University filing a sealed copy of the Database Query Spreadsheet for my review, if I deemed such a review necessary. In my preliminary decision, I found (at para. 23) that it was not necessary for the University to disclose the Funding Identity Information to argue effectively that this information constitutes "details" of academic research.

[10] The issues arising from Dr. Eaton's appeal are:

1. What is the standard of review and who bears the onus?

2. Does Funding Identity Information constitute "details of academic research" so as to exempt it from disclosure pursuant to s. 17(3) of *LAFOIP*?

3. If yes, has the University reasonably exercised its discretion in refusing to disclose Funding Identity Information pursuant to s. 17(3) of *LAFOIP*?

[11] For the reasons that follow, I find that Funding Identity Information – the identity of an agency providing funding for research and the identity of the University department or unit receiving that funding – does not constitute "details of academic research" pursuant to s. 17(3) of *LAFOIP*. As such, the University is not entitled to refuse to disclose the Funding Identity Information under this class of exemption.

[12] It is possible, however, that some Funding Identity Information sought by Dr. Eaton is protected from disclosure by other specific exemptions under *LAFOIP*. The University is entitled to undertake a case-by-case review to determine what, if any,

other exemptions apply to Funding Identity Information for specific research projects relevant to Dr. Eaton's request. As a result, I will not order that the Database Query Spreadsheet be disclosed at this time.

B. ANALYSIS

1. Appeal is a Hearing *De Novo*; University Bears the Onus

[13] Dr. Eaton's appeal before this Court is a hearing *de novo*: *LAFOIP*, s. 47(1). As a result, I am not required to give any deference to the Commissioner's recommendations respecting Dr. Eaton's request, nor to the University's decision to deny portions of her request: *Consumers' Co-operative Refineries Limited v Regina (City)*, 2016 SKQB 335 at paras 11-13, 6 CELR (4th) 70; *Britto v University of Saskatchewan*, 2017 SKQB 259 at paras 19-21, 13 CPC (8th) 187; *Gordon v Regina Qu'Appelle Regional Health Authority*, 2017 SKQB 291 at para 43.

[14] Because *LAFOIP* contains a presumption that the records requested by Dr. Eaton should be disclosed to her, the University bears the onus of establishing that these records need not be disclosed: ss. 5.1 and 51 of *LAFOIP: Britto v University of Saskatchewan*, 2018 SKQB 92 at para 24 [*Britto 2*]; *University of Saskatchewan v Saskatchewan (Information and Privacy Commissioner)*, 2018 SKCA 34 at para 10.

[15] Finally, a public body is not entitled to deny an applicant access to the entirety of a record simply because it contains some information which is properly withheld. Rather, a public body is required to undertake a case-by-case analysis of each record to determine whether the record could be produced if portions of the record were redacted or severed: s. 8 of *LAFOIP; H.J. Heinz Co. of Canada Ltd. v Canada (Attorney General)*, 2006 SCC 13 at para 43, [2006] 1 SCR 441 [*Heinz*]. The "severability" principle applies to both individual records and to classes of records: *Britto 2* at para

29 and *Merck Frosst Canada Ltd. v Canada (Health)*, 2012 SCC 3 at para 236, [2012] 1 SCR 23.

2. Funding Identity Information Does Not Constitute Details of Academic Research

[16] I find that Funding Identity Information does not constitute "details of academic research" pursuant to s. 17(3) of *LAFOIP*. This is because: (a) the broad purpose of *LAFOIP* is to promote openness, transparency and accountability in public institutions such as the University; (b) the purpose of s. 17(3) is to protect academic freedom and foster competitiveness, but the exemption provided by s. 17(3) of *LAFOIP* must be interpreted in a limited and specific way; (c) the ordinary meaning of "details" suggests there should be a specific and pointed connection between the record requested and the academic research, such that disclosure of the requested record would disclose, directly or indirectly, the particulars of a research project; (d) other provisions exist in *LAFOIP* to address specific harm that may be caused by disclosure of the Funding Identity Information, including, but not limited, to harm to economic interest and competitive position; and, (e) there is no evidence that disclosing the Funding Identity Information threatens academic freedom.

(a) The Purpose of *LAFOIP* is to Promote Openness, Transparency and Accountability

[17] In determining whether s. 17(3) of *LAFOIP* applies to Funding Identity Information, I have used the modern approach to statutory interpretation. This means that I have read the words of the legislation in context, giving them their ordinary meaning, and with the understanding that s. 17(3) was intended to have a meaning that is harmonious with *LAFOIP*'s scheme and purpose: *Rizzo & Rizzo Shoes Ltd.*, [1998] 1 SCR 27 at para 21; *Heinz* at para 21; *Britto 2* at para 26.

[18] The principles underlying the modern approach to interpretation are summarized in *Ballantyne v Saskatchewan Government Insurance*, 2015 SKCA 38 at paras 19 and 20, 457 Sask R 254:

> [19] The leading case with respect to statutory interpretation is the Supreme Court of Canada's decision in *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 SCR 27 [*Rizzo Shoes*]. A number of principles set out in that case are applicable to the case at hand, namely:
>
> > 1. The words of an Act are to be read in their context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, its objects, and the intention of the legislature (See: *Rizzo Shoes* at para. 87). (See also: *Saskatchewan Government Insurance v Speir*, 2009 SKCA 73 at para 20, 331 Sask R 250; and *Acton v Rural Municipality of Britannia, No. 502*, 2012 SKCA 127 at paras 16-17, [2013] 4 WWR 213 [*Acton*]).
> >
> > 2. The legislature does not intend to produce absurd consequences. An interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical or incoherent or if it is incompatible with other provisions or with the object of the legislative enactment (See: *Rizzo Shoes* at para. 27).
> >
> > 3. Any statute characterized as conferring benefits must be interpreted in a broad and generous manner (See: *Rizzo Shoes* at para. 21). This principle is enshrined in s. 10 of *The Interpretation Act, 1995*, SS 1995, c. I-11.2 (See: *Acton* at paras. 16-18).
> >
> > 4. Any doubt arising from difficulties of language should be resolved in favour of the claimant (See: *Rizzo Shoes* at para. 36).
>
> [20] In Sullivan on the Construction of Statutes, 6th ed (Markham: LexisNexis, 2014) at 28-29, Ruth Sullivan sets out three propositions that apply when interpreting the plain meaning of a statutory provision:
>
> > 1. It is presumed that the ordinary meaning of a legislative text is the meaning intended by the legislature. In the absence of a reason to reject it, the ordinary meaning prevails.

> 2. Even if the ordinary meaning is plain, courts must take into account the full range of relevant contextual considerations including purpose, related provisions in the same and other Acts, legislative drafting conventions, presumptions of legislative intent, absurdities to be avoided and the like.
>
> 3. In light of these considerations, the court may adopt an interpretation that modifies or departs from the ordinary meaning, provided the interpretation adopted is plausible and the reasons for adopting it are sufficient to justify the departure from ordinary meaning.

[19] The object and purpose of access to information legislation such as *LAFOIP* is to promote openness and transparency in public institutions, thereby enhancing accountability. In *Dagg v Canada (Minister of Finance),* [1997] 2 SCR 403 [*Dagg*], Justice La Forest (in dissent but not on this point), held that access to information legislation is intended to promote disclosure of documents held by public institutions, thereby enhancing Canadian democracy through increasing government transparency:

> 63 Rights to state-held information are designed to improve the workings of government; to make it more effective, responsive and accountable. Consequently, while the *Access to Information Act,* [RSC 1985, c A-1] recognizes a broad right of access to "any record under the control of a government institution" (s. 4(1)), it is important to have regard to the overarching purposes of the Act in determining whether an exemption to that general right should be granted.

[20] The Ontario Superior Court affirmed Justice La Forest's statement in *Ontario Medical Association v Ontario (Information and Privacy Commissioner)*, 2017 ONSC 4090 at paras 33 and 34:

> [33] The second observation is that this argument ignores the well-established rationale that underlies access to information legislation. That rationale is that the public is entitled to information in the possession of their governments so that the public may, among other things, hold their governments accountable. As La Forest J. said in

Dagg v. Canada (Minister of Finance), [1997] 2 S.C.R. 403 at para. 61:

> The overarching purpose of access to information legislation, then, is to facilitate democracy. It does so in two related ways. It helps to ensure first, that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry.

and further at para. 63:

> Rights to state-held information are designed to improve the workings of government; to make it more effective, responsive and accountable.

> [34] The proper question to be asked in this context, therefore, is not "why do you need it?" but rather is "why should you not have it?".

[21] In Saskatchewan, this Court has also held that a primary purpose of *LAFOIP* is to promote accountability in public institutions. In *Leo v Global Transportation Hub Authority*, 2019 SKQB 150 [*Leo*], Justice Kalmakoff (*ex officio*) held (at paras. 18 and 19):

> [18] In *John Doe v Ontario (Finance),* 2014 SCC 36 at para 23, [2014] 2 SCR 3 [*John Doe*], the Supreme Court of Canada concisely summarized the legislative purpose of access to information statutes such as *FOIP*. In the opening paragraphs, Justice Rothstein wrote:
>
> > [1] Access to information legislation serves an important public interest: accountability of government to the citizenry. An open and democratic society requires public access to government information to enable public debate on the conduct of government institutions.
> >
> > [2] However, as with all rights recognized in law, the right of access to information is not unbounded. All Canadian access to information statutes balance access to government information with the protection of other interests that would be adversely affected by otherwise unbridled disclosure of such information.
>
> [19] Justice Rothstein went on to say, at para. 41, that statutes like *FOIP* establish a presumption in favour of granting access to

> information, because access to information in the hands of a public institution can increase transparency in government, contribute to an informed public, and enhance an open and democratic society. This requires that the citizenry be granted access to government records when it is necessary to meaningful public debate on the conduct of government institutions. However, he cautioned that the presumption in favour of granting access must be rebuttable in those limited and specific circumstances where the legislation permits an exemption to the government institution.

(b) Exemptions to Disclosure are Limited and Specific

[22] While the object of *LAFOIP* is to promote openness, transparency and accountability, the legislation still contains specific exemptions which protect certain classes of information or specific pieces of information from disclosure. It is well settled that such statutory exemptions are "intended to have a meaningful reach and application": *General Motors Acceptance Corp. of Canada v Saskatchewan Government Insurance* (1993), 116 Sask R 36 (Sask CA) at para 11. However, in order to give meaning to the overriding purpose of the legislation, statutory exemptions must be interpreted harmoniously, in context, and in a "limited and specific way" (*Leo* at para 19).

[23] The exemption from disclosure contained in s. 17(3) of *LAFOIP* is often referred to as the "research exemption". It provides that the head of a university has the discretion to decide to refuse to disclose "details of the academic research being conducted by an employee" of the university.

[24] Section 17(3) of *LAFOIP* is a "class based" exemption. The provision does not reference any consequence that must result from the release of the information in order for the exemption to apply. This is in contrast to other "harm based" exemptions found in *LAFOIP*. For example, ss. 18(1)(c)(i), (ii) and (iii) are harm based exemptions which provide that disclosure of third party information shall be refused when it can

reasonably be expected to result in: financial loss or gain; prejudice to a competitive position; or, interference with a negotiation.

[25] As such, when relying on s. 17(3) of *LAFOIP* as a reason to refuse to disclose information, the University must only establish that the information in question – in this case, the Funding Identity Information – falls within the class of "details of academic research" in order to invoke the exemption.

[26] There are no reported Saskatchewan cases dealing with the research exemption contained in s. 17(3) of *LAFOIP*. In addition, the term "research" is not defined in *LAFOIP*, *The Freedom of Information and Protection of Privacy Act,* SS 1990-91, c F-22.01, nor *The Health Information Protection Act,* SS 1999, c H-0.021. However, Ontario's *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31 [*FIPPA*], which also contains a "research exemption", has been the subject of some legal review and analysis. Under Ontario's *FIPPA*, an exemption from disclosure exists for a "record respecting or associated with research conducted or proposed" by a person associated with an educational institution: s. 8.1(a). Decision-makers in Ontario have developed a practice of using the definition of "research" as it is defined in Ontario's *Personal Health Information Protection Act, 2004*, SO 2004, c 3, Sched A as having an equivalent meaning in Ontario's *FIPPA:* see *Carleton University v Information and Privacy Commissioner of Ontario and John Doe, requester,* 2018 ONSC 3696 at para 7. "Research" is understood to mean "a systematic investigation designed to develop or establish principles, facts or generalizable knowledge, or any combination of them, and includes the development, testing and evaluation of research." I accept this is an ordinary meaning of research that should be used to interpret s. 17(3) of *LAFOIP.*

[27] In addition, by relying on *Hansard* from the Ontario legislature, the Ontario Privacy Commissioner has found that the purpose of the "research exemption" under *FIPPA* is "to protect academic freedom and foster competitiveness": *Carleton University (Re)*, 2011 CanLII 3432 at pages 5 and 8 (Ont IPC); *University of Ottawa (Re),* 2012 CanLII 31568 (Ont IPC) at paras 25-29 [*UOttawa 2012*].

[28] As there is no relevant provision from Saskatchewan *Hansard* to assist in interpreting the legislature's purpose in enacting the research exemption contained in s. 17(3) of *LAFOIP*, I also accept the purpose that was articulated for the research exemption under Ontario's *FIPPA*. The purpose of a research exemption, such as s. 17(3) of *LAFOIP*, is to promote academic freedom and foster competitiveness within public universities. Generally speaking, academic freedom is the freedom to pursue knowledge and to express ideas without undue or unreasonable interference.

[29] The question, then, is whether disclosing Funding Identity Information constitutes the disclosure of "details of academic research" pursuant to s. 17(3) of *LAFOIP*, which infringes upon academic freedom and competitiveness.

(c) "Details" Means Particulars About the Research, Itself

[30] I find that the word "details", as it is used in s. 17(3) of *LAFOIP*, means a specific, particular piece of information about the academic research that is undertaken.

[31] The word "detail" is not defined in *Black's Law Dictionary.* The *Cambridge English Dictionary* defines "detail" as: (1) "a single piece of information of fact about something"; (2) "information about someone or something"; and (3) the "small features of something you only notice when you look carefully": <https://dictionary.cambridge.org/dictionary/english/detail> (8 February 2021).

[32] Because the meaning and scope of a word may differ significantly depending on the dictionary used to define it, I am hesitant to rely on a dictionary definition as determinative of the ordinary meaning of "details" in s. 17(3) of *LAFOIP*: *Sullivan on the Construction of Statutes*, 6th ed (Markham: LexisNexis, 2014) at 39. Nevertheless, I accept that, in ordinary use, a "detail" is something that is specifically related to the item in question. It is an individual feature or characteristic of the item.

[33] This definition, alone, is insufficient to glean the meaning of s. 17(3). To determine whether Funding Identity Information constitutes "details" of academic research, the ordinary meaning of the word "detail" and the phrase "details of academic research" must be considered in the context in which it is used in *LAFOIP*, taking into account *LAFOIP*'s purpose and objects, as well as any other related provisions which exist in the *LAFOIP*.

[34] In Ontario, the Ontario Divisional Court has determined that there need only be "some connection" between the requested record and the academic research in question to trigger the protections from disclosure contained in the "research exemption": *Ministry of Attorney General v Toronto Star*, 2010 ONSC 991 at paras 42-46, 101 OR (3d) 142. However, the language used in Ontario's *FIPPA* to express the research exemption is considerably broader than that used in *LAFOIP*.

[35] Section 17(3) of *LAFOIP* provides that a head of a university may refuse to disclose records which reveal "details" of academic research. Use of the term "details" suggests a specific and pointed connection between the record and the academic research. For contrast, the phrase, "respecting or associated with research", used in s. 65(8.1)(a) of Ontario's *FIPPA* suggests a broader relationship between the record and the academic research. The difference is significant.

[36] In my view, the use of the term "details" in s. 17(3) of *LAFOIP* indicates that there must be a specific nexus between the record for which disclosure is sought, and the academic research being conducted, in order for a university to rely on this provision to refuse disclosure. A specific nexus ties the record to the research itself. Conversely, the term "respecting or associated with research" allows a looser, more tenuous, connection.

[37] The University relies on several cases from Ontario's Privacy Commissioner for the proposition that any financial information respecting an academic research project constitutes "details of the academic research" being conducted by the University. In *UOttawa 2012*, the Office of the Privacy Commissioner [Privacy Commissioner] held that the research exclusion applied to expense reports from a research project. The Privacy Commissioner noted that the records related to how funding received for the project was being used. As such, an analysis of the expenditures might reveal features of the research being conducted (at para. 51). Similarly, in *University of Western Ontario (Re)*, 2013 CanLII 8117 (Ont IPC) [*University Western Ontario 2013*], the Privacy Commissioner held that documents relating to the expenditure of research funds in furtherance of the research activities were captured by the research exemption and were not subject to disclosure.

[38] However, in an earlier case, *University of Western Ontario (Re)*, 2008 CarswellOnt 11575 (WL) (Ont IPC) [*University Western Ontario 2008*], the Privacy Commissioner noted that records concerning research funding applications are distinct from the research itself: "Funding applications for research facilities cannot be equated with actual research projects that will be carried out in those facilities" (at para. 84). In that case, the university received external grants to fund development of a wind tunnel to study bird migration. The external funders names were made public. The university

issued a request for proposals for developers to build the wind tunnel for the research. An individual later applied for access to certain records related to the request for proposals. The university denied access, relying on the research exemption.

[39] The Privacy Commissioner found that records related to the request for proposals should be disclosed, finding that the university did not establish a substantial connection between the funding records requested and actual academic research because the records were not prepared for a specific research project and did not disclose, "directly or by inference, the particulars or broad objectives" of any research project (at para. 85).

[40] *University Western Ontario 2008* was decided when the test to trigger the research exclusion in Ontario required a "substantial connection" between the record and the academic research, not just "some connection". In my view, this makes the *University Western Ontario 2008* decision particularly relevant to the instant case because Saskatchewan's *LAFOIP* also suggests that a substantial connection is required between the record and the research, itself. By using the term "details", s. 17(3) of *LAFOIP* signals that a specific or pointed connection must exist between the requested record and the academic research in order for the record to constitute "details" or particulars of the academic research, and be protected from disclosure. Thus, I find that a record or piece of information which discloses "details of the academic research being conducted" pursuant to s. 17(3) of *LAFOIP* is one which discloses, directly or by inference, the particulars of the academic research, itself.

[41] Even without the significant difference in the language used to express the research exemption in Ontario versus Saskatchewan, I find that the *UOttawa 2012* case and the *University Western Ontario 2013* case are distinguishable on their facts. While *UOttawa 2012* and *University Western Ontario 2013* find that expense reports

are records connected to academic research, there is a significant difference between a record that discloses who provided funding to whom versus one that discloses how that funding was used. This difference lies in whether a requested record might reveal something about the particulars – that is the specifics or "details" of the methodology, mode or results – of the academic research itself. This was acknowledged in *UOttawa 2012,* when the Privacy Commissioner noted that the disclosure of how funding was directed by the affected parties "may in fact reveal details about the research conducted by the parties" and was therefore not disclosable.

[42] There is also an argument that Funding Identity Information constitutes "details" of academic research because s. 17(4) of *LAFOIP* expressly requires disclosure of the amount of funding being provided for academic research. Arguably, by conjoining s. 17(4) with s. 17(3), and then expressly distinguishing s. 17(3), this suggests that the amount of funding received for a research project is a "detail" of academic research. If the amount of funding received for research constitutes a detail of the research, it follows that the identity of the funder might also be a detail of the research.

[43] However, I find that the amount of funding received to conduct academic research is not a detail of academic research. Again, this is because disclosing the amount of funding does not reveal the particulars of the research – the questions, methodology, results or conclusions of the research, itself. Thus, while the legislature has specified that the quantum of research funding received by a public institution will always be subject to disclosure, this does not affect the status of the Funding Identity Information.

(d) Other Provisions in *LAFOIP* Address Specific Harm

[44] My finding that Funding Identity Information is not a detail of academic research is also supported by the interpretive principle that separate provisions in an enactment should be interpreted as having separate meanings and specific purposes and should be read harmoniously. It is a well-settled principle of legislative interpretation that the legislature does not intend to include superfluous provisions in enactments.

[45] The University argues, and I accept, that there may be harms associated with disclosing Funding Identity Information in certain cases. The hypothetical examples of harm put forward by the University are mainly focused on risks to economic and competitive advantage. Hypothetical examples include the risk of: breach of contract; breach of confidentiality or legal privilege; harm to the ability to later commercialize research; harm to priority of publication; harm to competitive advantage of the third-party funders; and harm to competitive advantage of the University in securing funding. There is also the possibility, however remote, of risk to the personal security of researchers engaged in research funded by controversial funders.

[46] However, *LAFOIP* contains a number of provisions, other than s. 17(3), which exists to protect a record from disclosure if a harm will result from that disclosure. The following provisions in *LAFOIP* address the hypothetical examples of harm raised by the University:

Concern	***LAFOIP* protective provision**
Some funding is provided by external donors on the contractual condition that the identity of the funder remain private or confidential.	Section 17(1)(d) provides that information may be protected from disclosure if it could reasonably be expected to interfere with contractual or other negotiations of the University.
If the identity of a department or unit receiving funding is disclosed, this may threaten the physical safety or mental health of the researcher.	Section 20 allows disclosure of a record to be refused on the basis that such disclosure would affect "the safety or the physical or mental health of an individual".
Some research is funded in support of litigation. Disclosing the identity of the funder could disclose the fact that research was being conducted, thus breaching the protection of litigation privilege.	Section 21(a) creates discretion to refuse to disclose a record that "contains any information that is subject to any privilege that is available at law". This includes litigation privilege.
Research funding may be "scooped" by other universities, thus prejudicing the University's competitive position.	Section 17(1)(f) provides that information can be protected from disclosure if such disclosure could reasonably be expected to prejudice the economic interests of the University.
Competitor corporations may learn about one another's research, thus prejudicing the funding corporation's competitive position.	Section 18(1)(c) protects information from disclosure if such disclosure would prejudice the competitive position of a third party.
Providing the identity of a funder of research may result in difficulties when the corporation wishes to later commercialize the research it funded.	Section 18(1)(c) protects information from disclosure if such disclosure would prejudice the competitive position of a third party.

[47] The existence of these exemptions suggest that s. 17(3) was not intended to be used as a blanket denial to address specific economic and competitive harms. On the contrary, this type of harm is to be addressed on a

case-by-case basis, relying on specific "harm based" exemptions, rather than the "class-based" exemption of s. 17(3).

(e) There is No Evidence that Disclosing Funding Identity is a Threat to Academic Freedom

[48] Finally, the University has argued that disclosing Funding Identity Information would have a general chilling effect on academic freedom, resulting in a reduction in research activity. I find, however, that there is no admissible evidence to support these contentions. In her February 18, 2020 affidavit, Dr. Kathleen McNutt states:

> 22 ... Requiring the University to disclose the name of the funding agency will expose researchers to unwarranted scrutiny and potential criticism, or personal or professional backlash, with respect to for whom they choose to perform research. Professors would no longer have the environment to pursue innovative research, including for what may be considered to be controversial, unpopular or polarizing entities or causes, without fear of disclosure and ensuing reprisals.
>
> 23. Currently, researchers have complete autonomy in determining for who, and in what areas, they conduct research. If the University could not provide protection for researchers in respect of, inter alia, the source of their research funding and the identity of the entities for whom they perform research, that would erode their rights to academic freedom and could cause a significant curtailment of research activity. Researchers may be reluctant to take on research projects, knowing that they would have no say in whether details relating to their sponsors could be obtained by members of the public and other professors through access requests under the Act.

[49] In my preliminary decision in this matter, I suggested that hypotheticals could be used in legal argument to demonstrate why Funding Identity Information was or was not "details of academic research". However, Dr. McNutt's statement goes beyond stating facts upon which to found a hypothetical example. Her statement is a statement of opinion, and it is not based on any facts established in the other materials filed in this matter. I note that the issue of whether academic freedom is threatened by

private research funding at public universities is the subject of considerable scholarly and popular debate: see, for example Manuela Hugentobler, Markus Muller & Franz Andres Morrisey, "Private Funding and its Dangers to Academia: an Experience in Switzerland" (2017) 7:2 European Journal of Higher Education 203-213; Molly McCluskey, "Public Universities Get an Education in Private Industry", The Atlantic Monthly (3 April 2017); Lisa Bero, "When Big Companies Fund Academic Research, the Truth Often Comes Last", (The Conversation, 2 October 2019), online: <https://theconversation.com> (2 February 2021). However, none of the affiants who filed affidavits on behalf of the University have been qualified to give opinion evidence on that issue.

[50] As such, Dr. McNutt's statement, noted above, is argumentative and speculative. It is not admissible. There is no evidence before me that proves that disclosing Funding Identity Information presents a general threat to academic freedom.

[51] In the result, I find that Funding Identity Information does not constitute "details of academic research being conducted" within a public university so as to trigger the class exemption from disclosure provided by s. 17(3). The broad purpose of *LAFOIP* is to promote openness, transparency and accountability in public institutions such as the University, and the purpose of s. 17(3) of *LAFOIP* is to protect academic freedom and foster competitiveness. However, the exemption from disclosure provided by s. 17(3) must be interpreted in a limited and specific way. The legislature's use of the word "details" in the phrase "details of the academic research being conducted" suggests that there should be a specific and substantial connection between the record requested and the academic research, itself. The protections from disclosure provided by s. 17(3) should not be triggered unless disclosure of the record would reveal, directly or indirectly, the particulars of the research project, such as its methodology, results or

conclusions. This limited and specific interpretation is supported by the fact that other provisions exist in *LAFOIP* to address the hypothetical economic and competitive harms which may result from the disclosure of Funding Identity Information. Disclosing Funding Identity Information does not risk the disclosure or details of the research, itself. Finally, there is no evidence that disclosing Funding Identity Information generally threatens academic freedom.

[52] Ultimately, requiring that Funding Identity Information be disclosed is in keeping with promoting transparency, openness and accountability in public institutions, such as the University. If this information is publicly available it provides community members with information that may be relevant to the context of the academic research, thereby providing the public with the ability to consider, analyze and debate the funding choices made by a public institution. This enhances the University's accountability, which is a key purpose of access to information legislation: *Dagg* at para 63.

3. The University's Exercise of Discretion

[53] As I have decided that the identity of the funding agency and of the funding recipient are not "details" of "academic research" pursuant to s. 17(3) of *LAFOIP*, it is not necessary for me to consider the issue of the University's exercise of discretion.

C. CONCLUSION

[54] The University has refused Dr. Eaton access to two types of records – the identity of the funder and the identity of the department or unit receiving funding – in relation to petroleum research being conducted within the University. It did so by relying on a discretionary class exemption which allows the University to refuse to

provide "details of the academic research being conducted by an employee of the university". I have found that the two types of records requested by Dr. Eaton are not "details" of academic research and do not fall within this class exemption. However, this does not mean that every record within the two types requested by Dr. Eaton is inescapably subject to disclosure.

[55] While I have determined that Funding Identity Information is not captured by the "research exemption" in s. 17(3), it is still possible that such information may be protected from disclosure by other exemptions under *LAFOIP*.

[56] I have reviewed the Database Query Spreadsheet which was filed sealed with the court. The filed hard copy of the Database Query Spreadsheet is cut-off and does not provide the complete information that I assume is contained in each category of the electronic version of this document. In any event, from what I can discern from the copy provided, the Database Query Spreadsheet shows that a significant amount of funding for research conducted at the University is provided by public sources, while some other funding is provided by the private sector.

[57] The University is entitled to consider whether disclosing Funding Identity Information for any specific research project may result in harm prohibited by other provisions of *LAFOIP*. As a result, I have determined that it is not appropriate for me to order that the Database Query Spreadsheet be disclosed at this point. However, I reiterate that the effect of my decision is that the University cannot rely on s. 17(3) as a blanket exemption to refuse to provide Funding Identity Information. This should result in a significant amount of the information requested being disclosed to Dr. Eaton. In order to refuse further disclosure, the University must demonstrate, on specific evidence, why a specific enumerated exemption applies to Funding Identity

Information for a specific research file. Otherwise, the Funding Identity Information for the research files in question must be disclosed.

[58] Dr. Eaton is successful in both the preliminary application and the current application. She shall have the costs of 2019 SKQB 127 on Column III, and the costs of this application on Column II. The matters were complex, involving the interpretation of a provision of *LAFOIP* that had not previously been considered, and involving multiple affidavits. The preliminary application was particularly contentious and required significant preparation and response by Dr. Eaton. While Dr. Eaton sought solicitor-client costs in relation to the preliminary application, I do not find that the preliminary application was so exceptional as to warrant solicitor-client costs, but Column III costs are appropriate.

[59] Finally, I had the benefit of very able submissions from counsel for both parties and I thank them for their assistance.

J.
M.R. MCCREARY