



OFFICE OF THE
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COMMISSIONER
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Order F11-31

(Reconsideration of Order F09-06)

UNIVERSITY OF BRITISH COLUMBIA

Jay Fedorak, Adjudicator

October 20, 2011

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Summary: A journalist requested records from UBC relating to seven entities. UBC was able to provide some records and a few others were publicly available but for the most part UBC argued that it did not have custody and control of the requested records. Order F09-06 found UBC to have control of the requested records with respect to three of the entities. The Order was subject to a judicial review that led to a consent order to the effect that the OIPC would reconsider the question as to whether UBC had custody or control of the records of the three entities. In the meantime, a judicial review of Order F08-01 found that the relationship between SFU and its subsidiaries did not meet the common law test for piercing the corporate veil, and, therefore, SFU did not exercise control over the records. In this case, the relationship between UBC and the three entities does not meet the common law test for piercing the corporate veil. UBC does not exercise control over the records for the purpose of FIPPA.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 3(1) and 4(1); *Interpretation Act* s. 8; *University Act*, ss. 27(1) and 47; *Access to Information Act* (Canada); *Municipal Freedom of Information and Protection of Privacy Act* (Ontario), ss. 2(1) and 2(3).

Authorities Considered: **B.C.:** Order F09-06, [2009] B.C.I.P.C.D. No. 9; Order 00-47, [2000] B.C.I.P.C.D. No. 51; Order 01-20, [2001] B.C.I.P.C.D. No. 21; Order 02-19, [2002] B.C.I.P.C.D. No. 19; Order 02-30, [2002] B.C.I.P.C.D. No. 30; Order 04-08, [2004] B.C.I.P.C.D. No. 8; Order 04-19, [2004] B.C.I.P.C.D. No. 19; Order F06-01, [2006] B.C.I.P.C.D. No. 2; Order F08-01, [2008] B.C.I.P.C.D. No. 1.

Cases Considered: *Simon Fraser University v. British Columbia (Information and Privacy Commissioner)*, [2009] BCSC 1481; *Lacker v. Lacker*, [1982] 42 B.C.L.R. 188; *Canada Post Corp. v. Canada (Minister of Public Works)*, [1995] 2 F.C. 110, [1995] F.C.J. No. 241 (C.A.); *Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27; *Neilson v. British Columbia (Information and Privacy Commissioner)*, [1998] B.C.J. No. 1640; *Greater Vancouver Mental Health Service Society v. British Columbia (Information and Privacy Commissioner)*, [1999] B.C.J. No. 198 (S.C.); *Ontario (Criminal Code Review Board) v. Doe* (1999), 180 D.L.R. (4th) 657, 47 O.R. (3d) 201, [1999] O.J. No. 4072 (C.A.); *Sarvanis v. Canada*, [2002] 1 S.C.R. 921; *Canada (Information Commissioner) v. Canada (Minister of Citizenship and Immigration)*, [2003] 1 F.C. 219 (C.A.); *City of Toronto Economic Development Corp. v. Ontario (Information and Privacy Commissioner)*, [2008] O.J. No. 1799.

INTRODUCTION

[1] This case concerns a journalist challenging the decision by the University of British Columbia (“UBC”) to refuse him access to the records of three of its subsidiary companies, on the grounds that the records are not in its custody or under its control for the purposes of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”). This order is a partial reconsideration of Order F09-06,¹ which found that the records were under the control of UBC for the purposes of ss. 3(1) and 4(1) of FIPPA.

[2] The journalist made an access request to UBC for certain records relating to the following “UBC entities”: (a) UBC Properties Investments Ltd. and UBC Properties Trust; (b) Discovery Parks Inc.; (c) UBC Foundation; (d) University Golf Club and University Golf Course; (e) UBC Research Enterprises Inc.; (f) UBC Research Inc.; and (g) UBC Investment Management Trust.

[3] In relation to each entity, the journalist requested:

- the most recent annual report (any that had not yet been publicly released);
- salaries and expenses for the president, CEO, or highest ranking employee for the most recent fiscal year; and
- minutes of all meetings of the governing body for 2006 to date.

[4] UBC responded that it was unable to provide the requested records, as most of the entities were separate legal bodies that did not fall within the scope of FIPPA. The journalist requested a review of UBC’s response. The matter was not resolved in mediation by this Office and proceeded to a written inquiry under Part 5 of FIPPA. The OIPC issued a notice of inquiry to the journalist, UBC and the seven entities. On April 21, 2009, the OIPC issued Order F09-06, which held that the records of Discovery Parks Inc., University of British Columbia Foundation, University Golf Club, University Golf Course, and UBC Research

¹ [2009] B.C.I.P.C.D. No. 9.

Inc. did not fall under the control of UBC. However, the adjudicator found that UBC exercised control over the three remaining entities: UBC Properties Investments Ltd., UBC Research Enterprises Inc. and UBC Investment Management Trust under ss. 3(1) and 4(1) of FIPPA and directed UBC to process the access request for the records of these entities.

[5] UBC filed a judicial review application in relation to the portion of the Order that directed it to process the access request for the three entities. On September 30, 2009, the British Columbia Supreme Court, by consent of the parties, set aside that part of the Order and remitted the matter back for reconsideration, as the adjudicator had relied on Internet material that, although cited by the journalist, was not put before him during the inquiry and to which the other parties did not have an opportunity to respond, prior to issuance of the Order.

[6] As a consequence, this reconsideration relates only to the records of the three entities that the adjudicator found to be under the control of UBC in Order F09-06.

ISSUE

[7] The question that I must decide is whether UBC exercises control of the records of UBC Properties Investments Ltd., UBC Research Enterprises Inc. and UBC Investment Management Trust within the meaning of ss. 3(1) and 4(1) of FIPPA.

DISCUSSION

[8] **Background**—After that portion of Order F09-06 was remitted back for reconsideration, but prior to the reconsideration taking place, the British Columbia Supreme Court allowed an application for judicial review of Order F08-01 in *Simon Fraser University v. British Columbia (Information and Privacy Commissioner)*.² Order F08-01 involved a similar request by a university professor to Simon Fraser University (“SFU”) to provide records in the possession of its University Industry Liaison Office relating to two “spin-off companies”. SFU initially processed the request on the basis that the requested records were in its custody or under its control, but subsequently maintained that the records were not under the scope of FIPPA, because they were under the control of a subsidiary corporation.

² [2009] B.C.J. No. 2145.

[9] The adjudicator in Order F08-01 concluded that the records in the possession of S F Univentures Corporation (“SFUV”), which was a wholly owned subsidiary of SFU, were under SFU’s control based on the following factors:

- (a) SFUV operated only as a holding company for SFU;
- (b) all of the directors of SFUV were SFU employees;
- (c) SFUV had no location or staff independent of SFU; and
- (d) there was no indication that SFUV was governed in any way except at the direction of SFU and to promote SFU’s interests.

[10] The adjudicator went on to conclude as follows:

[82] I agree with SFU that there is no particular contractual or statutory provision which provides SFU with access or control over the records. However, in order to give effect to FIPPA’s purposes, it is necessary to consider whether, in the specific circumstances of this case, SFU does in fact have control over the records in question, through its control over SFUV. Given the relationship between SFU and SFUV, it is necessary to consider whether it is appropriate to ignore the separate existence of the public body’s subsidiary for the purposes of determining control under FIPPA.

[83] Former Commissioner Loukidelis referred to this possibility in Order 02-29. The Commissioner first noted that, if a public body’s subsidiary had been incorporated for the purposes of avoiding the public body’s obligations under FIPPA, it might be appropriate to ignore that separate existence and treat the public body and the subsidiary as a single entity. He went on to say:

There may even be cases in which a public body’s subsidiary has been incorporated for legitimate business reasons, but is so completely under the public body’s domination that its separate corporate existence should be ignored for the Act’s purposes. I should be clear that only in the clearest of cases will it be appropriate even to consider whether a subsidiary’s separate corporate existence can be ignored on either of the grounds just mentioned.

...

[93] I agree with SFU that the mere fact that it has exclusive ownership interest in SFUV is not sufficient to demonstrate that SFUV’s separate existence should be ignored for the purposes of determining control under FIPPA. A finding that ownership is sufficient would render meaningless the different treatment under FIPPA of corporations owned by local government bodies and those owned by entities otherwise defined as public bodies. However, in this case, a number of factors combine to demonstrate that, in

this case, SFU and SFUV should be treated as one entity. It is obvious from the structures and operation of SFUV that it is wholly within SFU's domination. As a result, for the reasons set out above, I find that this is one of those clear cases where records under the control of SFUV should be treated as being under the control of SFU.

[11] SFU filed a judicial review application seeking to set aside Order F08-01. The Canadian Association of University Teachers ("CAUT") was granted party status and UBC was granted intervenor status in that proceeding.

[12] On the judicial review, the Court held that the records were not under the control of SFU and that the adjudicator had erred by disregarding the separate corporate existence of the subsidiary corporations, contrary to the common law test for lifting the corporate veil. The Court also acceded to UBC's argument that the subsidiaries were private sector organizations subject to the *Personal Information Protection Act* ("PIPA") and found that it would be inappropriate to conclude that the same records could be under the control of both SFU and its companies when they were subject to different legislative privacy schemes:

[81] I am satisfied that applying the correctness standard, the Delegate erred in law by piercing SFU's corporate veil without applying the proper legal standard for doing so. I also find that the Delegate erred in finding that those records were under the control of SFU and hence subject to the *FIPPA* while SFUV is clearly regulated by the *Personal Information Protection Act*. I agree with the submission of the intervenor, UBC that, in this case, it is inappropriate to find that the records were under the control of two different organizations subject to two separate legislative regimes respecting privacy.³

[13] In the result, the application was allowed and Order F08-01 was set aside. The professor and CAUT filed an appeal. The Commissioner filed a separate appeal on the issue of standard of review. On November 26, 2009, UBC requested that the reconsideration of Order F09-06 be held in abeyance pending the outcome of the appeal in *SFU v. IPC*. All of the participants consented to UBC's request and the Commissioner agreed to adjourn the inquiry pending disposition of the appeal.

[14] As matters turned out, the appeal did not proceed as the professor passed away earlier this year. The Court of Appeal subsequently dismissed the appeal on the basis of mootness, as there was no one with a sufficient interest in obtaining the records in issue.⁴

³ The Court did not address s. 3(2)(d) of PIPA which provides that PIPA does not apply to a record that is subject to FIPPA or s. 79 of FIPPA which provides that in the event of conflict with other legislation, FIPPA prevails. It should also be noted that PIPA only applies to personal information and not to records such as annual reports which generally do not contain personal information.

⁴ Following this decision, the Commissioner filed a notice of abandonment of her appeal, as it was also rendered moot by the access applicant's death.

[15] Following the dismissal of the appeal, I notified the parties that the Commissioner had re-opened the reconsideration of Order F09-06 and invited the parties to make further submissions on the control question in light of the Supreme Court's decision in *SFU v. IPC*. The parties filed further submissions and, in some cases, additional evidence.

[16] **Application of *SFU v. IPC* to the Reconsideration of Order F09-06—**The participants in this inquiry made supplementary submissions on, amongst other things, the impact of the *SFU v. IPC* decision. UBC argued that the decision is binding authority for the following two propositions. First, in deciding the custody or control in this case, the Commissioner must be mindful that it is inappropriate to find that the records are under the control of two different organizations subject to two separate legislative regimes respecting access and privacy. Second, the Commissioner must apply the proper legal standard in order to pierce the corporate veil and find that the records of a private sector entity are under the control of a public body.

[17] The journalist contends that the decision is not determinative in this inquiry because: (a) it was not upheld by the Court of Appeal, as the appeal was dismissed on a technicality; (b) the Chambers Judge applied the wrong standard of review; and (c) there are significant differences between the structures and reporting relationships of the SFU and UBC entities.

[18] I find that this case raises the same fundamental issue that was considered in *SFU v. IPC*, namely the nature of the relationship between the public body and its subsidiary entities. The question common to both cases is whether it is appropriate to ignore the separate existence of a wholly owned corporation created by a public body, when determining control of disputed records under ss. 3(1) and 4(1) of FIPPA.

[19] Consistent with the existing jurisprudence and orders under FIPPA, the adjudicator in Order F08-01 applied a broad contextual approach to determining “control” for the purposes of ss. 3(1) and 4(1), having regard to the purposes of the Act.⁵ An example of a case where a broad approach to the “control” test was also recently endorsed in *Canada (Information Commissioner) v. Canada*

⁵ The cases include *Neilson v. British Columbia (Information and Privacy Commissioner)*, [1998] B.C.J. No. 1640, *Greater Vancouver Mental Health Services Society v. British Columbia (Information and Privacy Commissioner)*, [1999] B.C.J. 198 (S.C.), *Canada Post Corp. v. Canada (Minister of Public Works)*, [1995] 2 F.C. 110, [1995] F.C.J. No. 241, *Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403; *Ontario (Criminal Code Review Board) v. Doe* (1999), 180 D.L.R. (4th) 657, 47 O.R. (3d) 201 (C.A.); *Canada (Information Commissioner) v. Canada (Minister of Citizenship and Immigration)*, [2003] 1 F.C. 219 (C.A.).

(*Minister of National Defence*), where the Court made the following observations in relation to the *Access to Information Act*, R.S.C. 1985, c. A-1.⁶

[48] As “control” is not a defined term in the Act, it should be given its ordinary and popular meaning. Further, in order to create a meaningful right of access to government information, it should be given a broad and liberal interpretation. Had Parliament intended to restrict the notion of control to the power to dispose or get rid of the documents in question, it could have done so. It has not. In reaching a finding of whether records as “under the control of a government institution”, courts have considered “ultimate” control as well as “immediate” control, “partial” as well as “full” control, “transient” as well as “lasting” control, and “*de jure*” as well as “*de facto*” control. While “control” is to be given its broadest possible meaning, it cannot be stretched beyond reason. Courts can determine the meaning of a word such as “control” with the aid of dictionaries. The *Canadian Oxford Dictionary* defines “control” as “the power of directing, command (under the control of)” (2001, at p. 307). In this case, “control” means that a senior official with the government institution (other than the Minister”) has some power of direction or command over a document, even if it is only on a “partial” basis, a “transient” base, or a “*de facto*” basis. The contents of the records and the circumstances in which they came into being are relevant to determine whether they are under the control of a government institution for the purposes of disclosure under the Act (paras. 91–95).

[20] For the purposes of this inquiry, I must take as my starting point the *SFU v. IPC* decision, which establishes that the common law test arising from corporate law principles must be applied when determining whether it is appropriate to “lift the corporate veil” for the control analysis under FIPPA. As UBC correctly points out, this decision is binding. The fact that the appeal of *SFU v. IPC* did not proceed does not derogate from the binding effect of the decision, nor is the standard of review adopted by the Chambers Judge relevant to the analysis in this inquiry. The journalist’s contention that there are significant differences between the structures and reporting relationships between the SFU and UBC entities will be addressed below.

[21] In *SFU v. IPC*, the Court cited the following passage from *International Trademarks v. Clearly Canadian Beverage Corporation & Clearly Canadian Beverage (International) Corporation*, (1999), 47 B.C.L.R. (2d) 193 (S.C.) which summarizes the test for piercing the corporate veil:

[10] The test in these circumstances is that set out in *Aluminum Co. of Canada Ltd. v. Toronto*, [1944] 3 D.L.R. 609 (S.C.C.), Rand J. at 614:

The question, then, in each case, apart from formal agency which is not present here, is whether or not the parent company is in fact in

⁶ 2011 SCC 25. The orders include Order 04-19, [2004] B.C.I.P.C.D. No. 19, Order 02-29, [2002] B.C.I.P.C.D. No. 29, Order 02-30, [2002] B.C.I.P.C.D. No. 30 and Order F06-01, [2006] B.C.I.P.C.D. No. 2.

such an intimate and immediate domination of the motions of the subordinate company that it can be said that the latter has, in the true sense of the expression, no independent functioning of its own.

[11] This test was discussed with approval in *Harrington v. Dow Corning Corp.* (2 April 1998), Vancouver C954330 (B.C.S.C.) by Mackenzie J. (as he then was):

The test for an alter ego or agency relationship sufficient to impose liability on a parent company is a stringent one. The subsidiary must be under the complete control of the parent to an extent that it has no independent functions of its own. It exercises no discretion independently of the parent: *Aluminum Company of Canada v. The Corporation of the City of Toronto*, [1944] 3 D.L.R. 609 (S.C.C.); *Gregorio v. Intrans-Corp.* (1994), 18 O.R. (3d) 527 (C.A.); *Hunt v. T & N PLC.* [1989] B.C.J. No. 2173, November 29, 1989, B.C.C.A., Vancouver Registry CA011399.

[22] It must be recognized that there are cases which support a more contextual approach to the application of the corporate veil test.⁷ However, in my view, the *SFU v. IPC* decision leaves no question that a strict test must be applied in determining whether records of wholly owned subsidiary corporations fall under the “control” of a public body under ss. 3(1) and 4(1) of FIPPA.

[23] The question that I must decide, on the basis of the evidence adduced in this inquiry, is whether UBC Properties Investments Ltd., UBC Research Enterprises Inc. and UBC Investment Management Trust are under the control of UBC to such an extent that they have no independent functions of their own and their records should be considered under the control of UBC for the purposes of ss. 3(1) and 4(1) of FIPPA.

UBC

[24] UBC was incorporated as a university and is continued under s. 3(1) of the *University Act*, R.S.B.C. 1996, c. 468 which sets out the duties, functions and powers granted to universities. Section 47 of the *University Act* provides as follows:

- 47 A university must, so far as and to the full extent that its resources from time to time permit, do all of the following:
- (a) establish and maintain colleges, schools, institutes, faculties, departments, chairs and courses of instruction;
 - (b) provide instruction in all branches of knowledge;

⁷ Cases such as *Lacker v. Lacker*, [1982] 42 B.C.L.R. 188 which involved a matrimonial dispute which was discussed in Order F09-06. At issue in *Lacker* was the question of whether the husband had “control” and “possession” of records belonging to a company of which he was the sole shareholder for the purposes of disclosure under the Rules of Court. The Court held that the husband did have control because he was the sole shareholder of the company.

- (c) establish facilities for the pursuit of internal research in all branches of knowledge;
- (d) establish fellowships, scholarships, exhibitions, bursaries, prizes, rewards and pecuniary and other aids to facilitate or encourage proficiency on the subjects taught in the university and original research in all branches of knowledge;
- (e) provide a program of continuing education in all academic and cultural fields throughout British Columbia; and
- (f) generally, promote and carry on the work of a university and all its branches, through the cooperative effort of the Board, Senate and other constitute parts of the University.

[25] The university may acquire and hold property (s. 50), expropriate land (s. 51), execute legal documents (s. 56), invest money (s. 57) and borrow money with Ministerial approval (s. 58). It is also subject to the *Financial Administration Act* and the *Financial Information Act* and must provide a statement to the Province of its assets and liabilities. The university also falls within the definition of “educational body” and “local public body” as those terms are defined in Schedule 1 of FIPPA.

UBC Properties Investments Ltd.

[26] UBC Properties Investments Ltd. was originally incorporated as a numbered company and changed to its current name in 1999. It is a trustee, under a legal trust arrangement, in which UBC is one of two beneficiaries (referred to as the “UBC Properties Trust”). UBC Properties Investments Ltd. carries on the business of holding property for, and administering and managing the business of, the UBC Properties Trust.

[27] UBC owns all of the shares of UBC Properties Investments Ltd. and, as the sole shareholder, elects the Board of Directors for the company. The Board of Directors selects the officers who, in turn, report to the Board. There are eleven directors, three of whom are also employed by UBC in various capacities. Three of the officers of UBC Properties Investments Ltd. are also UBC employees. Relying on corporate law principles, UBC and UBC Properties Investments Ltd. point out that those directors, who are UBC employees, are not permitted to allow the interests of their employer to interfere with their fiduciary obligation to act in the best interests of UBC Properties Investments Ltd. The Chair and the Chief Executive Officer of the Board are not UBC employees.

[28] UBC Properties Investments Ltd. has approximately 40 employees, who are hired by the company’s management. The business office for the company is located off the UBC campus. According to the Chief Financial Officer and Vice President of UBC Properties Trust, UBC has no involvement in the ongoing administration and management of the UBC Property Trust.

[29] The Assistant Secretary Treasurer of UBC Properties Investments Ltd. (who is also a UBC employee) prepares the minutes of all Board meetings. While the minutes are stored on UBC property, the Assistant Secretary Treasurer deposes that they are kept separate and apart from any UBC files. He maintains that his right to possession of the minutes stems from his position as an officer of UBC Properties Investments Ltd., and not by virtue of his status as a UBC employee.

[30] UBC Properties Investments Ltd. voluntarily provided UBC with a document akin to an annual report entitled “Year in Review”. It also provided information regarding the salaries and expenses of its Chief Executive Officer to UBC for the 2005-2006 fiscal year. This information was published in UBC’s Consolidated Financial Statements Booklet pursuant to the *Financial Information Act*, R.S.B.C. 1996. c. 140 and regulations (“FIA”). Apart from this, UBC Properties Investments Ltd. maintains that it does not provide minutes of Board meetings to UBC, nor is there any contract in existence that confers any right on UBC to inspect, review, possess, copy, use or dispose of any of the company’s records (including the minutes of Board meetings). UBC Properties Investments Ltd. argues that the ability of the university to elect directors to the company does not give it authority to compel those directors to disclose the minutes of Board meetings to the university and that a shareholder has no right to the custody or control of records of a company incorporated under the *Business Corporations Act*.

[31] The journalist tendered evidence from a website describing UBC Properties Investments Ltd. which states that the company “reports to the UBC Board of Governors through UBC’s Vice-President Administration & Finance, who also administers contractual development duties and tasks”.⁸ The journalist also tendered information from websites concerning UBC Investment Management Trust and UBC Research Enterprises Inc. UBC argued that these references contained “general descriptions and colloquialisms that are typical of websites” and in no way capture the true nature of the operations of these entities. Although the website extracts provide support for the argument that UBC exercises control over these companies, I find the sworn evidence of the corporate principals and corporate records, which were filed, to be more compelling, because it provides a more detailed description of the operation of the company than does the overview on the website.

[32] Applying the stringent test for piercing the corporate veil from *SFU v. IPC*, I find that UBC Properties Investments Ltd. is not under the complete control of UBC, for the following reasons. UBC Properties Investments Ltd. is not merely a holding company; it carries on the business of administering and managing the business of the UBC Properties Trust. UBC has no involvement in the ongoing administration and management of the trust itself. The majority of the directors of

⁸ Applicant’s Affidavit sworn June 21, 2011, Ex. “A”.

the company are not UBC employees. UBC Properties Investments Ltd. operates from a location, and with a staff, independent of UBC. The records were not created or received by UBC employees in the course of their employment. There is no evidence that UBC and UBC Properties Investments Ltd. intermingled their records, or otherwise conducted themselves in such a way as if there were no substantive distinction between the two bodies. In short, the evidence fails to establish that UBC Properties Investments Ltd. operates under the complete control of UBC.

UBC Investment Management Trust

[33] UBC Investment Management Trust was incorporated under the British Columbia *Company Act* in 2003. It is a share capital entity, which is wholly owned by UBC. Evidence was led that UBC Investment Management Trust operates as a stand-alone business under a contract with UBC (under which UBC pays an annual fee) to act as the university's investment manager with respect to ownership of UBC assets, including the endowment fund and staff pension plan assets. UBC Investment Management Trust retains senior investment advisors to complement the Board of Directors, which is comprised of knowledgeable investment and business executives. None of the staff are UBC employees.

[34] There are ten directors on UBC Investment Management Trust's Board of Directors. Of the ten directors, nine are from the investment, corporate and development community. One of those directors is the Vice-President, Finance, Resources and Operations with UBC. There are two other directors associated with UBC. One is currently the Chair of the Finance Committee of the Board of Governors of UBC and the other is also a member of the Board of Governors. UBC Investment Management Trust contends that the three directors who are associated with UBC act on the same basis as other directors, namely as unpaid volunteers in their personal capacity. The evidence establishes that they do not intermingle or store documents received in their capacity as company directors with UBC files.

[35] While UBC Investment Management Trust does not provide an annual report to UBC, it did provide information regarding the salaries and expenses of its Chief Executive Officer to UBC for the 2005-2006 fiscal year pursuant to the FIA and this information was published in UBC's Consolidated Financial Statements Booklet. Apart from that information, UBC Investment Management Trust maintains that it does not provide minutes of Board meetings to UBC and there is no contract in existence that confers any right on UBC to inspect, review, possess, copy, use or dispose of any of its records (including the minutes of Board meetings).

[36] Based on the test set out in *SFU v. IPC*, I find that the UBC Investment Management Trust is not under the complete control of UBC for the following reasons. UBC Investment Management Trust is not merely a holding company; the evidence establishes that it was incorporated to operate as UBC's investment manager with respect to ownership of UBC assets and does so pursuant to a contract. The majority of directors, who are appointed for their business and investment expertise, are not UBC employees. The records were not created or received by UBC employees in the course of their employment. There is no evidence to suggest that UBC and UBC Investment Management Trust intermingled their records, or otherwise conducted themselves in such a way as if there were no substantive distinction between the two bodies. I conclude that the evidence falls short of establishing that UBC Investment Management Trust is operated under the complete control of UBC.

UBC Research Enterprises Inc.

[37] UBC Research Enterprises Inc. is a wholly owned subsidiary of UBC which was incorporated in 1990 to encourage, promote, and assemble resources for the commercialization of inventions. All four of the company's directors are UBC employees. The president of UBC Research Enterprises Inc., is also the Managing Director of the University Industry Liaison Office ("UILO") which facilitates industry engagement with UBC researchers on projects that have commercial potential. Those projects are sent to UBC Research Enterprises Inc. for development and commercialization. He deposes that the role of UBC and UILO is limited to identifying the projects for referral to UBC Research Enterprises Inc. and that they have no further involvement in the commercialization of the projects once they are identified for the company. UBC Research Enterprises Inc. typically develops two to three projects identified by UILO in any given year.

[38] Evidence was provided that UBC Research Enterprises Inc.'s business is operated by its management team independently from UBC with all key decisions regarding administration and management made by the company's Board of Directors. Although it has no employees, the company hires contractors to carry out the projects that it manages.

[39] As the Board of Directors for UBC Research Enterprises Inc. did not meet in 2006, there are no meeting minutes in existence for that year. UBC, as sole shareholder, signed a consent resolution dispensing with the requirement for Annual General Meetings. The president deposes that UBC Research Enterprises Inc. files an annual report with the Registrar of Companies but does not release the report, or a copy of it, to UBC. Company records are not intermingled with UBC files. As the company is currently inactive, there is no salary or expense information. There is no contract in existence that confers any

right on UBC to inspect, review, possess, copy, use or dispose of any of UBC Research Enterprises Inc.'s records.

[40] Based on the test set out in *SFU v. IPC*, I find that UBC Research Enterprises Inc. is not under the complete control of UBC. Although UBC Research Enterprises Inc. is governed by four directors who are also UBC employees (and may hold directorships as a derivative function of their employment), that alone is not a sufficient basis upon which to conclude that they were acting at the direction of their employer based on *SFU v. IPC*. The records were not created or received by UBC employees in the course of their employment. There is no evidence that UBC and UBC Research Enterprises Inc. intermingled records or otherwise conducted themselves in such a way as if there were no substantive distinction between the two bodies. On that point, I accept the evidence that UBC and the UILO do not have any further involvement in the management of the projects once they have been referred to UBC Research Enterprises Inc. for development. The evidence falls short of establishing that UBC Research Enterprises Inc. operates under the complete control of UBC.

Conclusion

[41] The evidence does not establish that UBC exerts such a level of control over these entities that they have no independent functions of their own. Although it is clear on the evidence that UBC Properties Investments Ltd., UBC Research Enterprises Inc. and UBC Investment Management Trust operate to promote UBC's interests, I find that these entities have internal governance structures that operate in a more independent manner in relation to UBC than the governance structure in place between SFUV and SFU. The evidence establishes that UBC Properties Investments Ltd., UBC Research Enterprises Inc. and UBC Investment Management Trust control how they perform the services that they provide to UBC. I also find that there is no evidence to establish that UBC Properties Investments Ltd., UBC Research Enterprises Inc. and UBC Investment Management Trust were incorporated to evade UBC's obligations under FIPPA.

[42] Based on the principles set out in *SFU v. IPC*, I find that this is not a case where it would be appropriate to disregard the separate existence of UBC Properties Investments Inc., UBC Research Enterprises Inc. or UBC Investment Management Trust for the purposes of determining whether their records fall under the control of UBC. It is clear from the material before me that the relationship between UBC and its subsidiaries does not meet the common law test for piercing the corporate veil set out in *SFU v. IPC* for the reasons that I have outlined. I find that the records at issue in relation to the three entities are not under the control of UBC for the purposes of ss. 3(1) and 4(1) of FIPPA.

CONCLUSION

[43] For the reasons given above, I find that UBC does not have control of the requested records within the meaning of ss. 3(1) and 4(1) of FIPPA. Under s. 58(3)(a) of the Act, I confirm that UBC performed its duties in responding to the journalist as it did.

October 20, 2011

ORIGINAL SIGNED BY

Jay Fedorak
Adjudicator

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