



Order F22-48

## THOMPSON RIVERS UNIVERSITY

Jay Fedorak  
Adjudicator

October 26, 2022

CanLII Cite: 2022 BCIPC 55

Quicklaw Cite: [2022] B.C.I.P.C.D. No. 55

**Corrected judgment:** A corrigendum was issued on January 13, 2023; the corrections have been made to the text and the corrigendum is appended to this judgment.

**Summary:** An applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to Thompson Rivers University (TRU) for copies of email correspondence between a faculty member and a researcher living in a foreign country. TRU denied access under s. 3(1)(e) of FIPPA, on the grounds that the records were the research materials of its faculty member. The adjudicator found that TRU failed to meet its burden of establishing that the records were the research materials of its faculty member and ordered TRU to disclose them.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, s. 3(1), s. 3(1)(e), s. 4.

### INTRODUCTION

[1] An individual (applicant) made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to Thompson Rivers University (TRU) for all correspondence sent via email between a faculty member and a researcher living in a foreign country (foreign researcher). TRU responded that the requested records were outside the scope of FIPPA in accordance with s. 3(1)(e).<sup>1</sup>

[2] The applicant requested a review by the Office of the Information and Privacy Commissioner (OIPC) of TRU's decision to withhold the information under s. 3(1)(e).

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<sup>1</sup> Since the applicant made the request, amendments to FIPPA occurred, including to this provision. It is now under s. 3(3)(i)(iii). For the purposes of this Order, I will refer to the provision as s. 3(1)(e).

[3] Mediation by the OIPC did not resolve the matter and the applicant requested that it proceed to an inquiry.

[4] The applicant and TRU made submissions to the Inquiry. The faculty member supplied TRU with an affidavit that TRU included in its submission.

## ISSUES

[5] The issues to be decided in this inquiry are:

1. Whether the requested records are in the custody or under the control of TRU; and
2. Whether the records are outside the scope of FIPPA in accordance with s. 3(1)(e).

[6] Previous orders have established that the public body has the burden of establishing that records are excluded from the scope of FIPPA.<sup>2</sup>

## DISCUSSION

[7] **Background** – The faculty member works in a department of TRU that has been the subject of controversy over the issue of the academic quality of certain journals in which some of his colleagues have published articles. One of his colleagues wrote an article alleging that other colleagues had published in journals with substandard academic credentials. The faculty member subsequently began a series of research projects with a foreign researcher. These projects included examining the substance of the controversy in the faculty member's department. This collaboration included correspondence that the faculty member conducted through his TRU email account.

[8] The applicant believes that someone in the department leaked confidential information about departmental meetings to the foreign researcher. The applicant is not seeking access to research materials, but rather correspondence relating to professional activism.

[9] **Records at issue** – The records at issue are correspondence communicated by email between the faculty member and the foreign researcher with whom he has conducted research and jointly published journal articles.

### ***Are the requested records in the custody of TRU?***

[10] While FIPPA does not define the term “custody”, previous orders have established how to determine whether a public body has custody of a record. The first step is to establish whether the public body has physical possession of the record. If it does, the second step is to determine whether it also has a legal right

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<sup>2</sup> For example, Order F15-26, 2015 BCIPC 28 (CanLII) para. 5.

or obligation to the information in its possession.<sup>3</sup> It follows that a public body cannot have custody if it does not have physical possession.

### Physical Possession

[11] The applicant submits that TRU has possession of the records. He asserts that the records are stored in an official TRU email account. The hardware and software used to manage this email account, he submits, are owned and operated by TRU.<sup>4</sup>

[12] TRU submits that it does not have physical possession of the records. It acknowledges that all of the records once resided on its email system server, Nevertheless, after TRU received and responded to the applicant's request, the faculty member "purged" most of the records from his email account because he was running low on storage space. He then moved the remaining records (extant records) to his email archive folder.<sup>5</sup> TRU describes these actions as follows:

Some of the Disputed Records were retained in [the faculty member's] archive folder. [The faculty member] has granted TRU permission to temporarily access these records for the purposes of confirming that section 3(3)(i) applies to them. ... the Disputed Records are comprised of the emails recovered from [the faculty member's] archive.<sup>6</sup>

[13] Based on TRU's description, it is reasonable to conclude that the email archive folder forms part of TRU's email network. TRU indicates that the faculty member gave permission to TRU information technology employees to retrieve the extant records from the email archive folder on a temporary basis. If the extant records were truly inaccessible to TRU information technology employees, the faculty member would have had to copy the extant records to enable TRU's access to information officers to view them. It is common knowledge that email systems permit storage of records both on the central systems servers and in a user archive that is separate from the server but remains connected to the email network. From TRU's submissions, it is reasonable to conclude that the extant records remain part of the TRU email network.

[14] I find that TRU has physical possession of the extant records because they are in the possession of an employee of TRU, in his email archives folder and that folder is part of the TRU network.

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<sup>3</sup> See for example Order F15-65, 2015 BCIPC 71 (CanLII), paras. 11-13; Order F18-45, 2018 BCIPC 48 (CanLII), para 17; Order 02-30, 2002 BCIPC 42463 (CanLII); Order F16-15, 2016 BCIPC 17 (CanLII) at para 16.

<sup>4</sup> Applicant's response submission, para. 6.

<sup>5</sup> TRU's initial submission, paras. 21 and 25; TRU's reply submission, para. 12.

<sup>6</sup> TRU's initial submission, paras 25-26.

[15] I find it reasonable to conclude that the mere fact an employee of a public body moved certain records into an email archives folder, does not mean that those records ceased to be in the physical possession of the public body for the purposes of FIPPA.

[16] With respect to the deleted records, TRU says that it made inquiries of its information technology department as to whether the deleted records could be retrieved and was told that this is not possible.<sup>7</sup> I accept this, and I find that TRU does not have physical possession of the records the faculty member destroyed, because these records are irretrievable.

### Legal rights and obligations

[17] Past orders have found that employers have legal rights and obligations with respect to records in the physical possession of public body employees relating to their performance of core functions of the public body.<sup>8</sup> On the other hand, the public body would not have legal rights and obligations for the purposes of FIPPA for records in the physical possession of public body employees that relate to matters other than the performance of the core function of the public body. For example, an employer would have no legal right to any records relating to the employee's personal life, such as their families or their volunteer activities, even if the faculty member just happened to keep those records in their place of work or on their employer's computer network.

[18] The applicant argues as follows:

These records relate to a public body matter. [The faculty members] is a public employee at a public institution in British Columbia. His work is publicly funded, both via salary, as well as infrastructure support, including academic journal fees and subscriptions. [The faculty member] is publicly representing TRU, and also participating in its governance. TRU's reputation is staked in part on the performance and activities of [the faculty member].<sup>9</sup>

[19] TRU submits that the faculty member has a tripartite workload, which consists of teaching, administration and research.<sup>10</sup> The faculty member attests in an affidavit that the records at issue consist of research materials and a few communications of a purely personal nature.<sup>11</sup> The faculty member created the extant records on the TRU email system and subsequently moved them to his email archive folder on the TRU network, where he can access them for the purpose of fulfilling his work responsibilities, as an employee of TRU.

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<sup>7</sup> TRU's initial submission, para. 26.

<sup>8</sup> See for example Order F13-23, 2013 BCIPC 30 (CanLII).

<sup>9</sup> Applicant's response submission, para. 11.

<sup>10</sup> TRU's initial submission, Affidavit of the privacy assistant, paras 11-12.

<sup>11</sup> TRU's initial submission, Affidavit of the faculty member, paras 10-12.

[20] The submissions of TRU and its exhibits establish that TRU has agreed to assign copyright and other rights regarding research to its faculty members. Nevertheless, the wording of the collective agreement clearly indicates that faculty members exercise these rights as employees of TRU, not as part of their personal lives independent of their function as faculty members of TRU.<sup>12</sup>

[21] TRU asserts that faculty members enjoy the academic freedom to pursue research topics of their choice and to reach their own conclusion without undue influence from their employers. The collective agreement stipulates that this freedom is subject to certain conditions.<sup>13</sup> Therefore, the collective agreement gives TRU the authority to ensure that faculty members exercise their academic freedom appropriately. Consequently, TRU does have limited legal rights and obligations to the information collected and created by its employees. I also note that faculty members publish the product of their scholarship in their capacity as employees of their universities. This is clear from the cited publications that identify the faculty member as an employee of TRU.<sup>14</sup>

[22] TRU submits that it does not direct the research of their employees or exercise legal ownership of the artistic rights of publications independently of those employees. Nevertheless, I conclude that TRU has a vested interest in the outcome of this research. Moreover, it is reasonable to conclude that TRU hypothetically could incur legal liability as a result of the activities of its employees, where the records may be relevant. I see no reason why the principle of academic freedom cannot coexist with the universities having a legal right or obligation to the information in their possession for the purposes of FIPPA.

### ***Conclusion on custody***

[23] I find that the extant records are in the physical possession of an employee of TRU in their capacity as an employee, and not as a private citizen. The extant records are also on the TRU email network. This constitutes the physical possession of the public body. I also find that TRU has sufficient legal rights and obligations with respect to the extant records in its possession that satisfy the test for determining that it has custody under s. 3(1).<sup>15</sup>

### ***Are the records under the control of TRU?***

[24] Either custody or control over a particular record will suffice to bring it within the scope of s. 3(1). Both are not required. As I have determined the records are in the custody of TRU, I do not need to determine whether they are

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<sup>12</sup> TRU's initial submission, para. 40.

<sup>13</sup> TRU's initial submission, para. 38.

<sup>14</sup> As indicated in articles cited by the faculty member in TRU's initial submission, Exhibit B.

<sup>15</sup> The concept of custody is also relevant to the application of s. 4(1) of FIPPA, which gives applicants, like the one in this case, a right of access to any record in the custody or under the control of a public body.

also under the control of TRU. Nevertheless, for the sake of completeness I will.

[25] I follow previous orders that have identified and examined a series of indicators of control to consider when determining whether a public body exercises control of a record for the purpose of FIPPA. They include whether: the record was created by an officer or employee of the public body in the course of carrying out their duties; the public body has statutory or contractual control over the records; the public body has possession of the records; the public body has relied on the records; the records are integrated within the public body's other records; the public body has the authority to regulate the use and disposition of the records; the content of the record relates to the public body's mandate and functions; and the contract allows the public body to inspect, review, possess or copy the records. The list of indicators is not exhaustive and not all will apply in every case.<sup>16</sup>

Were the records created by an employee in the course of carrying out their duties?

[26] TRU does not deny that its faculty member created the records in the course of carrying out his duties as an employee of TRU. It does point out, however, that the foreign researcher is not an employee of TRU. I note that, in this case, the records in the possession of the foreign researcher are not at issue. TRU and the faculty member submit that the records at issue constitute the correspondence of an employee of TRU, who created and received on the TRU email network in the course of carrying out his tripartite workload. These records are currently in his possession.

[27] I find that the records were created by an employee of TRU in the course of carrying out his duties.

Does the public body have statutory or contractual control over the records?

[28] There was no evidence provided of statutory provisions or a contract governing the control of the records. There is a collective agreement between TRU and its faculty members, but it is silent on the issue of the control of records for the purposes of FIPPA.

Has the public body relied on the record?

[29] The faculty member attests that he has relied on the records for the purpose of conducting his research in the course of carrying out his duties as a faculty member. He has used these materials in producing articles for publication in scholarly journals, where he identifies himself as a representative of TRU. TRU

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<sup>16</sup> See for example Order F18-45, 2018 BCIPC 48 at para. 23; Order F15-65, 2015 BCIPC 71, at para. 18; Order 02-29, [2002 BCIPC 42462](#) (CanLII), at para. 18; Decision F10-01, 2010 BCIPC 5 (CanLII) at para. 9.

argues that it has not relied on the record for any additional purposes.<sup>17</sup>

[30] I find that an employee of TRU has relied on the records in the course of carrying out his duties as an employee of TRU.

Are the records integrated with the other records of the public body?

[31] TRU does not address this point, other than to say that it was the employee's decision to use the TRU email system, and that there was no requirement to do so.<sup>18</sup> The faculty member has indicated that the extant records remain in his possession in his email archive folder. He has not indicated the nature of any other records that might also reside in his email archive folder. Given that the archive folder is connected to the TRU email system, it is reasonable to conclude that other records in the archive folder relate to TRU business.

Does the public body have the authority to regulate the use and disposition of the records?

[32] TRU submits that it has no authority to regulate the use or disposition of the records. I note TRU asserts that, in the collective agreement with faculty members, it has assigned the copyright and patent of any work product to its employees.<sup>19</sup> Nevertheless, the fact that faculty members have ownership of copyright and patent to any work product does not necessarily negate the authority of TRU to regulate the use and disposition of the record. In addition, I note that employees of TRU are not independent of TRU. While it might be the case that managers in the administration of TRU do not exercise this authority over the records, employees of TRU do exercise this authority as a corporate component of TRU.

[33] Therefore, TRU retains the authority to regulate the use and disposition of the records through its own employees to which it has assigned that authority.

Does the content of the record relate to the public body's mandate and functions?

[34] TRU submits that the research activities of its employees do not relate to its mandate, functions and responsibilities.<sup>20</sup> This is a surprising assertion given that it elsewhere cites the collective agreement identifying TRU's "teaching function as well as its scholarship and research"<sup>21</sup>. Moreover s. 3(1)(c) of the *Thompson Rivers Universities Act* requires TRU to "to undertake and maintain

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<sup>17</sup> TRU's initial submission, para. 55.

<sup>18</sup> I note that when employees of public bodies use personal or other external email accounts to conduct the business of the public bodies, those records remain subject to FIPPA.

<sup>19</sup> TRU's initial submission, second affidavit, Exhibit E.

<sup>20</sup> TRU's initial submission, para. 53; TRU's reply submission, para. 14.

<sup>21</sup> TRU's initial submission, para. 38.

research and scholarly activities”.<sup>22</sup> That the faculty member’s appointment involves a tripartite workload, including conducting research, suggests that his research activities are central to the functions of TRU.

[35] I do not think it accurate to say, as TRU does, that universities merely encourage their faculty members to conduct research in the same way that they might encourage them to volunteer for charitable work during their spare time or to do anything else in their personal lives.<sup>23</sup> As is evident from the submissions of TRU and its governing statute, scholarly academic research, along with teaching, are the two essential functions of TRU. It employs tripartite faculty members to fulfill those two purposes.

[36] Therefore, I find that the records at issue relate to academic research, which is a core function of the university and an essential component of its mandate.

Does a contract allow the public body to inspect, review, possess or copy the record?

[37] There is no contract that addresses TRU’s rights to inspect, review, possess or copy the record. The collective agreement is silent on these points. I note, however, that, in this case, TRU’s access to information officers, in addition to the faculty member himself, have reviewed the extant records, which are located on the TRU email network.

***Conclusion on control***

[38] I find that, on balance, the indicators of control in this case support the conclusion that the records are under the control of TRU. The records relate to the conduct of academic research, which is not only an essential purpose of a university as an institution of higher learning, but also a statutory obligation.

[39] An employee of TRU, whose appointment requires that he conduct academic research, created the records in the course of that employment. The product of that research identifies the faculty member as an employee of TRU.

[40] Given I find above that the records are in both the custody and under the control of TRU, I will now turn to the issues as to whether the records are excluded from the application of FIPPA under s. 3(1)(e).

***Are the records excluded from FIPPA under s. 3(1)(e)?***

[41] TRU submits that the extant records are solely the research materials of the faculty member. I note that it does not assert that they also consist of teaching

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<sup>22</sup> *Universities Act* SBC 2005 c 17.

<sup>23</sup> TRU’s reply submission, paras. 14-15.



materials. The relevant provision reads as follows:

- 3 (1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:
- ...
- (e) a record containing teaching or research materials of
- (i) a faculty member, as defined in the *College and Institute Act* and the *University Act*, of a post-secondary educational body,
  - (ii) a teaching assistant or research assistant employed at a post-secondary educational body, or
  - (iii) another person teaching or carrying out research at a post-secondary educational body;

[42] Therefore, the question that I must decide is whether the requested records constitute the research information of a faculty member of TRU. The applicant did not explicitly request research information of the faculty member. The applicant's submission denies any intent to access research materials. The applicant says he is seeking correspondence between the faculty member and a foreign researcher relating to departmental administration, "professional activism, muckraking, lobbying and/or politicking".<sup>24</sup> In an affidavit in support of TRU's initial submission, the faculty member asserts that the requested records constitute research materials and research information, with the exception of a small number of emails of a purely personal nature, unrelated to TRU.<sup>25</sup>

**[43] Do the Records Contain the Research Information of TRU Researchers?** – FIPPA excludes from its scope the research material of researchers at post-secondary education institutions. Previous orders have considered the application of s. 3(1)(e) of FIPPA and established its principles.<sup>26</sup> Order 00-36 described the purpose of the provision as:

Section 3(1)(e) is intended to protect individual academic endeavour. It will protect the intellectual value in teaching materials or research information developed by an employee of a post-secondary educational body, for her professional purposes, by protecting it from disclosure to those who might exploit it to her disadvantage.

[44] In this case I must decide whether the extant records comprise the research information of a faculty member, as defined in the *College and Institute*

<sup>24</sup> Applicant's response submission, paras. 24-26.

<sup>25</sup> TRU's initial submission, first affidavit, para. 10.

<sup>26</sup> See for example, Order F12-03, 2012 BCIPC 3 (CanLII); Order F10-42, 2010 BCIPC 63 (CanLII) and Order 00-36, 2000 BCIPC 39 (CanLII).

Act (CIA).

**[45] Is the faculty member a “faculty member” as defined in the *College and Institute Act*? –** The CIA defines a faculty member as:

an instructor, librarian, tutor, counsellor, research associate, program co-ordinator or other employee of the institution that a collective agreement between the bargaining agents, as defined in section 1 of the *Labour Relations Code*, for the institution and faculty members specifies to be a faculty member.<sup>27</sup>

[46] TRU submits that the TRU Collective Agreement governs the faculty member’s employment.<sup>28</sup> It states explicitly that the faculty member is an employee and faculty member of TRU.<sup>29</sup> The submissions of the applicant also support a finding that the faculty member is an employee of TRU.<sup>30</sup> The CIA includes TRU as a university subject to that act.<sup>31</sup>

[47] Therefore, I conclude that the faculty member is a “faculty member” for the purposes of the CIA and s. 3(1)(e) of FIPPA.

**[48] Does the information constitute teaching materials or “research information”?** – I considered the meaning of “research” for the purpose of s. 35 in Order F11-21.<sup>32</sup> I reviewed the definitions of “research” used in other orders and reference materials and concluded that the investigation into the pursuit of knowledge needed to incorporate two elements. The first is that it must be scientific or systematic and the researcher must take a critical approach to their evidence. The second is that the evaluation of the evidence must derive something meaningful, such as new knowledge, principles, theories or facts. I also observed that submitting research proposals to the scrutiny of a Research Ethics Board (or other body of professionals with expertise in evaluating the theoretical and methodological soundness of research proposals and their potential for creating new knowledge) is a means of ensuring that proposals meet the criteria of “research” under FIPPA.<sup>33</sup>

[49] The only evidence before me here is the mere assertion of the faculty member in an affidavit that the records constitute research information and research materials. The faculty member describes various research projects he has collaborated on with the foreign researcher and provided a list of their joint publications, but he has not established a direct connection between the records

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<sup>27</sup> *College and Institute Act* RSBC 1996 ch 52, s. 1.

<sup>28</sup> TRU’s initial submission, para. 38.

<sup>29</sup> TRU’s initial submission, para. 65.

<sup>30</sup> Applicant’s initial submission, para. 11.

<sup>31</sup> *College and Institute Act*, s. 1.

<sup>32</sup> Order F11-21, 2011 BCIPC 27 (CanLII), paras. 32-46.

<sup>33</sup> Order F11-21, paras. 95-99.

at issue and these research projects.<sup>34</sup> TRU has not provided an itemized description of the records or otherwise supported the mere assertion with evidence. TRU submits that its faculty member “is a well-respected, full-professor” and there is “no need to question his assurance that the materials comprised proprietary research materials”.<sup>35</sup> TRU is suggesting that the word of its faculty member alone is sufficient to establish that all of the records constitute research materials or research information for the purposes of this inquiry.

[50] The applicant submits that there are valid reasons to doubt that all of the records consist of research materials. The applicant cites an article that the faculty member and the foreign researcher published as proof that they have engaged in extensive activities regarding the research and public statements of a rival TRU faculty member.<sup>36</sup> The applicant alleges that they have collaborated on numerous formal complaints to TRU about this rival faculty member and contacted numerous journalists, institutions and scholars about issues pertaining to this rival faculty member. The applicant quotes a series of emails from the foreign researcher to the rival faculty member that indicate someone had disclosed internal communications relating to a TRU departmental meeting to him.<sup>37</sup> The applicant believes that the faculty member is the most likely source of this disclosure to the foreign researcher. It appears that the applicant is suggesting that the requested records might include communications on these issues.<sup>38</sup>

[51] The information in the article and the emails that the applicant cites has raised reasonable questions about the accuracy of the faculty member’s affidavit evidence that the submissions of TRU have not allayed.

[52] The applicant requested all correspondence, not research materials specifically. I have only the word of the faculty member that all of the records are research materials, except for some personal correspondence. The faculty member has destroyed most of the records before the applicant had exhausted the statutory right of review. TRU also indicates that the faculty member initially resisted its attempts to review the extant records for the purpose of responding to the applicant’s request.<sup>39</sup> These actions also raise doubts about his affidavit evidence. I have no independent evidence corroborating his claim, and without having had an opportunity to view the records, I cannot confirm whether his

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<sup>34</sup> TRU’s initial submission, Affidavit of the faculty member, paras. 9-13, and Exhibit B.

<sup>35</sup> TRU initial submission, para. 20.

<sup>36</sup> Applicant’s response submission, para. 21; “Did the Research Faculty at a Small Canadian Business School Publish in “Predatory” Venues? This Depends on the Publishing Blacklist.” *Publications*, 2019 7(35): 4.

<sup>37</sup> Applicant’s response submission, para. 22-24, emails of the foreign researcher to the rival faculty member, 10, 12 and 13 October 2017.

<sup>38</sup> Applicant’s response submission, paras. 17-24.

<sup>39</sup> TRU’s initial submission, paras. 13 and 18.

description is accurate with respect to each extant record.

[53] I note that TRU has had ample opportunity to provide independent evidence to corroborate the assertion of its faculty member. It has made two submissions to this Inquiry. Contrary to standard practice, it has not included copies of the extant records with its submissions to the OIPC. It has instead chosen to rely merely on the word of its faculty member as being sufficient to establish that the extant records at issue constitute research information.

[54] I find that the faculty member's affidavit is insufficient to establish that the extant records constitute research information.

[55] In summary, without further evidence or the extant records before me, I find that TRU has failed to demonstrate that each of the requested records constitutes the research information of its faculty member. It has the burden of establishing the application of s. 3(1)(e) in this inquiry, and it has not met that burden. Consequently, I am unable to find that that s. 3(1)(e) applies to the records, and TRU is not authorized to rely on it to deny access to the applicant. TRU must respond to the applicant's access request as required under Part 2 of FIPPA.

***Issue arising during the inquiry***

[56] In its reply submission, TRU accuses the applicant of disclosing the contents of its submissions to a non-party to these proceedings. It submits that this constitutes a breach of an implied undertaking of confidentiality and requests that I reprimand the applicant for this.

[57] I decline to do so for a variety of reasons. The first is that parties may not raise new issues during the course of the inquiry without first requesting the permission of the OIPC. TRU has not done so in this case. The second is that, because TRU raised the matter in its reply submission, the applicant has not had an opportunity to respond. The third is that TRU has not provided proof that it was indeed the applicant who disclosed the information at issue. These grounds are sufficient to dismiss TRU's request.

[58] Nevertheless, it is also important to note that that, in fact, there are no implied undertakings of confidentiality with respect to this Inquiry or any other under FIPPA. TRU has misread the comments of the adjudicator in the Order F15-02 that it cited.<sup>40</sup> On the contrary, there are no constraints on the use by applicants of information they obtain during the course of an OIPC inquiry. Therefore, TRU's accusation is unfounded, and I will take no action.

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<sup>40</sup> F15-02, 2015 BCIPCD 2 (CanLII) para. 38. The adjudicator denied the request to find that the applicant was under an implied undertaking to use an exhibit only for the purposes of the inquiry.

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## CONCLUSION

[59] For the reasons given above, I make the following order under s. 58 of FIPPA:

1. I confirm that the requested records are in the custody and under the control of TRU for the purposes of s. 3.
2. I find that TRU has failed to establish that s. 3(1)(e) applies to the records.
3. I require the public body to give the applicant access to the requested records in accordance with Part 2 of FIPPA.
4. The public body must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the records described at item 3 above.

[60] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by December 8, 2022.

October 26, 2022

### ORIGINAL SIGNED BY

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Jay Fedorak, Adjudicator

OIPC File No.: F20-81975

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**Corrigendum of the Reasons for Decision  
of  
Jay Fedorak, Adjudicator**

Footnote 26 of paragraph 43 has been changed from: “See for example, Order F10-37, [2010] B.C.I.P.C.D. No. 55; Decision F07-03, [2007] B.C.I.P.C.D. No. 14, and Decision F08-02, [2008] B.C.I.P.C.D. No. 4.” to: “See for example, Order F12-03, 2012 BCIPC 3 (CanLII); Order F10-42, 2010 BCIPC 63 (CanLII) and Order 00-36, 2000 BCIPC 39 (CanLII).”

The first sentence of paragraph 48 has been changed from: “I considered the meaning of “research” for the purpose of s. 3(1)(e) in Order F11-21.” to “I considered the meaning of “research” for the purpose of s. 35 in Order F11-21.”

January 13, 2023

**ORIGINAL SIGNED BY**

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Jay Fedorak, Adjudicator