

October 15, 2010

Allan Rock
head, institution subject to FIPPA
President, University of Ottawa

**RE: Release of documents about Denis Rancourt, pursuant to the
Freedom of Information and Protection of Privacy Act (FIPPA)**

Dear Allan,

As you know, I filed a labour law grievance against the University of Ottawa on October 14, 2010 ("Grievance G27 - Unethical behaviours of employer and conspiracy to do harm, IPC Adjudication Order PO-2915").

The matter involves you because as head of the institution subject to FIPPA you have the authority to release the eleven FIPPA-request respondent documents in question.

The Information and Privacy Commissioner of Ontario (IPC) Adjudicator Frank DeVries has, in his IPC Order PO-2915, ruled that he generally agrees with me that these records should be released but that he does not have the authority to order this release.

In addition, the IPC Assistant Commissioner (Access) Brian Beamish has informed me in writing that in a case such as this one, a head such as yourself would have a moral responsibility to release the records.

Mr. Beamish put it this way in a recent letter to me about PO-2915:

I can also advise you that the Commissioner has consistently called for changes to the exclusion from the Act found in section 65(6). In addition to opposing its introduction, the IPC has continued to advocate for the repeal of the section. For example, in the IPC's 1998 Annual Report, the Commissioner stated the following:

One primary concern of the IPC is legislation or programs that exclude information or records from the scope of the Acts. When this happens access and privacy rights are compromised, and the right of review by an independent body, the IPC, is lost.

One piece of legislation that excludes records from the Acts is the Labour Relations Act, 1995 (Bill 7). Its stated purpose is to restore balance and stability to labour relations and to promote economic prosperity." However, very broadly drafted provisions in the new law exclude many employment-related records about public sector employees, including records that do not have any bearing on labour relations. As a result, public sector employees may be precluded from obtaining access to

employment-related records about themselves, and from making a privacy complaint if their personal information is improperly used or disclosed... This approach to information about employees is not in keeping with world-wide trends favouring fair information practices, and in particular, the protection of personal privacy.

... In addition to opposing section 65(6), the IPC has also encouraged institutions to consider the voluntary disclosure of records falling within the ambit of the section. In Order PO-2613, Adjudicator DeVries had the following observations after finding that the records at issue in that appeal fell within the exclusion:

In this order, I was compelled by the wording of section 65(6)3, as interpreted by the courts (see Solicitor General, cited above) to uphold the Ministry's claim that a record containing the job positions, job descriptions, and classification standards within the Ontario Public Services not covered by the Act. However, section 65 in no way prohibits an institution from disclosing records, it simply removes them from the access and privacy regimes established by the Act. Outside the scope of the Act, an institution still has the discretion to disclose records even when section 65 is applicable. Relying on this provision to deny public access to information about jobs the public's tax dollars pay for seems at odds with the stated purposes of the Act, and the Government's recent statements supporting its "culture of openness".

It seems to me, Allan, that these concerns and recommendations from the Commissioner would be even more vital to uphold in the publicly funded university setting.

I am certain that you will agree that transparency "in keeping with world-wide trends favouring fair information practices" is as vital as, for example, freedom of expression in a university.

I am certain also that, as former Minister of Justice, you agree with the Commissioner that section 65(6) of the FIPPA should not be used to deny fair access.

Therefore, I ask that you release the eleven records in question, as they are about me.

Sincerely,

A handwritten signature in black ink that reads "Denis Rancourt". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Denis Rancourt

Cc: made public