

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

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## ORDER PO-4774

Appeal PA23-00143

The Hospital for Sick Children

December 30, 2025

**Summary:** The appellant, a member of the media, made a request under the *Freedom of Information and Protection of Privacy Act* for access to a report and attached appendices relating to the hospital's review of an article published by *The Lancet*. The hospital issued a decision denying access to the report under the research exclusion in section 65(8.1)(c). In this decision, the adjudicator finds the report to be excluded from the scope of the *Act* under section 65(8.1)(c) and dismisses the appeal.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, section 65(8.1)(c).

**Orders and Investigation Reports Considered:** Orders PO-4561, PO-4393, PO-2825, and PO-4555.

**Cases Considered:** *Ontario (Solicitor General) v. Mitchinson* (2001), 55 O.R. (3d) 355 (C.A.).

### OVERVIEW:

[1] The Hospital for Sick Children (the hospital) is a pediatric teaching and research hospital in Toronto affiliated with the University of Toronto's Faculty of Medicine. In April 2006, *The Lancet* published a research study titled "Pharmacogenetics of morphine poisoning in a breastfed neonate of a codeine-prescribed mother" (the Lancet Study). The research findings indicated a potential risk associated with breastfeeding while taking codeine.

[2] One of the study's authors (the physician) was, at the time, employed by the hospital as a laboratory director and physician. The physician had also founded the hospital's former Motherisk Drug Testing Laboratory, a research and clinical program that later became the subject of external reviews, leading to broader scrutiny of the physician's published work.

[3] In 2020, *The Lancet* received a complaint requesting retraction of the Lancet Study. In response, the hospital initiated an inquiry under its Responsible Conduct of Research Policy (the policy) and prepared an inquiry report with appendices.

[4] The appellant, a member of the media, submitted a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the hospital's inquiry report and appendices relating to its review of the Lancet Study.

[5] The hospital located the responsive report and appendices and issued a decision denying access on the basis of the research exclusion in section 65(8.1)(c) of the *Act*.

[6] The appellant was dissatisfied with the hospital's decision and appealed it to the Information and Privacy Commissioner of Ontario (the IPC). The IPC attempted to mediate the appeal.

[7] As mediation did not resolve the appeal, the matter proceeded to adjudication. An IPC adjudicator conducted a written inquiry and received representations from the parties that she shared in accordance with the IPC's *Code of Procedure* and *Practice Direction 7*. The appeal was then transferred to me to complete the inquiry. I determined that I did not require further representations from the parties.

[8] In this order, I find that the report and appendices are excluded from the scope of the *Act* under section 65(8.1)(c) and I dismiss the appeal.

## **RECORD:**

[9] The record at issue is the hospital's inquiry report, along with its appendices, relating to the Lancet Study.

## **DISCUSSION:**

[10] The sole issue to be determined in this appeal is whether the section 65(8.1)(c) exclusion, for records respecting or associated with research or teaching, applies to the record.

[11] Section 65(8.1) of the *Act* excludes certain records relating to research and teaching from the *Act*. As a result, the *Act's* access scheme does not apply to them. The

purpose of section 65(8.1) is to protect academic freedom and competitiveness.<sup>1</sup>

[12] Section 65(8.1)(c) states, in part:

This Act does not apply to a record respecting or associated with research, including clinical trials, conducted or proposed by an employee of a hospital or by a person associated with a hospital[.]

[13] The IPC has defined “research” as “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.” The research must be able to be linked to specific, identifiable research projects conducted or proposed by a specific faculty member, employee, or associate of an educational institution.<sup>2</sup>

[14] The exclusion is to be narrowly construed, and legislative intent must be kept in mind when interpreting the meaning of the word “research” in the exclusion. This section applies where there is “some connection” between the record and the specific, identifiable “research, including clinical trials, conducted, or proposed by an employee of a hospital or by a person associated with a hospital.”<sup>3</sup>

## **Parties’ representations**

### ***Hospital’s representations***

[15] The hospital submits that the record is the outcome of a research integrity inquiry conducted under the policy. It explains that it initiated its inquiry after *The Lancet* received a complaint requesting the retraction of the 2006 Lancet Study co-authored by the physician; that complaint was referred through the University of Toronto to the hospital because the research was conducted during the physician’s employment. The hospital asserts that a report arising from this inquiry is a record “respecting or associated with research” and is excluded under section 65(8.1)(c).

[16] The hospital submits that the policy applies to all hospital researchers, broadly defined as “any individual who conducts research at or under the auspices of” the hospital. It notes that the policy requires all individuals involved in an inquiry or investigation to maintain the confidentiality of records and communications.<sup>4</sup> It further notes that the report itself is marked confidential, that expert reviews were provided on a confidential basis, and that it has maintained that confidentiality in accordance with the policy.

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<sup>1</sup> Order PO-2693, *Carleton University v. Information and Privacy Commissioner of Ontario and John Doe, requester*, 2018 ONSC 3696.

<sup>2</sup> Order PO-2693.

<sup>3</sup> Order PO-4393, applying Order PO-2942 to section 65(8.1)(c); see also *Ontario (Attorney General) v. Toronto Star*, 2010 ONSC 991 (Div. Ct.).

<sup>4</sup> Section 4.3 of the Responsible Conduct of Research Policy, available [online](#).

[17] The hospital submits that the Lancet Study constitutes “research” within the meaning adopted by the IPC. It states that the physician was employed by and affiliated with the hospital at the relevant time, and the report examines concerns about the scientific rigour of the study. The hospital argues that the report contains analysis of the study’s methodology, data and conclusions, and that a research integrity assessment is inherently connected to the underlying research.

[18] The hospital submits that the “some connection” test is not onerous. It relies on *Ontario (Attorney General) v. Toronto Star*,<sup>5</sup> where the Divisional Court held that the phrase “in respect of” “is probably the widest of any expression intended to convey some connection between two related subject matters.” The hospital asserts that records evaluating a researcher’s work readily meet this threshold.

[19] The hospital submits that the exclusion applies because the Lancet Study constitutes research within the IPC’s definition; the research was conducted by a physician employed by and associated with the hospital; and the record is the hospital’s inquiry report examining concerns about that research under its policy.

[20] Finally, the hospital submits that this appeal engages the purpose of the research exclusion. It asserts that research integrity inquiries form part of the academic self-governance the Legislature intended to protect, given the public interest in academic freedom, health research, and innovation. In its view, section 65(8.1)(c) reflects the Legislature’s intention to insulate such processes from the public right of access.

### ***Appellant’s representations***

[21] The appellant submits that a 2018 media investigation identified possible problems with more than 400 articles the physician co-authored, including inadequate peer review, undisclosed conflicts of interest, and inaccuracies regarding testing methodologies. She notes that, in response, the hospital launched a systemic review of the physician’s published work.

[22] The appellant submits that the Lancet Study came under renewed scrutiny during this period. The appellant states that a 2020 review by the head of clinical pharmacology and toxicology at Sunnybrook Hospital described aspects of the physician’s explanations as “implausible,”<sup>6</sup> and that senior hospital leadership signed letters sent to *The Lancet* and other journals asserting the study was “fatally flawed” and should be retracted. The appellant adds that the Lancet declined to retract the article, claiming a retraction was

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<sup>5</sup> 2010 ONSC 991 (Div. Ct.).

<sup>6</sup> The appellant refers to the following article: Rachel Mendleson, “Should breastfeeding mothers take codeine for post-partum pain? Doctors re-examined a 2005 tragedy and found new information about what regulators have been telling us.” *Toronto Star*. (8 June 2020). Available [online](#).

“not warranted.”<sup>7</sup>

[23] The appellant submits that access should be granted in the public interest, to ensure accountability in how the hospital handled its review of the Lancet Study. The appellant argues that public accountability considerations weigh heavily in favour of disclosure, given the longstanding controversy surrounding the Motherisk program and the significant public impact of the Lancet Study.

[24] The appellant acknowledges that section 65(8.1) is intended to protect academic freedom and intellectual property. However, the appellant submits that the exclusion should not apply in this case because the underlying research was published more than 15 years ago. In the appellant’s view, the request is not about the research itself, which has long been in the public domain, but about institutional accountability arising from controversy linked to the Motherisk program.

[25] The appellant further submits that, if section 65(8.1) is found to apply, it should be applied only to specific portions of the record and not the record in full. She argues that confidentiality designations under the hospital’s internal policy do not determine access under the *Act* and cannot, on their own, exclude a record from disclosure.

### ***Hospital’s reply representations***

[26] The hospital submits that research matters are self-governed by the academic community and form part of the academic freedom the Legislature intended to protect. It states that the research exclusion was enacted to preserve this academic oversight framework, given the significant public interest in supporting health research and innovation at Ontario hospitals. The hospital maintains that research integrity inquiries, such as the process that produced the record at issue, are one component of this framework and are intended to be conducted confidentially under its policy.

[27] Responding to the appellant’s argument that the exclusion should not apply because the research is more than 15 years old, the hospital relies on *Ontario (Solicitor General) v. Mitchinson*.<sup>8</sup> It states that, in that case, the Court of Appeal held that when an Act provides that it “does not apply” to a category of records, those records remain outside the Act permanently, and the IPC has no authority to impose temporal limits on an exclusion.

[28] Finally, the hospital acknowledges that confidentiality is not a requirement for the exclusion to apply. However, it maintains that its policy requires research integrity proceedings to be kept confidential, and it submits that this approach is consistent with

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<sup>7</sup> The appellant refers to the following article: Rachel Mendleson, “A ‘flawed’ medical journal article on postpartum pain was targeted for retraction from The Lancet. Here’s why that didn’t happen.” Toronto Star. (3 July 2023). Available [online](#).

<sup>8</sup> 55 O.R. (3d) 355 (C.A.)

the Legislature's intent in enacting section 65(8.1)(c).

### **Analysis and findings**

[29] I have reviewed the record at issue and the parties' representations. For the following reasons, I find that the record is excluded from the scope of the *Act* under section 65(8.1)(c).

[30] Before turning to my analysis, I note that Order PO-4561, issued during the adjudication of this appeal, addressed a related request concerning the same 2006 Lancet Study. In that order, the adjudicator found that emails exchanged during the hospital's academic integrity review were excluded because they contained, or were closely connected to, substantive academic analysis of the study's methodology, data, and conclusions. I agree with the reasoning in PO-4561 and adopt and apply it in this appeal.

[31] The appellant was invited to provide additional representations in light of PO-4561; none were received.

[32] Section 65(8.1)(c) excludes from the *Act* any record "respecting or associated with research, including clinical trials, conducted or proposed by an employee of a hospital or by a person associated with a hospital." The exclusion applies where there is "some connection" between the record and specific, identifiable research conducted or proposed by a hospital-affiliated researcher.<sup>9</sup> The IPC has defined research as "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." The research must be referable to specific, identifiable research projects that have been conceived by a specific faculty member, employee, or associate of an educational institution.<sup>10</sup>

[33] Legislative intent also informs the interpretation of "research" in section 65(8.1). In Order PO-4393, the adjudicator found that requiring the record to be linked to identifiable research projects reflects the purpose of this exclusion: to protect academic freedom and research at hospitals and educational institutions,<sup>11</sup> while also respecting the *Act's* accountability objectives.

[34] The parties do not dispute that the Lancet Study is a specific, identifiable research project conducted by a physician employed by and affiliated with the hospital at the time of publication. The question is therefore whether the record at issue has "some

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<sup>9</sup> Order PO-2942; see also *Ontario (Attorney General) v. Toronto Star*, 2010 ONSC 991 (Div. Ct.).

<sup>10</sup> Order PO-2693.

<sup>11</sup> The legislative intent of section 65(8.1)(a) has been found in past IPC orders to protect academic freedom and competitiveness while creating a general right of access to information held by universities (see Orders PO-2693, PO-2825, PO-2942, and PO-2946 for example). Concerning section 65(8.1)(c), the same can be inferred with respect to the legislature's intent to protect the academic freedom and competitiveness of hospital-based research (see for example, Order PO-3365).

connection" to that research.

[35] After reviewing the record, I find that it does. The record is the hospital's inquiry report, prepared under its policy after concerns were raised about the scientific integrity of the Lancet Study. It summarizes the allegations, the expert reviews obtained, and the committee's assessment of the study's methodology, data interpretation, and scientific conclusions. The appendices contain materials that informed that assessment. In substance, the report is an evaluation of the research itself, which falls squarely within the accepted definition of research as including the *testing and evaluation of research*.

[36] This type of inquiry is inherently associated with the underlying research. It scrutinizes the study's scientific foundation, examines the rationale for its conclusions, and documents the hospital's internal academic assessment of the work. These are hallmarks of research integrity evaluation, a process directly linked to the conduct, testing, and evaluation of research for the purpose of establishing generalizable knowledge. I therefore find that the report has a sufficient connection to the specific identifiable research project for the purposes of section 65(8.1)(c).

[37] This conclusion is consistent with Order PO-4561, which concerned the same research project. In that order, the adjudicator found that emails exchanged during the inquiry met the "some connection" test because they contained substantive academic analysis of the study. The adjudicator described this analysis as "akin to a peer review," a category of record previously held to fall within section 65(8.1)(c).<sup>12</sup>

[38] The record in the current appeal goes further: it is the hospital's final inquiry report of that academic assessment. If the preliminary considerations in PO-4561 were excluded under section 65(8.1)(c), then the final report, which consolidates and formalizes the hospital's findings, necessarily satisfies the same test.

[39] I acknowledge the appellant's submissions regarding public interest and institutional accountability. However, section 65 exclusions are categorical; when they apply, the *Act* does not apply to the record, and there is no authority to order disclosure on public interest grounds.<sup>13</sup>

[40] The appellant also submits that the exclusion should not apply because the research in question was published more than 15 years ago. I do not accept this argument. The Court of Appeal in *Ontario (Solicitor General) v. Mitchinson* held that where an Act states that it "does not apply" to a class of records, those records remain outside the Act permanently, and the IPC has no authority to impose temporal limits on exclusions. That reasoning applies equally to section 65(8.1)(c).

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<sup>12</sup> Order PO-2825

<sup>13</sup> Order PO-4555, at para 8: "The public interest override cannot be applied to a record that is excluded from the scope of the *Act*. If a record is found to be excluded from the *Act*, the IPC has no authority to order the disclosure of the record, regardless of whether there is a public interest in that record."

[41] I also do not accept the appellant's argument that, if section 65(8.1)(c) applies, the exclusion should be limited to specific passages rather than the record as a whole. As stated above, the IPC takes a record-by-record approach to considering records subject to an exclusion claim. Once a record is excluded under section 65, it falls outside the scope of the *Act* and cannot be severed under section 10(2).

[42] For these reasons, I find that the report and appendices have "some connection" to the specific, identifiable research conducted by the physician, and are therefore excluded from the scope of the *Act* under section 65(8.1)(c).

**ORDER:**

I uphold the hospital's decision and dismiss the appeal.

Original Signed by: \_\_\_\_\_  
Elana May  
Adjudicator

\_\_\_\_\_ December 30, 2025