FOI’s Impact on the Personal Records of Employees

Last updated: August 10, 2017 (v1.1)

1. Custody and control

1.1 Do you store some of your personal documents at your office? Do you feel these records are not the property of the University and therefore shouldn't be accessible under the Freedom of Information and Protection of Privacy Act (the Act)? If you have such concerns you are not alone as these and other similar issues are brought to our attention by staff.

1.2 The Act does address this issue and we have prepared the following to assist staff in determining if a record is subject to the Act and therefore available to access requests under the Act.

1.3 The section of that Act which applies is section 3 (1) which states: This Act applies to all records in the custody or under the control of a public body.

- **Custody**: In most cases, custody means having physical possession of a record, even though the public body does not necessarily have responsibility for the record.

- **Control**: Control of a record means the power or authority to manage, restrict, regulate or administer the use or disclosure of the record. A record that is in the possession or held by a public body is presumed to be under its control unless there is evidence to the contrary.

1.4 Where the University does not have physical possession of the record but an employee or contractor of SFU has custody or control of the record (e.g., records are located in an employee's home) SFU is deemed to have control of the record for the purposes of the Act.

1.5 To help determine if a record is in your custody or control ask yourself the following questions:

- Did an SFU employee or contractor create the record in the course of their duties?

- Does an SFU contract or agreement specify the record or class of records as being under the control of SFU (e.g., does the contract permit SFU to inspect, review, possess or copy records of the contractor)?

- Does the content of the record relate to SFU's mandate or functions?

- Does SFU have the authority to regulate the use and disposition of the record?

- Does SFU rely upon the record to a substantial extent?
• Is the record closely integrated with other records held by SFU (e.g., are the records in administrative or operational files)?

• If the record is stored on SFU premises on behalf of another agency, are SFU staff restricted from access to the record?

1.6 Two points need specific clarification.

1.6.1 First, research and teaching materials collected by teaching staff are not records in the University’s custody and control.

1.6.2 Second, if an employee's personal records become integrated with other information held by the University and are used by the University in decision making or program activity, then they are considered to be University records even though they were not originally collected for the University. For example, while bargaining groups, the Student Society and other similar groups are not covered by the Act, the records they provide to and receive from the University are. Your best safeguards are not to store your personal records on University premises or to ensure they are clearly classified and filed separate from University records.

2. Other Reference Tools:

2.1 Overview of the Act

2.2 FOI/POP Questions and Answers – College and University Sector

2.3 Information and Privacy Records Keeping Tips

3. Questions?

3.1 Please contact:

• Paul Hebbard, Coordinator of Information and Privacy, 778-782-2313

• Craig Neelands, Information and Privacy Officer, 778-782-5465