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**CASE SUMMARY: THE APPELLANT, UNIVERSITY OF BRITISH COLUMBIA, SUCCESSFULLY APPEALED THE ORDER OF A CHAMBERS JUDGE. THE CHAMBERS JUDGE HAD DENIED ITS PETITION FOR JUDICIAL REVIEW OF A DECISION OF AN ADJUDICATOR IN THE OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER (OIPC). THE ADJUDICATOR HAD ORDERED CERTAIN ADMISSIONS CRITERIA TO BE DISCLOSED TO THE RESPONDENT, MR. LISTER.**

**Administrative law – Decisions reviewed – Privacy Commissioner – Freedom of information and protection of privacy – Disclosure of records – Judicial review – Appeals – Standard of review – Reasonableness**

*University of British Columbia v. Lister*, [2018] B.C.J. No. 658, 2018 BCCA 139, British Columbia Court of Appeal, April 13, 2018, M.V. Newbury, P.A. Kirkpatrick and B. Fisher J.J.A.

In March 2013, the Respondent, Mr. Lister, was a journalist for the student newspaper at the Petitioner, University of British Columbia (“UBC”). Mr. Lister sought access about the undergraduate admissions process through the *Freedom of Information and Protection of Privacy Act* (“FIPPA”). The information request related to a “broad-based” admissions process (“BBA”) adopted by UBC in 2013 and which included an evaluation of non-academic qualities and skills. The scoring criteria and instructions for the staff reviewers are set out in a document called the Rubrics. UBC refused to provide access.

Mr. Lister applied to the Office of the Information and Privacy Commissioner (OIPC) and an adjudicator granted his request and ordered UBC to disclose the documents. UBC had argued that it spent substantial time and money to create the BBA and it could no longer use the BBA if the Rubrics were made public. The adjudicator decided that (1) the Rubrics were not excluded from the scope of *FIPPA*, and (2) UBC was not authorized to refuse disclosure under sections 13 or 17. Section 17(1) allows a public body to refuse disclosure if it could reasonably be expected to harm the financial or economic interests of the public body.

UBC applied to the Supreme Court to seek judicial review of the OIPC adjudicator’s decision. The Chambers Judge applied a reasonableness standard of review, and held the adjudicator’s decision was reasonable regarding the above findings. UBC then appealed the decision to the Court of Appeal.

The Court of Appeal considered whether the Chambers Judge erred in concluding the adjudicator’s decision was reasonable.

The Court of Appeal held that the adjudicator unreasonably concluded that the Rubrics did not disclose the personal profile questions. This finding formed the basis for the adjudicator’s decision that the Rubrics were not a “record of a question” excluded by section 3(1)(d) of the *FIPPA*.

Although not necessary for the result, the Court of Appeal also commented on the adjudicator's application of section 17(1) of *FIPPA*. The Court of Appeal said it was unreasonable for the adjudicator to reject UBC's cogent reasons for why its financial interests would be harmed by the disclosure.

The Court of Appeal allowed the appeal and set aside the adjudicator's orders that UBC was not authorized to refuse disclosure. The Court of Appeal remitted the matter to the OIPC for the OIPC to make the appropriate orders.

This case was digested by [Scott J. Marcinkow](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Scott Marcinkow at [smarcinkow@harpergrey.com](mailto:smarcinkow@harpergrey.com).