# Access to Information, Higher Education, and Reputational Risk: Insights from a Case Study

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**Abstract**

Access to information and freedom of information (ATI/FOI) requests are an increasingly utilized means of generating data in the social sciences. An impressive multi-disciplinary and international literature has emerged which mobilizes ATI/FOI requests in research on policing, national security, and imprisonment. Absent from this growing literature is work which deploys ATI/FOI requests in research on higher education institutions (HEIs). In this article I examine the use of ATI/FOI requests as a methodological tool for producing data on HEIs. I highlight the data-generating opportunities that this tool offers higher education researchers and provide a first-hand account of how ATI/FOI requests can be mobilized in higher education research. I argue that despite the value of ATI/FOI requests for producing data on academic institutions, the information management practices of HEIs limit the effectiveness of ATI/FOI in ways that I detail drawing on my experience using information requests to scrutinize the quality assurance of undergraduate degree programs in Ontario. I suggest that in an age of rankings and league tables HEIs are likely to prioritize the protection of their reputation over the right of access. In conclusion I consider the implications of the article's findings for higher education researchers and ATI/FOI users.

**Keywords:** access to information, freedom of information, higher education, research methods, reputational risk

**Résumé**

Les demandes d'accès à l'information et concernant la liberté d'information (AI/LI) constituent un moyen de plus en plus utilisé afin de générer des données en sciences sociales. Une impressionnante littérature multidisciplinaire et internationale mobilisant les demandes d'AI/LI dans la recherche sur le maintien de l'ordre, la sécurité nationale et l'emprisonnement a émergé dans les récentes années. Cette littérature en croissance est toutefois lacunaire sur le plan des travaux qui utilisent les demandes d'AI/LI dans la recherche sur les établissements d'enseignement supérieur (EES). Dans cet article, j'examine l'utilisation des demandes d'AI/LI comme outil méthodologique permettant de produire des données sur les EES. Je souligne les possibilités de production de données qu'offre cet outil aux chercheurs de l'enseignement supérieur, et je donne un compte rendu personnel de la manière dont les demandes d'AI/LI peuvent être mobilisées dans la recherche au sein des EES. Je soutiens que, malgré la valeur des demandes AI/LI dans la production de

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données sur les établissements universitaires, les pratiques de gestion de l'information des EES limitent l'efficacité des AI/LI de certaines manières. J'utilise mon expérience en matière de demandes de renseignements pour examiner l'assurance qualité des programmes universitaires de premier cycle en Ontario. Je suggère qu'à l'ère des palmarès et des tableaux de classement, les EES sont susceptibles de donner la priorité à la protection de leur réputation plutôt qu'au droit d'accès. En conclusion, j'examine les implications des résultats de l'article pour les chercheurs de l'enseignement supérieur et les utilisateurs de l'AI/LI.

**Mots clés :** accès à l'information, liberté de l'information, enseignement supérieur, méthodes de recherche, risque pour la réputation

## Introduction

In recent years, social scientists have increasingly been making use of access to information or freedom of information requests as a means of obtaining data from government agencies (Walby and Larsen 2012; Larsen and Walby 2012; Brownlee and Walby 2015). Long used by lawyers, journalists, and information professionals, this methodological tool has increasingly been mobilized by social scientists, in the last decade or so, in research on government agencies resistant to outside scrutiny. By providing partial access to a "backstage" realm of texts that were never meant for public disclosure, ATI/FOI legislation has enabled social scientists to uncover government activities that were written out of the carefully prepared public relations texts and official stories released by government agencies at the federal, provincial or state, and municipal level. In this respect ATI/FOI law has proved to be a useful, if limited, research tool for overcoming or bypassing organizational reluctance to voluntarily provide information about internal activities and processes.

An impressive multi-disciplinary and international social science literature has emerged based on the analysis of ATI/FOI disclosures. Critical scholars have mobilized ATI/FOI requests in research on policing, security, and carceral organizations in Canada (Wright, Moore, and Kazmiersky 2015; Luscombe and Walby 2015; Rigakos and Worth 2011; Kinsman and Gentile 2010; Piché 2011; Piché and Walby 2010; Yeager 2008; see also Brockman 2018), Britain (Rappert 2012; Brown 2009), and the United States (Greenberg 2016; Lee 2001). While this body of literature has demonstrated that ATI/FOI requests can be used to good effect in facilitating access to information about the activities of government agencies, it has also highlighted important gaps between the official promise of ATI/FOI law and the reality of access barriers and continued organizational secrecy and obfuscation. Following the pioneering work of the public administration scholar Alasdair Roberts (2006, 2005, 2001), social scientists making use of ATI/FOI requests have documented a number of organizational information management and disclosure practices that minimize the disruptive potential of ATI/FOI requests. These include special procedures for handling politically sensitive requests, restrictive interpretations of key provisions of ATI/FOI law, failure to include certain organizations under the ambit of ATI/FOI law, extended delays in processing requests, exorbitant access fees, and incomplete and heavily redacted disclosures. These practices limit the reach and

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effectiveness of ATI/FOI requests in ways that cast serious doubt on the official claim that ATI/FOI law is intended to contribute to greater openness and transparency in government. As Luscombe and Walby (2017, 382) have suggested, far from undermining the obfuscating powers of government, ATI/FOI requests "may simply result in information mirages that placate the citizenry and manufacture consent for existing rule."

In this article, I discuss my experience using freedom of information requests on Ontario universities and elaborate on lessons learned along the way. I highlight the data generating opportunities that ATI/FOI requests offer higher education researchers at the same time as I document the obstacles and barriers I encountered in my attempts to scrutinize the quality assurance of undergraduate degree programs in Ontario. I detail the extremely discretionary use of exemptions by different universities to block access to or redact the documents sought and explore the ways in which the information management practices of academic institutions limit the effectiveness of ATI/FOI requests. Based on my experience, I theorize that, as higher education institutions have become more and more concerned with the task of managing reputational risk in the broader context of the rise of influential national and global university rankings, they are likely to treat ATI/FOI requests as sources of uncertainty and potential institutional harm to guard against. I use my case study to illustrate how, in an age of rankings and league tables, universities manage reputational risks associated with access requests by interpreting exemptions relating to the economic interests and competitive position of an institution expansively. While such institutional reputation management does not fundamentally undermine the promise of ATI/FOI law, it does play an important role in shaping what the right of access actually means in practice.

From a broad socio-legal perspective on law, in short, this article constitutes a carefully documented example of an empirical study that sheds light on how an important legal regime is unfolding in practice, highlighting important gaps between the rhetoric of ATI/FOI law and its enactment in fairly low-visibility bureaucratic settings.

## Researching Higher Education Using Access to Information

Although there exists a sizeable and growing body of social scientific work which mobilizes ATI/FOI requests in research on policing, national security, and imprisonment, there is next to no literature deploying ATI/FOI requests in research on higher education institutions. Higher education researchers could benefit from mobilizing ATI/FOI requests. Much of what is said and done in academic institutions is written down or otherwise documented, and despite a number of limitations and barriers to access, much of this material is accessible through ATI/FOI requests. Higher education researchers could potentially make use of ATI/FOI requests to expose the illegal and unethical activities of HEIs. In recent years, universities and colleges have been involved in all kinds of scandals. Academic institutions from around the world have been accused of admitting unqualified applicants on the basis of their political connections, of inflating grades to maintain enrolments, of inflating enrolments to increase public funding, and of awarding degrees through bribery (Chapman and Lindner 2016; Friedrichs 2010, 91–94). Professors, provosts,

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and presidents have been accused of using university money and/or research grants to cover the costs of expensive parties, dinners, and trips. Various departmental and research units housed in universities have been accused of compromising their integrity and autonomy to produce research findings consistent with the interests of their corporate sponsors. These and many more unethical activities conducted in and by HEIs could be investigated by means of ATI/FOI requests.

However, ATI/FOI requests need not necessarily be used to uncover what Gary Marx (1984, 79) called "hidden and dirty data," that is, strategically concealed information whose revelation would be deeply discrediting to an institution. Although much existing ATI/FOI research has a critical-activist bent to it, formal information requests can also be used to obtain ordinary, non-controversial records that can help researchers illuminate the routine actions and decisions of academic institutions. A wide range of internal texts is accessible through ATI/FOI requests, including draft documents and reports, memoranda, interdepartmental memos, faxes, minutes from committees and working groups, briefing notes, Power Point presentations, letters and e-mails, budget and statistical breakdowns, organizational flow charts, and much else besides. By providing partial access to this backstage realm of texts, ATI/FOI requests can help researchers expand their understanding of the internal operations of HEIs. They can be used on their own or in combination with other methods to generate data that can help higher education researchers shed light on a particular process, incident, or departmental unit of interest. Furthermore, ATI/FOI requests could be used by higher education researchers to investigate the backstage operations of research councils and strategic funding initiatives. Researchers could file information requests to investigate how research moneys were allocated for specific grants and learn more about the policy behind, and intent of, strategic funding initiatives. To paraphrase Keen (1992, 46), the uses of ATI/FOI requests are only as limited as researchers' ingenuity in developing applications in their field of specialty.

Although HEIs are not government agencies, they are usually covered by ATI/FOI laws. In Canada, where I conduct my research, all publicly funded universities and colleges are covered by provincial ATI/FOI laws. Despite this, however, there has been very little ATI/FOI research conducted on Canada's publicly funded HEIs, the only exception being Brownlee's (2015) work on the casualization of academic labour. Based on FOI requests submitted to eighteen universities in Ontario in 2010, Brownlee was able to document the extent to which these universities are increasingly relying on temporary contract faculty. Brownlee's success in using FOI requests to produce data about Ontario universities is encouraging for other social scientists interested in Canadian higher education.

Following his lead, therefore, as part of a research project which sought to investigate the implications for criminological research and practice of the emergence of external quality assurance systems in higher education, I filed FOI requests with seven Ontario universities. This was done in an attempt to obtain copies of the criminology undergraduate program self-studies produced in response to the implementation of new mandatory quality assurance requirements across the province's higher education system in the mid-1990s. I obtained eight program

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reviews through FOI requests.[1] These were analysed using Foucauldian methods of discourse analysis.

The findings of the analysis will be reported elsewhere. In this article, I focus on the FOI process itself as an object of research. I discuss my experience using FOI requests on Ontario universities and elaborate on lessons learned along the way. As many scholars have argued, it is important for researchers to document the ATI/FOI process and to outline and reflect on the obstacles and barriers they encounter in their attempts to obtain access to the backstage of institutional practice (Luscombe and Walby 2017, 384; Greenberg 2016, 110; Monaghan 2015, 53). Given that ATI/FOI training is still for the most part not included in graduate programs in social science disciplines, empirical accounts of ATI/FOI in action offer researchers an invaluable resource for enhancing their understanding of the mechanics and limitations of the brokering process. Such accounts can help users avoid and overcome common pitfalls in future uses of ATI/FOI requests for research purposes. Although a few accounts of ATI/FOI in practice have been published, we still know very little in terms of how higher education institutions handle information requests. By recounting my experience going through the FOI request process and generating new insights into access barriers, opacity, and reputation management in the context of higher education research, this article contributes to filling this gap in the literature.

The remainder of the article is divided into three sections. In the first section I document and reflect on the research access barriers I encountered throughout the FOI process. I note a limitation in the scope of institutions covered by the Ontario *Freedom of Information and Privacy Act* (FIPPA) and examine universities' differing interpretations and applications of exemptions in responding to my requests. Although inconsistent access decisions can be a source of uncertainty and frustration for researchers, in the second section I illustrate how they can be used as a basis for appealing access decisions and testing the limits of exemptions.

In the third section I use my experience as a case study to explore the ways in which the information management practices of university access to information offices prioritize the protection of their host institution's reputation over the right of access. I consider the relationship between university resistance to FOI requests for research purposes and the rise of influential national and global rankings that have heightened the importance of the task of reputation management for higher education institutions. Based on how universities interpreted and applied exemptions to limit my use of FOI, I suggest that in the contemporary context, these institutions are likely to treat ATI/FOI requests as sources of reputational risk to be managed. I conclude by considering the implications of the article's findings for higher education researchers and ATI/FOI users.

## Barriers to Scrutinizing the Quality Assurance of Undergraduate Degree Programs in Ontario

My efforts to obtain undergraduate program self-studies can be divided into three stages: 1) informal requests to the executive director of the Ontario Universities

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[1] Documents produced as part of a cyclical program review typically include a unit self-study, an external evaluation, an internal institutional evaluation, and a follow-up document laying out plans to implement the recommendations issuing from the review process.

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Council on Quality Assurance (OUCQA[2]); 2) collection and analysis of publicly available information in university senate archives followed by two additional rounds of informal enquiries, the first to program co-ordinators and department chairs, the second to university quality assurance officers and ATI/FOI coordinators; and 3) the filing of FOI requests. The first two stages failed to turn up the sought after information. The executive director of the OUCQA informed me that self-study documents are "not in the public domain"—which is surprising given that one of OUCQA's (2016, 36) operating principles stipulates that its "assessment process and the internal quality assurance process of internal universities will be open and transparent"—and university staff repeatedly told me that the documents I was after were considered confidential to the department/faculty in question, the dean, and the senate, and that, as such, they could not provide me with copies. Hence I was left with no other option but to use the power of the law to broker access to the sought after documents.

Despite not turning up the information I was looking for, these preliminary searches during the first two stages did provide an important starting point for identifying specific records that could be requested via FOI requests and for developing a familiarity with the distinctive terminology used in academic program quality assurance processes and the complex of university committees and offices involved. Information such as the particular dates when academic program reviews were initiated and the titles of existing records enabled me to narrow down my "sample" to the seven universities that had undergone at least one criminology self-study and to formulate focused and precise requests. As noted by Walby and Larsen (2011, 629), keeping requests limited and specific is important in order to prevent ATI/FOI coordinators from either dismissing them outright or interpreting them so broadly that they can demand long extensions and charge exorbitant access fees.

Although I initially sought to file one FOI request with the OUCQA, I actually had to file individual information requests with each of the seven Ontario universities of interest. This is because, according to the directory of public-sector organizations covered by provincial and municipal FOI laws in Ontario,[3] the OUCQA is itself *not covered*. This is in contrast to the Higher Education Quality Council of Ontario and the Post-secondary Education Quality Assessment Board, the other two major quality assurance agencies in Ontario's higher education accountability regime. It seems rather curious that a provincial body whose mission stipulates that it "operates in a fair, accountable and transparent manner with clear and openly accessible guidelines and decision-making processes" (OUCQA 2016, 36) falls outside the remit of legislation enacted precisely to make the operations of

[2] The OUCQA is an arms-length government body created in the mid-1990s with a mandate to guide Ontario's universities in the ongoing quality assurance of their undergraduate programs. It is responsible for approving or declining new program proposals, reviewing existing programs on a cyclical basis in order to verify academic standards and assure ongoing improvements, and ensure through regular audits that the province's publicly funded universities comply with the quality assurance guidelines, policies, and regulations established and ratified by the council (OUCQA 2016).

[3] Found at https://www.ontario.ca/page/directory-institutions.

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government and government-funded organizations more open and transparent! When asked why the OUCQA is exempt from the requirements of the FIPPA, the executive director responded by explaining that the Council is not considered an "institution" under the Act because it does not receive its funding directly from the provincial government (B. Timney, personal communication, May 15, 2017). In fact, the OUCQA is funded through yearly and intermittent fees charged to publicly funded universities. The limited scope of ATI/FOI laws has been noted by others in the literature (e.g., Luscombe and Walby 2017, 381–382) in relation to police unions and miscellaneous private organizations that collaborate with public policing organizations and yet are absolved from the requirements of ATI/FOI laws. In the case of the OUCQA, we have an arms-length provincial body in a position of authority to judge the quality of Ontario's higher education programs that does not fall under the schedule of the FIPPA and is therefore not subject to requests. Although not as egregious as institutional accountability deficits related to agencies that collaborate with the public police, the OUCQA's exemption from the requirements of the FIPPA poses a challenge to the public's "right to know" insofar as it insulates the provincial body from outside scrutiny.

In any case, Ontario's publicly assisted universities are subject to the requirements of the FIPPA, and therefore, in order to obtain the information I was after, I drafted nine individual formal information requests. As has been the case for many ATI/FOI researchers, my information requests yielded inconsistent outcomes. Although each university received the same standardized letter, two denied access entirely while the rest granted partial access. Wilfrid Laurier, Ottawa, and Ryerson granted partial access to the information I requested within the official thirty-day response window mandated by the Act; the University of Ontario Institute of Technology (UOIT) granted partial access after requesting a thirty-day time extension under the pretence of having to "consult with external counsel" to comply with my request; and Toronto at the time found no available responsive records for the then ongoing 2016–2017 criminology program review. Carleton and York, on the other hand, denied access entirely.[4]

In their responses to my requests, universities also varied in terms of the exemptions they invoked and how they interpreted and applied them to withhold information. Although many ATI/FOI users have commented on the inconsistent and seemingly arbitrary application of redaction clauses by federal government agencies (Monaghan 2015; Hewitt 2012; Rappert 2012), we still know very little in terms of how higher education institutions handle formal information requests. Accordingly, in what follows, I detail which exemptions were invoked by each university and compare the different ways in which they were interpreted and applied.

Within the FIPPA, there are two classes of exemptions to access: mandatory and discretionary. Mandatory exemptions relate to sections of the FIPPA that *require* a public institution to refuse to disclose documents that rightly fall within its scope, including, for example, cabinet records, personal information about

[4] Access fees also varied between universities. Ryerson charged $24 for one program review, UOIT $37.50 for two program reviews, Wilfrid Laurier $91 for one program review, and Ottawa $170 for two program reviews.

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individuals other than the requester, and third-party information supplied in confidence. Discretionary exemptions, on the other hand, specify that public institutions *may* refuse to disclose a record or part of a record based on an assessment of whether disclosure of the requested information could be prejudicial or injurious to the interests articulated in the exemptions. The type of records withheld under discretionary exemptions include any records which contain information that could reasonably be expected to prejudice financial or other specified interests, information related to advice or recommendations within public institutions, and information about inter-governmental relations. Depending on the exemption provisions invoked, in short, institutions either have an obligation or the discretion to refuse access.

In responding to my requests, universities claimed both discretionary and mandatory exemptions. Table I lists the exemptions invoked by each university along with the relevant passages from the Act. As indicated in the difference in wording between "A head *shall* refuse to disclose a record" and "A head *may* refuse to disclose a record," sections 13 and 18 are discretionary exemptions whereas sections 17 and 21 are mandatory exemptions.[5] Ryerson is the only university to have claimed an *exception* under section 65, also listed in Table I.

The first thing to note here is that while Wilfrid Laurier, Ottawa, Ryerson, and UOIT invoked certain exemptions and exclusions as a *basis to sever* select sensitive information before granting me access to the requested information, Carleton and York invoked certain exemptions as a *basis to deny* me access in full.

The second thing to note is that, in the release packages I obtained, certain exemptions were interpreted and applied consistently while others were not. On the one hand, sections 13(1), 21(1), and 65(8.1) were consistently used to protect the personal information and intellectual property of faculty and students. This basically means that professors' vitae, course outlines, and research plans were redacted, along with any sensitive identifying information. Sections 17(1)(a), 18(1)(c), and 18(1)(f), on the other hand, were interpreted and applied very differently across universities. Ostensibly invoked in order to protect the economic interests and competitive position of the institution, the nature of the sensitive information redacted under these sections varied greatly between universities. The head of Ottawa did not even invoke any of these sections. The head of Ryerson only severed three lines on one page that refer to the management of personnel that have not yet been put into operation. The head of UOIT severed select and limited information related to student and alumni satisfaction data, graduation rates, historical enrolment data, and cost structure and contribution to the overhead. The head of Carleton—who initially denied my request but eventually granted partial access after I appealed his decision (see below)—severed about ten lines regarding future course development and approximately thirty lines having to do with details regarding the composition of the unit's internal management board. He also redacted both the external evaluation and internal institutional evaluation of the program self-study in full. And finally, the head of Wilfrid Laurier redacted no less

5 A "head" is the chief privacy officer of the institution in question and *not* the head of an academic faculty, department, or program.

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**Table I**
Exemptions invoked by universities in response to a Freedom of Information (FOI) request

| | Discretionary | Mandatory | Exceptions |
|---|---|---|---|
| Wilfrid Laurier University | 13(1); 18(1)(c); 18(1)(f) | 21(1) | |
| University of Ottawa | | 21(1) | |
| Ryerson University | 18(1)(f) | 21(1) | 65(8.1) |
| UOIT | 13(1); 18(1)(c) | 21(1) | |
| Carleton University | 18(1)(c); 18(1)(f) | 17(1)(a) | |
| York University | 18(1)(c) | 21(1) | |

13 (1). A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

17 (1). A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

(a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization.

18 (1). A head may refuse to disclose a record that contains,

(c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;

(f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public.

21 (1). A head shall refuse to disclose personal information to any person other than the individual to whom the information relates.

65 (8.1). This Act does not apply,

(a) to a record respecting or associated with research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution;

(b) to a record of teaching materials collected, prepared or maintained by an employee of an educational institution or by a person associated with an educational institution for use at the educational institution.

than ten pages in the self-study itself including entire sections titled "achievement of learning outcomes," "unit reflection on administrative structures," "existing human and financial resources," "strengths of the program," "student involvement and innovative teaching methods," "weakness of the program," "strategic plan for criminology," "issues to be addressed by the unit/university," "summary of unit reflection and assessment," and "questions to the consultant." She also redacted the external reviewer's report and unit response in full.

Thus, although most heads expressed some concerns about the financial and reputational consequences that might result from the disclosure of select information in the requested documents, each handled their concerns rather differently. What these differences bring to light is the highly discretionary, and even arbitrary, process of FOI exemptions. The FIPPA provides enormous latitude to FOI coordinators for rejecting requests and for redacting and censoring sensitive information.

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Together with what Hewitt (2012, 198) calls the "human factor," that is, FOI coordinators' varying interpretations of the requirements of the Act, this latitude makes for a very imperfect and ad hoc process of FOI decision making.

The last thing to note in relation to how universities responded to my requests is the different ways in which the requested records were altered before being released. The records contained in the release packages from all universities except Carleton and Ryerson were "flat" and unsearchable, meaning that previously searchable digital files were converted into images before being released. Relatedly, redacted text was "whited out" rather than "blacked out" only in the release packages of Ryerson and UOIT, making it more difficult to establish whether and where a given record was redacted because the redacted text appears as a white space that is impossible to differentiate from the document background.

Different access decisions made in response to an identically worded information request; varying invocations, interpretations, and applications of exemptions; dissimilar release package formats: what all of these things highlight is how inconsistent the practices and procedures of Ontario universities' ATI offices are. The diversity of institutional responses to the same formal information requests, as Spivakovsky (2011) has noted, is a challenge for researchers insofar as it adds an element of uncertainty to their data gathering plans and can sometimes lead them to change the direction or reduce the scope of their project. However, differing and inconsistent responses can also be used as a basis for appealing access decisions. In the present case, I decided to formally appeal Carleton's and York's decisions to deny my requests on the basis that their interpretation and application of exemptions was overbroad.

## Inconsistent Access Decisions as a Basis for Appeal

The mediation stage of the appeals ended in an impasse. The heads of Carleton and York effectively reiterated to the mediator that they were not willing to disclose the requested information because they deemed it all exempt under certain sections of FIPPA, and I made the argument that the information of concern should simply be severed so that portions of the records could be released instead of access being denied in full. I then moved my appeals forward into adjudication. Interestingly, upon receiving a Notice of Inquiry for adjudication from the Office of the Information and Privacy Commissioner of Ontario, the head of Carleton got in touch with the mediator right away to let her know that he now wanted to grant me partial access to the requested documents (and that without requiring access fees!). In the case of Carleton, therefore, it seems as though the prospect of adjudication—and all the extra work this would create for the university's privacy office—served as an incentive to disclose portions of the requested records.

In the case of York, the appeal made it into adjudication. The main issue up for adjudication in the appeal was whether the requested records legitimately fell under the discretionary exemption at section 18(1)(c). In its representations, York argued that the records at issue should be protected under section 18(1)(c) because their disclosure could result in adverse consequences to the university's ability to protect its legitimate economic interests in a competitive martketplace. It pointed out that many other universities in Ontario offer criminology programs

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to undergraduates and that York competes with these publicly funded institutions for a limited pool of potential applicants. York stated that disclosure of the requested information would give competing institutions an unfair advantage when constructing their programs. The university's economic and competitive position would be at risk, it contended, if areas identified for improvement or with weaknesses along with plans to address them were made available to competitors offering similar programs. Disclosure of the self-studies would, the university suggested, allow competitors to implement changes to their programs that could counteract the strengths of the revealed program and exploit its weaknesses, making York's program less attractive to prospective students.

I raised two main issues in response to York's representations. First, I noted that I submitted identical information requests to five other Ontario universities and that, in every case, partial access was granted. I argued that in comparison with these five other universities York's interpretation and application of the discretionary exemption at section 18(1)(c) was overbroad. Second, I brought up a precedent-setting legal judgment issued in a previously adjudicated appeal, PO-3594. This order resolved an appeal regarding a request similar to mine, namely, a request submitted to Fleming College for access to records about the review of the college's Emergency Management post-graduate certificate program. Initially the college denied the requester access to the records *in part*, citing the application of the discretionary economic and other interests exemptions at section 18(1), but the requester appealed the decision on the grounds that the institution had engaged in an overbroad application of these exemptions. In the process of considering whether the discretionary exemption at section 18(1)(c) applied to the requested records, the adjudicator judged that information about the program's weaknesses is protected under section 18(1)(c) but that neutral and positive information about the program is not. If order PO-3594 is taken as a legal precedent in the matter of adjudicating requests for information on academic program reviews, I argued, then at the very least, York ought to disclose those portions of the requested records which contain neutral and positive information about the program.

Two years after I filed the initial request with York, the appeal was finally resolved with the drafting of order PO-3943. In this order the adjudicator ruled that only information about program weaknesses qualifies for exemption under section 18(1)(c) and ordered York University to disclose the remaining information at issue in the records.

My experience appealing Carleton's and York's decision to deny my request suggests that users of ATI/FOI requests should always follow through on all the steps of the appeal process when their initial requests are denied—or, more pointedly, that they should never take no for an answer. Access to information laws are still relatively new, and researchers should therefore be prepared to appeal access decisions and test the limits of exemptions.

## Research Access Barriers, Higher Education Institutions, and Reputational Risk

Perhaps because the documents I was seeking were rather innocuous in comparison with the "hidden and dirty data" sought by other ATI/FOI users, I did not encounter

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the full range of access barriers identified by Monaghan (2015). So far as I know, there was no political interference with my requests, only one university asked for a thirty-day extension to the response deadline, total access and appeal fees amounted to less than $400, and all universities were able to locate the requested records. The responses to my FOI requests did, however, reveal highly inconsistent redaction practices on the part of universities' ATI offices. In some cases exemption clauses were arguably used as mechanisms to stunt the dissemination of information and preserve opacity.

There was therefore some resistance to my attempts to gain research access to internal documents produced as a result of purportedly open and transparent quality assurance processes. Drawing on wider debates on research access barriers in social science, it is possible to speculate about the reasons why universities engaged in various attempts to insulate their program evaluations from public scrutiny. Notwithstanding universities' own claims that the immediate purpose of redacting information under sections 17(1)(a), 18(1)(c), and 18(1)(f) was to protect their ability to compete for a limited pool of students in the higher education marketplace, I suggest here that research access barriers like arbitrary redactions are a way for universities to manage reputational risk.

Many scholars have argued that obstacles to accessing data on the activities of private and public agencies have increased over the last few decades (Watson 2015; Mopas and Turnbull 2011; Tombs and Whyte 2002). Although gaining access to corporations and state institutions has always been a major challenge for social scientists, this appears to have become progressively more difficult in recent years in spite of repeated calls for greater transparency and openness. One possible explanation for this is the ascendance of "reputational risk" as an explicit managerial category shaping organizational behaviour across the private and public sectors in western societies. According to Michael Power and his colleagues (2009), the adoption of formal risk management principles and practices has become a cornerstone of good governance within contemporary organizations. Organizations are now responsible for managing all kinds of risks including that "purest" of socially constructed risks, "reputational risk." As part of their risk management efforts, organizations routinely reorganize their work to anticipate and manage how they are perceived by others. Some also protect their reputations by insulating themselves from public scrutiny. Criminal justice agencies like the Correctional Service of Canada (CSC), for example, have clamped down on external research access. As noted by Hannah-Moffat (2011), CSC increasingly treats applications to gain access to data as sources of potential institutional harm, that is, as risks to be managed according to the anticipated negative consequences (reputational, financial, and legal) of having particular practices, policies, incidents and statistics exposed to public scrutiny.

There is some evidence to suggest that higher education institutions too have become more and more concerned with the task of managing reputational risk. The emergence of national and global university rankings has brought about an unprecedented level of visibility and calculability to university and college reputations (Hazelkorn 2015; Marginson and van der Wende 2007; Dill and Soo 2005).

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Administered by non-state organisations in the commercial publishing industry and by higher education and research organisations themselves, reputational metrics, rankings and league tables have proliferated rapidly since the 1990s. What started off as relatively benign and inconsequential benchmarking exercises have over the last few decades grown exponentially in scale and scope and secured great prominence in higher education, policy, and public arenas internationally. Rankings and league tables are now a constant and unavoidable presence in the increasingly globalized and competitive higher education landscape. Universities today operate in a dense relational space in which they are regularly measured, compared, and ranked against one another on a range of proxy indicators of research performance, student selectivity, teaching quality, and much more. Despite widespread criticism of the methodology used to evaluate and rank universities, rankings have for some years now played a significant role in constructing and influencing the reputations of HEIs in the eyes of their various publics, including governments, private investors, industrial partners, alumni, faculty, and students and their parents.

By quantifying the reputations of HEIs and rendering them amenable to comparative evaluation, rankings have helped fuel an arms race for reputational supremacy in higher education. Scholars have found that, as the interest in and influence of rankings has grown, HEIs have increasingly reorganized their internal operational procedures and decision-making processes specifically to improve their rank and reap the attendant financial and reputational advantages. There have even been reports of some HEIs attempting to maximize their rank by engaging in various gaming strategies involving the manipulation of rules and the misrepresentation of data central to league table rankings (Dill and Soo 2005, 526; Espeland and Sauder 2007, 30–32). Such strong reactivity effects have led Marginson (2014, 46) to suggest that "ranking has become a form of regulation as powerful in shaping practical university behaviours as the requirements of states."

The rise of national and global rankings and league tables has thus given a powerful impetus to HEIs to monitor and manage their reputational risk. As Brownlee (2015, 792–793) remarked of his experience using FOI requests to uncover hidden academics working in Ontario's universities, rising concerns "about market reputation and the university's 'brand name' have led to greater administrative secrecy and intolerance of institutional criticism." There have even been recent cases in Britain and Canada of universities prioritizing their reputation over the academic freedom of researchers and the confidentiality of research participants (e.g., Hedgecoe 2016; Palys and Atchison 2008, 73–74). To these cases we can add my own, in which universities prioritized the protection of their reputation over the right of access.

In responding to my FOI requests, many Ontario universities applied exemptions to the requested records more broadly than necessary even though the documents I was seeking were not particularly controversial. In particular, they blocked access to or redacted the documents sought by interpreting exemptions relating to the economic interests and competitive position of an institution rather expansively, therefore limiting the reach and effectiveness of my requests.

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This suggests that heads of universities' ATI departments, like the heads of government departments (Larsen and Walby 2012, 21), tend to view FOI requests as sources of uncertainty and political risk. They are predisposed to prioritize the protection of their university's reputation over the right of access and therefore to treat FOI requests as risks to be managed according to the potential negative consequences that might result from the disclosure of particular practices, policies, incidents and statistics. Discretionary exemptions make it relatively easy for heads to redact any and all reputation-compromising information. They provide enormous latitude to reject requests and sever sensitive information. Certainly the heads of Carleton and York interpreted and applied the FIPPA in a manner that gave them maximum protection from disclosure. While universities are entitled to monitor and manage research access requests that might harm their interests, it becomes troubling when such activities lead to overbroad censorship and organizational secrecy. Although the evidence base in this paper is limited, it does suggest that universities are as resistant to outside scrutiny as policing and security institutions. This case study illustrates how universities, just like private corporations and state institutions, have developed internal information management and disclosure practices to minimize the disruptive potential of access requests.

## Conclusion

That research access barriers like discretionary redaction practices can be used by university heads to protect higher education institutions from reputational risk reveals a significant gap between the ideal of transparency and accountability in public institutions and the reality of opposition to and manipulation of access mechanisms. Despite highly managed and limited disclosures, however, FOI requests can generate valuable data for higher education researchers. In this article I have related my experience using FOI requests on Ontario universities and elaborated on lessons learned along the way. From a broad socio-legal perspective, I have shed light on how an access law regime is unfolding in practice and provided insights into the main barriers and openings that researchers are likely to encounter when mobilizing ATI/FOI requests. The findings of this article have clear implications for higher education researchers and ATI/FOI users. First, given the wide range of otherwise inaccessible materials available for higher education research purposes through ATI/FOI requests, higher education researchers should consider adding this legal tool to their methodological toolbox. Developing familiarity with the access process can help higher education researchers open up a variety of new avenues for research and assist them in expanding their understanding of the internal operations of higher education institutions. Second, given higher education institutions' intense concerns to protect themselves from reputational risk in this age of rankings and league tables, ATI/FOI users should expect to encounter various access barriers and experience unexpected setbacks. Academic institutions are likely to treat ATI/FOI requests as sources of reputational risk to be monitored and managed. While this certainly limits the effectiveness of ATI/FOI requests, I would still encourage researchers to harness this under-utilized tool as a means of

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generating data on higher education institutions. With sufficient determination and patience, and the benefits of other ATI/FOI users' first-hand experiential accounts, higher education researchers can use ATI/FOI requests to broaden the scope of the data they analyze and enlarge the range of questions they seek to answer.

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