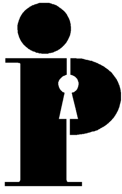

ORDER PO-2642

Appeal PA06-206

Queen's University

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NATURE OF THE APPEAL:

Queen's University (the University) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

> …any and all information related to the issuance of a Trespass Notice (also known as a *Notice of Prohibition*) on [specified date] against me by Queen's University. Specifically, I would like copies of the complaint made against me stating I attended Goodes Hall on several occasions, including the name(s) of the individual(s) who reported and/or witnessed my alleged trespass of property. These copies should also include the time(s) and date(s) I was allegedly witnessed on or around Goodes Hall, including who the alleged incident was reported to (name, position and office) and dates.
>
> …any other similar files under my name that might exist in relation to the issuance of the Trespass Notice.
>
> …any subsequent files made in relation to [a named individual] and myself. These should also include any complaints and/or actions taken against me by Queen's University students or personnel.

The University located responsive records and issued a decision granting partial access to them, denying access to some records or portions of records pursuant to the exemptions at section 14(1)(e) (endanger life or safety), 14(1)(d) (law enforcement), and section 21(1) (personal privacy).

The requester, now the appellant, appealed the University's decision on the basis that additional responsive records might exist, that information contained in the records or parts of records that were disclosed to him was inaccurate and that he disagreed that the exemptions claimed apply. The appellant also indicated that he seeks continuing access to records containing his personal information.

During the intake stage of this appeal, this office advised the appellant of the appropriate processes for submitting a request for correction of records and for making a request for continuing access to records. These two issues were removed from the scope of this appeal.

During mediation, the University issued a second decision letter, noting that in addition to sections 14(1)(e), 14(1)(d), and 21(1), it was relying on sections 20 (danger to safety or health), 49(a) (discretion to refuse requester's own information) and 49(b) (personal privacy). The University provided an index of records to the appellant.

Subsequently, the University issued a third decision letter, granting partial access to three records (Records 17, 18, and 26) and granting full access to two records (Records 31 and 33). The University provided the appellant and this office with an amended version of the index to reflect the disclosure.

The appellant confirmed that he wished to continue pursuing access to the remaining records and that he wished the following issues to be addressed at the adjudication stage of the appeal process:

- Whether the exemptions listed at section 14(1)(e), section 14(1)(d), section 20, section 49(a) read in conjunction with section 14(1)(e), 14(1)(d) and/or 20, and section 49(b) read in conjunction with section 21(1), apply to exempt the records or the portions of the records for which they have been claimed.

- Whether the University conducted a reasonable search for records responsive to the request.

I decided to begin my inquiry into this appeal by sending out a Notice of Inquiry, setting out the facts and issues, to the University, initially. The University provided representations in response.

On my initial review of the file, I noted that there were three individuals named in the records who might have a particular interest in the disclosure of these records (the affected parties). At the same time as I sent a Notice of Inquiry to the University, I also sent a Notice of Inquiry to the three affected parties so as to provide them with an opportunity to participate in this appeal. All three affected parties responded to the Notice of Inquiry.

In its representations, the University advised that Records 23 and 25 were released in full to the requester and are therefore no longer at issue. It also advised that it was no longer relying on section 14(1)(d) for Record 24. Finally, the University advised that it was withdrawing its claim that the names of a number of individuals that they had previously severed from the records are exempt from disclosure under section 21(1). These names, which included University employees and Kingston Police officers, were disclosed to the appellant.

I amended the Notice of Inquiry to reflect the changes outlined in the University's representations, and sent it to the appellant, together with a copy of the University's representations, which I severed for confidentiality reasons. Due to confidentiality concerns, I did not disclose any of the affected party's representations to the appellant. In response, the appellant submitted representations to this office.

RECORDS:

The records remaining at issue are detailed in an index prepared by the University that has been provided to both the appellant and this office. The index that has been relied upon in this appeal is the one that was revised on November 29, 2006, as noted at the top left hand corner of each page of the index.

Two changes must be made to that index. As advised by the University, Records 23 and 25 were released to the appellant and are therefore no longer at issue. Additionally, the University is no

longer relying on section 14(1)(d) for Record 24. Taking into account these changes, there are 81 records that remain at issue in this appeal.

DISCUSSION:

PERSONAL INFORMATION

For the purpose of determining whether the exemptions at section 21(1) under Part II of the *Act* or sections 49(a) or (b) under Part III of the *Act* might apply, it is necessary to first establish whether the record or records contain "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except if they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name where it appears with other personal information relating to the individual or where the

> disclosure of the name would reveal other personal information about the individual;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225]. However, even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

Please note that the correct approach for determining whether a record contains personal information that is "mixed" (the personal information of the appellant together with that of another individual) is to review the entire record, not only the portions remaining at issue [Order M-352].

As noted above, in its representations the University advised that it would disclose the names of University employees and Kingston police officers identified in the records. However, the University has withheld the name of one specific employee. The University submits that disclosure of this individual's name would provide "sufficient context for the appellant to identify the individuals or the actual content of the record." Having reviewed the portions of records where the specific employee's name appears, I accept that this is the case. In my view, the disclosure of this individual's name, even though it appears in professional capacity, qualifies as the personal information of one of the affected parties as it would not only identify that individual but would also reveal personal information about her. Accordingly, I uphold the University's decision to withhold that employee's name.

Addressing the records as a whole, the University submits that they contain personal information that is, in most cases, a mixture of the appellant's and other individuals' personal information. The University identifies on a record-by-record basis what type of personal information each record contains and, in some circumstances, the reasoning behind some of the severances made in order to demonstrate how disclosure would render an individual identifiable.

I have reviewed the records and find that all of them contain the personal information of the appellant. All of the records relate to incidents in which he was involved, either directly or indirectly. All of the records also include the personal information of other individuals, including

the three affected parties. The records contain personal information such as street addresses, email addresses, telephone numbers and other identifying numbers, educational histories, dates of birth, and in most cases, the disclosure of the names on the records would reveal other personal information about those individuals.

As all of the records at issue contain the personal information of the appellant together with the personal information of another individual, it is necessary for me to determine whether the discretionary exemptions at sections 49(a) and (b) under Part III of the *Act* might apply to permit the University to withhold the information.

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION

Section 47(1) gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right.

Under section 49(a), an institution has the discretion to deny an individual access to their own personal information where the exemptions in sections 12, 13, **14**, 14.1, 14.2, 15, 16, 17, 18, 19, **20** or 22 would apply to the disclosure of that information.

For the purposes of this appeal, the University relies on section 49(a) in conjunction with sections 14(1)(e) and 20 to deny the appellant access to some of the records, in part or in full, despite the fact that they contain his own personal information.

Section 14(1)(e): law enforcement

Section 14(1)(e) reads:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> > endanger the life or physical safety of a law enforcement officer or any other person;

The term "law enforcement" is used in several parts of section 14, and is defined in section 2(1) as follows:

> "law enforcement" means,
>
> > (a) policing,
> >
> > (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and

(c) the conduct of proceedings referred to in clause (b)

Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)].

Except in the case of section 14(1)(e), where section 14 uses the words "could reasonably be expected to", the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

In the case of section 14(1)(e), the institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated. However, while the expectation of harm must be reasonable, it need not be probable [*Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.)].

A person's subjective fear, while relevant, may not be sufficient to establish the application of the exemption [Order PO-2003].

Representations on section 14(1)(e)

The University takes the position that disclosure of the information at issue could reasonably be expected to endanger the life or physical safety of the individuals named in the records. It submits:

> The incident reports which are found in records 2 to 23 and 26 to 30 have been severed to remove the names and other contextual identifiers of the female students who sought the assistance of Campus Security. These women had been harassed by the requester and were fearful about their personal safety. It is the opinion of the University that disclosure of the information severed from the records would endanger the physical safety of these women.
>
> …Records 34 to 83 contain personal information about [meetings between the affected parties and other individuals]. It is the University's position that revealing this information to the requester would place these women at risk and it has accordingly refused to disclose these records.
>
> …

> The University has relied not only on the expressions of concern of the two female students, but also on the opinion of experts in the field of harassment and violence against women, in concluding that disclosure of the information which has been severed from the records in question could reasonably be expected to endanger the physical safety of the women who brought their complaints and concerns to Campus Security and the Human Rights Office.

The appellant submits that the University has not provided the requisite evidence to demonstrate that the release of the requested information would endanger the life of a law enforcement officer as contemplated by section 14(1)(e). He submits that any such fear is both subjective and unfounded because otherwise they would not have released the names and titles of all security personnel involved.

Analysis and findings on section 14(1)(e)

As noted above, unlike the other parts of section 14(1) which require "detailed and convincing" evidence to establish that the exemption applies, under section 14(1)(e) the University must establish a reasonable basis for believing that endangerment to the life or physical safety of a law enforcement officer or *any other person* will result from disclosure of the record.

I have carefully examined the records. With the lowered threshold for section 14(1)(e), and bearing in mind the difficulty of predicting future events in the law enforcement context (as established in *Ontario (Attorney General) v. Fineberg,* cited above, and followed in PO-2040), I find that there is a reasonable basis for believing that the individuals who are referred to in the records could be endangered by disclosing the information at issue to the appellant.

The evidence before me indicates that the appellant has not been physically violent towards the affected parties, or any other individuals. However, based on the University's representations (including the confidential portions that I have withheld from the appellant), as well as the confidential submissions of the affected parties, I find that the University has provided sufficient evidence to establish a reasonable basis that endangerment to the life or physical safety of the affected parties and other individuals referred to in the records could reasonably be expected to occur were the information at issue disclosed. I am satisfied that the concerns expressed by the University and the affected parties, with respect to the physical safety of the individuals referred to in the records, are neither frivolous, nor exaggerated. In my view, there is sufficient evidence before me to conclude that the appellant's motives for seeking access to this information are not benevolent and that he has demonstrated a history of intimidating behaviour. I accept that the University, as well as the affected parties, are legitimately concerned that disclosure of the information in the records remaining at issue could reasonably be expected to worsen the situation and I agree.

Accordingly, I find that the University has satisfied its onus under the discretionary exemption under section 49(a) read in conjunction with section 14(1)(e) and that, subject to my finding on

the University's exercise of discretion, this provision applies to exempt all of the information at issue from disclosure.

As I have found that section 49(a) read in conjunction with section 14(1)(e) applies to all of the information at issue, it is not necessary for me to establish whether section 49(a) applies in conjunction with section 20. However, because of the similarities between the exemptions, the University's submissions on the application of section 20 help to inform its submissions on the application of section 14(1)(e) and, in my view, are particularly persuasive. As the University's representations on section 20 have informed my decision as a whole, for the sake of completeness, I will also address the application of section 49(a) in conjunction with section 20.

Section 20: threat to health and safety

Section 20 reads:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

As with section 14(1)(e), for this exemption to apply, the institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated. Also, while the expectation of harm must be reasonable, it need not be probable [*Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.)].

Representations on section 20

The University states that if the information at issue is disclosed it could reasonably be expected to seriously threaten the safety or health of the affected parties and other individuals named in the records. The University submits:

> In the case of the records at issue, the threat is threefold. First, the affected individuals, the named individual and the employee may be identified and so may be targeted by the requester for reprisal. The employee may be targeted for assisting the affected individuals to end their association with the request, the named individual may be targeted for supplying information that led to the issuance of the Notice of Prohibition, and the affected individuals may be targeted because of renewed interest in them … or for ending their association with the requester…
>
> Second, the pattern of conduct that the requester has engaged in is indicative of an escalation of danger to the affected individuals and if identified the affected individuals may be subject to physical or mental harm. It is difficult to say where the conduct of the requester would lead if unchecked and therein lies the danger.

> It is the unpredictable nature of stalking behaviour that gives cause for concern. In some cases, there turns out to be no cause for concern for physical safety as the harassment or obsessive behaviour ceases or it does not escalate. In other cases the harassment continues for years…
>
> [The University makes it clear that there is currently no evidence that the requester has violent intentions but argues that it is impossible to determine which cases of harassment may escalate to physical violence.]
>
> The University also argues that in some circumstances, although there may not be any physical harm to the victim, the psychological stress is great. It submits that such psychological stress falls within the meaning of "threat to health" contemplated by section 20 as the Oxford English Dictionary definition of health includes "spiritual, moral, or mental soundness or well-being."
>
> …
>
> Third, … harassers often attempt to continue contact with their victims through "legal means and according to the US Department of Justice and the National Centre for Victims of Crimes, a US-based victims resource and advocacy group, it is not uncommon for the stalkers to start stalking again after an event that renews the stalker's interest in the victim [US Department of Justice, "Stalking" (2003) Community Oriented Policing Services, online <http://www.ncvc.org/src/AGP.Net/Components/Documentviewer./Download.aspxnz?Document ID=35211>. A decision by the IPC to release the information in records 34 to 82 could provide the requester with a "fix" of contact which he may seek to duplicate by reestablishing contact with the affected individuals thereby subjecting them to additional harassment and affecting their mental health if not their physical well being.

In support of its representations on the application of section 20 to the records at issue, the University has included additional documentation, some of which consists of letters and affidavits that address the circumstances of this particular appeal. Although I have reviewed this information closely and have considered it in my analysis, I have withheld the letters and affidavits, due to confidentiality concerns, and I will not refer to their specific contents in this order.

The appellant submits that, as with its arguments with respect to the application of section 14(1)(e), the University has not provided sufficient evidence to show that disclosure of the requested records could reasonably be expected to endanger the health and safety of any individual. He argues that the University's submissions which imply that he poses a threat to the physical safety of the individuals involved in this matter are unfounded, exaggerated and are a result of personal bias and stereotyping.

Analysis and findings on section 20

In Order PO-1940, Adjudicator Laurel Cropley found that section 20 applied to deny records to an appellant who was deemed to be "angry and potentially dangerous" after having engaged in a pattern of abusive and intimidating correspondence with the institution. In that order she stated:

> [I]t is noteworthy to add (in response to the appellant's assertions that he would not physically attack anyone) that a threat to safety as contemplated by section 20 is not restricted to an "actual" physical attack. Where an individual's behaviour is such that the recipient reasonably perceives it as a "threat" to his or her safety, the requirements of this section have been satisfied. As the Court of Appeal found in *Ontario (Ministry of Labour)*:
>
>> It is difficult, if not impossible, to establish as a matter of probabilities that a person's life or safety will be endangered by the release of a potentially inflammatory record. Where there is a reasonable basis for believing that a person's safety will be endangered by disclosing a record, the holder of that record properly invokes [sections] 14(1)(e) or 20 to refuse disclosure.

I agree with the reasoning of Adjudicator Cropley and the Court of Appeal in *Ontario (Ministry of Labour)* cited above, and find it applicable to the current appeal.

In the current appeal, based on the representations submitted by the University and the affected parties, as well as on a review of the records themselves, I accept that the appellant has engaged in persistent and harassing behaviour towards the affected parties. As noted above, although there is no evidence before me that the appellant has been physically violent towards the affected parties or any other individuals, from their confidential representations, it is clear that the affected parties perceive that disclosure of this information could reasonably be expected to seriously threaten their health or safety. Based on their representations, coupled with the evidence provided to me by the University in its representations, including the confidential attachments, I am satisfied that there exists a reasonable basis for believing that the disclosure of the information at issue in this appeal could reasonably be expected to seriously threaten the health or safety of the individuals named in the records. I find that the evidence provided by these parties in support of this contention demonstrates that the threat to health or safety is not "frivolous or exaggerated" in accordance with the guidance provided by the Ontario Court of Appeal in the *Ontario (Ministry of Labour)* decision referred to above. As a result, I find that the requirements of section 20 have been met and the information at issue qualifies for exemption under section 49(a) read in conjunction with section 20.

As I have found that the information at issue is exempt under section 49(a), it is not necessary for me to determine whether it is also exempt under section 49(b). However, for the sake of completeness, I will continue my analysis to determine whether section 49(b) applies.

PERSONAL PRIVACY

Previous orders have established that if a record contains the personal information of individuals other than the appellant, but does not contain the appellant's personal information, a decision regarding access must be made in accordance with the exemption at section 21(1) of Part II of the *Act* [Orders M-352 and MO-1757-I]. However, in circumstances where a record contains both the personal information of the appellant and another individual, the request falls under Part III of the *Act* and the relevant personal privacy exemption is the exemption at section 49(b). The invasion of privacy exemption is mandatory at section 21(1) under Part II but discretionary under Part III at section 49(b). Thus, in the latter case an institution may disclose information that it could not disclose if Part II is applied [Order MO-1757-I].

Under section 49(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would constitute an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester.

If the information falls within the scope of section 49(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the requester's right of access to his or her own personal information against the other individual's right to protection of their privacy. I will address the balancing of these rights in my discussion on the University's discretion below.

Sections 21(2) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold under section 49(b) is met.

If any of paragraphs (a) to (c) of section 21(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 49(b). In the circumstances of this appeal, none of the paragraphs of section 21(4) are applicable.

If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 49(b). The University claims that the presumption in paragraph (b) of section 21(3) applies to the all of the personal information of individuals named in the records at issue in this appeal. Section 21(3)(b) provides:

> A disclosure of personal information is presumed to constitute and unjustified invasion of personal privacy where the personal information,
>
>> was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that the disclosure is necessary to prosecute the violation or to continue the investigation.

The University submits:

> The information contained in records 1 through 32 was compiled by Campus Security as part of its investigation into a possible violation of the law. The records contain information relating to concerns about personal safety brought to the attention of Campus Security by the women in question; the concerns were based on the requester's unlawful harassing activities. Records 34 through 83 contain information about the harassing activities of the requester disclosed to a Human Rights advisor. These records form part of an investigation into a possible violation of the law since they formed the basis of the decision of the advisor to send the two complainants to the Kingston police.

The appellant submits that the Kingston Police are not conducting an ongoing investigation and that Queen's Security concluded their investigation due to a lack of evidence.

Analysis and findings

Even though no criminal proceedings were commenced against the appellant, section 21(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law [Order P-242]. Additionally, there is nothing in section 21(3)(b) that indicates that the presumption applies only while a law enforcement investigation is ongoing, because it concerns a "possible" violation of law. [Order M-389].

I have carefully reviewed all of the information at issue and find that the personal information was compiled and is identifiable as part of an investigation into a possible violation of the *Criminal Code* by Queen's Campus Security. Accordingly, I find that the presumption in section 21(3)(b) applies, and disclosure of the all of the information at issue is presumed to be an unjustified invasion of the personal privacy of individuals other than the appellant who are referenced in the records. This presumed unjustified invasion of personal privacy only be overcome if section 21(4) or the "public interest override" at section 23 applies [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. Section 21(4) is inapplicable in the circumstances of this appeal. The appellant has not raised the application of the public interest override in section 23, and I find that it does not apply as the appellant's interest is a private one rather than public.

As section 21(3)(b) applies, disclosure is presumed to be an unjustified invasion of personal privacy, and the records and portions of records at issue are exempt from disclosure under section 49(b). I will, however, consider below whether the absurd result principle applies to the records or portions of records that contain both the personal information of the appellant and other identifiable individuals and also whether the University exercised its discretion in a proper manner.

Absurd result

Where the requester originally supplied the information or the requester is otherwise aware of it, the information may be found not exempt under section 49(b), because to find otherwise would be absurd and inconsistent with the purpose of the exemption [Orders M-444, MO-1323].

The absurd result principle has been applied where, for example:

- the requester sought access to his or her own witness statement [Orders M-444, M-451]

- the requester was present when the information was provided to the institution [Orders M-444, P-1414]

- the information is clearly within the requester's knowledge [Orders MO-1196, PO-1679, MO-1755]

If disclosure is inconsistent with the purpose of the exemption, the absurd result principal may not apply, even if the information was supplied by the requester or is within the requester's knowledge [Orders M-757, MO-1323, MO-1378].

The appellant submits that the absurd result principle applies to all emails that he allegedly sent to the University. The appellant's position on this issue appears to result from the fact that under the "General Description" heading on the index of records some of the records are described as "email from requester".

Analysis and findings

Although much of the information at issue in this appeal is within the appellant's knowledge (including descriptions of incidents in which he was involved or, even, emails that he drafted), in the particular circumstances of this appeal I find that the absurd result principle does not apply.

Previous orders of this office have acknowledged that there are circumstances were the absurd result principle can be found not to apply even where the information at issue may be within the appellant's knowledge. In Order MO-1524-I, Adjudicator Laurel Cropley stated:

> The privacy rights of individuals other than the appellant are without question of fundamental importance. One of the primary purposes of the *Act* (as set out in section 1(b)) is to protect the privacy of individuals. Indeed, there are circumstances, where, because of the sensitivity of the information, a decision is made not to apply the absurd result principle (see, for example, Order PO-1759). In other cases, after careful consideration of all of the circumstances, a decision is made that there is an insufficient basis for the application of the principle (see, for example, Orders MO-1323 and MO-1449). In these situations, the privacy rights

> of individuals other than the requester weighed against the application of the absurd result principle.

In Order PO-2440, Adjudicator Frank DeVries applied the type of reasoning enunciated by Adjudicator Cropley in MO-1524-I and stated:

> I have carefully reviewed the circumstances of this appeal, including the specific records at issue, the background to the creation of the records, the unusual circumstances of this appeal, and the nature of the allegations brought against the police officer and others. I also note that the Ministry has, in the course of this appeal disclosed certain records to the appellant. I find that, in these circumstances, there is particular sensitivity inherent in the personal information contained in the records, and that disclosure would not be consistent with the fundamental purpose of the *Act* identified by Senior Adjudicator David Goodis in Order MO-1378 (name, the protection of privacy of individuals, and the particular sensitivity inherent in the records compiled in a law enforcement context). Accordingly, the absurd result principle does not apply in this appeal.

I adopt the reasoning enunciated by both Adjudicators DeVries and Cropley in their respective orders and find it relevant for the purposes of this appeal.

In the circumstances of the appeal before me, none of the information at issue was supplied to the University by the appellant and, other than the general descriptions of the records detailed on the index of records, he is not aware of the specific information contained in the records held by the University. Taking into consideration the sensitive nature of the information at issue and the reason why the records themselves were created and collected by the University, in my view, a compelling reason exists for not applying the absurd result principle. I find that disclosure of the information, including the appellant's own information (which is intermingled with that of other individuals), would be inconsistent with the purpose of the exemption. In this case, the purpose of the exemption at section 49(b), read in conjunction with section 21(3)(b), which is to prevent an unjustified invasion of privacy in relation to an investigation into a possible violation of law.

Accordingly, I find that the absurd result principle does not apply. Subject to my discussion below on the University's exercise of discretion, I find that all of the records at issue are exempt from disclosure under section 49(b).

EXERCISE OF DISCRETION

I will now determine whether the University exercised its discretion under sections 49(a) and 49(b) in a proper manner. These exemptions are discretionary, and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations

In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 54(2)].

Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant [Orders P-344, MO-1573]:

- the purposes of the *Act*, including the principles that
  - information should be available to the public
  - individuals should have a right of access to their own personal information
  - exemptions from the right of access should be limited and specific
  - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution

- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information

Representations

The University submits that in determining what personal information to release to the appellant, it has balanced his right to access his own personal information against that of the affected parties but that "it was clear to the University that the interests of the affected individuals outweighed those of the requester" for the reasons laid out in its representations.

It submits that:

> [T]he refusal to release this information is not detrimental to the requester and he will not be exposed to pecuniary or other harm. The steps taken by the University had, as their sole focus, the protection of the [affected parties'] learning environment. The requester was not a member of the University community, was not subject to its disciplinary processes, and no proceeding was taken against him, nor were any of his legal rights affected. As noted above, he was not a member of the Queen's community and has no right to be on the campus.

The University states that it provided the affected parties with an opportunity to make representations on the disclosure of the information. It submits that the response provided by all of the affected parties provided the basis for the University's decision to withhold all of the records or portions of the records from the appellant. It submits that no other factors were relevant and none were considered.

Analysis and finding

In determining whether the University has properly exercised its discretion in this appeal, I have considered all of the relevant circumstances, including the sensitive nature of the information at issue and the amount of information that has been disclosed to the appellant. I have also carefully considered the representations of all parties, including the confidential representations of the affected parties.

I am satisfied that the University has exercised its discretion in good faith and has taken appropriate factors into consideration while not considering irrelevant ones. In my view, it has not erred in its decision to withhold the information that remains at issue in the records under the exemption at sections 49(a) and 49(b) of the *Act*. As a result, I will uphold the University's decision not to disclose the information at issue.

SEARCH FOR RESPONSIVE RECORDS

Where a requester claims that additional records exist beyond those identified by the institution, as it the case in this appeal, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24 [Order P-85, P-221, PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624].

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

Representations

The appellant takes the position that the University has not conducted a reasonable search. Specifically, he feels additional records should exist that relate to the issuance of a particular Notice of Prohibition. He refers to a list of records attached to his representations. In this list he submits that "Commissionaires' Logs from Goodes Hall" must exist, that responsive records should have been located in relation to a particular file number, and that additionally entries for two particular security logs must exist. The list also refers to records which he believes are not the "original records made in response to actions taken by Queen's University Security" and he submits that the information from those original records has been "copied to a new file or system". The appellant also identifies "Security Log 2444, as cited but not released". However, I note that Security Log 2444 has been partially disclosed to the appellant as Record 26. The remaining portions of the list appear to reference records to which he has already been granted partial access but wishes that the severed portions be disclosed to him.

The University submits that the initial search for responsive records was conducted by three individuals: the Director of the Human Rights Office, an Assistant at the Access and Privacy Office, and the Director of Campus Security. The University has provided affidavits from all three of these individuals that detail their respective searches, including information such as how records are kept in the affiant's respective offices and the steps taken to ensure that all responsive records were located.

The Director of the Human Rights Office submits:

> There is no reason to believe that there would be any other information regarding this request. We keep only single copies of files and even when more than one Advisor has handled an issue, we would consolidate or cross reference the files.

> No client information is kept anywhere else in the Office and as mentioned above, we keep no electronic records on client files.

The University submits that after receiving the Mediator's Report and learning that the appellant still maintained that there were additional records, additional searches were conducted in the Office of the University Registrar by the Assistant to the Registrar and in the School of Business by the Director of the Dean's Office. Affidavits detailing these searches were also provided.

The University states that all individuals who conducted the searches have been trained to be responsible for access and privacy issues in their faculty, school or department.

Analysis and finding

As set out above, the issue to be decided is whether the University has conducted a reasonable search for responsive records as required by section 24 of the *Act*. The *Act* does not require the University to prove with absolute certainty that further records do not exist. However, the University must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records within its custody or control [Order P-624]. Previous orders have established that a reasonable search is one in which an experienced employee, expending reasonable effort, conducts a search to identify any records that are reasonable related to the request [Order M-909].

As set out above, although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that additional records might exist.

The University has provided a comprehensive description of the steps it undertook to locate responsive records, including detailed affidavits sworn by five experienced employees who conducted the searches in support of its position. In my view, based on the evidence that it has provided, the University has adequately discharged its responsibilities under section 24 of the *Act* and has made a reasonable effort to identify and locate records responsive to the appellant's request.

Although the appellant's representations refer to records that he believes exist, in my view, he has not provided me with a reasonable basis to conclude that, despite the University's numerous searches, these records might exist.

Accordingly, having considered the submissions of both the University and the appellant, and having considered the circumstances of this appeal, I am satisfied that the University's search for records responsive to the request was reasonable. Therefore, I uphold the University's search.

ORDER:

1. I uphold the University's decision to deny access to the records and portions of records at issue in this appeal.

2. I uphold the University's search for responsive records.

3. I dismiss the appeal.

Original Signed By: February 14, 2008
Catherine Corban
Adjudicator