



**Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER PO-2992

Appeal PA09-300

York University



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NATURE OF THE APPEAL:

York University (the university) received a two-part request under the *Freedom of Information and Protection of Privacy Act* (the *Act* or *FIPPA*) for access to certain information. The university assigned request number 2009-10 to the first part of the request and request number 2009-11 to the second part of the request. This appeal deals with the first part of the request (number 2009-10) for access to information pertaining to communications between employees of the university and certain identified individuals (including a named Member of Provincial Parliament (MPP)), as well as all other MPPs and Federal Members of Parliament (MPs), since February 1, 2009. This part of the request stated:

Specifically, the search should include records of communications with: [the names of seven individuals]; any/all staff members who work in the office of the President, and staff members who work in the office of the Vice-President Students directly with the vice-president and/or on human resources and employee relations.

The requester acknowledged that some of the listed individuals might be students of the university and clarified that “[i]n order to respect their privacy and for the sake of expediting your response to this request, please note that I am not seeking records of academic, medical or other personal information the university might hold.”

In response, the university issued a fee estimate for locating responsive records and preparing them for disclosure, requiring a deposit of one-half the fee before processing the request. The university then notified a number of persons whose interests may be affected by disclosure under section 28(1) of the *Act* to obtain their position on access to the requested information. The university then issued its first decision letter.

In the decision letter, the university confirmed the requester’s further clarification that he did not want the university to exhaustively search for correspondence with all MP’s and MPP’s. Rather, that he wanted to have the university provide the results of a preliminary search on the topic of a certain student election only and he would then decide whether to ask the university to conduct a broader search. The university granted partial access to the responsive records, relying on sections 17(1) (third party information) and 21(1) (invasion of privacy) of the *Act* to deny access to the portion it withheld. The letter provided that if the affected parties “do not appeal and request a review” of its decision, the non-withheld portion of the responsive records would be disclosed to the requester.

The university simultaneously issued its decision letter to the affected parties regarding its access determination. With respect to the affected party whose information remains at issue in this appeal, the letter advised that in the university’s opinion:

... only the disclosure of your student number, telephone number and non-York University email address would constitute an unjustified invasion of your personal privacy. Accordingly, we will sever this information from the records and not disclose it.

This affected party (now the appellant) appealed the university's decision to grant access to certain responsive records pertaining to the appellant. In the appellant's appeal form, the appellant takes the position that the emails at issue are private and privileged between the appellant and the recipient and further that the appellant was never informed that the emails might be disclosed. The appellant also expresses a concern for their physical safety. The appellant further states that withholding the appellant's student number and alternative email address is not sufficient. The appellant takes the position that disclosure of any information would cause significant adverse consequences in the appellant's "student life" at the university.

The university then decided to withhold all the information pertaining to the appellant that it had been initially prepared to disclose.

The appeal could not be resolved at mediation and it was moved to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*.

After mediation had been completed, but before a Notice of Inquiry was prepared, the university issued a supplementary decision letter to the requester accompanied by an index of records. This supplementary decision letter informed the requester that it had further reconsidered its position and was now disclosing certain records in part, or in full, to the requester, upon payment of the balance of the fee due. In addition, the university advised that it was only relying on section 21(1), and not section 17(1), to deny access to any of the withheld information. I agree with the university's position that section 17(1) is not applicable in the circumstances of this appeal.

I then commenced the inquiry by sending a Notice of Inquiry setting out the facts and issues in the appeal to the appellant. Although provided with the opportunity to do so, the appellant did not provide any representations in response to the Notice of Inquiry. I then sent a Notice of Inquiry to the university and the requester. Only the university provided responding representations. In its representations the university clarified it had actually disclosed the responsive portion of an identified record to the requester. Accordingly, access to the information in that record is no longer at issue in the appeal.

RECORDS:

The records at issue in this appeal are email communications listed as Records 14, 16, 23 to 27, 31 and 34 on the index of records.

DISCUSSION:

PRELIMINARY MATTER

Although submissions were made with respect to the severing of personal information of other identifiable individuals, in this order I will only be addressing the personal information pertaining to the appellant that the university decided to disclose.

PERSONAL INFORMATION

Under *FIPPA*, different exemptions may apply depending on whether a record at issue contains or does not contain the personal information of the requester.¹ Where records contain the requester's own personal information, either alone or together with the personal information of other individuals, access to the records is addressed under Part III of *FIPPA* and the exemptions at section 49 may apply. Where the records contain the personal information belonging to individuals other than the requester, access to the records is addressed under Part II of *FIPPA* and the exemptions found at sections 12 to 22 may apply. In order to determine which sections of *FIPPA* apply, it is necessary to decide whether the record contains "personal information" as defined in section 2(1) of *FIPPA* and, if so, to whom it relates.

To satisfy the requirements of the definition in section 2(1) of *FIPPA*, the information must be "recorded information about an identifiable individual," and it must be reasonable to expect that an individual may be identified if the information is disclosed.² The definition of personal information in section 2(1) contemplates inclusion of the following types of information:

- (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 where 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 content of the original correspondence,
- (g) the views or opinions of another individual about the individual, and

¹ Order M-352.

² Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

- (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) of the definition of the term in section 2(1) may still qualify as personal information.³

On April 1, 2007, amendments relating to the definition of personal information in *FIPPA* came into effect. To some extent, the amendments formalized the distinction made in previous orders between personal and professional (or business) information for the purposes of *FIPPA*. Sections 2(3) and (4) state:

(3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

However, it remains true that 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.⁴

In its representations, including those on the application of the factors at section 21(2) of *FIPPA*, the university submits that the records concern the appellant's activities in monitoring the ballot process with regards to a student election, "which was a public event."

The university submits, however, that the records remaining at issue contain the appellant's personal information. The university explains:

Of particular note, the records contain the [a]ppellant's student number (which is an identifying number assigned to the individual as defined in section 2(1)(c)), a personal telephone number, and non-York University email address (which are an address and telephone number as defined in section 2(1)(d)). The [a]ppellant's "@yorku.ca" email address was, at the time of the request, publicly available on the York University website, and thus was not deemed to be personal information as defined in section 2(1)(d). All personal information of the [a]ppellant where the disclosure was deemed to be an invasion of the [a]ppellant's personal privacy was severed, and York University intends not to disclose this personal information of the [a]ppellant to the requester.

³ Order 11.

⁴ Orders P-1409, R-980015, PO-2225 and PO-2435.

I have reviewed and considered the records, the university's submissions and the appellant's position as reflected in her appeal form. I find that at the time that the records at issue in this appeal were generated the appellant was acting in an official capacity in the context of a student election. There is no evidence before me that there is any complaint or concern about the appellant's conduct in that regard. Accordingly, with certain limited exceptions, the content of the emails at issue relate entirely to the appellant in an official capacity and not the appellant's personal capacity.

That said, I am satisfied that the appellant's student number, personal telephone number and non-university email address qualify as the appellant's personal information within the scope of the definition of personal information set out at section 2(1) of the *Act*.

In addition, although utilized in an official capacity in the creation of some of the records at issue, the appellant's student email address does potentially have a personal component. There is no evidence before me that the appellant's university email address continued to be used in an official capacity after her role in the student election was over. I infer, in the absence of evidence to the contrary, that the appellant returned to the status of a student thereafter and uses the email as a student. In my view, therefore, disclosing her current student email address, which contains her name and reveals that she attends the university, discloses something of a personal nature about her. That said, as the requester does not seek access to the appellant's personal information, it can easily be severed from the records remaining at issue.

In my view, once all of this information is severed from Records 14, 16, 23, 25, 26, 27, 31 and 34 the remainder of the information in those records does not qualify as the personal information of the appellant.

I will now consider Record 24. In my view, in addition to the appellant's university email address (which is addressed above) a certain portion of Record 24 qualifies as the personal information of the appellant. Although the information appears in a record relating to the conduct of the student election, it simply reflects the appellant's state of mind at a particular time, thereby revealing something of a personal nature about the appellant. Accordingly, in my view, this information, which I have highlighted on a copy of Record 24 provided to the university along with a copy of this order, falls within the scope of the definition of personal information set out at section 2(1) of the *Act*. As the requester is not seeking any personal information in the records, this too can be severed. After this information is severed, and the appellant's university email address is removed, the balance of the record does not contain any of the appellant's personal information. Accordingly, in addition to withholding the appellant's university email address, I will allow the appeal with respect to the withholding of the highlighted portion of Record 24 on a copy of the record provided to the university along with this order.

As set out above, this order only addresses the personal information pertaining to the appellant that the university decided to disclose. After the above-indicated severances are made, I find that no personal information of the appellant remains. Because section 21(1) only applies to personal information, the remaining information that pertains to the appellant is not exempt under that section. Accordingly, it is not necessary to conduct any further analysis with respect to the balance of the information pertaining to the appellant in the records.

ORDER:

1. This order only addresses the personal information pertaining to the appellant that the university decided to disclose. In all other respects, the university's decision to withhold or disclose information was not before me in this appeal.
2. Of the information pertaining to the appellant that the university decided to disclose, I uphold the appellant's appeal only with respect to withholding the appellant's university email address and the portion of Record 24 that I have highlighted on a copy of the record provided to the university with this order. I order the university not to disclose this information to the requester.
3. For greater certainty, the university is not to disclose either:
 - a. Personal information pertaining to the appellant that it decided to withhold or,
 - b. Personal information pertaining to the appellant that I ordered it not to disclose in order provision 2, above.
4. I reserve the right to require the university to provide me with a copy of the records that it discloses to the requester in accordance with the terms of this order. The university should not release any information to the requester pursuant to this order before **September 23, 2011**.

Original signed by: _____
Steven Faughnan
Adjudicator

August 26, 2011