

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

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## ORDER PO-3008

Appeal PA10-220

University of Ottawa

October 31, 2011

**Summary:** The appellant sought access to all records about a named individual located in the university president's office. The university denied access to portions of the responsive records under the personal privacy exemption in section 21(1). The appellant also claimed that the university had not conducted a reasonable search for responsive records. This order upholds the university's decision and dismisses the appeal.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as am., ss. 2(1) (definition of personal information), 21(1), 24.

**Orders and Investigation Reports Considered:** MO-2264.

### OVERVIEW:

[1] The University of Ottawa (the university) received a request pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*). The request was for the following:

All records about [a named individual] in [the] President[']s office, including and not limited to records accessible on his Blackberry.

The request covers the period January 1, 2010 to present.

[2] The university located the responsive records and issued a decision letter granting partial access to the records citing the personal privacy exemption at section 21 of the *Act*.

[3] The requester, now the appellant, appealed the university's decision to deny him access to portions of the records. The appellant also contended that the university's search for responsive records was not complete.

[4] During mediation, the appellant advised the mediator that he wished to pursue access to the section 21 severances relating to Records 34, 36, 53, 54, 95, 96 and 111. The appellant also confirmed that he wished to pursue the matter of the university's search, as he believes that there was a letter sent from the Canadian Association of University Teachers (CAUT) to the university's provost that would have been forwarded and commented on by the university's president and senior administrators.

[5] The appeal was not resolved at mediation and the file was referred to adjudication, where an adjudicator conducts an inquiry. During my inquiry into this appeal, I sought and received representations from the university, the appellant and the affected person. Representations were shared in accordance with section 7 of this office's *Code of Procedure and Practice Direction 7*.

[6] In this order, I uphold the university's decision to withhold the information at issue in the records and also uphold its search for responsive records.

## **RECORDS:**

[7] The records remaining at issue are emails and are identified as:

- Records 34, 36, 53, 54, 95, 96 and 111.

## **ISSUES:**

- A. Did the university conduct a reasonable search?
- B. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- C. Does the mandatory exemption at section 21(1) apply to the information at issue?

## **DISCUSSION:**

### **A. Did the university conduct a reasonable search?**

[8] The appellant's position is that the university's search should have yielded the following records:

- letter from CAUT to the university's provost; and
- records in which the university's president and the university's senior administrators comment on the letter from CAUT to the university's provost.

[9] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24 [Orders P-85, P-221 and 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.

[10] 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 [Orders P-624 and PO-2559]. To be responsive, a record must be "reasonably related" to the request [Order PO-2554].

[11] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request [Orders M-909, PO-2469, PO-2592].

[12] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control [Order MO-2185].

[13] 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 [Order MO-2246].

[14] The university was required to provide a written summary of all steps taken in response to the request. In particular, it was asked:

1. Did the institution contact the requester for additional clarification of the request? If so, please provide details including a summary of any further information the requester provided.
2. If the institution did not contact the requester to clarify the request, did it:
  - (a) choose to respond literally to the request?
  - (b) choose to define the scope of the request unilaterally? If so, did the institution outline the limits of the scope of the request to the requester? If yes, for what reasons was the scope of the request defined this way? When and how did the institution inform the requester of this decision? Did the institution explain to the requester why it was narrowing the scope of the request?
3. Please provide details of any searches carried out including: by whom were they conducted, what places were searched, who was contacted in the course of the search, what types of files were searched and finally, what were the results of the searches? Please include details of any searches carried out to respond to the request.
4. Is it possible that such records existed but no longer exist? If so please provide details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.

[15] The university submits that a search was conducted searching for electronic emails stored in the president's Microsoft outlook inbox as well as paper records stored in the his office. This search was conducted by the president's special assistant, who is an experienced employee familiar with the filing systems within the president's office.

[16] The university states that it is aware of one letter from CAUT to the Vice President Academic and Provost dated March 22, 2010, a copy of which was made publicly available by CAUT on its website. The University submits that this CAUT letter was not addressed to the president; therefore, it was not located during the search of the president's office for records responsive to the request. Consequently, there are no records related to the senior administrators commenting on this letter from CAUT in the president's office in the time-frame requested by the appellant.

[17] The appellant did not provide representations concerning the university's search for responsive records.

### **Analysis/Findings**

[18] Based upon my review of the university's representations, I find that it has conducted a reasonable search for responsive records. I find that the appellant has not provided a reasonable basis for me to find that either a letter from CAUT to the university's provost or records in which the university's president and the university's senior administrators comment on this letter exist.

[19] Accordingly, as the university has provided sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records at issue within its custody or control, I uphold its search for records.

### **B. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?**

[20] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "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;

[21] 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].

[22] Sections 2(2), (3) and (4) also relate to the definition of personal information. These sections state:

(2) Personal information does not include information about an individual who has been dead for more than thirty years.

(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.

[23] 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 and PO-2225]. 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 and MO-2344].

[24] 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.)].

[25] The university submits that the severed portions of the records contain personal information about identifiable individuals other than the appellant including these individuals' email addresses and other contact information, personal opinions and views. The information at issue also includes unsolicited comments which were written to the president in a personal capacity.

[26] The appellant did not provide representations as to whether the records contain personal information.

### **Analysis/Findings**

[27] Based upon my review of the information at issue, I agree with the university that it consists of personal information of identifiable individuals other than the appellant, including the personal information of the affected person. This information consists of these individuals' personal email and home addresses, telephone numbers, personal opinions or views that do not relate to another individual, and names that appear with other personal information relating to these individuals in accordance with paragraphs (d), (e) and (h) of the definition of "personal information" in section 2(1) of the *Act* (see also Order MO-2264).

### **C. Does the mandatory personal privacy exemption at section 21(1) apply to the information at issue?**

[28] The university submits that disclosure of the information at issue in the records would constitute an unjustified invasion of the personal privacy of the identifiable individuals in the records, including the information related to the affected person. The affected person also objected in his representations to the disclosure of both his and other identifiable individuals' personal information in the records.

[29] Where a requester seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies.

[30] The only exception which may apply in the present appeal is that set out in section 21(1)(f), which reads:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

[31] In order to establish that section 21(1)(f) applies, it must be shown that disclosure of the personal information would not constitute an unjustified invasion of the personal privacy of the identifiable individuals in the records.

[32] The factors and presumptions in sections 21(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 21(1)(f). If any of paragraphs (a) to (d) of section 21(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 21. Section 21(4) does not apply in this appeal.

[33] 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 21. In this appeal, the presumptions in section 21(3) do not apply. As section 21(3) does not apply, section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy [Order P-239]. The list of factors under section 21(2) is not exhaustive.

[34] In the absence of representations from the appellant and based upon my review of the information at issue in the records, I find that none of the considerations favouring disclosure in section 21(2), listed or otherwise, are relevant in the circumstances of this appeal.

[35] As identified above, in order to establish that section 21(1)(f) applies, it must be shown that disclosure of the personal information would not constitute an unjustified invasion of personal privacy. Since no factors favouring the release of the personal information in the records apply, I find that disclosure of the information at issue in the records would constitute an unjustified invasion of the personal privacy of the identifiable individuals in the records. Therefore, the information at issue in the records is exempt under the mandatory personal privacy exemption in section 21(1) of the *Act*.

**ORDER:**

I uphold the university's decision and dismiss the appeal.

Original Signed By: \_\_\_\_\_

Diane Smith  
Adjudicator

October 31, 2011