Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3043

Appeal PA11-501

University of Ottawa

January 25, 2012

Summary: An individual submitted a request for records related to communications between the president of the university and the individual who was hired as the president's Chief of Staff. The university declined to process the request as submitted, taking the position that it required clarification. Having concluded that the appellant was refusing to clarify the request, the university closed the request file and refunded the fee. Upon appeal to this office, and an unsuccessful effort to reach a mediated resolution, the adjudicator found that in closing the request file, the university failed to meet its statutory obligations under sections 26 and 29 of the *Act*. The university is ordered to issue an access decision in response to the request.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 24(1)(b), 24(2), 26-29.

Orders and Investigation Reports Considered: Orders P-260, and MO-2116.

BACKGROUND:

[1] On September 19, 2011, the appellant submitted an access request to the University of Ottawa (the university) that stated:

> By virtue of the *Freedom of Information and Protection of Privacy Act* of Ontario, I hereby request the following records:

> All records:
>
> 1) Sent by [the university President] and received by [an identified individual]
> 2) Sent by [the identified individual] and received by the [university President]
>
> The respondent period is from six months prior to [the identified individual's] hiring as [the university President's] Chief of Staff to present.
>
> Please contact me if you need any clarifications about my request. As always for my requests, please provide the respondent records on CD to avoid paper cost.

[2] On September 22, 2011, the university wrote to the appellant, stating that the request was too broad to permit the identification of responsive records. The university asked the appellant to specify the subject matter and key words so that the request could be processed. The university also advised the appellant that:

> Depending on the clarification you give us, we may be obliged to extend the 30-day response period provided by the [*Act*].
>
> We would be pleased to answer any questions or assist you in clarifying or reformulating your request. … If we do not hear from you within 30 days of this letter's date, we will close your file.

[3] On September 29, 2011, the appellant sent an email to the university, stating that he considered his request to be "clear and unambiguous." The appellant requested that the university:

> … process my clear and unambiguous request immediately, otherwise I will file you in deemed refusal on October 19, 2011. October 19 is your thirty day deadline from the date of my request.

[4] The university subsequently sent the appellant a letter on October 17, 2011 advising him that it could not process his request as submitted. The university indicated that as a consequence of his "refusal to provide clarification", it was closing the file and returning the request fee.

[5] Upon receipt of the university's October 17, 2011 letter, the appellant sent another email to the university on October 20 regarding the decision to close his request file. In the email, the appellant referred to sections 24(1)(b) and 24(2) of the *Act* and maintained that he had already provided sufficient detail to process the request. The appellant also wrote:

> I ask that you reconsider your position and provide me with the requested email records.
>
> As I stated in response to your September 22 letter … my request was clear and unambiguous. The search would require only retrieving all records sent from [the university's President] to [his Chief of Staff] and vice-versa. Identifying the responsive email records would be a quick and simple task given the efficiency of e-mail search tools. In fact, were I to provide "a specific subject matter and … key-words" as you requested in your September 22 letter, that would only lengthen the search time for responsive records in this case.
>
> Whether or not you will have a large number of records to review for disclosure following the search for all e-mail records sent between [the two identified individuals] is a separate matter and is not the question at issue in your refusal of my request.

[6] On October 26, 2011, the appellant sent an email asking whether the university would be responding to his email of October 20. The university responded by advising the appellant that he could appeal its decision of October 17, 2011 (to close the appeal file) by contacting the Commissioner's office. On November 2, this office received the appellant's appeal.

[7] The mediator appointed to explore resolution of the appeal confirmed with the appellant that he seeks email records relating to "all matters" passing between the two identified individuals, where one of the identified individuals was the author and the other was either the primary recipient or had been copied on the email. The mediator conveyed this information to the university, but the university declined to change its position. Accordingly, the appeal was transferred to the adjudication stage of the appeal process, where it was assigned to me to conduct an inquiry.

[8] I sent a Notice of Inquiry to the university, initially, to outline the issue and to seek representations. I received a brief response to the Notice of Inquiry in which the university stated only that it "does not have additional factors to raise." I am therefore issuing this order, without seeking representations from the appellant, to deal with the completion of the appellant's request by the university.

DISCUSSION:

WAS THE UNIVERSITY'S RESPONSE TO THIS REQUEST ADEQUATE?

[9] As stated, the correspondence from the university that I received on January 23, 2012 was provided in response to the December 30, 2011 Notice of Inquiry. In that document, I stated:

> Based on my review of the file, I have formed the preliminary opinion that the request submitted by the appellant known as A11-44 is sufficiently detailed for the purpose of section 24(1) of the *Act,* and that the university ought to have processed it accordingly, rather than closing the file and returning the request fee.
>
> Specifically, in my view, it appears that the requester is seeking access to all emails exchanged between [the two identified individuals] for the period starting six months prior to the latter individual's hiring as [the university President's] Chief of Staff up to, and including, September 19, 2011.
>
> I am offering the university an opportunity to provide representations in response to my preliminary opinion, set out above, and with reference to the relevant portions of the following issue outline.

[10] Next, I set out the provisions of section 24 of the *Freedom of Information and Protection of Privacy Act* (the *Act*) and associated principles developed in past orders of this office. Specifically, I noted that section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section of the Notice of Inquiry stated:

> 24(1) A person seeking access to a record shall,
>
> (a) make a request in writing to the institution that the person believes has custody or control of the record;
>
> (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;
> . . .
>
> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).
>
> Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, any ambiguity in the request should be resolved in the requester's favour [Orders P-134 and P-880].
>
> To be considered responsive to the request, records must "reasonably relate" to the request [Orders P-880 and PO-2661].

> Did the request provide sufficient detail to identify the records responsive to the request?
>
> What is the scope of the request and what records or portions of records may be responsive to the request?
>
> Please explain the university's decision, based on its view that the request did not sufficiently describe the records sought, to close the request file [emphasis in original].

[11] As indicated previously, the university advised that it has nothing further to add in response to the outline of the issue, and questions posed, in the Notice of Inquiry.

Analysis and findings

[12] In the December 30, 2011 Notice of Inquiry sent to the university, I stated that I had formed the preliminary opinion that the appellant's request is sufficiently detailed for the purpose of section 24(1) of the *Act*. I also expressed the view that the university ought to have processed the request, rather than closing the file and returning the fee paid by the appellant.

[13] The university did not provide any explanation in response to the Notice of Inquiry that would assist me in understanding why it chose to respond to the appellant's request in the manner it did.

[14] Moreover, based on my consideration of the appellant's request, I am satisfied that it concisely and clearly conveys the subject matter of his interest. I note that the appellant stated (in an October 20, 2011 email), and the mediator clarified, that the appellant sought access only to *email* records.

[15] With reference to section 24(1)(b) of the *Act*, I find that no further information or clarification ought to have been required to enable an experienced employee of the university to identify the records, even though the request may be broad in scope. Additionally, even if the request is broad in scope, I conclude that the request did not require reformulation in order to comply with section 24(1) (Order P-260).

[16] In fact, I tend to agree with the appellant that "… Identifying the responsive email records would be a [relatively] quick and simple task given the efficiency of e-mail search tools." I also agree that the volume of records the university might identify and be required to review for disclosure following the search for responsive records is a separate matter that could be addressed by section 27(1)(a) of the *Act*.

[17] I appreciate that the university may initially have approached the issue of clarification with the appellant in an attempt to provide him with an indication of the anticipated breadth of the request's scope. Indeed, clarification of the scope of a request and a requester's specific areas of interest are key aspects of the access procedure outlined in sections 24 to 30 of the *Act*. In Order P-260, former Assistant Commissioner Tom Mitchinson concluded that the institution in that appeal was not obliged under section 24(2) of the *Act* to contact that particular requester for clarification. The former Assistant Commissioner cautioned that his comments ought not:

> … to be interpreted as discouraging institutions from contacting requesters during the course of responding to a request, if it is felt that the requester may not be aware of the scope of the request and the corresponding fee implications. On the contrary, co-operation and dialogue between the institution and the requester at this stage can only assist in ensuring that the requirements of the requester are being addressed.[1]

[18] In this appeal, however, it is clear that from the very beginning, the university had obligations with respect to responding to the appellant's request that it did not meet. The process for responding to access requests is set out in considerable detail in the *Act*, as well as in various guidelines established and circulated to institutions, including the university, by this office.

[19] More specifically, the time limits and the procedures prescribed by the *Act* for providing access decisions to requesters, and notifying affected parties, are set out in sections 26, 27 and 28. Once an institution has received a request, and clarified it as required, section 26 of the *Act* prescribes a 30-day time limit in which the institution must respond to the request. Section 26 states:

> Where a person requests access to a record, the head of the institution to which the request is made or if a request is forwarded or transferred under section 25, the head of the institution to which it is forwarded or transferred, **shall**, subject to sections 27, 28 and 57, within thirty days after the request is received,
>
> (a) give written notice to the person who made the request as to whether or not access to the record or a part of it will be given; and

[1] At page 18 of Order P-260 (Ministry of Treasury and Economics).

> (b) if access is to be given, give the person who made the request access to the record or part, and if necessary for the purpose cause the record to be produced [emphasis added].

[20] Section 27(1) of the *Act* allows an institution to extend the 30-day time limit for responding to a request in certain circumstances, including ones that may have been anticipated in this matter. Above, I referred to section 27(1)(a), which states:

> A head may extend the time limit set out in section 19 for a period of time that is reasonable in the circumstances, if,
>
> (a) the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution; …

[21] Section 27(2) addresses notice requirements for extensions. Indeed, from the university's first letter to the appellant, dated September 22, 2011, it is clear that the university was aware of the time extension provisions in section 27.

[22] Section 28 describes in detail the process to be followed by an institution in circumstances where disclosure may engage the interests of affected persons. Finally, where an institution refuses access to a record under section 26, section 29 outlines the contents of a notice of refusal. Finally, section 57(3) requires an institution to give the requester a "reasonable estimate" of the fee that will have to be paid (if it is over $25) before giving access to the record(s).[2]

[23] As described, there were a number of options available to the university in responding to the appellant's request. However, simply closing his file - based on the seemingly erroneous belief that it required clarification and that the appellant would not provide it - was not one of them. In the circumstances, I find that the actions taken in response to the appellant's request were not in accordance with the university's statutory obligations under sections 26 and 29 of the *Act*.

[24] Accordingly, I will be ordering the university to issue an access decision to the appellant in response to his request. This order is to be taken to confirm the interpretation of the appellant's request, which will serve to guide the university in processing the request in accordance with the *Act.*

[25] I find that the appellant's request clearly contemplates the identification of **all email records exchanged between the two identified individuals** – the university President and his current Chief of Staff - in the role of sender and recipient (either in the "To" or "CC" lines) **for the time period represented by six months**

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[2] For an in-depth discussion of this office's approach to the issue of time extensions and interim access decisions, see Order PO-2634 (Ministry of Natural Resources).

prior to the specified individual's hiring as the university President's Chief of Staff to the date the request was originally received (September 19, 2011).

[26] In determining the appropriate remedy in this appeal, I am mindful that the individuals identified in this request may have an interest in its outcome, and that their interests may, therefore, be engaged under section 28 of the *Act*. While I acknowledge that the timing specified below essentially returns the parties to the starting point of the process, which may be frustrating for the appellant, it offers the most appropriate remedy in the circumstances.

ORDER:

1. I order the university to process the request and issue a proper decision letter in compliance with its statutory obligations under section 26, 28 and 29 of the *Act*, treating the date of this order as the date the request was received.

2. In order to verify compliance with this order, I order the university to provide me with a copy of the decision letter issued pursuant to provision 1.

Original Signed By: January 25, 2012
Daphne Loukidelis
Adjudicator