

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3628

Appeal PA14-310

York University

July 6, 2016

Summary: The appellant made a request for records relating to successful petitions for late withdrawal from university courses made by students in three specified faculties during the 2012-2013 academic year. He sought, in particular, student petition letters setting out the students' reasons for seeking late withdrawal, and records of deliberations of the three faculties in relation to granted petitions. The university denied access to the student petition letters, in full, on the basis of section 21(1) (personal privacy) of the *Act*. The appellant appealed the university's denial of access to the petition letters and its search for records of faculty deliberations. In this order, the adjudicator finds that the students' personal information in the petition letters is subject to the presumption against disclosure at section 21(3)(d) (educational history) and that the letters are exempt, in full, under section 21(1). She also upholds the university's search for records. The appeal is dismissed.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 2 (definition of "personal information"), 21(1), 21(2), 21(3)(d), 24.

OVERVIEW:

[1] The appellant, the father of a student at York University (the university), asked the university for general data on student petitions to withdraw from university courses past the published deadline. The university referred the appellant to petition statistics on its website, and also compiled for the appellant the number of petitions that had been granted, which does not appear on its website.

[2] The appellant then made a request to the university under the *Freedom of*

Information and Protection of Privacy Act (the *Act*) for information relating to a petition and subsequent appeals filed by his son in relation to his son's request for late withdrawal from a university course. The appellant also requested general information about student petitions for late withdrawals in three specified faculties that the university had granted in the 2012-2013 academic year.

[3] After requesting and receiving the signed consent of the appellant's son to disclose his personal information to his father, the university granted the appellant partial access to records about his son's petition and appeals. The appellant did not appeal this decision.

[4] The second part of the appellant's request, seeking information about other students' successful petition applications, gave rise to a number of access decisions.

[5] In its first access decision, the university granted partial access to 118 "faculty decision letters"—letters from faculty to students granting the students' petitions for late withdrawal. Some information in the records was withheld on the basis of the mandatory exemption at section 21(1) (personal privacy), with reference to the presumption against disclosure at section 21(3)(d) (educational history). The decision included a fee for partial access to the faculty decision letters.

[6] The appellant subsequently narrowed his request to four of the faculty decision letters issued by the faculty of education. The university issued a revised fee decision in response, indicating that the four letters would be severed in the manner indicated in its first decision letter.

[7] The appellant appealed the university's decision to this office.

[8] During mediation of the appeal, the appellant again revised his request. He indicated that he seeks access to five of the faculty decision letters to which the university originally granted partial access, and, in addition:

- Petitions and/or supporting documentation submitted by the other students that identify their reason(s) for dropping a course past the published drop deadline date in the faculties of education, environmental studies and fine arts for the 2012-13 academic year, where such petitions were granted.

(The appellant specified that he only seeks access to the reasons given by students for making petitions, and not to other information that may be contained in the records, such as students' names, student numbers, addresses, or any other information that could identify students.)

- All records relating to the deliberations, minutes, recordings or other records created as a result of and throughout the decision-making process relating to the granted petitions.

[9] The university issued another revised decision in response. It reiterated its

original decision to grant partial access to faculty decision letters, and selected five at random to disclose to the appellant. The appellant confirmed he does not seek access to any of the information withheld from the five letters, or to any of the remaining faculty decision letters; accordingly, those letters are not at issue in this appeal.

[10] The university granted partial access to the other requested records. It denied access to the portions of students' petition applications and to any supporting documentation submitted by students identifying their reasons for requesting late withdrawal. The university relies on section 21(1), with reference to the presumption at section 21(3)(d), in support of its decision to withhold this information in full.

[11] The university granted partial access to records relating to deliberations of the faculty of education in relation to successful petitions, with some information in the records withheld on the basis of section 21(1). It also advised that there are no responsive records relating to deliberations of the faculty of fine arts or the faculty of environmental studies.

[12] The appellant continues to seek access to the reasons given by students for making their petitions for late withdrawal. Access to this information in the records is therefore at issue in this appeal. In addition, the appellant believes there ought to exist records relating to the deliberations of the faculties of fine arts and environmental studies, and more records relating to the deliberations of the faculty of education. Accordingly, the reasonableness of the university's search for such records is also an issue. The appellant does not, however, seek access to the withheld portions of the records of deliberations of the faculty of education.

[13] As no further mediation was possible, this appeal was transferred to the adjudication stage for an inquiry under the *Act*. The adjudicator formerly assigned to this appeal sought and received representations from the university and the appellant, which were exchanged in accordance with this office's *Code of Procedure and Practice Direction 7*. The appeal was then transferred to me. In this order, I uphold the university's decision to withhold the students' petition letters, in full. I also uphold the reasonableness of the university's search for records of deliberations of the three university faculties. I dismiss the appeal.

[14] I note that the appellant alludes in his representations to a violation of his son's privacy relating to the university's discussions with the appellant about his son's petition. This issue is outside the scope of this appeal, and I will not address it in this order.

RECORDS:

[15] At issue are 135 successful petitions for late withdrawal from university courses in three faculties during the 2012-2013 academic year.

[16] The appellant also contends that there ought to exist records of deliberations of

the faculties of fine arts and environmental studies in relation to successful petitions, and that there also ought to exist additional records of deliberations of the faculty of education.

ISSUES:

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

DISCUSSION:

A. Do the records contain "personal information" as defined in section 2(1) of the *Act*, and, if so, to whom does it belong?

[17] The university seeks to withhold the students' petition letters in full on the basis of the personal privacy exemption at section 21(1) of the *Act*. In order for section 21(1) to apply, the records must first be shown to contain the personal information of individuals other than the requester.

[18] "Personal information" is defined in section 2(1) of the *Act* to mean 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,

(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[.]

[19] 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.¹

[20] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information were disclosed.²

[21] Each of the 135 records at issue contains two parts: an Undergraduate Academic Petition Form completed by a student, and the student's accompanying petition statement, typically in the form of a letter. The university explains that a petition is a written request for waiver of a faculty's academic regulation or a deadline. As explained on its website,³ students must make a petition by completing the form and submitting a typed petition statement letter, outlining the regulation or deadline being petitioned and the grounds for the petition, explaining in detail the circumstances supporting the petition request.

[22] The form, a blank copy of which is available on the university's website,⁴ requires that the student provide information including his or her name, student number, email address, home faculty and course being petitioned. All this information comprises the student's personal information within the meaning of paragraphs (b), (c) and (d) of the definition at section 2(1).

[23] The accompanying petition letters, which are a mandatory part of a student's petition, are drafted by the students, and vary in content. On my review of the records, I confirm that they generally contain petitioning students' names along with detailed information about them, including information about their family status, educational history, medical, psychological and psychiatric history, employment history, financial circumstances and personal opinions or views. This information qualifies as the students' personal information within the meaning of paragraphs (a), (b) and (e).

[24] I also find that both parts of the petition application, taken together, constitute correspondence of a confidential nature sent by petitioning students to the university. The university advises students on its website that petition information is confidential,

¹ Order 11.

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

³ Online here: <http://www.registrar.yorku.ca/petitions/academic>.

⁴ <http://www.registrar.yorku.ca/pdf/Undergraduate%20Academic%20Petition%20Form.pdf>.

shared only with petition committee members (or, where a petition contains allegations about the actions of an employee, shared only with appropriate university officials). I am satisfied that the letters sent by petitioning students to the university are of an explicitly private and confidential nature. I also find that the fact of having made a petition to the university constitutes a student's personal information. For these reasons, the records also contain the students' personal information within the meaning of paragraphs (f) and (h).

[25] The appellant has reiterated throughout this appeal that he seeks only the reasons that were given by students in successful petitions for late withdrawal, and not any of their personal information. He cites as examples of the latter kinds of information, which he proposes be severed from the records, students' names, student numbers and addresses. In his representations, the appellant appears to draw a distinction between the information contained in completed Undergraduate Academic Petition Forms, to which he does not seek access, and the accompanying student petition letters, to which he does. His position appears to be based on the premise that the petition letters alone do not contain the students' personal information, or that they can be severed in such a way as to withhold their personal information while disclosing the portion containing the students' reasons for petitioning the university.

[26] I found above that both the completed forms and the petition letters contain personal information within the meaning of section 2(1). Assuming the completed forms are not at issue, and considering only the petition letters, I conclude that the personal information in the petition letters is not severable in the manner proposed by the appellant. This is because I find that all the information in the petition letters, including the specific reasons given by each student in support of his or her petition, is the student's personal information.

[27] Each petition letter contains detailed reasons for which the petition is being made. These include very specific information about a student's home and academic life, family issues, financial difficulties, social and cultural pressures, educational setbacks and medical and psychological issues. The appellant contends that these reasons, without more, would not enable him to identify the petitioners from a university population of over 50,000 students. I conclude, however, that the level of specificity in the letters, in consideration of the much smaller pool of individuals who successfully petitioned for late withdrawal in the three specified faculties during the specified time period (numbering 135 students), gives rise to a reasonable expectation that individuals may be identified if the petition letters were disclosed. Even if the university were to remove from the letters the students' names, student numbers and other identifiers described by the appellant, I find that the remaining information could reasonably be expected to identify particular petitioners. On this basis, applying the reasoning upheld by the Divisional Court and Court of Appeal,⁵ I find that all the information in the student petition letters qualifies as the students' personal information.

⁵ See footnote 2.

[28] In the event I were to accept the appellant's position that personal information could reasonably be severed from the letters, the university notes that some of the letters are handwritten, and, for these letters, submits that handwriting could be used to identify an individual. Based on my finding above, it is unnecessary for me to consider this argument. I do, however, wish to address the appellant's observation that the petition application instructs students to submit their statement letters in typed format, and his argument that handwritten letters therefore do not comply with the university's own instructions and ought not to have been granted. The appropriateness of the university's decisions on the petition applications has no bearing on the issue before me, which is whether the personal information in the petition letters is reasonably severable. Similarly, the appellant's demand that the university confirm the "number of such handwritten petition statements that were granted by the university despite not even meeting basic instruction requirements" has no bearing on my decision on this issue. If the appellant now seeks access to the number of successful handwritten petition applications, he may wish to make a fresh access request to the university.

[29] I conclude that the very information sought by the appellant constitutes the students' personal information, and that the records are not reasonably severable.⁶ In addition, the records do not contain any personal information of the appellant or of the appellant's son. Given this, I will next consider the university's claim that section 21(1) applies to exempt the records, in full.

B. Does the mandatory personal privacy exemption at section 21(1) apply to the records?

[30] 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. None of the exceptions in paragraphs (a) to (e) applies. The only applicable exception is paragraph (f), which allows disclosure if it would not be an unjustified invasion of personal privacy.

[31] Sections 21(2) and (3) of the *Act* help in determining whether disclosure would or would not be an unjustified invasion of privacy within the meaning of section 21(1)(f). In addition, section 21(4) lists situations that would not be an unjustified invasion of personal privacy.

[32] The parties' representations refer to the factors at sections 21(2)(a), (d), (f), (h) and (i), and the presumptions at sections 21(3)(a), (c), (d), (f), (g) and (h). These sections state:

⁶ The courts have considered the concept of "reasonable severability" in access-to-information statutes, including the *Act*, concluding that information in records that would, if released, comprise only disconnected or meaningless snippets is not reasonably severable. See, among others: *Ontario (Minister of Finance) v Ontario (Information and Privacy Commissioner)* (1997), 102 OAC 71 (Div Ct); *Montana Band of Indians v Canada (Minister of Indian & Northern Affairs)* (1988), 51 DLR (4th); and *Canada (Information Commissioner) v Canada (Solicitor General)* [1988] 3 FC 551.

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;

(d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

(f) the personal information is highly sensitive;

(h) the personal information has been supplied by the individual to whom the information relates in confidence; and

(i) the disclosure may unfairly damage the reputation of any person referred to in the record.

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

(a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

(c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels;

(d) relates to employment or educational history;

(f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

(g) consists of personal recommendations or evaluations, character references or personnel evaluations; or

(h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

[33] Once a presumed unjustified invasion of personal privacy is established under section 21(3), it cannot be rebutted by one or more factors or circumstances under section 21(2).⁷ A presumption under section 21(3) can only be overcome if section 21(4) or the "public interest override" at section 23 applies.⁸

[34] I will therefore begin by considering whether any of the claimed presumptions at

⁷ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.)

⁸ *John Doe v. Ontario (Information and Privacy Commissioner)*, cited above.

section 21(3) applies to the records.

Section 21(3) presumptions

[35] The university primarily relies on the presumption against disclosure at section 21(3)(d), which applies to personal information relating to employment or educational history. The university submits that petition requests by their nature have an impact on a student's education, with the outcome of a petition request potentially reflected on a student's transcripts, and consequential potential effects on a student's academic progress, future job prospects and other expectations.

[36] The university also submits that the presumptions at sections 21(3)(a), (c), (f), (g) and (h) may apply to some of the records, and that neither section 21(4) nor section 23 applies to rebut a presumption against disclosure.

[37] The appellant states that even assuming the information at issue is students' personal information (which he denies), the presumption at section 21(3)(d) cannot apply. He states that in the case of granted petitions, the dropped courses do not form part of the students' transcripts, and therefore have no impact on a student's educational history or, beyond that, to his or her academic progress and future prospects and expectations. He reiterates this argument to challenge the application of any of the other presumptions to the records.

[38] I find that the presumption against disclosure at section 21(3)(d) applies in these circumstances. Even assuming that a successful petition for withdrawal from a course means that the dropped course does not appear on a student's transcripts, I am satisfied that the very fact a student applied for a late withdrawal constitutes personal information relating to that student's educational history. Whether the withdrawal is granted or denied (and therefore appears on a student's transcripts), and whether a student's request to drop a course has any discernible effect on his or her academic and professional future has no bearing on the issue.

[39] The presumption against disclosure at section 21(3)(d) therefore applies to all the petition letters at issue. Some of the letters also contain information about petitioning students' medical, psychiatric or psychological histories, or about their financial activities, or alludes to their racial or ethnic origins, sexual orientation or religious affiliations; these letters also invoke the presumptions at sections 21(3)(a), (f) and (h). I find it unnecessary to decide whether other information in the letters meets the requirements of the section 21(3)(c) and (g) presumptions, also cited by the university.

[40] I also find that none of the exceptions at section 21(4) applies to the records. In addition, the appellant did not raise the issue of the public interest override at section 23; in any event, I find there is insufficient evidence before me to establish a compelling public interest in disclosure of the student petition letters, as required by section 23.

[41] As a presumed unjustified invasion of personal privacy cannot be rebutted by the factors or circumstances at section 21(2), the records are exempt in full. For the appellant's benefit, I confirm that the only factor favouring disclosure to which he alludes in his representations—namely, section 21(2)(d) (fair determination of rights)—has no application in these circumstances. The appellant's access request appears to be motivated by his belief that his son's petition for late withdrawal, and subsequent appeals of the university's decision, were unfairly denied. The appellant has not demonstrated how disclosure of the petition letters would affect the university's decision in his son's case, nor how this would relate to a determination of the appellant's rights. I also observe that the only other factor favouring disclosure raised in this appeal, section 21(2)(a), was cited by the university in arguing against the relevance of this factor. The appellant does not make arguments about the application of this factor, and the evidence before me does not support its application on these facts.

[42] Having found that all the petition letters are subject to the presumption against disclosure at section 21(3)(d), I conclude that they are exempt, in full, under section 21(1).

C. Did the university conduct a reasonable search for records?

[43] While the university located records of deliberations of the faculty of education in relation to granted petitions, it advised the appellant that there exist no such records for the faculties of environmental studies and fine arts. The appellant believes that the university has not conducted a reasonable search for records in all three faculties.

[44] 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 24.⁹ 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.

[45] The university was asked to provide a written summary of all steps taken in response to the appellant's request, and to provide this information in affidavit form. The university provided an affidavit of its director of records and information management, who also serves as the coordinator of the university's information and privacy office. The director provides details of the search for records responsive to the appellant's request. This included searches by the three faculties identified by the appellant for records of deliberations relating to granted petitions for late withdrawal in the 2012-2013 academic year. If these searches yielded no records, the faculties were asked to provide an explanation.

[46] The director enclosed with her affidavit copies of the email requests sent to the three faculties, and the responses received from each. The faculty of education responded by attaching responsive records. The faculty of environmental studies

⁹ Orders P-85, P-221 and PO-1954-I.

reported that while there are normally discussions at the table, with each committee member taking his own notes, such notes are destroyed once a decision is made. The faculty of fine arts reported that petition summaries and committee decisions are recorded, but that notes of deliberations are not. The director followed up with the faculty of fine arts to clarify this response. The faculty of fine arts confirmed that its petition committee hears oral summaries of petition requests and records its decision as a simple affirmative or negative at the bottom of a student's petition letter; the faculty confirmed that it generates no other records of its deliberations. Based on these responses, the university reported to the appellant that no records of deliberations exist in the faculties of environmental studies and fine arts.

[47] The appellant refers to the university's statement, made in another part of its representations, that the decision to grant a petition is "not a decision taken lightly." He argues that the university's failure to establish consistent procedures or documentation standards governing faculties' decision-making processes belies this statement. He also notes the disparity between the documentation requirements imposed on students who wish to make a petition and the absence of any corresponding responsibilities on the part of faculty decision-makers.

[48] I am satisfied that the university conducted a reasonable search for records in the circumstances. I find that the university's efforts to locate responsive records were reasonable, and yielded records reasonably related to the appellant's request. To satisfy the requirements of section 24, the university need not prove with absolute certainty that no further records exist; it need only show that it made a reasonable effort to identify and locate responsive records.¹⁰ 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.¹¹ I am satisfied that the searches were coordinated and conducted by appropriately experienced individuals within the university, among them a faculty manager of recruitment, senior undergraduate advisors, and a faculty associate dean.

[49] I also accept the university's explanation for the absence of records in two of the faculties. While the appellant has identified that there are inconsistent documentation practices across faculties, this alone does not establish that additional records must exist. Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, he still must provide a reasonable basis for concluding that such records exist.¹² The appellant has also failed to provide a basis for his claim that there must exist additional records within the faculty of education beyond those that have been disclosed to him. His concerns about the decision-making process in relation to student petitions, and, more specifically, about the university's decision on his son's petition for late withdrawal, do not establish a basis for requiring the university to conduct further searches for records. I note that this is the only remedy available on finding that an institution did not conduct a reasonable search.

¹⁰ Orders P-624 and PO-2559.

¹¹ Orders M-909, PO-2469 and PO-2592.

¹² Order MO-2246.

[50] I therefore uphold the university's search for records.

[51] As I have upheld the university's access decision as well as the university's search for records, I dismiss the appellant's appeal.

ORDER:

1. I uphold university's decision to withhold the petition letters, in full.
2. I uphold the university's search for records.

Original Signed by: _____

Jenny Ryu
Adjudicator

July 6, 2016 _____