Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4420

Appeal PA21-00639

McMaster University

July 19, 2023

Summary: The appellant sought access to "all letters and information sent against" her by two university employees relating to a security incident on a specific date. The university located emails and a security report. The university granted full access to the emails and partial access to the security report by withholding information about incidents not involving the appellant as non-responsive to the request. The adjudicator finds that the university properly interpreted the scope of the appellant's request and finds that its search for responsive records was reasonable. The appeal is dismissed.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O 1990, c. F.31, as amended, section 24.

OVERVIEW:

[1] As a result of security incidents at McMaster University (the university) in April 2019, the appellant was declared *persona non grata* (PNG or PNG status) and barred from accessing university property for a specific period of time.

[2] The university had, by this time, also declared the appellant's brother (a former student) PNG and prohibited him, too, from entering the university campus. After her brother's PNG designation, the appellant – who is not affiliated with the university – and another individual came to the university to advocate and present a letter on her brother's behalf. The appellant's attempts to meet with university officials resulted in calls to the university's security services, and with the appellant and the other individual

ultimately escorted off campus by university security.

[3] The appellant and the other individual later returned, at which time each was presented with a letter designating them PNG and prohibiting them from entering upon the campus.

[4] The appellant made a request to the university under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to:

> All of the letters and information sent against me from [named individual 1], and [named individual 2] to McMaster security services on April 25, 2019.

[5] The university conducted a search for records for the period between April 25, 2019 and May 25, 2019. It issued a decision in which it wrote that, "[g]iven the narrow time frame provided in the request, we have taken the liberty of extending the time frame in our search for responsive records to May 25, 2019."

[6] The university's search resulted in the location of two records – a 67-page PNG report from security services (record 1), and a seven-page email chain between the appellant and university staff (record 2). The university granted full access to record 2, and partial access to three pages of record 1. The university claimed that the withheld portions of record 1 were exempt under the discretionary personal privacy exemption in section 49(b).

[7] The appellant appealed the university's decision to the Office of the Information and Privacy Commissioner of Ontario (IPC). The parties participated in mediation, during which the university issued a revised decision.

[8] In its revised decision, the university wrote that it was no longer relying on section 49(b), and claimed instead that the information originally withheld pursuant to section 49(b) is non-responsive to the request. As a result, section 49(b) was removed as an issue and is not before me in this appeal, while the issue of whether the withheld portions of the record are responsive to the request was added.

[9] The reasonableness of the university's search for responsive records was also added as an issue during mediation, because the appellant claimed that additional records exist that the university did not identify, while the university maintained that no additional responsive records exist.

[10] The appeal was not resolved in mediation and was transferred to the adjudication stage of the appeal process. I decided to conduct an inquiry, during which

I received representations from the appellant and the university.[1]

[11] In this order, I find that the university properly interpreted the scope of the request and that the records disclosed to the appellant, in full and in part, are responsive to the request, and that the portions that the university withheld are not responsive to it. I also find that the university's search for responsive records was reasonable and I dismiss the appeal.

RECORDS:

[12] The record is a 67-page PNG Security Incident Report (the PNG report or record). At issue is access to the information withheld from the report, including portions withheld from the three pages disclosed to the appellant.

ISSUES:

A. What is the scope of the request and which records are responsive to it?

B. Should the university's search for responsive records be upheld?

DISCUSSION:

Background provided in both parties' representations

[13] The parties have each described their encounters and the appellant's reasons for attending the campus. In its representations, the university has provided details about underlying issues involving the appellant's brother. The appellant's representations, meanwhile, focus on the alleged merits of the PNG letters. She alleges mistreatment by the university, including on dates other than the date set out in the request, and has included audio recordings and photographs of a rash she claims she experienced as a result of her alleged treatment while on campus.

[14] Although I have reviewed the parties' entire representations, I have only summarized those portions that are relevant to the issues before me in this appeal.[2]

Issue A: What is the scope of the request and which records are responsive to it?

[15] As noted above, the university located two responsive records: a chain of emails

[1] The appellant submitted a series of emails following her representations which I also considered as part of her representations.
[2] The parties agreed to the issues during mediation. The issues were set out in a mediator's report, which confirmed the parties' agreement on the outstanding issues for adjudication.

about the April 25, 2019 incident, and a 67-page PNG report. The university disclosed the chain of emails in full. The university denied access to 64 pages of the 67-page PNG report, and to portions of the three pages of the PNG report that it did disclose, on the basis that those 64 pages and portions of the disclosed pages contain information that is not responsive to the request.

[16] To determine whether these portions have been properly withheld as non-responsive requires consideration of section 24 of the *Act*. Section 24 imposes certain obligations on requesters and institutions when submitting and responding to access requests. It states, in part, that:

> (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 under the 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).

[17] To be considered responsive to the request, records must "reasonably relate" to it.[3] Institutions should interpret requests liberally, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in a request should be resolved in the requester's favour.[4]

Representations

[18] The university submits that, while the request was specific to records dated April 25, 2019, the university took the view that the appellant was seeking records relating to the incident that occurred on that day, but not necessarily to records created on that day. The university says that it therefore elected to apply a broad interpretation to the scope of the request, which allowed it to locate correspondence dated as late as May 21, 2019 as being responsive to the request, and to locate other responsive records relating to the appellant contained in the security report.

[19] The university says that, had it taken a literal and narrow interpretation of the request, it would not have been able to locate these records, and that its general interpretation of request's scope was reasonable and consistent with the purpose and spirit of the *Act*.

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[3] Orders P-880 and PO-2661.
[4] Orders P-134 and P-880.

[20] As noted above, the appellant's representations focus on the merits behind the university's actions against her and her brother. The appellant argues that, because the university has lied about her character, is defaming her in its representations, and has engaged in psychological games with her and her brother, her request "is now updated" to include access not only to the entire 67-pages of the PNG report, but to camera recordings as well.

Analysis and findings

[21] Section 24(1)(b) requires a person seeking access to a record to give enough detail to enable an experienced employee, upon a reasonable effort, to identify the record. If the request does not sufficiently describe the record to which access is sought, section 24(2) requires the institution to inform the appellant of the defect and help with reformulating the request. Where the request is ambiguous, the institution should also resolve any ambiguity in the appellant's favour.

[22] The appellant's request is expressly for access to all letters and information about her from two individuals sent to security "on" April 25, 2019. The request specifies the type of information to which access is sought, the individuals who authored the requested communications, and the date on which the relevant security incident occurred.

[23] In the circumstances, I find that the appellant's request is clear and concise, so that there was no need for the university to seek clarification. The request was for specific information relating to the appellant and she received access to this information.

[24] I have reviewed the PNG report and the information withheld from the portions of the report that were disclosed to the appellant, and I am satisfied that the withheld information is indeed non-responsive to the appellant's request. The PNG report is essentially a log of security incidents that, in this case, occurred in the one-month period starting on April 25, 2019 – the date identified in the request. It documents the incident involving the appellant, and, as I have noted above, the portions relating to the appellant were disclosed to her. It also documents all other PNG-related incidents that occurred in that period of time but that did not involve the appellant; these portions were not disclosed to the appellant.

[25] I accept the university's explanation that, by searching for responsive records created after the date provided in the request, the university was able to locate records relating to that incident but that may have been created after it. In the circumstances, I find that the university properly responded to the request and properly interpreted its scope. I find that information about incidents on dates other than the date in the request and involving individuals other than the appellant does not reasonably relate to the request. Because the withheld information relates to incidents not involving the appellant, I find that it is not responsive to the request and must not be disclosed to the

appellant.

[26] I acknowledge that the appellant purports to "update" her request to include video recordings she says will support her account of the events (including on additional dates). The fact that the appellant did not include video records in her initial request does not preclude her from making a fresh request for this other information. However, as I have already noted, the appellant's request was clear and concise. It identified letters and information sent by two named individuals to security on a specific date as the subject of the request. I find that the request provided sufficient detail to allow the university to identify records responsive to it. I find that the request did not include access to video recordings, and that there was no ambiguity in this regard.

[27] In conclusion, based on my review of the records and the parties' representations, I find that the information that the university withheld as non-responsive is not about the appellant. I find that it relates to other students or individuals and incidents over a 30- day period starting April 25, 2019 that do not reasonably relate to the appellant or the information provided in the request, and is therefore outside the scope of the request.

[28] Accordingly, I accept the university's position that the withheld information is not responsive to the appellant's request and that the records disclosed, including partially, are.

[29] For these reasons, I find that the request was sufficiently clear that the university was not obliged to contact the appellant to explore what she meant, or to help reformulate the request pursuant to section 24(2) of the *Act*. I also find that, by interpreting the request liberally, that is, by searching within a broader timeframe, the university was able to locate emails about the incident that it then disclosed to the appellant, either in full or in part.

Issue B: Should the university's search for responsive records be upheld?

[30] The appellant has also challenged the reasonableness of the university's search for responsive records. Where a requester claims that additional records exist beyond any located by the institution, the issue is whether the university has conducted a reasonable search for records as required by section 24 of the *Act*.[5] If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the university's decision. Otherwise, I may order the university to conduct another search for records.

[31] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester must still provide a reasonable

[5] Orders P-85, P-221 and PO-1954-I.

basis for concluding such records exist.[6]

[32] 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 it has made a reasonable effort to identify and locate responsive records;[7] that is, records that are reasonably related to the request.[8]

[33] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to identify and locate records which are reasonably related to the request.[9]

Representations

[34] In support of its position that its search was reasonable, the university submitted three affidavits describing its search efforts: two sworn by the two individuals named in the request (the former Vice-Provost and Dean of Graduate Studies and a professor, respectively), and the third from the university's senior manager of security services.

[35] Both individuals named in the request attest that they searched their email accounts, and each identified responsive emails. The university says that these were disclosed to the appellant in full. Each state that they did not exchange any correspondence with the university's security services related to the April 25, 2019 incident involving the appellant.

[36] According to the security services' senior manager's affidavit, he searched security services' digital reporting system, through which security services' special constables submit reports regarding security incidents reported to them, for documents related to the appellant. The result was that a "Security Incident Report (Persona Non Grata Status) report" – the record at issue – was located and partially disclosed to the appellant.[10]

[37] The appellant's representations do not address the university's searches directly. Rather, the appellant argues that the university should now also disclose video camera recordings for April 25th and another date because she says the university has, among other things, lied about and defamed her in its representations.

Analysis and findings

[38] I am satisfied that the university conducted a reasonable search for responsive records. The university's representations demonstrate that experienced employees, knowledgeable in the records related to the subject matter of the request, made

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[6] Order MO-2246.
[7] Orders P-624 and PO-2559.
[8] Order PO-2554.
[9] Orders M-909, PO-3649 and PO-2592.
[10] As noted above, those portions of the report relating to the appellant were disclosed to her.

reasonable efforts to locate all communications about the appellant to security services and with the appellant relating to the date identified in the request. This includes searches by the individuals expressly named in the request.

[39] By expanding its search to include records created after April 25, 2019, I find that the university was able to locate and disclose records relating to the April 25th incident that were created after it.

[40] 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. The appellant has not provided me with a reasonable basis on which I could conclude that additional records exist in response to this particular request, but that have not been located by the university. I reject the assertion that video recordings must now also be disclosed in response to this request, since I have already found that they were not within the scope of the request.

[41] For these reasons, I uphold the university's search for responsive records as reasonable.

ORDER:

The appeal is dismissed.

Original Signed By: July 19, 2023
Jessica Kowalski
Adjudicator