

Information and Privacy Commissioner,
Ontario, Canada



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

FINAL ORDER PO-3528-F

Appeal PA12-298

University of Ottawa

August 31, 2015

Summary: The appellant sought access to all records related to a specified corporation that were in the possession of 19 named university executives and executive offices. The university issued a decision granting the appellant access to two of the eleven records it identified as responsive to the request. The appellant appealed the university's decision to withhold records 2 through 10. Interim Order PO-3417-I upheld the university's decision to deny access to records 8 and 9 in their entirety on the basis that they were excluded from the scope of the *Freedom of Information and Protection of Privacy Act* under section 65(6)3. Consideration of the remaining withheld records (records 2 through 7 and 10) and the possible application of the exemptions relied on by the university to withhold them, was deferred in order to provide the parties with an opportunity to address two new issues raised in Interim Order PO-3417-I: the responsiveness of the portions of the records that do not refer to the corporation specified in the request; and the possible application of the mandatory personal privacy exemption in section 21(1) of the *Act* to records 2 through 7. This Final Order finds that only the discrete references to the corporation in the records at issue are responsive to the request. It also finds that none of the exemptions claimed by the university to withhold the records applies to the responsive information and it orders the university to disclose the responsive information to the appellant.

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

OVERVIEW:

[1] This is the Final Order in respect of Appeal PA12-298, and it follows my Interim Order PO-3417-I, issued October 30, 2014.

[2] The appellant sought access to all records related to a specified corporation that were in the possession of 19 named University of Ottawa executives and executive offices. The university located 11 records (emails including attachments) that it identified as responsive to the request and issued a decision granting the appellant full access to two of them. The university relied on the mandatory exemptions in sections 17 (third party information) and 21 (personal privacy) and the discretionary exemptions in sections 13 (advice or recommendations), 18(1)(c) (economic and other interests) and 19 (solicitor-client privilege) to deny the appellant access to the remaining nine records. It also claimed that records 8 and 9 were excluded from the application of the *Act* by section 65(6)3 which excludes records relating to employment related matters. The appellant appealed the university's decision to this office.

[3] In Interim Order PO-3417-I, I upheld the university's decision that records 8 and 9 were excluded from the scope of the *Act* under section 65(6)3. I deferred my decision on the remaining records and the possible application of the exemptions relied on by the university to withhold them, in order to provide the parties with an opportunity to address two new issues raised in my Interim Order: the responsiveness of the portions of records 2, 3, 4, 5, 6, 7 and 10 that do not refer to the corporation specified by the appellant in his request; and the possible application of the mandatory personal privacy exemption in section 21(1) of the *Act* to records 2, 3, 4, 5, 6, and 7. After issuing Interim Order PO-3714-I, I invited the university and the appellant to provide representations on these two new issues. I received representations from the university and shared these with the appellant. The appellant did not provide me with representations.

[4] In this Final Order, I find that only one discrete portion in each record is responsive to the request and no exemptions apply to prevent the disclosure of this information.

RECORDS:

[5] The records at issue are the emails and attachments in records 2, 3, 4, 5, 6, 7 and 10, excluding the email addresses contained therein.

DISCUSSION:

Are the records at issue responsive to the request in their entirety?

[6] At paragraph 19 of Interim Order PO-3417-I, I raised the issue of the responsiveness of records 2, 3, 4, 5, 6, 7 and 10 and noted that these records contain a significant amount of information that appears not to be responsive to the appellant's request for records "related to" a specified corporation. I noted that while the request as framed by the appellant is broad in terms of the individuals and communications it aims to encompass, it is specific in stating that the records the appellant seeks are those that are "related to" the specified corporation. I further noted that while the name of the specified corporation appears once in each of records 2, 3, 4, 5, 6, 7 and 10, the records primarily contain information that is related to matters that do not involve the corporation, but instead involve other entities and individuals.

[7] In response to my invitation to submit representations on the issue of responsiveness, the university states it has reconsidered its position. The university submits that records 2, 3, 4, 5, 6, 7 and 10, do not for the most part reasonably relate to the request for all records related to the specified corporation. The university notes that the specified corporation is mentioned once in each of the emails that comprise records 2 through 7, and once in the financial information in record 10. As noted above, the appellant, although invited to do so, did not submit representations on the issue of responsiveness.

[8] In determining the scope of a request in accordance with the obligations of requesters and institutions under section 24 of the *Act*, this office has consistently stated that institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. This office has also consistently found that records must "reasonably relate" to the request in order to be considered responsive to the request.¹

[9] The appellant's request specifies the 19 university executives and executive offices whose record holdings should be searched for all records related to a specified corporation and is therefore sufficiently detailed to identify that all records relating to the specified corporation are responsive to it. In this regard, I find that the university appropriately identified the records at issue as responsive records in accordance with its obligation to adopt a liberal interpretation of the request. However, there is a significant amount of information in each record, the majority in fact, that is entirely unrelated to the corporation.

[10] On my review of the records, I find that each one contains a single reference to the corporation identified in the appellant's request. Records 2, 3, 4, 5, 6 and 7, are emails that form part of an email string circulated among various individuals within the university and outside of it. Record 2 consists of the initial email that was circulated to the group and it contains a single reference to the specified corporation. Other than the single reference to the specified corporation made in passing, record 2 does not

¹ Orders P-880 and PO-2661.

address the corporation; nor is it about the corporation. Rather, the email is about a research proposal put forth by the author of the email. Records 3, 4, 5, 6 and 7 consist of emails written in response to the email in record 2. Each of records 3 through 7 includes the original email in record 2, and it is in the copy of record 2 found within each of records 3 through 7, that the specified corporation is mentioned. Beyond this mention of the corporation in passing, none of records 3 through 7 contains any other information about the corporation. To summarize, the corporation is mentioned once in a series of emails whose subject matter is a discussion among various university executives about a research proposal including details, suggestions and opinions about the proposal and about the approach to be taken regarding the proposal. I also note that the corporation is neither a recipient nor sender of any of the emails in records 2 through 7 and is not copied on them. I find that the single reference to the corporation that is made in record 2 and repeated in records 3 through 7 in identical form is the only information in these records that is responsive to the request. I find that the remaining information contained in these records that is about the corporation is not reasonably related to the request, which was only for records related to the corporation. Having found this remaining information non-responsive, I will not consider it further in this appeal.

[11] Record 10 is an email that contains as an attachment a donor list generated on a specific date. The email provides general information on the donor list and the processing of donations by the university. The donor list contains detailed information regarding more than one hundred individuals and entities including: donor name, donation amount, type of donation, the campaign from which the donation originated and the fund to which each donation was directed. Only one entry in the entire donor list relates to the corporation specified by the appellant in his request. I find that this entry related to the corporation is responsive to the request, as is the email under whose cover the donor list was circulated. However, the more than 100 remaining entries in the donor list that have no connection whatsoever to the corporation do not reasonably relate to the request. On this basis, I find that these remaining entries in record 10 are non-responsive to the request and I will not consider them further in this appeal.

[12] As a result of my findings that most of the information in records 2, 3, 4, 5, 6, 7 and 10 is not responsive to the request, the sole issue left for me to determine is whether the discrete portions of these records that I have found responsive to the request are exempt from disclosure under any of the exemptions claimed by the university.

[13] The exemptions relied on by the university in its decision are the mandatory exemptions in sections 17(1) and 21(1) and discretionary exemptions in sections 13(1) and 18(1)(c). Since the university has refused the appellant access to this information, it bears the burden of proof that the responsive information falls within the exemptions

it has claimed. Having reviewed the representations, I conclude that the university has not satisfied its burden of proof for any of the exemptions it has claimed.

[14] The university's representations repeat the words of the exemptions it relies on and reiterate the language included in my Notice of Inquiry which sets out general principles, references to relevant past orders and interpretations adopted by this office. The university's representations lack the detailed and convincing evidence that is required to establish the application of the section 17(1) and 18(1)(c) exemptions. They also lack sufficient evidence to establish that the references to the corporation that remain at issue comprise advice or recommendations such that the section 13(1) exemption applies to them. Finally, since the information that remains at issue is about the corporation, it cannot be said to be personal information. The absence of any personal information in the remaining information at issue precludes the application of the mandatory personal privacy exemption in section 21(1) to the remaining information. In addition, the responsive information does not on its face contain the type of information that would qualify for exemption under any of the exemptions relied on by the university.

[15] For the foregoing reasons, I find that the exemptions in sections 13(1), 17(1), 18(1)(c) and 21(1) do not apply to the information I have found to be responsive. Accordingly, I will order the university to disclose the responsive information in records 2, 3, 4, 5, 6, 7 and 10 to the appellant. Because the responsive information in record 2 is repeated in records 3 through 7, disclosure of the relevant part of record 2 will satisfy the university's obligation to disclose this information in respect of records 3 through 7.

FINAL ORDER:

1. I order the university to disclose the information which I have found to be responsive to the request in records 2 and 10 to the appellant by **October 6, 2015**, but not before **October 1, 2015**. For clarity, I attach to this order a copy of records 2 and 10 highlighting the information the university is to disclose.
2. In order to verify compliance with this order, I reserve the right to require the university to provide me with a copy of the disclosure ordered in provision 1.

Original signed by: _____
Stella Ball
Adjudicator

_____ August 31, 2015