Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3511

Appeals PA13-112 and PA13-462

York University

July 17, 2015

Summary: The appellant made a request to the university for records about himself that may be held in various offices. The responsive records, including incident reports and handwritten notes, were withheld in full and in part, pursuant to the discretionary exemptions in sections 49(a) and (b) of the *Act*. The appellant raised the issue of whether the decision maker for the university was in a conflict of interest. The appellant sought access to the withheld information, including information identified as not responsive and questioned whether the university's search for records was reasonable. In this order, the adjudicator upholds the university's decision, in part.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 2(1)(definition of "personal information"), 14(1)(a), 20, 21(3)(b), 21(3)(f), 21(2)(h), 49(a) and (b).

Orders Considered: PO-2381.

OVERVIEW:

[1] This order disposes of the issues in Appeals PA13-112 and PA13-462 arising out of two requests for information by the appellant to York University (the university).

[2] In appeal PA13-112, the appellant submitted a request to the university under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to "York U. Security Files" for a specified time period. The university clarified the request with

the appellant in order to clarify that he was seeking records from the security office relating to him.

[3] The university issued a decision granting partial access to the responsive records, relying on section 49(a) (discretion to refuse access to requester's information), in conjunction with sections 14(1)(a) (interfere with a law enforcement matter) and 20 (danger to safety or health) and section 49(b) (unjustified invasion of personal privacy) of the *Act*.

[4] During mediation, the appellant confirmed that he was seeking access to the withheld information and that he was concerned about a possible conflict of interest regarding a named university employee in her role as General Counsel with the university.

[5] In appeal PA13-462, the appellant made a request to the university under the *Act* for access to all records relating to himself that were held by:

1. York U. Housing Office; [for specified period]
2. York U., VP. [named individual] office; [specified period]
3. Ombuds Office, York U.; [specified period]
4. Security Office, York U.; [specified period]

[6] The university issued a decision to the appellant granting partial access to the responsive records with severances pursuant to the personal privacy exemption and for non-responsiveness.

[7] In his appeal to this office, the appellant indicated that he was pursuing access to all of the withheld records, including information that was identified as not responsive. The appellant also expressed his view that additional records should exist.

[8] During mediation, the university maintained that it has located all responsive records and that no additional records exist.

[9] Neither appeal was resolved at mediation and as such, were moved to the adjudication stage of the appeal process. The adjudicator assigned to these appeals sought and received representations from both the appellant and the university. Representations were shared in accordance with section 7 of this office's *Code of Procedure* and IPC *Practice Direction 7*. The appeals were then assigned to me to complete the inquiry.

[10] In this order, I uphold the university's decision, in part.

RECORDS:

[11] In appeal PA13-112, records 1, 4, 5, 8, 9, 10, 12, 13, 15, 21, 26, 27, 32 and 34 remain at issue, either in part, or in their entirety.

[12] In appeal PA13-462, only brief portions of handwritten notes, emails and administrative documents that are labelled records 1, 5, 7, 8 and 9 remain at issue.

ISSUES:

A. Is the university's secretary/general counsel in a conflict of interest position respecting the access decision in the appeal?

B. What is the scope of the appellant's request?

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

D. Does the record contain "personal information" as defined in section 2(1) and , if so, to whom does it relate?

E. Does the discretionary exemption at section 49(a) in conjunction with the section 14 or 20 exemptions apply to the information at issue?

F. Does the discretionary exemption at section 49(b) apply to the information at issue?

G. Did the university properly exercise its discretion to apply section 49(a) and/or (b)?

DISCUSSION:

A. Is the university's secretary/general counsel in a conflict of interest position respecting the access decision in the appeal?

[13] The appellant submits that the university's secretary/general counsel is in a conflict of interest in regard to the requested records. The appellant is concerned about this individual's involvement given that the Freedom of Information Co-ordinator and Vice-President of Finance and Administration report to her.

[14] The appellant and the university were asked to consider a series of questions to establish whether a reasonable person could reasonably perceive bias or a conflict of interest on the part of the secretary/general counsel, who the appellant believed to be the decision maker, with respect to these requests. Both parties were asked to review Orders MO-1285, PO-2381 and MO-2605.

[15] The university submits that the appellant's belief is incorrect as the Vice-President of Finance and Administration who was the decision maker does not report to the individual who is the secretary/general counsel. The university states:

> [Named Vice-President of Finance and Administration], not [named general counsel], was the decision-maker for both requests under appeal. [Named Vice-President of Finance and Administration] does not report to [named general counsel]; they are peers, both members of the senior executive team. [Freedom of Information Co-ordinator] reports to [named general counsel] because the Information and Privacy Office falls within the Office of the University Secretary and General Counsel, a fairly common reporting relationship for FIPPA personnel within Ontario universities.
>
> It is difficult to understand why the Appellant considers [named general counsel] to be in a conflict of interest position. Specifically with regards to the questions posed under this section of the Notice of Inquiry, York University responds that [named general counsel] is not the decision-maker, and therefore the questions are not relevant. If the questions pertain to [named Vice-President of Finance and Administration], then York University responds that a well-informed bystander would not perceive bias on the part of the decision-maker. York University is frequently asked to disclose records of Security Services, and we respond in the same manner, reviewing all responsive documentation, including security incidents, and severing as appropriate. [Named Vice-President of Finance and Administration] has an open mind in regards to these requests; the rationale for the decision to withhold certain records or parts of records, is explained further below in these Representations.

[16] The university submits that neither the Vice-President of Finance and Administration nor the General Counsel have any pecuniary or personal interest in the records.

[17] The appellant's allegation that the general counsel/secretary has a conflict of interest in relation to the records is grounded in the following:

- The fact that his request for corrections of the university's security office records were disallowed and destroyed and he was obliged to leave the country. The appellant alleges that the decision to not allow his correction requests was made by the general counsel/secretary, the Vice-President of Finance and Administration and the Freedom of Information Co-ordinator.

- The appellant has complained about the Vice-President of Finance and Administration to the police and this is known to the Vice-President of Finance

and Administration and the general counsel/secretary as the appellant sent a copy of the complaint to the former Director of York security.

- The general counsel is also the lawyer for York University, among many other positions. She supervises [the Freedom of Information Co-ordinator] and gives advice (or supervises) security office that belong to [Vice-President of Finance and Administration].

- The general counsel and the Vice-President of Finance and Administration are in adjacent offices and thus support one another.

[18] Based on my review of both appeals, including the information that was withheld from the appellant and the parties' representations, I find the appellant's submission that the general counsel/secretary had a conflict of interest in the records is unfounded. Moreover, it is evident from the university's representations that even if the general counsel/secretary had any interest in the records, she was not the decision-maker for the purposes of the *Act*. With regard to the university's decision-maker, I find that the appellant's allegations about the influence of the general counsel/ secretary on the Vice-President of Finance and Administration or the Freedom of Information Co-ordinator to be unsubstantiated. It is not evident to me from the circumstances in these two appeals that the general counsel/secretary exerted pressure or influence over the decisions made by the Freedom of Information Co-ordinator or the Vice-President of Finance and Administration in regard to the appellant's requests.

[19] This office has, in past decisions, recognized that a decision-maker may make decisions relating to records about themselves. In Order PO-2381, the IPC held that the head was not in a conflict of interest when he made a decision regarding records describing events in which he was involved. In making this decision, the IPC stated the following:

> … the fact that the CEO has been personally involved in resolving the question of the disposition of these lands in his capacity as a senior official of the ORC, including participating in exploring options other than sale of the appellant's company, combined with the fact that the ORC and the appellant are in litigation over the appropriate disposition of these lands, is not sufficient to disqualify the CEO from exercising the statutory function of deciding access requests under the *Act*. These facts do not establish a conflict of interest or a reasonable apprehension of bias.

[20] I concur with that rationale. Many of the records at issue do not relate to the decision-maker or include references to him, but relate to the university's security office which is apparently within his area of administration. I find that the appellant has not established that the Vice-President of Finance and Administration had an interest in the

security office records such that a different decision would have been made with regard to access to the records.

[21] Based on the appellant's representations, it appears that his concerns are primarily with the way he was treated by the security office and the whereabouts of his correction requests. I make no determination as to a conflict of interest regarding this issue as these requests or any subsequent appeal relating to them are not before me in this appeal.

[22] In the present appeal, I find that a well-informed person, considering all of the circumstances, would not reasonably perceive a conflict of interest on the part of the decision-maker. Accordingly, I dismiss this part of the appeal.

B. What is the scope of the appellant's request?

[23] In appeal PA13-462, the university severed parts of Records 1, 5, 7, 8 and 9. Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

> (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).

[24] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.[1]

[25] To be considered responsive to the request, records must "reasonably relate" to the request.[2]

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[1] Orders P-134 and P-880.
[2] Orders P-880 and PO-2661.

[26] The university submits that the scope of the appellant's request in Appeal PA13-462 was clear based on the appellant's emails and the university's discussions with him. The university states that the appellant was seeking records about himself that are held in identified offices within specified timeframes and explained the nature of the severances it found to be not responsive as follows.

- Record 1 consists of university Ombudsperson's handwritten notes. There is a note on the second page that is written in different ink and likely at a different time. It relates to an academic at an American university who may have been coming for a visit. This information is considered to be not responsive as it doesn't pertain to the appellant in any way.

- Records 5, 7, 8, and 9 are all primarily email exchanges between the appellant and ombudsperson. The portions of the records that have been deemed not responsive are simply forwarding of the emails between one of the Ombudsperson's email accounts to another. The Ombudsperson is also a faculty member of the university and a partner in a downtown law firm and thus he has multiple email accounts. Forwarding of the emails does not pertain to the appellant's request.

[27] The university submits that an additional portion of Record 1 was incorrectly severed as not responsive when it should have been severed under the personal privacy exemption in section 49(b). This portion consists of a cell phone number belong to a staff member.

[28] The appellant did not address this issue in his representations.

[29] As stated above, to be considered responsive to the request, the information or records must "reasonably relate" to the request. In appeal PA13-462, the appellant's request was for records relating to himself within four offices of the university. I find that the appellant's request was clear and unambiguous. Based on my review of the information withheld by the university as not responsive, it is evident that this information does not relate to the appellant. I uphold the university's decision to withhold this information as not-responsive and I dismiss this part of the appeal.

C. Did the university conduct a reasonable search?

[30] This issue appears only to have been raised by the appellant respecting Appeal PA13-462, which has a broader scope than the request in Appeal PA13-112.

[31] 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.[3] 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.

[32] 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.[4] To be responsive, a record must be "reasonably related" to the request.[5]

[33] 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.[6]

[34] 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.[7]

[35] 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.[8]

[36] The adjudicator who conducted the inquiry identified the following records to be of concern to the appellant:

- Camera evidence of harassment
- Proof of email of coffee invitation
- Destruction of a video that contains a recorded encounter between the appellant and an employee from security
- A complaint filed by the appellant against the former security office director

[37] The university was asked to provide a summary of steps taken to respond to the request.

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[3] Orders P-85, P-221 and PO-1954-I.
[4] Orders P-624 and PO-2559.
[5] Order PO-2554.
[6] Orders M-909, PO-2469, PO-2592.
[7] Order MO-2185.
[8] Order MO-2246.

[38] The university submits that in regards to the video containing the encounter between the appellant and a security employee, a DVD was produced to the appellant as one of the responsive records for the appellant's first access request[9]. The DVD contained CCTV images of the appellant at the security services office in the William Small building on April 12, 2010. The university notes that the appellant asked for this record to be deleted and the university agreed to do so, since it was not being used for an investigation and it was subsequently destroyed on March 1, 2011. The university submits that this was conveyed to the appellant. Finally, the university submits that under the university's Common Records Schedule, CCTV images are retained only if they form part of an investigation; otherwise, they are deleted within a two-month time frame.

[39] The university submitted an affidavit from its Coordinator of Records and Information Management of the Information and Privacy office at the university who coordinated the search. She affirms of her email exchanges with the appellant that culminated in the request that is the subject of Appeal PA13-462. The coordinator confirmed that the appellant was seeking records that mentioned or pertained to himself and then she prepared memos to be sent to the various units in the university that would maintain responsive records. Accordingly, memos for searches were sent to the following individuals:

- Chief of Staff, Office of the President (for records in the Office of the Ombudsperson)
- Senior Executive Officer, Office of the Vice-President Finance and Administration (for records relating to the Housing office, the Office of the Vice-President Finance & Administration and Security Services)

[40] The coordinator affirms that the searches were conducted and the responsive records were returned to her office. The coordinator affirms that on October 7, 2013, the appellant sent an email asking a number of questions about the decision letter and the index of records that had been provided to him on September 26, 2013. On October 15, 2013, the coordinator responded to the appellant's questions as follows:

> You asked about some records that appear to be missing. It seems that neither Housing Services nor the Office of the Vice-President Finance & Administration produced records which you sent yourself. If you wish these to be included, we can search for them, but this will add to the cost of your request.

[41] The appellant submits that an email relating to a "coffee invitation" was not identified because that record does not exist. I believe that the appellant also submits that his complaints against the security office and the Vice-President of Finance &

[9] Request 2010-025 which is not the subject of these two appeals or this order.

Administration should have been captured by the searches and the fact that they were not is proof that they were destroyed. It is unclear to me from the appellant's representations whether the appellant is legitimately seeking additional records or has used this argument as evidence that the security office and/or the Vice-President of Finance & Administration were in a conflict of interest with respect to the records.

[42] However, from my review of the appellant's representations, I am unable to find that the appellant has established a reasonable basis for his belief that additional responsive records should exist. The university notes in its representations that the appellant has not paid the fees nor picked up any of the records which he has requested and been granted access to. I find that the records and information that the appellant may be seeking may be the information which he has already been granted access to and do not form a reasonable basis for additional searches.

[43] I further note that for the purposes of this order that the appellant's complaints against the security office and the Vice-President of Finance & Administration have been the subject of a Privacy Complaint with this office and I will not address these records further.

[44] As stated above, the *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the university must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records. I have reviewed the university's representations, as well as the extensive communications provided by the appellant to the university. I find that the university made a reasonable effort to identify and locate the records relating to the appellant in the four offices that he identified in his requests. I accept the university's explanation that the video containing the appellant at the security office has been destroyed. I uphold the university's search as reasonable and dismiss this part of the appeal.

D. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[45] 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;

[46] 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.[10]

[47] 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.[11]

[48] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[12]

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[10] Order 11.
[11] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[12] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

[49] The university submits that as the two requests were made by the appellant for records related to himslef then all the responsive records contain the appellant's personal information. Furthermore, some of the records in both appeals contain the personal information of other individuals including:

- Record 1 (PA13-462) contains a portion withheld which has a handwritten note of a cell phone number for a staff member.

- Records 4, 5, 8, 9, 10, 12, 13 and 15 (PA13-112) consist of security incident reports or other documentation created or collected by Security Services with regard to an encounter between the appellant and an individual who worked for the university, but was also a student. The information pertains to the student worker in a personal capacity and reveals something of a personal nature about him/her.

- Records 26, 27 and 32 (PA13-112) are three versions of a security incident report. The report mentions a tenant who lived in the same apartment building as the appellant. The records identify the tenant by name and an identifying student number.

- Records 8 and 34 (PA13-112) contain personal information pertaining to specific salary costs for one security services employee.

[50] I find that the records contain information relating to the appellant that qualifies as his personal information within the meaning of that term, as it is defined in section 2(1) of the *Act*. I note that much of the appellant's personal information has already been disclosed to him, The remaining information contains views or opinions of another individual about the appellant (paragraph (g) of the definition of "personal information") and the appellant's name, appearing with other personal information where disclosure would reveal personal information about the appellant (paragraph (h) of the definition of "personal information").

[51] I also find that the records contain information which qualifies as the personal information of other identifiable individuals within the meaning of that term, as it is defined in section 2(1) including the following:

- Information relating to race, sex and family status of an individual (paragraph (a));
- Information relating to education or employment history of an individual (paragraph (b));
- the telephone number of an individual (paragraph (d));
- the personal opinions or views of the individual (paragraph (e));
- the individual's name where it appears with other personal information (paragraph (h))

[52] I find this information relates to these individuals in their personal, and not their professional capacity, and as such, is their personal information.

[53] The appellant submits in his representations that he is not interested in knowing the personal information of the university's employees. He names two specific employees whose information he does not require. Unfortunately, the personal information of these individuals is inextricably intertwined with that of the appellant and thus cannot be severed. Accordingly, I will have to consider the appellant's access to this information. However, I have removed the personal cell phone number of the university employee which appears in Record 1 of appeal PA13-462 from the scope of the appeal.

[54] As I have found that the records contain the personal information of the appellant and other individuals I will now consider the application of the discretionary exemptions in sections 49(a) and (b) to this information.

E. Does the discretionary exemption at section 49(a) in conjunction with the section 14 or 20 exemptions apply to the information at issue?

[55] Section 47(1) gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right and reads:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > where section 12, 13, 14, 14.1, 14.2, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information.

[56] Section 49(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information.[13]

[57] In this case, the university relies on section 49(a) in conjunction with section 14(1)(a) for Records 13 and 21 and section 20 for Record 1.

[13] Order M-352.

Law Enforcement

[58] In Appeal PA13-112, the university claims that section 14(1)(a) applies to exempt Records 13 and 21. Section 14(1)(a) states:

> (1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> (a) interfere with a law enforcement matter;

[59] The term "law enforcement" is used in several parts of section 14, and is defined in section 2(1) as follows:

> "law enforcement" means,
>
> (a) policing,
>
> (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or
>
> (c) the conduct of proceedings referred to in clause (b)

[60] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[14]

[61] Where section 14(1)(a) uses the words "could reasonably be expected to", the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient.[15]

[62] It is not sufficient for an institution to take the position that the harms under section 14 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfilment of the requirements of the exemption.[16]

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[14] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[15] Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).
[16] Order PO-2040; *Ontario (Attorney General) v. Fineberg*.

Section 14(1)(a): law enforcement matter

[63] The matter in question must be ongoing or in existence.[17] The exemption does not apply where the matter is completed, or where the alleged interference is with "potential" law enforcement matters.[18]

[64] The institution holding the records need not be the institution conducting the law enforcement matter for the exemption to apply.[19]

[65] The university submits that Records 13 and 21 both document interactions between the university and the Toronto Police Service with respect to the appellant pertaining to an investigation of harassment. The university notes that one of the documents cites a police occurrence number which demonstrates that the law enforcement matter was in existence.

[66] I have reviewed Records 13 and 21 and, find that Record 13 does include a reference to an occurrence number. However, the date on Record 13 is now 5 years old. It is not evident to me that the police's investigation is still ongoing. In fact, the adjudicator conducting the inquiry asked the university directly whether the law enforcement matter was ongoing and the university simply referred to the occurrence number. I find that the fact that the date on Record 13 is now 5 years old is not sufficient to establish that the law enforcement matter is ongoing or in existence. Accordingly, I find that section 14(1)(a) does not apply to the information and thus section 49(a) does not apply to exempt this information from disclosure. As no other discretionary exemptions were claimed for Record 21 and no mandatory exemptions apply, I will order this record disclosed to the appellant.

[67] The university claimed additional exemptions for Record 13 and I will proceed to consider the application of those exemptions, below.

Threat to Safety or Health

[68] In Appeal PA13-112, the university claims that section 20 applies to some of the records. Section 20 states:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

[69] For this exemption to apply, the institution must demonstrate that disclosure of the record "could reasonably be expected to" lead to the specified result. To meet this

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[17] Order PO-2657.
[18] Orders PO-2085, MO-1578.
[19] Order PO-2085.

test, the institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated.[20]

[70] An individual's subjective fear, while relevant, may not be sufficient to establish the application of the exemption.[21]

[71] The university submits that the appellant has a long history of encounters with security services and the Toronto Police Service due to mental health concerns. The university submits that its priority is to protect the health, safety and well-being of its students and employees and makes specific representations regarding the records. I will only be considering the application of section 20 to Record 1 as I find that section 49(b) applies to the remaining records below and that exemption was not claimed for this record.

[72] The university submits that Record 1 is a security incident report where a particular staff member is mentioned by name. The university states:

> Normally, York University does not sever names of employees from records when processing FIPPA requests; names in the context of employment responsibilities are considered to be business information. However, section 20 was claimed for [this record] because all contain the name of a York University employee who expressed a personal safety concern. Accordingly, we decided to err on the side of protecting our employee.

[73] The university provided a timeline of the interactions between the appellant and university staff. The timeline establishes that from 2002 to 2010 there have been a number of incidents where the university's security services had to get involved due to the appellant's behaviour. The university also submitted confidential representations that were not shared with the appellant that addressed the application of this exemption.

[74] The information severed from Record 1 consists of the name of a Housing service employee. The university did not sever the rest of the information in the record and, in my view, based on the information remaining; the individual to whom the information relates would be identifiable to the appellant. However, I also note that the appellant has not chosen to obtain this record even though he has previously been granted access to it.

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[20] *Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.).
[21] Order PO-2003.

[75] The appellant submits that the university, as indicated in the responsive records, blew the incident out of proportion which is the subject of these incident reports and he submits that the allegations about him in the records was fabricated by staff. The appellant also points out that between 2002 and 2007 there were no reported incidents about him.

[76] Based on my review of the information withheld and the parties' representations, I find that section 20 applies and that disclosure of the individual's name in Record 1 could reasonably be expected to threaten the safety and health of an individual. It is evident from the appellant's representations that he is unhappy with the way he was treated by both housing and security staff at the university. The appellant also attributes his departure from the university and the country to the incidents that took place at the university. The numerous emails this office has received from the appellant indicates that he has strong feelings about what occurred to him at the university. It is also evident from the records that university staff were concerned for their safety as a result of the appellant's visits and emails. I find that section 20 applies to the withheld information in Record 1 and as such I find it exempt under section 49(a), subject to my finding on the university's exercise of discretion.

F. Does the discretionary exemption at section 49(b) apply to the information at issue?

[77] In Appeal PA13-112, the university has claimed that section 49(b) applies to records 4, 5, 8-10, 12, 13, 15, 26, 27, 32 and 34. Under section 49(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester. Since the section 49(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.

[78] In applying section 49(b), sections 21(1) to (4) provide guidance in determining whether disclosure of the information would be an unjustified invasion of personal privacy. In the circumstances, the university submits that section 21(1)(f) is relevant such that disclosure of the information would constitute an unjustified invasion of another individual's personal privacy.

[79] In determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 49(b), this office will consider, and weigh, the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.[22] 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 49(b).

[22] Order MO-2954.

[80] The university submits that the presumption in sections 21(3)(b) and (f) and the factor in section 21(2)(h) are all relevant to the information withheld under section 49(b). These sections state:

> (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,
>
> > (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
>
> (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> > (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
> >
> > (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

[81] The university states:

> Records 4, 5, 8, 9, 10, 12, 13 and 15 consist of security incident reports or other documentation created or collected by Security Services with regards to an encounter between the Appellant and an individual who worked for the University but was also a student. The records reveal something of a personal nature about the student worker. Where the individual supplied the information, it was supplied in confidence pursuant to section 21(2)(h), and the individual did not give consent for disclosure of the personal information; doing so would constitute an unjustified invasion of personal privacy. Furthermore, these records were compiled and are identifiable as part of an investigation into a possible violation of law pursuant to section 21(3)(b).
>
> Records 26, 27 and 32 are three versions of [specified security incident report]. The report mentions a tenant who lived in the same apartment building as the Appellant. The records identify the individual by name and an identifying number (a student number). Furthermore, they were compiled and identifiable as part of an investigation into a possible violation of law pursuant to section 21(3)(b).

> Records 8 and 34 contain personal information pertaining to specific salary costs for one Security Services employee. Accordingly, disclosure of this employment information would constitute an unjustified invasion of personal privacy and was severed pursuant to section 21(3)(f).

[82] The appellant submits that I should consider the fact that the university's security and housing offices unfairly damaged his reputation by their actions and treatment of him. In particular, the appellant alleges that the university falsified documents about the appellant and by its actions invaded his privacy.

[83] The personal information at issue consists of the names and contact information, as well as the statements of other individuals about the appellant. I find that this personal information was compiled and is identifiable as part of the police's investigation into a possible violations of law, specifically the *Criminal Code.* As such, I find that disclosure of the personal information remaining at issue is presumed to be an unjustified invasion of the personal privacy of the individuals to whom the information relates under section 21(3)(b).

[84] I also accept the university's submission that the presumption in section 21(3)(f) is relevant for the personal information relating to the individual's finances in Records 8 and 34. Lastly, I find that some of the records contain personal information that was supplied in confidence and that the factor weighing against disclosure in section 21(2)(h) is also relevant. Past orders of this office have found that in order for section 21(2)(h) to be a factor, the personal information at issue must have been supplied by the person to whom it relates. Accordingly, this section does not apply when one individual provides personal information about another to an institution.[23] I find that the personal information at issue contains information about the university employee and the appellant and as such, I give this factor favouring non-disclosure little weight.

[85] The appellant has not established that any of the factors in section 21(2) favouring disclosure applies to the personal information remaining at issue. I have considered the appellant's arguments that the reports against him were fabricated, but I find these allegations to be unsubstantiated based on the information he has provided and the records themselves.

[86] Having found that the personal information at issue is subject to the presumptions in sections 21(3)(b) and (f) and that there are no factors favouring non-disclosure, I find that disclosure of the personal information at issue would be an unjustified invasion of individuals' personal privacy and as such, section 49(b) applies, subject to my finding on the university's exercise of discretion.

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[23] Order P-606.

G. Did the university properly exercise its discretion to apply section 49(a) and/or (b)?

[87] I have found that sections 49(a) and (b) apply to exempt the records at issue from disclosure. I must now consider whether the university properly exercised its discretion in applying these exemptions.

[88] The sections 49(a) and (b) exemptions are discretionary, and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[89] In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

[90] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[24] This office may not, however, substitute its own discretion for that of the institution [section 54(2)].

[91] In applying sections 49(a) and (b) to exempt some of the records, the university submits that it primarily considered the safety and health of its employees and students. The university submits that the appellant has a long history of encounters with both the university and the Toronto Police Service. The university also considered the needs of the police and the integrity of its law enforcement role when exercising its discretion to deny the appellant access to some of the records.

[92] The university submits that it was careful to consider whether to withhold the information requested would adversely affect a fair determination of the rights of the appellant and decided that it was unlikely to do so. The university notes that most of records were disclosed to the appellant, including the substance of all but one of the incident reports. However, the appellant has chosen not to obtain the copies of the records he has been granted access to.

[93] Finally, the university submits that it has exercised its discretion to try to achieve a balance between the appellant's needs and its concerns about the health and safety of its students and employees.

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[24] Order MO-1573.

[94] The appellant's representations do not address this issue directly. However, it is evident from the appellant's representations that he believes that the university exercised its discretion inappropriately. The appellant repeatedly submits that the university has fabricated the contents of the records in its attempt to cover-up its treatment of him.

[95] As I have previously found in this order, the appellant's allegations are unsubstantiated by the contents of the records or the university's treatment of them. I find that the university has severed the records in such a way as to demonstrate that it exercised its discretion in applying the exemptions in a limited and specific manner, keeping in mind that the appellant sought access to his personal information. I find that the university properly considered the exemptions claimed and the interests sought to be protected and also attempted to balance the privacy interests of the individuals whose personal information has been withheld against the appellant's right to his own personal information. I uphold the university's exercise of discretion and find that the records are exempt under sections 49(a) and (b).

ORDER:

1. I order the university to disclose Record 21 to the appellant by providing him with a copy of this record by **August 24, 2015**.

2. I uphold the university's decision with respect to the remaining issues and records.

3. In order to verify compliance with order provision 1, I reserve the right to require the university to provide me with a copy of the record sent to the appellant.

Original Signed By: July 17, 2015
Stephanie Haly
Adjudicator