Information and Privacy Commissioner,
Ontario, Canada

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

# ORDER PO-3609

Appeal PA15-293

The University of Waterloo

May 18, 2016

**Summary:** The appellant sought access to records relating to his daughter's application to a university computer workshop. The university located responsive records and issued a decision to the appellant. The appellant appealed the university's decision challenging the reasonableness of its search for responsive records and arguing that additional records exist. The university's search is upheld as reasonable and 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.

## BACKGROUND:

[1] The appellant submitted a request to the University of Waterloo (the university) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information about his minor daughter relating to her unsuccessful application to participate in a particular computer science workshop. The appellant specified in his request that he sought access to all of the information that the university and its Centre for Education in Mathematics and Computing (CEMC) have in their possession and/or have the ability to access in regards to his daughter. The appellant also requested the following:

> Do not omit any parts of the application and/or selection process mentioned above including all parts of the evaluation process including

> scoring, ranking and reference or any other notes. Please include all forms of print and written notes, electronic records (e.g. emails), sound recordings (e.g. voicemail) and any other forms of record keeping.

[2] The university identified five responsive records and issued a decision on May 8, 2015, granting full access to three of them. The university relied on the discretionary exemption in section 49(c.1)(ii) (evaluative or opinion material) to withhold a database entry record of the daughter's online application to the CEMC workshop and a letter of recommendation from the daughter's teacher that the university asserted was provided in confidence. In its decision, the university directed the appellant to seek permission from the teacher directly if he wished to have a copy of the letter.

[3] The appellant was not satisfied with the access decision and appealed it to this office. In his appeal letter, the appellant contended that the university had not provided all of the information pertaining to his daughter - particularly, email correspondence between it and him - and as a result, he questioned the reasonableness of the university's search for records.

[4] During the mediation stage of the appeal, the university issued a revised access decision on August 17, 2015, in which it indicated it was notifying the teacher who wrote the recommendation letter and seeking consent to disclose the letter to the appellant. The university also disclosed additional information from the database entry record, while continuing to rely on section 49(c.1)(ii) to withhold the information in the record that remained. The university also provided a copy of a document describing the workshop's selection and lottery process, which it had previously provided to the appellant at the request stage.

[5] The university issued another revised decision on September 8, 2015, confirming that no responsive records exist regarding the identity of the individual who evaluated the appellant's daughter's application. The university provided a web site link to a list of members of the CEMC who make up the pool of evaluators for the workshop and it advised the appellant that he could contact the workshop director to obtain further information. Finally, the university indicated that it had obtained consent to release the letter of recommendation and it disclosed that record in full to the appellant.

[6] The university also issued another revised decision on September 12, 2015, withdrawing its reliance on section 49(c.1)(ii) to withhold the remaining information in the database entry record and disclosing the record in full to the appellant.

[7] After receiving the university's supplementary decisions and disclosure, the appellant reiterated his request for "all emails that reference" his daughter. In response, the university provided a final supplementary decision on October 14, 2015, disclosing four additional emails. The university explained that it had not initially considered the emails as responsive to the appellant's request because it had not interpreted the request to include records it believed the appellant already had. The

university also included another responsive record, a fifth email, that it missed during its initial search but subsequently located in the workshop director's sent mail folder. The university conveyed that it conducted a full search of the workshop director's email account and a general email account and located no further records. The university confirmed with the workshop director that she no longer has copies of any emails she may have exchanged with the appellant.

[8] The appellant continued to maintain that additional records should exist. As a mediated resolution of the appeal was not possible, it was moved to the adjudication stage of the appeal process for a written inquiry under the *Act.*

[9] I sought and received representations from the university on the reasonableness of its search. I then shared the university's representations in their entirety with the appellant and invited him to submit representations on the sole issue in this appeal. The appellant did not provide representations.

[10] In this order, I uphold the university's search as reasonable and dismiss the appeal.

## DISCUSSION:

*[11]* The sole issue I must determine in this appeal is whether the university conducted a reasonable search for records as required by section 24 of the *Act*.[1] If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the university's decision. If I am not satisfied, I may order further searches.

[12] 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 that it has made a reasonable effort to identify and locate responsive records.[2] The appellant, who asserts that additional records exist, must provide a reasonable basis for concluding that records responsive to the request exist that the university has not identified.[3] To be responsive, a record must be "reasonably related" to the request.[4]

[13] Previous orders of this office have held that 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.[5] This office has ordered institutions to conduct further searches in cases where the institution did not provide sufficient evidence to demonstrate that it has made a reasonable effort

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

to identify and locate all of the responsive records within its custody or control.[6]

[14] The university submits that it largely responded literally to the appellant's request. It explains that it initially narrowed the scope of the request by deciding that the appellant was not seeking access to records that he already possessed, namely, four emails that he exchanged with the workshop director, and on this basis, it initially deemed these four emails to be non-responsive to the request.

[15] The university states that two searches were carried out by its Privacy Officer and the workshop director in late April 2015 and early October 2015, both in the workshop director's office. It explains that the workshop director holds all records relating to applications to the workshop and is most knowledgeable about them. It continues that the searches were done electronically by inputting the appellant's daughter's name into the database that holds all application information, the workshop director's email inbox and the email inbox of the general email account for the workshop. The university states that the CEMC does not retain paper files or any other electronic files relating to the applications to the workshop.

[16] During its April search, the university states that it located the appellant's daughter's database entry of her application, a letter of reference written in support of her application, an essay she wrote and four emails from the appellant, which as noted above, it initially considered non-responsive because the appellant already had them.

[17] As a result of its October search, the university states that it identified a fifth email in the workshop director's sent mail folder which it mistakenly did not search in April. It explains that during its October search, it searched the entirety of both the workshop director's email account and the general email account for any emails relating to the appellant's daughter. It states that as a result, it issued a revised decision letter disclosing the five emails to the appellant in their entirety with an explanation that the first four had not been deemed responsive initially and the fifth was identified during a subsequent full search of the workshop director's email inbox. It notes that it apologized to the appellant for not identifying and disclosing the fifth email during its first search.

[18] The university concludes by submitting that no further responsive records exist. It also confirms that there are no responsive records that once existed but no longer exist. On this point, the university notes that the workshop director did not have any responses to the emails the appellant sent to her because she believes all of her exchanges with the appellant occurred over the telephone. It adds that she does not normally delete emails sent in response to inquiries about the workshop and has email exchanges that she had with other individuals who made inquiries. The university's submissions are signed and affirmed by its Privacy Officer and the workshop director.

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[6] Order MO-2185.

[19] As noted above, the appellant did not submit representations.

[20] Having regard to the responsive records the university located during its two searches and disclosed to the appellant, and the evidence before me from the university about how it carried out its searches, and in the absence of any evidence that establishes a reasonable basis to conclude that additional records exist, I find the university conducted a reasonable search. I am satisfied that the workshop director responsible for the workshop and for communications with applicants to the workshop, is an experienced employee particularly knowledgeable in the subject matter of the appellant's request, and that her two searches of her email account and of the general email account for the workshop constituted a reasonable effort to located responsive records.

## ORDER:

I uphold the university's search and dismiss the appeal.

Original Signed by: May 18, 2016
Stella Ball
Adjudicator