

Information and Privacy Commissioner,
Ontario, Canada



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

FINAL ORDER PO-3944-F

Appeal PA15-501

Queen's University

March 28, 2019

Summary: The university received a request, pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*), for records relating to notes made by the appellant's former team coach and notes from a meeting on a specified date. In Interim Order PO-3918-I, the adjudicator ordered the university to conduct a further search for the former team coach's notes. In this final order, the adjudicator finds that the university's further search is reasonable.

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 made a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to Queen's University (the university) for the following information:

- 1) A named individual's (the former team coach) notes about the appellant and the team interactions with the appellant. The appellant stated that the notes were turned over to a named individual and another named individual when the former team coach left the program.
- 2) Details of the Threat Assessment Team (TAT) meeting called on a specified date by two named individuals.

The appellant stated that the meeting was held to discuss the appellant's future in a particular program. The appellant advised that the records

should include the minutes of the meeting and the decision put forward as a result of the meeting.

[2] The university issued a decision granting partial access to the responsive records. Access was denied to the withheld information under section 21(1) of the *Act*. The university also assessed fees for photocopying, totalling \$8.00 and noted that certain information was withheld as it was deemed not responsive to the request.

[3] The requester contacted the university regarding a specific record that was not disclosed in its initial decision. The university responded by issuing a supplemental decision, granting full access to one further record.

[4] The requester, now the appellant, appealed the university's original decision.

[5] During mediation, the mediator noted that the information withheld in the records related to both the appellant and individuals other than the appellant. The mediator raised the possible application of section 49(b) of the *Act* with the university. The university agreed and section 49(b) was added to the appeal.

[6] The appellant advised the mediator that he believed that further records responsive to his request exist at the university. In response, the university conducted a further search. Following the completion of this search, the university issued a revised decision disclosing additional records responsive to the appellant's request. In its decision, the university also provided a description of the search conducted.

[7] The appellant continued to seek access to information withheld by the university, including the information the university determined was not responsive to the request. The appellant also believed that further records responsive to his request exist.

[8] In Interim Order PO-3918-I, I ordered the university to conduct a further search for the former team coach's notes.

[9] In compliance with the interim order, the university conducted a further search and submitted an affidavit, detailing its further search efforts.

[10] I invited the appellant to provide representations in response to the university's affidavit. He declined to provide representations.

[11] In this final order, I find that the university's further search is reasonable.

DISCUSSION:

[12] In Interim Order PO-3918-I, I ordered the university to conduct a further search for the former team coach's notes.

[13] Accordingly, my review of the university's further search is restricted to this

aspect. Following the issuance of Interim Order PO-3918-I, the university conducted a further search for the former team coach's notes. It submitted an affidavit in support of its position that the further search was reasonable.

[14] The affidavit submitted by the university was prepared by the former team coach. She advised that the university's chief privacy officer contacted her after the interim order was issued. Shortly afterwards, she searched her office for hardcopy records and did not find any records responsive to the appellant's request. She advised that her practice is to destroy hardcopy records after about six to eight months. She also advised that the next day she searched her old laptop (which she had used when coaching the appellant's team) and did not find any responsive records. Approximately two weeks later, she searched her current laptop for emails and files. She advised that she did not find any emails but did find an electronic document titled "Team A Working Session" containing a transcription of her handwritten notes for the specified team meeting, besides two other electronic documents: a list of action items from a meeting in August 2014 and a document containing Toronto Team A's Mission and Goals. The former team coach opined that these documents were shared with all team members, including the appellant, around the time they were created.

[15] 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 24.¹ 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.

[16] 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 To be responsive, a record must be "reasonably related" to the request.³

[17] 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.⁴

[18] 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.⁵

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Order PO-2554.

⁴ Orders M-909, PO-2469 and PO-2592.

⁵ Order MO-2185.

[19] 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.⁶

[20] In Interim Order PO-3918-I, I found that the university did not conduct a reasonable search for the former team coach's notes because it only reviewed all the documents contained in the box provided by the former team coach. The university did not ask the former team coach directly whether she may have any responsive records when it conducted the additional search. Also, the university did not ask the former team coach to search her office for any notes, in case there were any that she did not return upon leaving the program.

[21] I have reviewed the university's affidavit in support of its position that the further search was reasonable. I am satisfied that the university's further search was conducted by an individual, who is knowledgeable about the subject-matter of the request. In this case, the further search was conducted by the former team coach whose notes are at issue. I am satisfied she searched her record holdings for the records sought by the appellant and expended a reasonable effort to do so. As stated above, the appellant did not provide representations about the former team coach's search. Accordingly, I find that the university's further search is reasonable.

ORDER:

I find that the university's further search was reasonable, and dismiss the appeal.

Original Signed by: _____
Lan An
Adjudicator

_____ March 28, 2019

⁶ Order MO-2246.