

Information and Privacy Commissioner,
Ontario, Canada



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

FINAL ORDER PO-4355-F

Appeal PA19-00413

McMaster University

February 16, 2023

Summary: This final order follows Interim Order PO-4311-I. The appellant made a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to McMaster University (the university) for records relating to incidents reported at the university's athletic centre. The university identified responsive records and provided the appellant with partial access to them. The appellant identified additional records that he believed existed and appealed the university's decision. In Interim Order PO-4311-I, the adjudicator found that the additional records were responsive to the appellant's request and ordered the university to conduct a further search for records. In this final order, the adjudicator finds that the university has now conducted a reasonable search for responsive records and dismisses the appeal.

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

Order Considered: Order PO-4311-I

OVERVIEW:

[1] This final order disposes of the only issue remaining from Interim Order PO-4311-I, specifically, whether McMaster University (the university) conducted a reasonable search for records responsive to the appellant's request as required by section 24 of the *Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] The appellant made a request under the *Act* for access to records relating to

incidents at the university's athletic centre over a specified time period.

[3] The university identified responsive records and decided to grant the appellant partial access to those records. The appellant identified additional records that he believed exist and he appealed the university's decision to the IPC. I conducted an inquiry and received representations from the parties. I found that the additional records identified by the appellant are responsive to the request and that the university had not conducted a reasonable search for responsive records.

[4] In Interim Order PO-4311-I, I ordered the university to conduct a further search for responsive records. In provision 2, I ordered the university to provide me with an affidavit sworn by the individual who conducted the further search and stating their knowledge and understanding of the subject matter of the requested records, the types of files searched, the results of the search and, in the event that no further responsive records were located, a reasonable explanation for this outcome. In provision 3 of the interim order, in the event that additional records were located, I ordered the university to provide a decision letter to the appellant regarding access to those records.

[5] The university has conducted a further search for responsive records and located two additional records. The university has provided me with an affidavit with information relating to the search and has issued a supplementary access decision to the appellant regarding the two additional records that have been located.

[6] In this final order, I find that the university has met the provisions of Interim Order PO-4311-I and has now conducted a reasonable search for responsive records as required by section 24 of the *Act* and I dismiss the appeal.

DISCUSSION:

[7] The only remaining issue in this final order is whether the university conducted a reasonable search for responsive records in response to Interim Order PO-4311-I.

[8] Where a requester claims additional responsive records exist beyond those found by an institution, the issue is whether the institution has conducted a reasonable search for records as required by section 24 of the *Act*.¹ If, after conducting an inquiry, the adjudicator is satisfied that the institution carried out a reasonable search in the circumstances, they will uphold the institution's search. If the adjudicator is not satisfied, they may order further searches.

[9] The *Act* does not require an institution to prove with absolute certainty that further records do not exist. However, it must provide sufficient evidence to show that a reasonable effort was made to identify and locate responsive records;² that is, records

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

that are “reasonably related” to the request.³

[10] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are reasonably related to the request.⁴ The IPC will order a further search if the institution does not provide enough evidence to show that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.⁵

[11] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they must still provide a reasonable basis for concluding that such records exist.⁶

University’s affidavit

[12] In response to Interim Order PO-4311-I, the university submitted an affidavit regarding its search for the additional incident reports. The affidavit is sworn by the director of the university’s athletic centre and describes the searches undertaken of physical and electronic files.

[13] These further searches located two of the three additional incident reports identified by the appellant; the two incident reports with specified numbers. The director of the university’s athletic centre stated their belief that that no further responsive records were within the athletic centre’s custody or control.

[14] The university issued a supplementary access decision to the appellant and provided partial access to the two additional records, stating that portions of the records were withheld pursuant to the personal privacy exemption in section 21(1) of the *Act*.

Appellant’s response

[15] I invited the appellant to respond to the university’s affidavit and supplementary access decision. The appellant provided a written response, stating that he considers the university has satisfied the interim order. The appellant did not raise any issues regarding the university’s further search.

Analysis and finding

[16] I find that the university has now conducted a reasonable search for records responsive to the appellant’s request and, in particular, the three additional incident reports identified by the appellant. The university’s further search satisfies Interim Order PO-4311-I.

³ Order PO-2554.

⁴ Orders M-909, PO-2469 and PO-2592.

⁵ Order MO-2185.

⁶ Order MO-2446.

[17] Having reviewed the university's affidavit evidence, I am satisfied that an experienced employee knowledgeable in the subject matter of the request expended a reasonable effort to locate records, specifically the additional incident reports identified by the appellant in this appeal.

[18] I note that the university has still not located one of the three additional records identified by the appellant. However, in response to the university's affidavit setting out its further searches, the appellant has not indicated that he continues to believe that an additional incident report exists. There is therefore no evidence before me of a reasonable basis for a belief that further responsive records exist or that ordering a further search will yield additional responsive records

[19] For these reasons, I find that the university has now concluded a reasonable search for records, as required by section 24 of the *Act*.

ORDER:

I uphold the university's search as reasonable. As reasonable search was the only remaining issue before me after Interim Order PO-4331-I, I dismiss this appeal.

Original signed by: _____
Katherine Ball
Adjudicator

February 16, 2023 _____