



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

FINAL ORDER PO-2674-F

Appeal PA06-347

Ryerson University



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NATURE OF THE APPEAL:

Ryerson University (the University) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for:

...copies of all sexual harassment complaints filed with the University between 2004 and present with all personal information removed. I'm requesting the original hand-written or typed complaints and all records of the university's handling and resolution of the cases such as any internal reports, disciplinary actions, expulsions or court actions. As well, I request any summary data on sexual harassment at the University for the same time frame including, but not limited to, statistics or listings of incidents and the results of investigations.

The request was clarified to include only records in relation to formal complaints for sexual harassment. As a result, the requester sought:

...all records of the university's handling and resolution of the cases, such as internal reports, disciplinary options, expulsions and court actions in respect of formal complaints for sexual harassment that existed as of September 7, 2006.

The requester expressly noted that "personal information" was not sought and directed that the request be satisfied "with all personal information removed".

The University issued a decision in which it described the search undertaken for the records responsive to this request. It noted that no records responsive to this request were found in the Centre for Student Development and Counselling and that any responsive records in the Human Resources (HR) and the Discrimination and Harassment Prevention Services (DHPS) departments were excluded from disclosure under the *Act* by reason of section 65(6).

In its decision, the University also indicated that:

Given the small number of formal complaints, and the small size of the Ryerson community, it is not possible to disclose any part of these records without compromising the personal privacy of affected individuals.

It went on to indicate that "all records of formal complaints are also under current litigation or about to be subject to litigation".

The University then stated that:

[t]he files containing formal complaints of sexual harassment involving faculty or staff would be subject to the exclusion in section 65(6) of the *Act* because all formal complaints are considered to be employment grievances and as such are employment-related matters in which Ryerson has an interest. These files are currently open and therefore Ryerson's interest is current and ongoing...

Further, it noted that "[t]here are no records corresponding to [the] request that are not employment-related records."

The University also applied the exemptions in sections 19(a) and (c) (solicitor-client privilege) and section 21 (personal privacy) to withhold the responsive records.

The requester, now the appellant, appealed this decision.

During mediation, the appellant indicated that he felt there should be responsive records in the Centre for Student Development and Counselling. As a result, the issue of reasonableness of search was added to this appeal. The appellant also raised as an issue the possible existence of a compelling public interest in the disclosure of the records under section 23 of the *Act* in response to the exemptions claimed by the University.

As mediation was not successful in resolving the issues in this appeal, the file was transferred to me to conduct an Inquiry. I provided the University with a Notice of Inquiry, setting out the facts and issues in the appeal. The University then located additional responsive records, which were added to this appeal. I then decided that I would first adjudicate the issue of whether the records were excluded from the *Act* by reason of section 65(6). The University provided representations in response to the Notice of Inquiry on the possible application of the exclusionary provision in section 65(6) of the *Act*.

I then sent a Notice of Inquiry, along with a copy of the University's representations to the appellant, seeking his representations on the applicability of section 65(6) to the records. Portions of the University's representations were not disclosed because of my concerns about their confidentiality. I received representations in response from the appellant. I sent a copy of the appellant's representations to the University and sought representations in reply. I received reply representations from the University. Subsequently I issued an interim order, Order PO-2625-I, in which I found that all of the responsive records located by the University were excluded from the *Act* by reason of section 65(6)3.

Following the issuance of Order PO-2625-I, I sent a Notice of Inquiry to the University seeking its representations on the sole remaining issue in this appeal as to whether the University had conducted a reasonable search for responsive records in the Centre for Student Development and Counselling (the Centre). I received representations from the University, and sent a complete copy of these representations, along with a Notice of Inquiry to the appellant, seeking his representations. The appellant did not provide representations in response.

DISCUSSION:

SEARCH FOR RESPONSIVE RECORDS

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 [Orders P-85, P-221, PO-1954-I]. 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.

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 [Order P-624].

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.

The University was asked to provide a written summary of all steps taken in response to the request. In particular, the University was asked to respond to the following, preferably in affidavit form:

1. Did the University contact the requester for additional clarification of the request? If so, please provide details including a summary of any further information the requester provided.
2. If the University did not contact the requester to clarify the request, did it:
 - (a) choose to respond literally to the request?
 - (b) choose to define the scope of the request unilaterally? If so, did the University outline the limits of the scope of the request to the requester? If yes, for what reasons was the scope of the request defined this way? When and how did the University inform the requester of this decision? Did the University explain to the requester why it was narrowing the scope of the request?
3. Please provide details of any searches carried out including: by whom were they conducted, what places were searched, who was contacted in the course of the search, what types of files were searched and finally, what were the results of the searches? Please include details of any searches carried out to respond to the request.
4. Is it possible that such records existed but no longer exist? If so please provide details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.

In response to the Notice of Inquiry, the University provided an affidavit from the University's Coordinator for the Centre for Student Development and Counselling in respect of this

reasonable search inquiry. The University also directed me to the information contained on its website concerning the University's "Crisis Intervention Referral Process" and the Centre for Student Development and Counselling. This information outlines the role of the Centre. The University submits that it made every effort to clarify the request to provide as much information to the appellant as possible to assist him.

In her affidavit, the University's Coordinator for the Centre states that there are no responsive records located in the Centre, as this Centre does not accept, nor otherwise deal with, formal complaints for sexual harassment. She states that:

[The Centre] does not have records of internal reports, disciplinary options, expulsions or court actions in relation to formal sexual harassment complaints. Such matters are handled by the Office of Discrimination and Harassment Prevention and/or the Safety and Security Office at Ryerson University. If a student came to the Centre in relation to sexual harassment, he or she would be referred to the Office of Discrimination and Harassment and/or to Safety and Security, whichever is appropriate in the context.

[In response to the Notice of Inquiry] I have now conducted a thorough search of the Centre's office...

There are no other records of the Centre held elsewhere in the University. Electronic data derived from the files of individuals who have come to the Centre for counselling are kept in a statistical database...

After receipt of the Notice of Inquiry herein; I asked my staff to identify the files categorized as "harassment", since there is no category called "sexual harassment". The category "harassment" includes counselling for distress resulting from a broad range of types of "harassment". In order to identify the files, they had to review the statistical database and extract the subset of the files coded as "harassment". During the time-frame relevant to the request herein, there were 4,219 files. Of those files, 65 were categorized as "harassment".

I personally reviewed each of the 65 files categorized as "harassment". I spent approximately 20 hours reviewing the files. I can confirm that as a result of my search, none of the records in the 65 files that I reviewed contained records of formal complaints of sexual harassment or of the University's handling or resolution of cases of sexual harassment or internal reports, disciplinary options, expulsions or court actions in respect of formal complaints for sexual harassment.

Given my position at the Centre and the role of the Centre, I believe that my search of the 65 files categorized as "harassment" was reasonable and more than adequately addresses whatever doubt may remain as to whether the Centre has any of the records referred to by the Appellant in the clarified request. Moreover,

given that the Centre plays no role in the handling of formal sexual harassment requests at Ryerson University, it is my sincere belief that the remaining 4,154 files that are not categorized as “harassment” do not contain the records sought by the appellant...

Analysis/Findings

The appellant is seeking records concerning any formal complaints of sexual harassment located in the University’s Centre for Student Development and Counselling. Although the appellant asserts that responsive records should exist in the Centre, by not providing representations in response to the Notice of Inquiry concerning the search issue, the appellant has not provided any evidence which would allow me to conclude that responsive records exist in the Centre.

Upon my review of the University’s representations, including the accompanying affidavit and the information from the University’s website concerning the Centre, I find that the University has provided sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624].

The University has provided a comprehensive description of the steps it undertook to locate records responsive to the appellant’s request. Accordingly, I find that the University has performed a reasonable search for responsive records.

ORDER:

I uphold the University’s search for records and dismiss the appeal.

Original signed by: _____
Diane Smith
Adjudicator

_____ May 15, 2008