

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-3404

Appeal PA12-448

University of Ottawa

September 26, 2014

**Summary:** The requester sought records from the University of Ottawa about himself covering a specified time period. The University located responsive records; however, the appellant believed that the records received were not complete and that additional responsive records existed. This order upholds the decision of the University and finds that the University's search was reasonable.

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

### OVERVIEW:

[1] The appellant submitted a multi-part request under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) to the University of Ottawa (the university) for records related to himself, in connection with specified courses and his student finances.

[2] The university issued a decision providing partial access to the records. The requester appealed this decision. During mediation all issues about access to the records were resolved. The university provided the requester (now the appellant) with full access to the records, except for severances under section 21 to remove personal information of other students, to which the appellant agreed. However, the appellant

indicated that he believed there were other records which have not been disclosed to him.

[3] As a mediated resolution of this issue was not possible, the appeal was moved to the adjudication stage, where an adjudicator conducts a written inquiry.

[4] I initially sought and received representations from the appellant on the issue of the reasonableness of the search, asking him to provide evidence to support his contention that more records exist. I then decided to seek representations from the university, asking it to specifically address portions of the appellant's representations that relate to his description of "missing records", and providing it with the non-confidential portions of the appellant's representations. The university was also asked to provide details of its search. I received representations from the university, which were then shared with the appellant. As the representations of the university raised issues of the custody or control of some records and the application of an exclusion under the *Act*, I asked the appellant to address these issues. The appellant decided not to submit reply representations.

[5] In this order, I uphold the university's search for responsive records.

## **DISCUSSION:**

### **Did the University conduct a reasonable search for records?**

[6] 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;

...

[7] 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.<sup>1</sup> If I am satisfied that the

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<sup>1</sup> Orders P-85, P-221 and PO-1954-I.

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.

[8] 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.<sup>2</sup> To be responsive, a record must be "reasonably related" to the request.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

[9] 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.<sup>6</sup> A requester's lack of diligence in pursuing a request by not responding to requests from the institution for clarification may result in a finding that all steps taken by the institution to respond to the request were reasonable.<sup>7</sup>

## **Representations**

[10] The appellant relies on a list which he created, which describes all the records he believes are responsive to his request. He highlights those which were not disclosed, and which he believes should exist. The appellant states that he presented this list to the university's Access to Information and Privacy Co-ordinator at the time the university provided partial disclosure. He submits that this individual's signature on the list signifies her acknowledgement that the missing records exist, in addition to those which were disclosed.

[11] Apart from the above, the appellant's representations consist, for the most part, of addressing various issues in relation to his education finances. These matters are not within my authority, as they relate to disputes about student funding and not about access under the *Act*.

[12] The appellant concludes by seeking an order that the university disclose the missing records, that it allow him to examine the original records and compare them to

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<sup>2</sup> Orders P-624 and PO-2559.

<sup>3</sup> Order PO-2554.

<sup>4</sup> Orders M-909, PO-2469, PO-2592.

<sup>5</sup> Order MO-2185.

<sup>6</sup> Order MO-2246.

<sup>7</sup> Order MO-2213.

the copies he has been given, and that it provide additional representations on its exercise of discretion.

[13] The university addresses the alleged “missing documents” in its representations. First, it agrees that it received the list from the appellant but states that the signature of the Co-ordinator only acknowledges receipt of the list and does not, as alleged by the appellant, signify the university’s agreement that documents were missing. The university did note, however, that two pages of responsive records (one from Record 4 and the other from Record 19 on the appellant’s list) were subsequently located. These were provided to the appellant with the university’s representations and are no longer at issue.

[14] Further, the university submits that rather than being “missing,” certain items on the list may not constitute a “record” as they refer to information that is not recorded in a tangible form. Other items are excluded from the scope of the *Act* under section 65(8.1)(b) because they consist of teaching materials (answer keys). The university states that other items no longer existed at the time of the request as they were returned to the appellant (such as the appellant’s assignments). Other items no longer existed because the university is obligated to keep personal information only for one year after its last use (some of the items on the list refer to documents from 2009 and 2010).

[15] Furthermore, the university submits that some of the records referred to in the list provided by the appellant are not in its custody and control but may exist, for example, at the Ministry of Training, Colleges and Universities.

[16] The university provided six affidavits outlining the searches for responsive records by university employees from six different offices. The affidavits and their attachments describe the instructions given to the employees about the search, the scope of the requested search, the locations or files where searches were conducted, the nature of the search (such as keywords used in searches of electronic records) and the result of the search. In some cases, such as student funding records, the individual conducting the search provided information about other locations where additional records might exist (the National Student Loan Service Centre, the Ministry of Training, Colleges and Universities).

## **Analysis and Findings**

[17] As stated above, in appeals involving a claim that additional records exist, the issue to be decided is whether an institution has conducted a reasonable search for responsive records as required by section 24 of the *Act*. The *Act* does not require the university to prove with absolute certainty that further records do not exist, but it must provide sufficient evidence to show that a reasonable effort was made to identify and locate responsive records.

[18] An appellant who challenges the adequacy of a search must establish a reasonable basis for concluding that additional responsive records might exist. In this appeal, I find that the appellant has not provided such a basis.

[19] On my review of the representations and material before me, I find that the university has conducted a reasonable search in response to the request. A number of its qualified staff, who are familiar with the operations of and filing systems within the faculties and services involved, completed thorough searches for responsive records in multiple locations. The affidavits provided by the university describe the scope, location and result of the searches and I am satisfied that it has made a reasonable effort to identify and locate all responsive records in its custody or control.

[20] The university has also provided explanations to address the appellant's contention that more records, in specified categories, should exist. With respect to those "missing records", I accept the university's explanation about the intent of the Co-ordinator's signature on the appellant's list of "missing records". I find that there was no acknowledgement by the university that the records the appellant believes are missing are, in fact, missing.

[21] I also accept the university's explanation that some records no longer exist because of the university's retention policies or because they were returned to the appellant. The appellant has provided no evidence casting doubt on this explanation. Further, I accept that some records sought by the appellant may not exist in the university's holdings because they relate to loan and grant payments administered by other entities and, again, the appellant has not shown why additional records in this category exist.

[22] On my review of the list of "missing records", it is clear that, for some items, the appellant is seeking explanations rather than records. For example, item #36 seeks "the reasons for not awarding bursary during fall 2009". I accept the university's submission that, to the extent these reasons are not recorded, these items are not "records" within the meaning of the *Act*. In any event, it has conducted a reasonable search for any records which may contain such explanations. The material before me indicates that during the course of dealing with the appellant, the university has provided some answers to the appellant's questions. It may be that the appellant is not satisfied with the university's responses to his questions about his student finances, but there is no reason to believe that additional records exist containing the answers he seeks.

[23] Finally, the appellant asserts that the university should have located "answer keys" to certain assignments. In its representations, the university states that these types of records are excluded from the scope of the *Act* under section 65(8.1)(b). That section excludes teaching materials of an educational institution, stating:

(8.1) This Act does not apply,

....

(b) to a record of teaching materials collected, prepared or maintained by an employee of an educational institution or by a person associated with an educational institution for use at the educational institution.

[24] I invited the appellant to respond to this issue, amongst others, and he did not submit any reply. It is unclear to me why the university failed to identify these records as responsive to the appellant's request earlier, and provide a decision on the application of section 65(8.1)(b) to them. However, the university has done so through its representations and the appellant has not responded by disputing its position. The issue in this appeal, the reasonableness of the search, is now resolved and, in the circumstances, I see no purpose in adding a new substantive issue to the appeal. I note that one of the administrators submitting an affidavit indicates a willingness to make the answer keys available to the appellant for review, without providing him with copies. I leave it with the appellant to pursue this opportunity to view these documents outside the *Act*, if he chooses.

[25] As indicated above, in his representations, the appellant requested that he be given an opportunity to examine all the original records and compare them to the copies he has been given. He relies on section 30(2) of the *Act* in this regard. This was not identified as an issue in the Mediator's Report, sent to the parties earlier in the appeal process. The appellant had the opportunity to ask for correction of that Report if he believed it did not accurately represent the issues outstanding in the appeal. I find he cannot raise this issue at this stage.

[26] I also find the appellant's submission regarding the institution's exercise of discretion to be misplaced as the issue before me, whether the university has conducted a reasonable search, does not raise any issues about its exercise of discretion.

**ORDER:**

I find that the university conducted a reasonable search for responsive records and I dismiss the appeal.

Original Signed By: \_\_\_\_\_  
Sherry Liang  
Senior Adjudicator

\_\_\_\_\_ September 26, 2014