Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3535

Appeal PA14-149

Ryerson University

September 28, 2015

Summary: The appellant submitted an access request to Ryerson University for records related to him that were held by a named individual at the university. The university located responsive records and decided to disclose them to the appellant in full or in part. The appellant appealed the university's decision, claiming that further records should exist. The adjudicator finds that the university conducted a reasonable search based on the wording of the request, 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.

Orders and Investigation Reports Considered: Orders M-909, PO-1744, and PO-3527.

BACKGROUND:

[1] On January 31, 2014, Ryerson University (the university) received a multi-part request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

> I am requesting copies of ALL documents held by [named individual] relating to my person, including but not limited to:

> ALL communications with all personnel at Ryerson University and the Chang School during the period of June 2013 to the present, including but not limited to the following:

[2] The request then listed specific types of records in Items i to x. These items included: emails; correspondence; notes of telephone conversations; information about meeting dates and meeting attendees; records indicating the parties who have had access to the requester's personal information held by the named individual; a copy of all grades received by the requester from the named individual; and records related to conversations, meetings and other correspondence between the named individual and three other named individuals.

[3] The requester also asked for ongoing disclosure as outlined in section 24(3) of the *Act*.

[4] The university employee named in the request conducted a search and located 28 responsive records. The university issued a decision letter granting full access to 25 of the responsive records and partial access to the remaining three records, with severances pursuant to sections 21 and 49(b) (personal privacy) and the exclusion in section 65(8.1) of the *Act*.

[5] The appellant appealed the university's decision on the basis that additional responsive records should exist.

[6] During mediation, the university provided the appellant with an index of records and advised the mediator that no additional records exist. The appellant confirmed that he was not seeking access to any of the records that were withheld in full or in part, but maintained his position that additional responsive records should exist.[1]

[7] Also during mediation, the university provided an affidavit sworn by the individual who coordinated the search for records, outlining certain details about the searches the university conducted in response to the request. The individual who swore the affidavit is not the named individual whose records were requested and who conducted the actual search for records.

[8] This appeal was moved to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*. I sought and received representations from the appellant and the university regarding the reasonableness of the search conducted in response to the access request.

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[1] The appellant also refers to his continuing access request, pursuant to which the university conducted a further search for records postdating the request resulting in this appeal, and which located a further record. Any issues arising from the request for records postdating the request which gave rise to this appeal is not before me.

[9] The sole issue in this appeal is whether the university conducted a reasonable search for records responsive to the request. In this order, I find that university's search was reasonable and I dismiss this appeal.

DISCUSSION:

[10] In appeals involving a claim that additional responsive records exist, as is the case in this appeal, the issue to be decided is whether the university has conducted a reasonable search for the records as required by section 24 of the *Act*. If I am satisfied that the search was reasonable in the circumstances, the university's decision will be upheld. If I am not satisfied, further searches may be ordered.

[11] A number of previous orders have identified the requirements in reasonable search appeals.[2] In Order PO-1744, the adjudicator made the following statement with respect to the requirements of reasonable search appeals:

> … the *Act* does not require [the institution] to prove with absolute certainty that records do not exist. [The institution] must, however, provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records. A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request (Order M-909).

[12] I agree with this statement, and have applied this approach in previous orders.[3]

[13] Where a requester provides sufficient detail about the records that he/she is seeking and the institution indicates that records or further records do not exist, it is my responsibility to ensure that the institution has made a reasonable search to identify any records that are responsive to the request. The *Act* does not require the institution to prove with absolute certainty that records or further records do not exist. However, in my view, in order to properly discharge its obligations under the *Act*, the institution must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request.

[14] Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response, the appellant must, nevertheless, provide a reasonable basis for concluding that such records exist.

The university's representations

[15] The university provided representations in support of its position that it

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[2] Orders M-282, P-458, P-535, M-909, PO-1744 and PO-1920.
[3] See, for example, Orders PO-3114, PO-3494 and PO-3527.

conducted a reasonable search for responsive records. In its representations, the university indicates that it considered records to be responsive if they were "held" by the named employee, were created within the specific dates outlined in the appellant's request and contained the appellant's personal information.

[16] The university submits that it did not need to seek clarification from the appellant about the scope of the request because the request contained sufficient detail to enable an experienced university employee to conduct a search for responsive records pursuant to section 24 of the *Act*. Specifically, the appellant identified the individual whose information was sought and asked for copies of records with the appellant's personal information that were "held" by that individual. The description included information about dates and types of records, but requested that the search not be limited to those types of records. Accordingly, the university submits that it had enough information to conduct a search as required by the *Act* without seeking clarification from the appellant or narrowing the search terms.

[17] The university states that, after receiving the request, the employee named in the appellant's request was directed to perform the search for responsive records.

[18] Attached to its representations, the university provides an additional affidavit, sworn by the named individual describing the search she conducted. In the affidavit, the named individual confirms that she understood the request was for all records that she held that relate to the appellant, including records in any medium. She confirms that the appellant was a student of hers during one semester, and states:

> I had dealings with [the appellant] because he was my student …. I have neither sent nor received physical letters, memos or other physical correspondence regarding [the appellant]. I did not make notes in my dealings regarding [the appellant]. I do not have calendar appointments regarding [the appellant].

[19] With respect to her email records, in the affidavit, the named individual states that she keeps her emails in her inbox and sent folders. She also states that did not delete any emails relating to the appellant.

[20] The named individual then advises that when she received the email from the Program Director advising her of the request for records, she conducted a search for responsive records. She states:

> I searched my inbox Folder and sent Folder for responsive emails. I searched by [the appellant's] name, as well as for emails sent and received by [university] administrators who were involved in matters relating to [the appellant].
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> Through the search I identified 28 responsive records. I saved copies of these records to a special folder for safekeeping and … delivered copies to

> [the Program Director]. I believe the 28 records are the only responsive records in my possession.

[21] The university submits that, based on the nature of the searches conducted and the affidavit evidence of the named individual, the search conducted for responsive records was reasonable. In addition, the university submits that it is unlikely that responsive records once existed, but no longer exist. The university notes that the search for responsive records was conducted shortly after the request was received, and that the named employee affirms that she "did not delete any records related to [the appellant]." The university submits that this statement is consistent with its Records Retention Schedule, Records Management Policy, and Information Protection and Access Policy and Procedures.

The appellant's representations

[22] The appellant takes the position that the university has not conducted a reasonable search for responsive records for the following reasons:[4]

1) Absence of prior documentation to substantiate correspondence

[23] The appellant refers to a number of the records which were disclosed to him, and argues that the content of those records suggest that preceding documentation should exist but has not yet been disclosed. For example, the appellant submits that some of the records refer to prior conversations held between the named individual and other university employees, and that notes documenting what was said during those conversations may exist but have not been provided. In addition, the appellant submits that some records lack preceding documentation that he believes would have initiated the email correspondence.

2) Gaps in the records

[24] The appellant submits that there are a number of gaps in the responsive records, which suggest that there are records that have not yet been disclosed. The appellant refers to the fact that a university administrator was clearly aware of the appellant's enrollment in the named individual's course, but that there is a lack of documentation regarding how the administrator became aware of this.

Analysis and findings

[25] As set out above, in appeals involving a claim that additional responsive records exist, the issue to be decided is whether the university has conducted a reasonable search for the records as required by section 24 of the *Act*. If I am satisfied that the university's search for responsive records was reasonable in the

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[4] The appellant also indirectly raises a privacy concern, which I will not address in this order.

circumstances, the university's decision will be upheld. If I am not satisfied, I may order the university to conduct additional searches.

[26] A reasonable search is one where an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request.[5] In addition, the following excerpt from Order M-909 explains the obligation of an institution to conduct a reasonable search for records:

> […] an institution has met its obligations under the *Act* by providing experienced employees who expend a reasonable effort to conduct the search, in areas where the responsive records are likely to be located. In the final analysis, the identification of responsive records must rely on the experience and judgment of the individual conducting the search.

[27] In the circumstances of this appeal, I find that the university has provided sufficient evidence to establish that it conducted a reasonable search for responsive records, as required by section 24 of the *Act*.

[28] First, I find the appellant's request to be clear and sufficiently detailed so that clarification by the university was unnecessary. I note that the university located a number of responsive records relating to the appellant and disclosed the majority of them to him. I have reviewed samples of the records that were provided to the appellant and I am satisfied that they are responsive to the request. As a result, I find that the university understood the appellant's request and was able to conduct a targeted and thorough search for responsive records.

[29] Second, I find that the university's representations and, in particular, the affidavit provided by the named individual who conducted the search, adequately address the requirements of section 24 of the *Act*. The representations indicate that the search was conducted by the individual named in the appellant's request and that the individual would be the one with the greatest access to and knowledge of the requested records. The named individual provides a sworn affidavit in which she reviews the nature of the records held by her and confirms the types of records she does not have and did not create. She also identifies that she did maintain and locate email records, identifies where they were stored, describes where and how she searched for these records, and states that she did not delete any responsive records after receipt of the access request. Based on this sworn evidence, I am satisfied that the search conducted was reasonable. I am also satisfied that the search was conducted by an experienced employee, who was knowledgeable in the subject-matter of the request and familiar with the relevant record-keeping practices.

[30] Third, I have considered the appellant's arguments that the wording of some of the records he has received suggest that other records exist. On my review of the

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[5] Order M-909.

records, I accept that some of them appear to refer to prior conversations held between the named individual and other university employees; however, the named individual's affidavit specifically states that she neither sent nor received physical letters, did not make notes, does not have calendar appointments, and does not have memos or other physical correspondence regarding the appellant. In these circumstances, I am not satisfied that the possible references to other conversations means that additional records exist or that the search conducted by the named individual was not reasonable. Similarly, I am not satisfied that other responsive records must exist in the record holdings of the named individual because a university administrator was aware of the appellant's enrollment in the named individual's course.

[31] As a result, based on the evidence provided by the parties, and particularly the affidavit provided by the named individual who conducted the search for records as described above, I find that the university conducted a reasonable search for responsive records as required by section 24 of the *Act*.

ORDER:

I dismiss this appeal.

Original Signed by: September 28, 2015
Frank DeVries
Senior Adjudicator