

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3527

Appeals PA14-152 and PA14-153

Ryerson University

August 31, 2015

Summary: The appellant submitted two access requests to Ryerson University for records related to him that were held by two named individuals at the university. The university located responsive records and decided to disclose them to the appellant. The appellant appealed the university's decisions, claiming that further records should exist. The adjudicator finds that the university conducted reasonable searches for both access requests, and dismisses the appeals.

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.

BACKGROUND:

[1] Ryerson University (the university) received two multi-part access requests for information under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requests and subsequent appeals were processed separately, but this order addresses the issues raised in both appeals.

Request 1 (appeal PA14-152)

[2] The first request read as follows:

I am requesting copies of ALL documents held by [named individual A] 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 January 2005 to the present, including but not limited to the following:

[3] The request then listed specific types of records in Items i to xiv. These items included: emails; correspondence; notes of telephone conversations; information about meeting dates and notes made by individuals present at such meetings; records indicating the parties who have had access to the requester's personal information held by the named individual; records related to conversations, meetings and other correspondence with six other named individuals and one other named institution; and records related to the requester's applications to the university.

[4] The university conducted a search and located three responsive records. Initially, the university denied access to the three records pursuant to certain exemptions in the *Act*.

[5] The appellant appealed the university's decision.

[6] During mediation, the university provided the appellant with an index of records and issued a revised decision granting access in full to the three responsive records.

[7] Also during mediation, the appellant advised that he was of the view that additional responsive records should exist. The university conducted a subsequent search and advised that no other responsive records exist. The university also provided an affidavit in support of the reasonableness of its search and identified that the individual whose records were requested is no longer with the university. The appellant maintained that additional responsive records should exist.

Request 2 (appeal PA14-153)

[8] The appellant's second access request was the following:

I am requesting copies of ALL documents held by [named individual B] 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 January 2005 to the present, including but not limited to the following:

[9] The request then listed specific types of records in Items i to xiii. These items included: emails; correspondence; notes of telephone conversations; information about meeting dates and notes made by individuals present at such meetings; records indicating the parties who have had access to the requester's personal information held by the named individual; and records related to conversations, meetings and other correspondence between the named individual and seven other named individuals.

[10] In response to the request, the university located 32 responsive records, and granted full access to them.

[11] The appellant appealed the decision on the basis that additional responsive records should exist.

[12] During mediation, the university conducted another search and located one additional responsive record, to which full access was granted. The appellant maintained his position that additional responsive records should exist.

[13] Both appeals were moved to the adjudication stage of the appeal process, where an adjudicator conducts a written inquiry under the *Act*. I sought and received representations from the appellant and the university regarding the reasonableness of the searches conducted in response to both access requests.

[14] The sole issue in these appeals is whether the university conducted reasonable searches for records responsive to the two requests. In this order, I find that university's searches were reasonable, and I dismiss these appeals.

DISCUSSION:

[15] In appeals involving a claim that additional responsive records exist, as is the case in both of the appeals before me, 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 carried out was reasonable in the circumstances, the university's decision will be upheld. If I am not satisfied, further searches may be ordered.

[16] A number of previous orders have identified the requirements in reasonable search appeals.¹ In Order PO-1744, the adjudicator made the following statement with respect to the requirements of reasonable search appeals:

¹ Orders M-282, P-458, P-535, M-909, PO-1744 and PO-1920.

... the *Act* does not require the Ministry to prove with absolute certainty that records do not exist. The Ministry 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).

[17] I agree with the adjudicator's statement, and have applied this approach in previous orders.²

[18] 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.

[19] 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 appellant's representations

[20] The appellant's representations were prepared and submitted by the appellant's representative. The appellant takes the position that the university has not conducted a reasonable search for responsive records.

[21] Regarding Request 1, the appellant identifies the following four reasons in support of his position:

1) Additional records should exist

[22] The appellant states that the responsive records provided by the university list three occasions when meetings were held in relation to the requester, and he submits that there must be additional communications related to each of the three meetings. He suggests that communications relating to scheduling and the rationale for each meeting must exist, in addition to the production of notes summarizing what occurred in each meeting.

² See, for example, Orders PO-3114 and PO-3494.

2) Nature of organization

[23] The appellant suggests that a formal institution such as a university must have in place established protocols for the management of meetings and minutes. He states that named individual A was a member of "upper management" and believes it is unreasonable to conclude that three meetings were held with upper management without a trace of what occurred during each meeting.

3) No indication of search by person knowledgeable in the matter

[24] In reference to the affidavit provided by the university during mediation, the appellant notes that it was not signed by anyone in the offices of upper management who would be able to confirm the protocol for saving documents related to meetings, or would have knowledge about the meeting and information storage protocols of the university's upper management. The appellant suggests that administrative staff within the department or other staff who worked directly with named individual A would be the appropriate people to verify the reasonableness of the search, as they would be able to speak to the location of documents and the protocols for handling documents after an individual leaves the department.

4) Inconsistency of production

[25] The appellant questions the search methodology used by the university in responding to the access request, and submits that it is unreasonable to conclude that records do not exist after named individual A left the university. In support of this position, the appellant's representative says that she has spoken with Information Technology personnel at other universities who have confirmed that information continues to be maintained within an information system.

[26] Regarding Request 2, the appellant identifies the following two reasons in support of the assertion that the university has not conducted a reasonable search for responsive records:

1) Inconsistencies of documentary sequence

[27] The appellant submits that there is no logical sequence in the interchange contained in records 3, 4, 5, 23 and 25, that there is no contextual basis for the introduction of the email exchanges contained in the records, and that this suggests that information is missing.

2) Absence of identifying information on emails

[28] The appellant submits that identifying information has been eliminated from records 3, 7 and 9. In particular, the appellant submits that the senders and recipients

of the emails contained in those records have been blocked, suggesting missing information and exchanges. The appellant believes there is a pattern to the exclusions.

The university's representations

[29] The university provided representations and submitted further affidavits in response to the appellant's representations. It takes the position that it conducted reasonable searches for responsive records.

[30] In its representations in both appeals, the university indicates that it considered records to be responsive if they were "held" by the named employee, were created within the specific dates and contained the appellant's personal information.

[31] The university submits that it did not need to seek clarification from the appellant about the scope of the requests because they 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 named the individuals whose information was sought and asked for copies of records with the appellant's personal information that was "held" by those individuals. 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.

[32] The university also submits that it is unlikely that responsive records existed but no longer exist. The university notes that the requests were received on January 31, 2014, that initial searches for responsive records were conducted by mid-February of that year, and that additional searches were conducted during the processing of these appeals. In each of these appeals, the university also provides an affidavit from the employees who conducted the searches for records, each of which include the statement by the affiants that they "... did not destroy or delete any records" relating to the appellant held by the named individuals between the date the university received the requests and the dates of the affidavits. The university submits that these statements are consistent with its Records Retention Schedule, Records Management Policy, and Information Protection and Access Policy and Procedures.

[33] In response to the appellant's submission that additional records should exist relating to meetings including the rationale for the meetings, arranging meeting times and the results of each meeting, the university submits that its protocols for record retention relate to formal meetings, such as those held by the Senate or the Board of Governors. The university submits that records from other meetings may be transitory records, the details of which may be recorded through the outcomes of action items such as correspondence, notes to file, etc. The university notes that there is no requirement that all meetings, including informal meetings, produce minutes.

[34] The university also describes in detail the searches it carried out in response to the two requests as follows:

Request 1

[35] With respect to the searches conducted for records responsive to Request 1, this request was for records held by named individual A who no longer works at the university.

[36] The university provides an affidavit sworn by the Executive Assistant in the office where individual A worked, who conducted a search of individual A's records. In the affidavit, the Executive Assistant confirms that she understood the request was for all records held by individual A that relate to the appellant, including records in any medium. She indicates that she conducted the search for individual A's records because he no longer works at the university, and because she has access to his records including calendar entries, correspondence and other records. The Executive Assistant also scheduled meetings for individual A, arranged phone calls, took messages and assisted with correspondence while individual A was at the university, and had access to all of those records when conducting the search. The Executive Assistant indicates that she did not schedule any meetings or phone calls, nor did she take any phone messages or assist with any correspondence between individual A and the appellant. Based on this knowledge, she confirms her belief that individual A had no direct relationship with the appellant, nor did he meet or correspond directly with him.

[37] The affidavit also identifies that the university switched to a new email system after individual A left, but that the university preserved individual A's email account before switching email providers. The Executive Assistant confirms that she was given access to individual A's email account by the university's IT services, and that she searched the archived emails in individual A's inbox, sent, trash and other folders. She also searched calendar entries and electronic and paper correspondence files.

[38] In the affidavit, the Executive Assistant identifies that her initial search produced the three responsive records, consisting of calendar entries describing meetings between individual A and other university employees and legal counsel. The Executive Assistant also states that, later in the appeal process, she conducted a second search for responsive records, and did not locate any additional records.

Request 2

[39] With respect to the searches conducted for records responsive to Request 2, this request was for records held by named individual B.

[40] The university provides an affidavit sworn by individual B. In the affidavit, individual B confirms that she conducted searches for responsive records. She states that she understood the request was for all records held by her that relate to the appellant, including records in any medium. She indicates that she communicated with the appellant periodically in person, by email, telephone and letter, and that she did not have any calendar entries related to the appellant. The affidavit also confirms that individual B had two email accounts with the university, that both accounts were migrated to the new system in October 2012, and that the one account she presently has contains the messages from both of the accounts that she used previously.

[41] The affidavit then identifies that individual B searched her inbox, sent messages, and trash folders for responsive emails using the appellant's name and initials. She confirms that she did not alter any email records before providing them to the Freedom of Information office, and states:

I kept complete email chain of communications but not necessarily each individual email because this was repetitive. Otherwise, I did not delete emails relating to [the appellant].

I did not alter the email records I held in any way before I printed copies for [the FOI office]. I did not delete parts of the email chain of communications or alter the text in any way. I did not alter or eliminate [the] "to" or "from" information in the email records or otherwise hide or block that information. ...

[42] In the affidavit, individual B also explains that she manually searched paper folders relating to admissions appeals and other subjects where she reasonably thought there would be responsive records.

[43] The affidavit explains that the initial search produced 32 responsive records. These records were provided to the university's Information and Privacy Officer on February 11, 2014. It also identifies that, at the request of this office, a second search was conducted by the same employee in September 2014. The affidavit indicates that individual B located one additional document on her hard-drive, which she provided to this office. The subsequent search did not yield any additional emails or correspondence, and individual B confirms in her sworn affidavit that she believes the 33 records are the only responsive records in her possession.

[44] Based on the above, the university submits that the initial and secondary searches carried out by the employees in response to both requests were reasonable, and conducted in accordance with section 24 of the *Act*.

Analysis and findings

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

[46] 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.³ 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.

[47] I have considered the parties' representations and have reviewed the records that the university located and disclosed to the appellant. In the circumstances of this appeal, I find that the university has provided sufficient evidence to establish that it conducted reasonable searches for responsive records, as required by section 24 of the *Act*.

[48] First, I find the appellant's requests 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's requests that were disclosed in full. I have reviewed samples of the records that were provided with the appellant's representations and I am satisfied that they are responsive to the appellant's requests. I find, therefore, that the university understood the appellant's requests so as to enable it to conduct targeted and thorough searches for responsive records.

[49] Second, in response to the appellant's assertion that the searches were not conducted by individuals knowledgeable in the matter, the university provides representations which identify the individuals who conducted the searches. It indicates that the searches for records responsive to Request 1 were conducted by an employee who works in the office where named individual A worked prior to leaving the university, and that the searches for Request 2 were conducted by the individual named in the appellant's request. The university also provided affidavit evidence from these two individuals who conducted the searches. These affidavits identify the affiant's level

³ Order M-909.

of access to records, describe where and how they searched for records, and state that they did not destroy or delete any responsive records after receipt of the access requests. Based on this evidence, I am satisfied that the searches were conducted by experienced employees, who were knowledgeable in the subject-matter of the requests and familiar with the relevant record-keeping practices.

[50] Third, I find that the university's representations adequately address the appellant's other specific concerns raised in his representations.

[51] The affidavit relating to Request 1 explains how the university handled switching email systems after named individual A left, and confirms that individual A's emails were preserved before switching email providers. It also confirms that the affiant was given access to the email archives for the purposes of her search. In these circumstances, I am satisfied that the records produced by the university's searches were consistent, and that the university maintained records created by individual A after this person had left the university.

[52] Similarly, I am not persuaded by the appellant's argument that additional records must exist because there must be additional communications related to the meetings referred to in the records, including information about the scheduling of and the rationale for each meeting. I am satisfied by the university's explanation regarding why additional records do not exist, including that the university's record retention policies only relate to formal meetings, that records from other meetings may be transitory in nature, and that there is no requirement that all meetings produce minutes. I find this to be a reasonable explanation for why the university was unable to locate any additional records of the type described by the appellant.

[53] With respect to Request 2, I have also considered the appellant's position that the absence of identifying information suggests that some records have been altered. I note that individual B's affidavit indicates that she kept complete email chains, but not necessarily each individual email, because to do so would be repetitive. The affidavit also confirms that she did not delete parts of any email chain or alter or eliminate any "to" or "from" information. I have also reviewed records 3, 7 and 9, relied on by the appellant. I note that while the express "From", "To" and "Cc" lines may not be contained as a separate line for each individual email entry contained in these records, it is clear from the records as a whole who the involved senders and recipients were. On my review of these records and the explanation contained in the affidavit provided by individual B about how email chains, but not necessarily each individual email, were retained, I am satisfied that they adequately address the appellant's concerns.

[54] As a result, based on the evidence provided by the university, and particularly the detailed affidavits provided by the individuals who conducted the actual searches for records as described above, I find that the university conducted reasonable searches for responsive records as required by section 24 of the *Act*.

ORDER:

I dismiss these appeals.

Original Signed By: _____
Frank DeVries
Senior Adjudicator

_____ August 31, 2015