

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-3744

Appeal PA14-154

Ryerson University

June 30, 2017

**Summary:** The appellant submitted an access request to Ryerson University for records relating to him that were held by a named individual at the university. The university conducted a search and issued a decision letter advising that there were no responsive records. The appellant appealed the decision, claiming that responsive records should exist, thereby raising the issue of whether the university's search was reasonable. In this order, the adjudicator finds that the university conducted a reasonable search for responsive records.

**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:** Order PO-1744.

### BACKGROUND:

[1] 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 January 2005 to the present, including but not limited to the following:

[2] The request then listed specific types of records in Items i to xii. 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.

[3] The university conducted a search and issued a decision letter advising that there were no responsive records.

[4] The requester appealed the university's decision.

[5] During mediation, the appellant advised the mediator that he was of the view that responsive records should exist. The university maintained that no responsive records exist, and provided an affidavit of search sworn by the individual who coordinated the search for records.

[6] Mediation did not resolve this appeal and the file was transferred to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry. I sought and received representations from the appellant and the university regarding the reasonableness of the searches conducted in response to the access request.<sup>1</sup> Included as an attachment to the university's representations was an affidavit sworn by the individual named in the request identifying the searches he conducted and the results of those searches. After receiving the university's representations, I sought and received reply representations from the appellant.

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

### **Preliminary Issue – scope of the request**

[8] In his reply representations the appellant takes the position that the wording of his request necessitates a search of not just the named individual's records, but also of the records held by the seven additional individuals who are referenced in the request. The appellant maintains that those seven other individuals may have records from the named individual that he does not have himself. On this basis, the appellant requests that I require the university to provide further clarification as to whether the records held by all of the individuals noted in the original request were searched.

[9] Having reviewed the wording of the original request, I am satisfied that the scope of the request is for records "held by" the named individual, and does not extend

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<sup>1</sup> There was a delay in seeking the university's representations as the appeal was placed on hold for a period of time at the appellant's request.

to include records held by the other seven individuals. The wording of the request is clearly for records held by the individual. The request then states that this is "including but not limited to" various types of records (letters, emails, etc.) involving others. Based on the wording of the request, I am satisfied that the references to the seven additional individuals were included to provide guidance on the types of records sought, and not to extend the request to include records held by others.<sup>2</sup>

### **Reasonable Search**

[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. 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.<sup>3</sup>

[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.

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<sup>2</sup> This finding is also supported by previous decisions involving these parties, which also involved requests for records "held by" other named individuals, and in which responsive records were located.

<sup>3</sup> See, for example, Orders PO-3114, PO-3494, PO-3527, and PO-3562.

### ***The appellant's representations***

[15] The appellant's representations were prepared and submitted by the appellant's representative. The appellant provides four arguments in support of his position that the university's search for responsive records was not reasonable.

#### *1) The named individual's position at the university*

[16] The appellant refers to media articles relating to his accessibility issues at the university. He submits that the individual named in his request held a position at the university that makes it reasonable to conclude that he would have been aware of these media issues involving the university.

[17] The appellant also notes that an investigation into the conduct of upper management was held regarding his accessibility issues. The appellant submits that this investigation, and the university's need to retain lawyers to deal with the matter, would have "inevitably" been brought to the named individual's attention.

#### *2) The inter-connectivity of Senior Executive Staff*

[18] The appellant submits that there is both a physical proximity of senior executive staff at the university, as well as an inter-connectivity in terms of managing the university's affairs. The appellant submits that the named individual's role at the university would be part of the "university-wide team" that supports and provides leadership in areas of academic policy, student support services, strategic planning, and other matters. On this basis, the appellant submits that it is reasonable to conclude that the named individual would have been asked to provide input into issues facing the administration.

#### *3) Written correspondence between parties indicating this connectivity*

[19] The appellant provides excerpts from email communications between the university's senior management, indicating that a number of individuals with "senior academic leadership" positions at the university had collaborated in order to respond to issues relating to the appellant. The appellant submits that it is reasonable to conclude that the named individual was either directly or indirectly included in that collaboration, given his position at the school.

#### *4) Verbal communications of inter-relationship of parties in decision-making*

[20] The appellant submits that the individual designated to handle his matters at the university has confirmed that any decisions also involved upper management. The appellant submits that it is reasonable to infer that the named individual was either indirectly or directly involved in the decision-making process, given his position at the university. Further, the appellant submits that it would be unreasonable to conclude that the named individual had no knowledge of the public relations matters involving

himself.

[21] Based on the four above-noted reasons, the appellant maintains that it is likely that the named individual holds documents responsive to his access to information request.

***The university's representations***

[22] The university indicates that it considered records to be responsive to the appellant's request if they were held by the named individual, were created within the specified dates, and contained the appellant's personal information.

[23] The university submits that it did not need to seek clarification of the request from the appellant, because the search description contained sufficient detail to enable an experienced university employee to conduct a search for responsive records pursuant to section 24(b) of the *Act*. Specifically, the appellant named a university employee and requested copies of records containing the appellant's personal information that were held by that individual. The appellant also provided details about dates and the types of records he was seeking, but also noted that the search was not to be limited to the specified 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.

[24] The university then provides representations in support of its position that the search was reasonable. The university provides an affidavit sworn by the named individual describing the search he conducted. In his affidavit, the affiant confirms that he understood the request was for all records that he held that relate to the appellant dating from January 2005 to January 31, 2014, including records in any medium. The affiant explains that he searched his archived email, which included emails from his Inbox, Sent, Trash, and other folders. He also searched calendar entries and electronic and paper correspondence files. The affiant then affirms that he did not hold any records responsive to the appellant's request.

[25] The university also submits that it is unlikely that responsive records existed but no longer exist. The university notes that the request for certain records held by a named individual was received on January 16, 2014, and that the search for responsive records was carried out by the named individual on or before February 4, 2014. In the affidavit sworn by the named individual describing the search that he conducted, he confirms that he "did not destroy or delete any records relating to the appellant" held by him between the date the university received the request and the last day of his employment. The university submits that this statement is consistent with its Records Retention Schedule, Records Management Policy, and Information Protection and Access Policy and Procedures.

[26] On this basis, the university submits that its search for records was conducted in

accordance with section 24 of the *Act*.

[27] The appellant's reply representations focus on his concerns regarding the scope of the request, addressed above.

### ***Analysis and findings***

[28] 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.

[29] 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.<sup>4</sup> 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.

[30] I have considered the parties' representations, including the affidavit provided by the university. In the circumstances of this appeal, and for the following reasons, 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*.

[31] First, I find the appellant's request to be clear and sufficiently detailed so that clarification by the university was unnecessary. The university explains its interpretation of the request, and I am satisfied that the university understood the scope of the request to include any records held by the named individual relating to the appellant, and conducted its search accordingly. As a result, I find that the university understood the appellant's request and was able to conduct a targeted search for responsive records.

[32] In addition, I find that the university's representations and, in particular, the affidavit provided by the named individual who conducted the searches, 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

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<sup>4</sup> Order M-909.

records. The named individual provided a sworn affidavit in which he describes where and how he searched for responsive records, and swears that he did not destroy or delete any responsive records before or 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.

[33] Lastly, I have considered the appellant's arguments regarding the named individual's position at the university and his references to the perceived interconnectedness of senior management. I appreciate the appellant's view that the named individual may have been aware of or involved in decision-making regarding the appellant in some way. However, this does not mean that the search for records held by the named individual was not reasonable. As referenced above, the appellant has made other requests to the university for records "held by" other named individuals, which resulted in responsive records being located. In this appeal, however, I must determine whether the search for records held by the individual named in this request was reasonable. Based on the evidence provided by the parties, and particularly the affidavit provided by the named individual who conducted the searches 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 the appeal.

Original Signed by: \_\_\_\_\_  
Frank DeVries  
Senior Adjudicator

\_\_\_\_\_ June 30, 2017