Information and Privacy Commissioner,
Ontario, Canada

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

FINAL ORDER PO-4156-F

Appeal PA19-00560

Ryerson University

June 8, 2021

Summary: The appellant sought, under the *Freedom of Information and Protection of Privacy Act,* a copy of any agreements made between Ryerson University (the university) and a specific law firm for the provision of legal services to the university. The university denied that responsive records exist. The appellant appealed the decision on the basis of his belief that the university did not conduct a reasonable search for responsive records. In Interim Order PO-4119-I, the adjudicator ordered the university to conduct another search for responsive records.

In this final order, the adjudicator upholds the university's search in response to the interim order as reasonable 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 Considered: Order PO-4119-I.

OVERVIEW:

[1] This final order addresses the reasonableness of the search conducted by Ryerson University (Ryerson or the university) for contracts or retainer agreements between the university and a specific law firm in response to Interim Order PO-4119-I.

[2] The appellant sought, under the *Freedom of Information and Protection of*

Privacy Act (*FIPPA* or the *Act*), a copy of any agreements made between Ryerson and a specific law firm for the provision of legal services to the university. Specifically, the requester sought:

> ...the contract and retainer(s)[1] that were signed by Ryerson University (Ryerson) and [a named law firm] in 2017/2018/2019 when [the law firm] was hired by Ryerson to provide legal services.

[3] The university issued a decision letter (the initial decision letter)[2] to the requester denying the request on that basis that his request was frivolous or vexatious. In this letter, Ryerson states that:

> ...please be advised that this request is denied on the basis that your request is frivolous or vexatious. Ryerson's decision is made in accordance with section 10(1)(b) of *FIPPA* as your pattern of conduct amounts to an abuse of right of access.
>
> In any event, [the law firm] is normally retained as counsel for the university's insurer and therefore, no such retainer would exist as between [the law firm] and Ryerson, and there would be no responsive records.

[4] The requester (now the appellant) appealed the university's decision to the Information and Privacy Commissioner of Ontario (the IPC), and a mediator was appointed to explore the possibility of resolution.

[5] During the course of mediation of the appellant's appeal, the university agreed to conduct an additional search for records in the Office of the General Counsel and Secretary of the Board of Governors and issued a revised decision letter to the appellant dated February 21, 2020.

[6] The appellant continued to take the position that responsive records ought to exist and advised that he wished to pursue the appeal at adjudication.

[7] No further mediation was possible and the appeal was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry. I decided to conduct an inquiry.

[8] After the parties exchanged representations, I issued Interim Order PO-4119-I (the interim order), in which I ordered the university to conduct another search for responsive records.

[9] In the interim order, I found that the university had not expended a reasonable

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[1] In this order, I also refer to the "contracts and retainers" in the request as "retainer agreements" or "agreements."

[2] The initial decision letter is dated November 14, 2019.

effort to locate records that were reasonably related to the appellant's request - in other words, it had not conducted a reasonable search for responsive records.

[10] In particular, I ordered the university to conduct another search for responsive records, taking into account the wording of the request and the following considerations:

- The university could have searched for responsive paper records in the Office of the General Counsel and Secretary of the Board of Governors. If a responsive contract or retainer exists, it could have been held in paper format, especially if a copy was not emailed between the parties for the relevant three-year period.
- The university could have searched for responsive email records in other email accounts, apart from that of the coordinator, in the Office of the General Counsel and Secretary of the Board of Governors. If a responsive contract or retainer exists, other individuals in that office, including legal counsel, could have held such.
- The university also could have searched for responsive electronic and paper records in the record holdings of the university staff that would have been signatories to any contract or retainer between Ryerson and the law firm. I note that the university has retained the law firm for non-insured matters.
- Finally, the university could have asked the law firm for the responsive records sought for the relevant three-year period, but did not. I note that the law firm has an ongoing relationship with Ryerson, and represents Ryerson with respect to a number of matters.

[11] As ordered, the university conducted another search and did not locate any responsive records. The university provided representations in support of its search. The appellant provided representations in response challenging the university's new search. He also challenged the terms of the interim order and asked that it be withdrawn from publication.

[12] In this order, I uphold the university's search in response to the interim order as reasonable. I do not find any basis for doing withdrawing the interim order from publication.

PRELIMINARY MATTERS RAISED BY THE APPELLANT CONCERNING THE INTERIM ORDER

[13] The appellant has raised a number of concerns regarding the interim order's provisions. He wants the interim order withdrawn from publication. He raised these concerns both before and after the university conducted another search for responsive records following the issuance of the interim order. He describes these concerns about

the interim order as "False Claims."

[14] Before I determine whether the university has conducted a reasonable search in accordance with the terms of the interim order, I will address each of the interim order excerpts quoted by the appellant (in bold) and his submissions thereon.

Summary on page 1 of the interim order

> **The appellant sought, under the *Freedom of Information and Protection of Privacy Act* (the *Act*), a copy of any agreements made between Ryerson University (the university) and a specific law firm for the provision of legal services to the university. The university denied that responsive records exist. The appellant appealed the decision on the basis of his belief that the university did not conduct a reasonable search for responsive records.**

[15] The appellant states:

> It is not my "belief that the university did not conduct a reasonable search for responsive records." I notified IPC that Ryerson University (Ryerson) maliciously concealed the existence of records it knows about and possesses.

[16] Following mediation of this appeal, the sole issue that was forwarded to adjudication was the issue as to whether the university conducted a reasonable search for responsive records.

[17] I note that the appellant was provided with a copy of the IPC's mediator's report, where the reasonableness of the university's search was identified as the sole issue in this appeal.

[18] In the cover letter to the mediator's report, the appellant was invited to advise the mediator if there were any errors or omissions in this report, by no later than March 6, 2020. The appellant was advised that after March 6, 2020, the appeal would be transferred to an adjudicator, who may conduct an inquiry and dispose of the outstanding issues in the appeal. The appellant did not identify any errors or omissions in the mediator's report.

[19] The appeal was then transferred to adjudication on the sole issue of the reasonableness of the university's search. That remains the sole issue in this appeal.

[20] Therefore, my task in the appeal before me is limited to deciding whether the university had conducted a reasonable search for responsive records. If I were to find in the interim order, or find in this final order, that there exists reasonable grounds for me to determine that the university had not located responsive records, then the remedy

would be to order another search for records. If Ryerson or its staff had concealed the existence of records, that would be a basis for finding that the search was not reasonable.[3] The evidence before me does not support a conclusion that Ryerson concealed records.

Paragraph 20 of the interim order

> **[20] I disagree with the appellant that there have been "backchannel communications" between the IPC and Ryerson during the inquiry. Any communication by me with Ryerson during the inquiry was for the purpose of seeking or receiving representations.**

[21] The appellant states:

> I did not claim that Ryerson had backchannel communication with Adjudicator Diane Smith. I mentioned that Ryerson (any Ryerson employee or representative) had backchannel communication with IPC (any IPC employee or representative). For example, if a Ryerson employee had backchannel communication with [the IPC Commissioner] (cc'd), it should be disclosed especially because [the Commissioner] has authority over adjudication officers and adjudicators. [The Commissioner] is aware that backchannel communication took place. The backchannel communication prove:
>
> - the existence of record(s).
> - Ryerson's deliberate mismanagement of my Freedom of Information and Privacy Protection Act (FIPPA) requests.
> - Ryerson's and IPC's knowledge of records' existence and Ryerson's mismanagement.
>
> Furthermore, IPC is requested to attach communication records (phone/email/zoom/other records of the backchannel communication it had with Ryerson) to the interim order.

[22] The appellant also alleged that there were "backchannel communications" between the IPC and Ryerson in the course of processing this appeal in his initial representations prior to the interim order.

[23] I found in the interim order that any communication between Ryerson and the IPC during the adjudication of this appeal took place in accordance with *FIPPA* and for the purpose of the inquiry being conducted. The appellant continues to make the same

[3] Such a finding could also be a basis for a referral to the Attorney General for prosecution.

submission regarding "backchannel communications" between the IPC and Ryerson. In the interim order, I concluded that this had not occurred.

[24] I addressed this concern in the interim order. I cited section 52(13) of *FIPPA*, which reads:

> The person who requested access to the record, the head of the institution concerned and any other institution or person informed of the notice of appeal under subsection 50(3) shall be given an opportunity to make representations to the Commissioner, but no person is entitled to have access to or to comment on representations made to the Commissioner by any other person or to be present when such representations are made.

[25] In the interim order, I relied on section 52(13) of *FIPPA*, and the common law requirements of procedural fairness, which are reflected in the IPC's *Practice Direction 7* on the sharing of representations among the parties to an appeal.

[26] I maintain my finding from the interim order that there have not been any "backchannel communications" between the IPC and Ryerson. I note that the appellant has again not provided any evidence of "backchannel communications," apart from mere speculation.

[27] As in the case of the communications before the issuance of the interim order, any communications between Ryerson and the IPC following the interim order were made for the purpose of my conducting the inquiry into this appeal.

Paragraph 7 of the interim order

> **[7] The appellant continued to take the position that responsive records ought to exist and advised that he wished to pursue the appeal at adjudication. Therefore, the reasonableness of the university's search for responsive records is the sole issue in this appeal.**

[28] The appellant again disputes the statement that "reasonableness of the university's search for responsive records is the sole issue in this appeal." He raises further concerns about alleged "backchannel communication."

[29] Specifically, the appellant submits that Ryerson's "contradictory claims" are a relevant issue. He identifies and describes these points, as follows:

> [Named Ryerson staff member], Ryerson (cc'd) and [a partner at the law firm] are deceptive and contradictory. Their claims should not be trusted. [The staff member] has mastery in manipulation, fear-mongering, implicit deception and character assassination. He is leveraging Ryerson's

> reputation, social standing and influence to advance his personal agendas. As a pathological deceiver, he has a history of communicating false claims indirectly through various stakeholders, and when those stakeholders are caught communicating his false claims, he does not come forward to take responsibility. He prefers to distance himself from his false claims.
>
> 2. IPC, Ryerson and [the staff member] colluded to issue an interim order that serves [the staff member's] agenda. [He] tried to manufacture a misleading justification, and skew the adjudication decision in his favour.

[30] I have already addressed above the appellant's concerns about the issue before me for determination in this appeal, finding that the sole issue properly before me under the *Act* is the reasonableness of Ryerson's search for records responsive to the appellant's request. I have also addressed the appellant's allegation of "backchannel communications". As for "contradictory claims," I will assess the claims of the university about its search for responsive records later in this decision.

[31] As well, there is no evidence, and I specifically disagree with the appellant, that the IPC colluded with Ryerson, or its staff member, to issue an interim order in Ryerson's favour. In fact, the interim order was not in Ryerson's favour, as it did not uphold Ryerson's search for response records.

Paragraphs 13 and 14 of the interim order regarding the appellant's request for an in-person hearing

> **[13] I have reviewed the appellant's request and the written submissions of both the university and the appellant. I find that this is not the case where an in-person inquiry is required in order for me to adjudicate upon the reasonable search issue regarding the records requested in this appeal. Nor do I find that it is necessary for me to subpoena witnesses in order to make a decision in this appeal.**
>
> **[14] As well, the appellant has not provided me with information to substantiate his position that it is necessary to have witnesses testify in-person before me to provide evidence about "Ryerson's fraud/fabrication/forgery" in relation to Ryerson's search for responsive records. In the circumstances of this appeal, it was not necessary for me to make a finding on any fraud, fabrication or forgery by Ryerson in order to determine whether Ryerson conducted a reasonable search for the records requested by the appellant.**

[32] In his submissions made prior to the issuance of the interim order, the appellant sought to have the inquiry conducted by means of an in-person hearing and to have

witnesses subpoenaed. He stated that the live testimony of witnesses could support his representations and expose "Ryerson's fraud/fabrication/forgery."

[33] In the interim order, I acknowledged that the appellant had sought to have this inquiry conducted by means of an in-person hearing and to have witnesses subpoenaed. I stated that the appellant wanted an in-person hearing with the live testimony of witnesses to support his representations and expose "Ryerson's fraud/fabrication/forgery."

[34] In the interim order, I cited the following sections from *FIPPA* about my jurisdiction to conduct an inquiry:

> Section 52(8) The Commissioner may summon and examine on oath any person who, in the Commissioner's opinion, may have information relating to the inquiry, and for that purpose, the Commissioner may administer an oath.
>
> Section 56(1) The Commissioner may in writing delegate a power or duty granted to or vested in the Commissioner to an officer or officers employed by the Commissioner, except the power to delegate under this section, subject to such limitations, restrictions, conditions and requirements as the Commissioner may set out in the delegation.

[35] I determined that, pursuant to sections 52(8) and 56(1) of *FIPPA*, I might, as the Commissioner's delegate, summon and examine on oath any person who, in my opinion, may have information relating to the inquiry. I then decided not to do it.

[36] The appellant disputes my finding in the interim order that "this is not the case where an in-person inquiry is required..." and that he "has not provided me with information to substantiate his position...". He also disputes my conclusion that "it is not necessary for me to making a finding of any fraud, fabrication or forgery by Ryerson."

[37] The appellant states that he notified the IPC about:

- the falsehoods contained in Ryerson's representation.
- [named university staff member's] political interference. IPC is aware of [his] interference. Through a separate correspondence, [the appellant] notified IPC that since [he is] aware of [the staff member's] trickery, an in-person hearing would help [the appellant] debunk [the staff member's] manipulation.
- the delay caused by Ryerson.
- the contradictory documents and claims previously issued by Ryerson and [the law firm].

- The backchannel communication between IPC and Ryerson.

[38] I maintain my finding that an in-person hearing was and is unnecessary in this appeal. The appellant still has not provided me with evidence that this type of hearing is required for me to adjudicate upon the issue in this appeal, the university's search for records responsive to the appellant's request for agreements between the university and the law firm for legal services between 2017 and 2019. The matter that the appellant is trying to raise, such as political interference and delay, are pure speculation on his part.

[39] I note in any event that my interim order found in favour of the appellant and ordered that the university should search again for responsive records, which it has now done.

Paragraphs 32 and 33 of the interim order

> **[32] The appellant also disputes Ryerson's position that it did not directly retain the law firm. He refers to information he received from another request where it appears the law firm issued documents upon the suggestion and instruction of Ryerson. He says that in these documents, Ryerson is referred to as the client of the law firm.**
>
> **[33] Specifically, the appellant refers to a decision letter in another request where he sought the dollar amount (including legal fees, retainer fees, applicable taxes and other charges) paid by the university to the law firm in 2018 and 2019. He states that this other decision letter seems to suggest that:[4]**

[40] The appellant states that these paragraphs suggest that in summarizing his representations, I misrepresented the documents he mentioned.

[41] The appellant's representations do not include the remaining part of paragraph 33, Paragraph 33 in its entirety reads:

> [33] Specifically, the appellant refers to a decision letter in another request where he sought the dollar amount (including legal fees, retainer fees, applicable taxes and other charges) paid by the university to the law firm in 2018 and 2019. He states that this other decision letter seems to suggest that:
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> a. Ryerson and [the law firm] had/have a contractual relationship.

[4] The appellant only quoted from the first portion of paragraph 33.

> b. Ryerson was invoiced for the services it received from [the law firm].
>
> c. [The law firm] invoiced Ryerson for the legal services it provided to Ryerson.
>
> d. Ryerson made payments to [the law firm].
>
> e. Ryerson paid legal and retainer fees to [the law firm].[5] This letter from the law firm was also referred to and enclosed with the university's revised decision letter sent to the appellant.
>
> f. Ryerson has at least fourteen records relating to the contractual relationship between [the law firm] and Ryerson.
>
> g. Ryerson has document(s) that mention the name of the employee(s) or department(s) that made payment(s) to [the law firm].
>
> h. Ryerson has document(s) that mention the name of the employee(s) or department(s) that authorized payment(s) to [the law firm].

[42] The appellant does not specifically refer to what exactly was misrepresented by my summary of his representations in paragraphs 32 and 33 of the interim order, nor how this would have affected the determination that I made in the interim order. He states:

> It seems IPC is misrepresenting the documents I mentioned. I did refer to a previous decision letter. However, I also referred to documents issued by [the law firm] upon the suggestion and instruction of Ryerson. Ryerson, [Ryerson staff member] and [the law firm] alleged that:
>
> > [name] is a partner at the law firm, [name] and has at all material times, been retained by Ryerson…

[43] I cannot ascertain what the appellant is claiming was misrepresented by me in paragraphs 32 and 33 of the interim order. Nevertheless, whether the law firm provided legal services to the university is not at issue. What is at issue in this appeal is whether there exists a retainer agreement between the law firm and the university for the provision of legal services dated between 2017 and 2019.

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[5] This letter from the law firm was also referred to and enclosed with the university's revised decision letter sent to the appellant.

Paragraph 38 of the interim order

> **[38] The university states that the other request referred to by the appellant was for invoices paid by the university to the named law firm in 2018 and 2019 and other related matters that are exempt from disclosure pursuant to section 19 of the *Act* (solicitor-client privilege). The appellant did not appeal the decision in that request.**

[44] As outlined above, at paragraph 38 of the interim order, I referred to another request the appellant made to the university for access to invoices from the law firm. In objecting to this paragraph of the interim order, the appellant describes in detail his belief that this other request was improperly processed by Ryerson.

[45] In the interim order, I considered the appellant's other request. I relied on the information provided by the parties about this other request, which related to invoices paid by the university to the law firm, in deciding to order the university to conduct another search for records responsive to the request at issue in this appeal.

[46] Regarding paragraph 38 of the interim order, the appellant alleges that:

> The content of several emails sent to me by IPC was suggested by Ryerson.

[47] He provides no examples or evidence to support this assertion. He claims that this alleged interference by Ryerson in the emails sent by the IPC to him indicates that responsive records exist and that the university does not want him to get access to these records.

[48] I find that the appellant's allegation that Ryerson has suggested the content of IPC emails to him is completely without merit. I also find meritless the appellant's claim that Ryerson's alleged influence on the IPC's communications to him demonstrates that responsive records exist. The IPC is an independent tribunal and its decisions are presumed to have been made in an impartial manner in accordance with the law.[6] The appellant has provided no evidence showing otherwise.

[49] I find that the appellant's claims that the IPC has been influenced by, or partial to, Ryerson to be mere speculation on his part and unsupported by the evidence, including the terms of the interim order, which was decided in the appellant's favour.

Conclusion

[50] I do not agree with the appellant that the interim order contains "False Claims" and there is no basis for it to be withdrawn from publication as requested by the

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[6] See Orders PO-3692 and PO-4143-R.

appellant.

DISCUSSION

Did the university conduct a reasonable search in response to the interim order?

[51] I will now address whether, in response to the interim order, Ryerson has conducted a reasonable search for records responsive to the appellant's request for agreements between Ryerson and the named law firm for legal services, dated from 2017 to 2019.

[52] 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.[7]

[53] Past orders have established that 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.[8] To be responsive, a record must be "reasonably related" to the request.[9]

[54] 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.[10]

[55] 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.[11]

[56] 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.[12]

Representations

[57] The university states that its Office of the General Counsel and Board Secretariat (General Counsel's Office) holds the relationship with external legal counsel and, as such, they have the requisite experience and knowledge in the subject matter of the

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[7] Orders P-85, P-221 and PO-1954-I.
[8] Orders P-624 and PO-2559.
[9] Order PO-2554.
[10] Orders M-909, PO-2469 and PO-2592.
[11] Order MO-2185.
[12] Order MO-2246.

request.

[58] The university states that it deemed records to be responsive if they were held by a relevant(s) employee(s) at the university and were created between 2017 and 2019, and contained:

- the appellant's personal information as defined by Section 2(1) of the *Act*, and/or
- information related to any contracts and retainers between the university and the named law firm.

[59] The university provided affidavits from the following four Ryerson staff from its General Counsel's Office who performed searches for responsive records in response to the interim order:

- a Legal Counsel,
- the Associate General Counsel, and
- two Administrative Coordinators, Legal Support.

[60] According to his affidavit, the university's Legal Counsel conducted an in-person search of records in the General Counsel's Office and in his email. He states:

> I searched the Office's legal files for responsive paper records. I searched all files pertaining to the [appellant] and I was unable to find a contract or retainer signed by the university and [the law firm] in 2017, 2018, or 2019. More generally, I searched for files pertaining to [the law firm] and tried to find a file with paper copies of any agreements with law firms, including [the law firm]; however, no such file nor any agreement or retainer with any law firm was found.
>
> I also conducted a search for my email from Spring 2019 onward [when he was hired by Ryerson]. I searched my email using terms such as, ["appellant's name"],[13] "retainer", "contract", and [name and acronym of the law firm]." I found no responsive records from this search of my email.

[61] The Legal Counsel also emailed a partner at the law firm, who responded as follows:

> I can confirm that I have searched [the law firm's] records from 2017 to 2019, inclusive, and did not locate any retainer agreement between [the law firm] and Ryerson. As indicated, this accords with my recollection that

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[13] Neither party explicitly indicated that the appellant was a party to legal proceedings involving the law firm, however, the appellant did not object to the university's search for records mentioning his name.

> there was no such retainer agreement, as our client relationship with Ryerson simply evolved out of the insured work we were doing for Ryerson through CURIE [the Canadian Universities Reciprocal Insurance Exchange].

[62] The university states that its former Assistant General Counsel is the legal counsel who managed litigation and billing matters, and is the individual who would have had a record of any retainer agreements entered into between Ryerson and the law firm.

[63] To account for the possibility that there may be responsive records in the former Assistant General Counsel's email, the Associate General Counsel conducted a search of the former Assistant General Counsel's emails. The Associate General Counsel describes her search, which did not locate any responsive records, as follows:

> I conducted a search of [the former Assistant General Counsel's] email account for records responsive to the request by searching for emails sent or received between January 1, 2017, and December 31, 2019, that: (i) contained the phrase "[law firm's email address]" and had attachments; and (ii) contained the phrases "[law firm's email address]" and "retainer".
>
> I undertook the above searches with both the Gmail 'conversation view' feature both on and off. The only potentially responsive records that I found related to email confirmations that CURIE had retained [the law firm] for specific legal matters on Ryerson's behalf.
>
> There were no retainer agreements attached or included. I also found one email that discussed the possibility of Ryerson and a third party entering into a joint retainer with [the law firm], but no subsequent joint retainer was found. This email noted that the joint retainer was being considered as an exception to Ryerson's practice not to enter into a retainer agreement with [the law firm] for legal matters because a third party was involved.

[64] The search of the first Administrative Coordinator, Legal Support, in response to the interim order was conducted as follows:

> I conducted a search in the general email inbox [email address] and the electronic legal files of the Office of the General Counsel and Secretary of the Board of Governors (GCBS). The general email inbox of the GCBS consists of email correspondences between the staff in GCBS and clients, individuals external to Ryerson, and other individuals with requests and inquiries. I searched this email inbox by using the search terms [variations of name of law firm, acronym of law firm, name of law firm, retainer, and contract]. No emails relating to this request were found.

> The electronic legal files consist of electronic copies of email correspondences and various legal documents saved for various legal matters handled by the GCBS. I searched through the electronic legal files by first conducting a search in the Legal Files Tracker using the search terms [referred to above]. The Legal Files Tracker is an excel sheet that summarizes and organizes all the legal files within GCBS, including lawyers on the file. In this search through the Legal Files Tracker, no files relating to this request were found.
>
> I then conducted a manual search within the GCBS Shared Drive of the legal files in the GCBS Shared Drive by using the same terms as noted above and have also not found any documents relating to this request.

[65] The second Administrative Coordinator, Legal Support, also conducted a further search for responsive records in light of the interim order. She did not locate any responsive records. She states:

> I conducted a search in my Ryerson employee email account and produced one record which was deemed not responsive. The terms used to conduct the search included [the variations of the name of the appellant, the law firm and retainer].

[66] The university states that it does not typically enter into retainer agreements with external law firms, particularly when the relationship with the external law firm is initiated through the university's insurer. With respect to the law firm in particular, Ryerson states that the practice has not been to enter into a retainer agreement.

[67] The university further states that with respect to each legal matter for which the law firm represents the university directly, the practice is not to have a retainer agreement. It states that the law firm sends the university invoices, which are then paid by the university through the Office of the General Counsel. It states:

> With respect to insured legal matters for which the university's insurer retains external counsel on behalf of the university … any retainer agreements that may exist are between the university's insurer and the external law firm, not the university…
>
> If there were responsive records that exist, they would only be in the possession of the General Counsel's Office at the university and [the law firm]. From the search conducted by the four experienced and knowledgeable staff in the General Counsel's Office and … the email from the law firm, … responsive records do not exist which are not in the institution's possession.

[68] The appellant did not provide representations that directly address the searches detailed above that the university conducted as directed in the interim order. The only

part of the appellant's May 10, 2021 representations that may address these searches reads:

> There are various departments at Ryerson. Employee(s) of these department[s] might have the autonomy to directly hire an external law firm or representative. In such cases, the contract and retainer might be possessed by the specific department (which hired the external law firm or representative) rather than the legal department or an insurer. The search allegedly conducted by Ryerson would not be helpful in discovering record(s) that are possessed by department(s) other than the legal department.

Analysis/Findings

[69] In this final order, I am reviewing Ryerson's searches for responsive records in response to the terms of the interim order. In the interim order, I found that the law firm has provided legal services to Ryerson. The issue is, however, whether Ryerson's efforts to search for any retainer agreement for these legal services dated between 2017 and 2019 were reasonable.

[70] As previously outlined above, in the interim order, I found that the university did not take into account the following considerations in conducting its search for responsive records:

- The university could have searched for responsive paper records in the Office of the General Counsel and Secretary of the Board of Governors. If a responsive contract or retainer exists, it could have been held in paper format, especially if a copy was not emailed between the parties for the relevant three-year period.

- The university could have searched for responsive email records in other email accounts, apart from that of the coordinator, in the Office of the General Counsel and Secretary of the Board of Governors. If a responsive contract or retainer exists, other individuals in that office, including legal counsel, could have held such.

- The university also could have searched for responsive electronic and paper records in the record holdings of the university staff that would have been signatories to any contract or retainer between Ryerson and the law firm. I note that the university has retained the law firm for non-insured matters.

- Finally, the university could have asked the law firm for the responsive records sought for the relevant three-year period, but did not. I note that the law firm has an ongoing relationship with Ryerson, and represents Ryerson with respect to a number of matters.

[71] The university did not locate any responsive records in response to its searches

following the interim order.

[72] Based on my review of the university's representations concerning the search made in response to the interim order, I find that the university has now taken into account all of these considerations in performing the new searches. As ordered, the university has:

- searched for responsive paper records in the Office of the General Counsel. This search was performed by the university's Legal Counsel.
- searched for responsive email records in other email accounts, apart from that of the coordinator, in the Office of the General Counsel. This search was performed by the university's Legal Counsel, and two different Administrative Coordinators, Legal Support. As well, the email records of the former Assistant General Counsel, who managed litigation files, were searched by the current Associate General Counsel.
- searched for responsive electronic and paper records in the record holdings of the university staff that would have been signatories to any contract or retainer between Ryerson and the law firm.
- asked the law firm whether it had records of any retainer agreements from 2017 to 2019 inclusive. The law firm did a search of its records and responded that it did not locate any retainer agreement between the law firm and Ryerson.

[73] In response to the university's new searches, the appellant argued that responsive retainer agreements with the law firm may exist as employees of various Ryerson departments might have the autonomy to directly hire an external law firm or representative. I disagree with this submission of the appellant. I accept the university's submission that:

> If there were responsive records that exist, they would only be in the possession of the General Counsel's Office at the university and [the law firm].

[74] The General Counsel's office is the university department that would have relationships with external counsel and would have entered into, and have possession of, any responsive retainer agreements. Four university staff conducted searches for these records, as did the law firm named in the request.

[75] I find that the university has, in response to the interim order, provided sufficient evidence that it conducted a reasonable search for responsive records, namely, any contracts or retainer agreements that were signed by Ryerson and the law firm, as external counsel, between 2017 and 2019.

[76] I have made this finding taking into account the searches conducted by the four

staff in the General Counsel's Office, namely, the Legal Counsel, the Associate General Counsel and the two Administrative Coordinators, Legal Support. I have also taken into account the email from the law firm as to its search for responsive records.

[77] I am satisfied that all of the searches conducted by the university and the law firm in response to the interim order demonstrate that there is no reasonable basis for me to find that responsive records exist, either in the university's possession or in the possession of the law firm, the other party to any responsive records.

[78] Accordingly, I uphold the university's search for responsive records.

ORDER:

I uphold the university's search for responsive records and dismiss the appeal.

Original Signed by:	June 8, 2021
Diane Smith Adjudicator	