Information and Privacy Commissioner,
Ontario, Canada

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

FINAL ORDER PO-4195-F

Appeal PA19-00306

Ryerson University

October 7, 2021

Summary: This final order disposes of an appeal that was partially upheld in Interim Order PO-4109-I. In the Interim Order, the adjudicator upheld the university's decision to withhold information in responsive records; however, she ordered the university to conduct further searches.

The university conducted further searches, yielding several new records and it issued a new decision. The appellant argued that the searches were nevertheless unreasonable. In this order, the adjudicator upholds the university's search as reasonable.

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

Orders Considered: Interim Order PO-4109-I.

OVERVIEW:

[1] As is explained in more detail in Interim Order PO-4109-I (the Interim Order), the appellant made a complaint to Ryerson University (the university) about a member of the university's staff (the Staff Member). Later, the appellant made a request to the university under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for information regarding "e-mails, deleted emails, and letter correspondence between [the Staff Member], and any other person or organization, that mentions, relates to, references or otherwise indicates [the appellant], and/or [a named First Nation]."

[2] The university disclosed responsive records withholding some information on the basis of the discretionary exemption for solicitor-client privilege at section 19 of the *Act*. The appellant appealed the university's decision to withhold information to the IPC. Reasonable search was added as an issue during the mediation stage of the inquiry.

[3] In the Interim Order, the adjudicator previously assigned to this appeal upheld the university's decision to withhold information and components of its search. However, she found that the appellant raised reasonable grounds that additional responsive records may exist in the university's human resources department and she ordered the university to conduct a further search and, if necessary, issue a new decision pertaining to new responsive records located. She also ordered the university to provide the IPC with information and representations about its search.

[4] After completing the new searches, the university issued a decision partially disclosing several new records to the appellant (the new decision). The appellant appealed the new decision to withhold the information in the newly-located records to the IPC and Appeal PA21-00289 was opened to resolve those issues.

[5] This appeal file (PA19-00306) was transferred to me to determine the final remaining issue: whether the university has now conducted a reasonable search.

[6] I continued the inquiry in accordance with the IPC *Code of Procedure* by sharing the university's representations about the search with the appellant and inviting his representations, which were made. I then shared the appellant's representations with the university and invited reply representations, which were made. I shared the reply representations with the appellant but I decided that no further response was necessary.

[7] In this order, I uphold the university's search as reasonable.

DISCUSSION:

[8] The remaining issue in this appeal is whether the university has now conducted a reasonable search. At paragraphs 115 to 122 of the Interim Order, the adjudicator upheld much of the university's search. However, she agreed that the appellant had provided sufficient evidence to form a reasonable basis to conclude that additional responsive records may exist in the university's human resources department and she ordered the university:

> to conduct a further search for records responsive to the appellant's request held by any employee and/or contractor in the Human Resources department, as well as anyone else that any employees and/or contractors from the Human Resource department communicated with about matters relevant to the appellant's request.

[9] 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.[1] 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.[2] 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.[3]

Representations

The university

[10] The university submits that it conducted further searches in accordance with the Interim Order. It describes the further searches undertaken in an affidavit sworn by the Executive Director, HR Strategic Partnerships and Labour Relations (the executive director) who was responsible for overseeing and coordinating the further searches.

[11] The executive director identified 18 staff in the Human Resources department who may have held responsive records in consideration of their portfolio and seniority. She then requested the 18 staff members to conduct searches of their email and Google Drive for records pertaining to the matter referred to in the request and, the following keywords: the name of the appellant, the name of the particular staff person, and the named First Nation.

[12] The university says that the searches were confined to email and/or Google Drive because there were no paper records kept regarding this matter.

[13] Five of the 18 staff located responsive records, which were provided to the executive director and which form the basis of the university's new decision.

[14] The university states that it has no indication that records were destroyed on the basis that there is no practice in the Human Resources department to delete records, as guided by the university's records retention schedule.

The appellant

[15] The appellant submits that the university's search was not reasonable. He makes two main arguments about why the search is deficient.

[16] First, he observes that the university did not search for records held by an individual identified in the Interim Order as a Human Resources Management

---

[1] Orders P-85, P-221 and PO-1954-I.
[2] Orders P-624 and PO-2559.
[3] Orders M-909, PO-2469 and PO-2592.

Consultant (the consultant). That is, the consultant was not one of the 18 employees asked by the executive director to search their records.

[17] Similar to his arguments made at an earlier stage in this appeal, which are described by the adjudicator at paragraph 124 of the Interim Order, the appellant explains the role of the consultant in relation to his complaint and his own communications with the consultant. To summarize, the appellant explains that the consultant informed him in 2016 that he (the consultant) had updated his director and "that the appropriate mechanisms to investigate your concern will be taking place."

[18] The appellant then refers to a web page that describes the university's procedures when investigating a human rights complaint.[4] He argues that any investigation referred to by the consultant would involve interviews, notes, an investigator's report and other supporting documents that he believes ought to be in the possession of the consultant.

[19] The appellant also explains that some of the records disclosed in the new decision included emails to or from the consultant.

[20] The appellant's second argument is that the searches undertaken as a result of the Interim Order were deficient because the 18 employees were not asked to search for *deleted* emails.

[21] Based on online research, the appellant describes how Google Drive treats deleted emails and his understanding of how this impacts the university's capacity and ability to store and retrieve deleted emails.[5] Based on this information, the appellant surmises that since October 2020, the university's deleted emails are permanently deleted after 30 days with only a limited ability to retrieve them. However, he submits that if the university uses a product called Google Vault, it could potentially retrieve deleted emails.[6] Based on this information, the appellant argues that the university could and should arrange to use Google Vault to recover deleted emails.

The university's reply

[22] Regarding the omission of the consultant from the list of employees who were asked to search, the university states that the consultant's employment with the university ended in 2017 and that their email account "was disabled at that time." It reiterates its original representations describing the steps taken to search for emails held by employees in the Human Resources department and states that the search was conducted in good faith in an effort to resolve the reasonable search issue raised by the appellant.

---

[4] https://www.ryerson.ca/humanrights/complaints-resolutions-what-to-expect/human-rights-complaints/

[5] Referencing the following website: https://www.ryerson.ca/google/news/2020/09/google-drive-trash-will-now-automatically-delete-after-30-days/

[6] Using information from: https://support/google.com/a/answer/112445?hl=en

[23] Regarding deleted emails, the university first refers again to the affidavit of the executive director and her evidence that there is no indication that records have been destroyed and that it is not the practice of Human Resources staff to delete emails. It also submits that none of the 18 staff members "indicated that records may have existed but no longer do, or that any responsive records had been destroyed in accordance with the authorized records retention schedule."

[24] The university refers to Order PO-3050, an order in which the adjudicator stated,

> In general, an access request for emails does not require a routine search of backup tapes for deleted emails unless there is a reason to assume that such a search is required, based on evidence that responsive records may have been deleted or lost.

[25] The university submits that it does not use Google Vault, as suggested by the appellant.

Finding

[26] I find that the university conducted a reasonable search. I am satisfied that the approach taken by the university demonstrates a reasonable effort to identify and locate responsive records. The search was overseen by the executive director who had ample knowledge to identify where to search for records and the search terms to be used. The approach was sufficiently thorough and reflects, as argued by the university, a good faith effort to locate additional records, which it did.

[27] In reaching this conclusion, I considered the appellant's argument that the search did not include deleted emails. However, I accept the university's position that a search for deleted emails is not necessary because there is no reasonable basis to indicate that any records were deleted. The evidence of the executive director, which I accept, is that the employees in the Human Resources department do not have a practice of deleting emails.

[28] The appellant argued that the university ought to use Google Vault to locate additional deleted records. The university explains that it does not have Google Vault so this type of search would not be possible. In any event, as indicated, I accept that a search for deleted emails is not necessary on the basis of the evidence of the executive director.

[29] I also considered the appellant's argument that the university's search was not reasonable because the executive director did not ask the consultant to search their emails. It was clarified in the university's reply that the consultant has not been employed with the university since 2017, almost two years prior to the request. The university also stated that the consultant's email was "disabled."

[30] Although the further searches yielded some records involving the consultant

(that were disclosed to the appellant), the appellant believes that the consultant would have more records, such as summaries, investigator's reports, supporting memos and notes *circa.* 2016. It is my view that the appellant's concern, although reasonable, is speculative based only on his assumptions about what may have transpired. I am also satisfied that records of this nature would be in the possession of other employees who remained with the university and, in particular, the consultant's director who *was* one of the 18 employees asked to search and whose searches yielded responsive records.

[31] In summary, when I consider the scope and breadth of the searches that were undertaken, and that at least one other employee with whom the consultant was working did participate in the search, there is no reasonable basis for me to conclude that further searches would result in additional records.

ORDER:

I uphold the university's search as reasonable.

Original Signed by: October 7, 2021
Valerie Jepson
Adjudicator