

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4218

Appeal PA17-451

Wilfrid Laurier University

December 14, 2021

Summary: The appellant submitted a request to Wilfrid Laurier University (the university) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for ongoing monthly access to all records that refer to her by full-time faculty and administrative staff and two specified individuals, in a specified department. After its search, the university provided the appellant with partial access to the records it located claiming certain exemptions and exclusions for the information it withheld. The appellant appealed and also claimed that the university's search was not reasonable and she believed further responsive records existed that were not located. After mediation, the sole issue to proceed to adjudication was whether the university's search was reasonable. In this order, the adjudicator finds that the university's search was 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 and Investigation Reports Considered: Order MO-1285.

OVERVIEW:

[1] The appellant submitted a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to Wilfrid Laurier University (the university) for access to all records that refer to her [including variations of her name] "found in the [specified department] full-time faculty and administrative staff, [specified individual], [specified individual]. From May 1, 2017 – ongoing on a monthly basis." The appellant specified that she wanted 10 name variations searched. She also confirmed that she did

not seek access to "basic administrative emails" which should be excluded from the search for records.

[2] The university issued an access decision and a supplementary access decision granting the appellant partial access to the responsive records it located. The appellant was not satisfied with the university's decisions and appealed it to the Office of the Information and Privacy Commissioner (IPC).

[3] The IPC attempted to mediate the appeal. During mediation, the appellant questioned the reasonableness of the university's search for records indicating she believes additional records responsive to her request exist at the university. The appellant asked that the appeal proceed to adjudication with the sole issue being reasonable search. As a mediated resolution of the appeal was not possible, the appeal was moved to the adjudication stage of the appeal process where an adjudicator may conduct a written inquiry under the *Act*.

[4] The university provided representations in response to the original adjudicator's Notice of Inquiry. I was assigned carriage of the file and provided the university's representations to the appellant, who also provided representations. The appellant's representations were provided to the university who made further representations in reply. The appellant was forwarded the university's reply representations and invited to provide a sur-reply. The appellant indicated that she would not provide sur-reply representations and, instead, referred to her initial representations.

[5] In this order, I find that the university's search was reasonable and dismiss the appeal.

DISCUSSION:

[6] The sole issue in this appeal is whether the university conducted a reasonable search for records.

[7] 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 If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[8] 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

¹ Orders P-85, P-221 and PO-1954-I.

show that it has made a reasonable effort to identify and locate responsive records.² To be responsive, a record must be "reasonably related" to the request.³

[9] 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.⁴

[10] 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.⁵

[11] 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.⁶

Representations

The university's representations

[12] The university submits that the search it conducted for paper, electronic, and email records responsive to the appellant's request was a reasonable and complete search.

[13] The university submits that it communicated with the appellant to clarify the scope of the request and confirm the records to be searched. It also submits that it shared information with the appellant on how the records would be searched in order for her to understand the process. The university submits that the individuals who were the most knowledgeable of the subject and informed on where responsive records would be located (those who either created or received the records) were provided with detailed instructions on completing a records search, including the kinds of records to be searched and types of search terms to be used, and they conducted their search.

[14] The university submits that due to the configuration of its email archive system, it is not possible for an individual to delete an email from the archive system. As a result, it submits that it is not possible for an email record to "no longer exist" at the time the search was conducted. The university submits that there were no indications that further paper, electronic, or email records responsive to the request had been created during the timeframe of the request, but no longer existed when the search was performed.

² Orders P-624 and PO-2559.

³ Order PO-2554.

⁴ Orders M-909, PO-2469 and PO-2592.

⁵ Order MO-2185.

⁶ Order MO-2246.

[15] The university submits that during a two month period in the timeframe searched, the appellant had no administrative ties to the named department, which likely had an impact of the number of responsive records found. The university also submits that section 65(6)3 (labour relations and employment exclusion) applied to some of these records held by the individuals in the roles of director of faculty relations and dean of the faculty where the appellant worked (the latter being the manager to whom the appellant reported to directly during this period as part of an alternative work arrangement). The university submits that as a result, the number of responsive records identified and provided in the search may have been fewer than what the appellant anticipated.

[16] The university included an affidavit sworn by its coordinator, records management and privacy office (the coordinator) who was the university employee responsible for coordinating the search. The coordinator submits that following receipt of the request she determined that clarification was required before moving forward, and therefore contacted the appellant to ask whether the inclusion of records that "refer or directly reference" would also include email communications that included the appellant's name, but were administrative in nature, and could be considered to not be "about" the appellant. The coordinator submits that examples were provided in order for the appellant to understand what was being asked. The coordinator submits that she also included a list of the proposed names of the faculty and staff whose records were to be searched to ensure that her understanding of the scope of the request was correct.

[17] The coordinator submits that the appellant confirmed that what had been described as "basic administrative emails" by the university did not need to be included in the release of records, and that the list of faculty and staff provided was what the appellant expected to be included in the search. The coordinator submits that the appellant also made an adjustment to the search terms, and asked for various versions of her name to be searched as well as various course numbers to be used.

[18] The coordinator submits that she indicated to the appellant that the change in the search terms to include general records about undergraduate courses, in the specified department, in addition to personal records about the requester, might have an impact on the fee. The coordinator submits that she also explained that the additional name variations suggested would lead to including many records that would not relate to the appellant at all, giving an example of what she meant. The coordinator informed the appellant that in order to retrieve responsive records, the university will be directing staff and faculty to search their accounts in accordance to its standard reasonable search guidelines for all records that refer to or name appellant (directly or indirectly), or that name the provided list of courses.

[19] The coordinator submits that the appellant withdrew her request for a general record search for the listed courses and clarified that the issue of the name variations to be searched.

[20] The coordinator submits that information provided to faculty and staff about conducting a reasonable search so they could understand the search process was also shared with the appellant.

[21] The coordinator submits that since the appellant asked for records "ongoing on a monthly basis," a schedule of record release was proposed.

[22] The coordinator submits that she contacted the staff and faculty on the list communicated previously to the appellant by email which included detailed instructions about the scope of the request and how the record search should be completed. She submits that faculty and staff were asked to conduct a search for the records and to provide any records that fit the specified parameters to the privacy office, along with written confirmation that a search had been done. The coordinator submits that if no responsive records were found, faculty and staff were asked to notify the privacy office of this in writing to ensure they had a record that the search had been completed.

[23] The coordinator submits that all of the contacted faculty and staff had completed records searches in response to previous access to information requests, and were familiar with the email archive system, and that all records created in the course of university business were to be provided to the privacy office.

[24] The coordinator submits that the search yielded 32 pages of responsive records which she noted was a smaller number of responsive records compared to other similar searches for records about the appellant arising from earlier requests. The coordinator submits that she expected this result since the appellant was no longer involved in the same way with the department for the date range searched.

[25] The coordinator submits that she reviewed records to determine if any additional records were referenced that could be responsive to the request. She submits that there were no indications that other records existed that had been destroyed before the search was completed.

[26] The coordinator noted that during the course of the search, one record (an email chain) was determined to require third party notice to an external organization. This notice was provided and representations were received.

[27] The coordinator submits that before the first scheduled release of records, the privacy office received written confirmation from all but two faculty members that a search was conducted and, when responsive records had been found, copies of the records were provided. She submits that of the two who did not respond, one was not able to complete the search due to being away on a year-long sabbatical, and the other required more time due to unforeseen circumstances. The coordinator submits that the university noted in its communication with the appellant that the records did not include the records of the two named individuals.

[28] The coordinator submits that the university provided the responsive records to the appellant. The coordinator submits that she noted that the number of responsive

records was small and indicated so on the correspondence sent to the appellant. She included the wording from her correspondence which indicated that "[A] contributing factor to this was because the time period in question was after the start of your alternative reporting structure where contact between yourself and the [d]epartment ... was to be avoided, and your administrative and service commitments to the department had ceased."

[29] The letter also noted the exemptions and exclusions that had been applied to the records, and provided information about how to appeal the decision to the IPC.

[30] The coordinator submits that the faculty member that had requested additional time to complete the search finally did so and she informed the appellant that no additional responsive records were found. The coordinator submits that this was not unexpected since most of the other faculty members in that department had no responsive records, and any responsive ones within the department (save between this individual and the individual on sabbatical), would have been included in the previously provided records.

[31] The coordinator submits that the last faculty member completed their search for responsive records when they returned to their administrative duties after their sabbatical. She submits that no records were located as a result of this search.

[32] The coordinator submits that based on the instructions provided to the faculty and staff completing the search and her review of the records, she believes that a reasonable search was completed to locate responsive records within the university's custody or control related to this request.

The appellant's representations

[33] The appellant submits that the issue of reasonable search extends to whether the faculty members named have conducted thorough searches of all records created, not just those electronic records captured on university email servers. The appellant submits that she has worked in the specified department for 13 years and that in those years there have not been any guidelines, policies, or procedures developed to govern how faculty members and staff share information with each other, with students, or with other university members.

[34] The appellant submits that the university uses an online learning platform, MyLearningSpace, which allows students and faculty members to communicate with each other, enables faculty to deliver course content to students, and conduct university business online. She submits that the records released to date reveal no searches of MyLearningSpace, or other social media sites, despite faculty members' use of MyLearningSpace, as well as platforms such as Twitter, Facebook, and personal web sites to conduct university business.

[35] The appellant submits that since making her access request, she has observed a reluctance to be forthcoming with information on the behalf of the university as well as

the members of the specified department.

[36] The appellant includes copies of minutes from two department meetings held in November 2017 and submits that they illustrate that the style of record-keeping in the department is such that an individual would have to be physically present at a meeting in order to understand what has transpired. She submits that the lack of information in department meeting minutes creates a culture of secrecy and non-transparency. The appellant submits that while beyond the scope of the IPC, it remains necessary to point out that if one were to experience systemic discrimination, it is most likely to occur in an environment such as this.

[37] The appellant submits that some of the pressing issues at stake in the reasonable search question are whether the named individuals in the specified department followed the rules provided to them and conducted a reasonable search of all the records in their possession. The appellant suggests that the IPC not be willing to allow individuals to communicate on institutional grounds about institutional matters related to a named individual (the appellant), but not turn over the records created through those meetings because they were not electronically recorded on an institutional server.

The university's reply

[38] As noted, the university was provided with a copy of the appellant's representations and provided a reply. The university submits that the primary issue noted by the appellant is to question whether other records exist that were not provided to the privacy office by members of the department who conducted the search.

[39] The university submits that it understood that the scope of the appellant's request could include responsive records created in MyLearningSpace (Laurier's online course management system), social media, or other solutions and communicated this to the employees completing the search. It submits that MyLearningSpace is a tool used for dissemination of course material and information to students and records could include additional or supplementary course materials, communicating information about course assignments or exams, or discussion groups for group participation. The university submits that students use MyLearningSpace to submit assignments and it is a secure portal for the posting of student grades.

[40] The university submits that while personal information is contained in MyLearningSpace, it would be highly unusual (and a possible privacy breach), for personal information about a faculty member to be housed there unless they were teaching the course and provided this information themselves, or were enrolled as a student. It submits that given the way the MyLearningSpace tool is used, it is not surprising that no records responsive to the appellant's access request were found there.

[41] The university also submits that it is unlikely that personal information about the appellant exists on the university's Twitter, Facebook, or other social media feeds. It submits that social media is an integral part of the university's strategy to communicate information and promote itself. Further, the university submits that because these are not secure platforms, it would be unusual for personal information about a faculty member to be communicated through an institutional social media account.

[42] The university repeats that the privacy office did not find it unusual for there to be a small number of responsive records held by members of this department for this request. Noting that the appellant had no administrative ties in this department during the responsive time period, there would be little cause for members of the department to create records in the course of their employment about, or naming, the appellant during this time period. In addition, the appellant noted in their letter dated June 19, 2017 that the records described as "basic administrative emails", need not be included in the release of records.

[43] The university acknowledges that, since the appellant's request, it has implemented additional or revised policies and procedures regarding the management of university records. It is the university's position that those changes are not relevant for the access request or this appeal. It submits that there is no indication that applicable policies and procedures in effect for the relevant time period of the search were not applied.

[44] The university submits that the members of the specified department performed the search for responsive records as requested and in accordance with the university's reasonable search guidelines, which were developed based on IPC Orders and guidelines.

Analysis and finding

[45] For the following reasons, I find that the university has provided 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. Further, I also find that the appellant has not provided a reasonable basis for me to conclude that additional responsive records exist.

[46] The appellant suggests that a reasonable search involves the relevant faculty members having conducted thorough searches and not just for electronic records captured in an email server. However, in my review of the instruction letter the coordinator provided to the individuals who would be searching, the search was not limited to electronic records but "all records that are within the parameters of the request description provided by the requester." The coordinator instructed the searchers to consider "all keywords and relevant search dates and email accounts." In my view, the coordinator's instructions were not focussed solely on electronic records captured in an email server as suggested by the appellant.

[47] Further, the university states in its reply that it understood that the scope of the appellant's request could include responsive records created in MyLearningSpace, social media, or other solutions and communicated this to the employees completing the search. Although the appellant suggests that the search was not complete because faculty did not search MyLearningSpace and other social media sites, I find that the coordinator instructed relevant faculty members to search this and other social media websites for responsive records. I also accept the university's explanation that it would be unusual for personal information about a faculty member to be housed in MyLearningSpace unless they were teaching the course and provided this information themselves, or were enrolled as a student.

[48] The appellant questions whether the named individuals who conducted the search followed the rules provided to them and conducted a reasonable search of all records in their possession. From the representations, it is clear that the university approached the appellant concerning who would be searching for responsive records. The coordinator provided a clear instruction letter to these individuals and affirms that they were all familiar with the email archive system. The instructions given to these individuals was that all records created in the course of business were to be provided to the privacy office. Further, the coordinator affirms that her expectation was that there would be a limited amount of responsive records given the appellant's limited involvement with the department for the initial date range selected. The appellant has not provided me with evidence to establish that the individuals who conducted the searches ignored the explicit instructions of the coordinator.

[49] Further, I find that the search was coordinated by an experienced employee knowledgeable in the subject matter of the request who expended a reasonable effort to locate records which are reasonably related to the request. It is clear from the representations, that the coordinator worked with the appellant to understand the request and also to confirm the individuals that should be involved in the search.

[50] In my review of the coordinator's email sent to the named individual to facilitate the search, I find that it is quite detailed and states that the search should include all records in whatever form they are recorded and includes print, electronic, document, notes, film. I find that the university provided clear and thorough instructions to the named individual on how to conduct a reasonable search for records responsive to the appellant's request. I am not convinced by the appellant's submissions that ordering a further search would result in the university locating further responsive records.

[51] Finally, although the appellant makes submission on the level of detail in the minutes created by the specified department, I find that this is not at issue within the scope of the appeal and I make no finding on this matter.

[52] For these reasons, I find that the university's search was reasonable.

ORDER:

I uphold the university's search as reasonable and dismiss the appeal.

Original signed by: _____

Alec Fadel
Adjudicator

December 14, 2021 _____