Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4246

Appeal PA20-00570

Queen's University

March 22, 2022

Summary: In this order, the adjudicator reviews the reasonableness of the searches conducted by Queen's University in response to a request under the *Freedom of Information and Protection of Privacy Act* for communications about the appellant, as well as information about a specific course. Based on the parties' representations, the adjudicator finds that the university conducted a reasonable search for records responsive to the appellant's request, and she dismisses the appeal.

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

OVERVIEW:

[1] This order determines the issue of whether Queen's University (the university) conducted a reasonable search for records responsive to a request submitted by a student under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) for access to the following information related to himself and one of his courses:

i. All correspondence between [Person A] and [Person B] from February 7th to March 31st, 2020, concerning the appellant.

ii. All correspondence between [Person A] and [Person C] from February 7th to March 31st, 2020, concerning the appellant.

iii. All correspondence between [Person A] and [Person D] from February 7th to March 31st, 2020, concerning the appellant.

iv. All correspondence between [Person A] and [Person E] from February 7th to March 31st, 2020, concerning the appellant.

v. All emails contact between [Person F] and [Person C] on February 24th, 2020 concerning the appellant, and or [a specified Math course (the math course)]. And complete change log history for [the specified Math course's website/webpage].

[2] After conducting an initial search, the university issued a decision granting full access to the responsive records located through its searches.

[3] The appellant appealed the university's decision to the Information and Privacy Commissioner of Ontario (the IPC). A mediator was assigned to explore resolution of the issues with the parties. During mediation, the mediator communicated with the appellant and the university to discuss the issues in the appeal.

[4] The appellant explained that he believed that additional records should exist, including additional emails between the individuals identified in his request and the change log for the specified math course website. When the mediator addressed this with the university, it maintained that a change log does not exist for the specified website, but agreed to conduct further searches for responsive email records. The university located additional responsive records, which it disclosed to the appellant in two supplemental decisions. The appellant maintained that additional records should exist and was not satisfied with the university's searches, because he thought that the university's Information Technology Services (ITS) should carry out the searches. As further mediation was not possible, the appeal was moved to the adjudication stage of the appeal process where an adjudicator may conduct an inquiry under the *Act*.

[5] I decided to conduct an inquiry and, during it, sought and received representations from the university and the appellant. In this order, I find that the university's search was reasonable and dismiss the appeal.

DISCUSSION:

Did the university conduct a reasonable search for records responsive to the appellant's request?

[6] The sole issue to determine in this appeal is whether the university conducted a reasonable search for records. The appellant believes that the university's search ought to have located additional emails between the individuals he named in the request, who are faculty of the Department of Math and Statistics, and a change log for the identified math course website.

[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 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 a reasonable search for records was conducted and that all responsive records were disclosed appropriately in compliance with the *Act*.

[13] The university's evidence was provided in an affidavit sworn by its Director, University Records Management and Chief Privacy Officer (the director) who was the university employee responsible for coordinating the search.

Clarification of the request

[14] The director submits that, following receipt of the request, she sought clarification from the appellant before proceeding with the search for records, particularly in relation to the fifth part of the request regarding the specified math course and the change log history. She submits that the appellant explained that for "complete change history" he was looking for all changes made to the math course's website in the last 12 months, and that he was looking for when and what changes occurred, including permissions to various links in the website. She submits that

[1] Orders P-85, P-221 and PO-1954-I.
[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.

regarding the correspondence, he said he preferred to receive all the emails, rather than those explicitly pertaining to himself as he believed they may not have strict naming conventions.

[15] The director notes that the appellant asked why she would ask the university employees for the records, suggesting that she should be able to access the records without notifying the employees. She submits that she explained to the appellant that she does not have access to employee email accounts, and that the university does not ask ITS to access and search through email accounts, particularly since with faculty members (as opposed to administrators), there could be significant amounts of non-university records in their accounts. She submits that such records may include personal information and records regarding research or teaching materials which do not fall under the *Act*.[7] She states that she explained to the appellant that the university's access procedure respects the Queen's University's Faculty Association collective agreement and the privacy rights of faculty members, in accordance with the *Act*.

[16] She submits that, after further discussion with the appellant about other students' personal information and his concern about naming conventions, the appellant agreed to limit the search to records about himself, but remained concerned about the ability and willingness of employees to conduct a proper search for records. She states that she explained to him that the university must comply with the law, and that he had the right to appeal the university's decision to the IPC. The appellant then submitted the request that is now at issue in this order, and the university proceeded with its search on that basis.

Initial search for records

[17] The director submits that a memo was sent to the *FIPPA* contact in the School of Graduate Studies, asking her to coordinate the search for parts i-iv of the request with Person A, the Associate Dean. She submits that she also sent a memo to the Faculty of Arts and Science *FIPPA* contact to search for records in the Department of Mathematics and Statistics (the department). She submits that she could have asked the contact to include parts ii, iii, and iv of the request, since Persons C, D, and F are faculty members in the same department. However, given that the appellant had expressed initial reluctance to let the faculty members know of the request, she believed that asking Person A for records would be less intrusive and more efficient.

[18] The director submits that responsive records were provided to her office, but Person F, the department head, asked for further clarification, stating that he had no email correspondence with Person C and that there was no change log history for the website in question, due to the way the website was managed. Person F explained, in particular, that "the website is managed by the Department itself on an Ubuntu server using Apache open-source software" and that the text was written using "an ordinary text editor in html code" with no change logs running on the site. The director states that she then contacted the IT support coordinator for the department, and asked that

[7] The university relies on Order PO-3309-F, *University of Ottawa* (*Re*), 2011 CanLII 74312.

he search the website's server for any change log history. She states that he explained that the website only shows the last time that a file is updated, rather than what changes are made or who made them.

[19] Following these interactions, the director submits that she discussed the responsive records with the university's decision-maker, and the decision letter and responsive records were sent to the appellant at no cost.

Subsequent searches for records

[20] The director submits that after the initial responsive records were disclosed to the appellant, the appellant contacted her asking about whether he could obtain a recording of a phone call between Persons A and B that had been mentioned in a record disclosed to him. The director contacted the individuals who told her that there was no recording of the call and that no recording had ever been made. The appellant again asked about the website's change log, and the director contacted Person F again, who reiterated that no change log existed and the reasons why the website did not "do any recording of file edits."

[21] The director addresses the search conducted during mediation following the appellant's indication that he had an email from Person A stating that Person E and Person A had communicated via email and telephone and his concern that no such written communication had been produced. The director states that she had followed up with Person A, who found three additional records that were not produced by the original search, and he had no explanation for why the records were not found in the first instance. The director submits that she issued a supplemental decision letter to the appellant with the additional records disclosed in full.

[22] Next, the director addresses the appellant's request to have the university's ITS conduct the search. The director explains that the university declined this request because, in accordance with the university's Access Authorization Procedure (the access procedure) and the collective agreement, searching for responsive records is the responsibility of the employees.[8] She submits that faculty members hold a significant amount of information that would be considered to not be in the university's custody or control, particularly records of teaching materials, research records, and personal communications, The university submits that ITS will only be asked to conduct searches in exceptional circumstances.

[23] She submits that the access procedure and the collective agreement are not barriers to the *Act*, and that faculty members understand that some of the records they hold are subject to the *Act*. She states that as an additional safeguard to ensure faculty members comply with requests, each Faculty has one or more "*FIPPA* Contacts" who are administrative staff and serve as a liaison between the director's office and faculty to ensure that faculty members conduct a reasonable search. She states that there is

[8] The university provided the following link to the procedure: https://www.queensu.ca/its/governance-instruments#access-authorization.

an expectation that only in exceptional circumstances, such as where an employee refuses to conduct a search following a request under the *Act*, will authorization be granted to a non-account holder to search.

[24] The director submits that in order to be "absolutely certain" that all responsive records had been found, she decided to consult all individuals named in the request, and asked them to search through their records, even if it meant that there would be duplicate records, and even if the faculty members would know that the appellant had made a request for his personal information. She states that during these consultations, only one additional email thread was found by Person E, and the record was fully disclosed to the appellant at no cost. She submits that no further records were found.

Further change log searches

[25] The director submits that after the additional records were released to the appellant, she again contacted the department's IT support coordinator about the change log history. She submits that he showed her the metadata for the website, confirming that the only information recorded is the last date on which a file is changed. The director also contacted Person C about the website again, and he explained that changes were made frequently as announcements or homework due dates were changed. Person C indicated that no changes were made to those pages once the course had ended, and said that he withdrew permission to the fall 2019 site in January 2020, which was his usual practice when a course was over. She submits that Person C told her that in February 2020, at Person E's request, he re-enabled permission to the site because the appellant had expressed concern about not being able to access it. She submits that Person C disabled permissions again in August 2020 as he was preparing for the fall 2020 course. The director submits that the dates of these changes cannot be confirmed because the site only records the date of the most recent change.

Possibility that records once existed

[26] The director submits that all of the offices that searched for records indicated that there were no records that once existed but no longer do, nor were any responsive records destroyed in accordance with any authorized record retention schedule. The director concedes that the original search for records may not have been thorough because her initial approach to the search was to rely solely on Person A for parts i-iv of the request, and resulted in the incomplete search. However, the director maintains that experienced employees knowledgeable in the subject matter of the request expended a reasonable effort to identify and locate all records reasonably related to the request and that all responsive records in the custody or control of the university were identified and located.

The appellant's representations

[27] The appellant submits that the university did not conduct a reasonable search for the records. He takes issue with the university's approach of asking faculty members to

search for and disclose responsive records, and points to the fact that additional records were located in the second search which, he says, shows faculty members lying and coordinating lies with other members of the university. He suggests that his reservations about the access process and the compliance of faculty members with their *FIPPA* obligations have been borne out by this experience.

[28] The appellant submits that the director did not take appropriate steps to ensure that the university complied with the *Act*. He states that the university puts, "as a matter of policy," their collective agreement "in front of the rights of students and everyone else's rights under [the *Act*]," and that he was dissatisfied with the director's response to his concerns about university employees' ability and willingness to conduct a proper search for records. He submits that the purpose of the university's access procedure is to protect itself from scrutiny.

[29] The appellant points to the fact that the university's access procedure resulted in emails not being disclosed following the initial search, and submits that a search that did not recover these emails could not have been reasonable. According to the appellant, "[a] reasonable search would have found the emails that were requested and would not have … given full preference and priority to the very people being scrutinized." He states that, considering that there is evidence that the first search was not completed properly, there is no reason to believe the second search for emails recovered all responsive records.

Analysis and finding

[30] 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 responsive email communications and the change log sought by the appellant in his access request.

[31] The university provided, in the director's affidavit, a detailed explanation of the efforts that were made to locate records responsive to the appellant's request. The director took steps to clarify the appellant's request, and once clarified, had experienced employees knowledgeable in the subject matter of the request coordinate searches. The director's representations demonstrate that she worked with the appellant to understand the request, explain the process, and confirm the relevant individuals who would be involved in the search. Upon consideration of the parties' representations on the subject, I am satisfied that the relevant employees expended a reasonable effort to locate records which are reasonably related to the appellant's request.

[32] The appellant's submissions convey his distrust of the process that the university used to search for records, and his belief that there is no way to ensure that the employees who are the subject of the request properly searched for records. He argues that university ITS staff should be responsible for the searches, rather than the employees who were named in his request. Being aware of the appellant's views on the subject, I asked the university to specifically address in its representations why ITS was not asked to conduct the search or additional searches, and I am satisfied that the

university provided a reasonable explanation in response. In particular, I considered the university's evidence about its Access Authorization Procedure and the rationale for its approach to searches for fulfilling requests for access under the *Act* in a university setting, which appears consistent with other like institutions. Therefore, regardless of whether the specific types of records that may exist in these employees' email accounts relate to matters of academic freedom here, I accept that it would only be in rare cases that the university would ask ITS to conduct the searches and that this is not one of those rare cases. Again, I am satisfied that the university asked relevant individuals familiar with the subject matter of the request to conduct the searches.

[33] After being alerted to the possible existence of further email communications between Persons A and E in mediation, the director took steps to find these records and disclosed them to the appellant. Additionally, I am satisfied that, after finding the records and realizing that her original approach to the search process had not yielded all responsive records, the director took reasonable steps to modify her process in order to locate additional records, and I note that an additional email thread from Person E was located and disclosed to the appellant.

[34] Finally, regarding the change log history that would have been responsive to part v of the request, I note that I also asked the university for a detailed explanation for why the change log for the specified math course page/website does not exist and/or cannot be located. The university provided that explanation to me in its representations. The appellant does not comment on this explanation in his representations, nor does he appear to dispute it. In any event, I find reasonable the university's explanation for why no change log history for the specified math course page was located by its searches – none existed for the reasons given the university.

[35] While I appreciate the appellant's concern that the university's initial search for records was inadequate, his submissions do not persuade me of a reasonable basis for believing that further responsive records exist. In particular, I am not persuaded that ordering a further search would result in the university locating additional responsive records, and the appellant's concerns about the process followed by the university do not establish a reasonable basis for believing that it would. In this appeal, the university's representations satisfy me that it carried out a reasonable search for the purpose of section 24 of the *Act*.

[36] 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: March 22, 2022

Daphne Loukidelis
Adjudicator