Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER PO-2846

Appeal PA08-166

University of Guelph

Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9188
TTY: 416-325-7539
http://www.ipc.on.ca

BACKGROUND:

Created by an act of Parliament in 1977, the Social Sciences and Humanities Research Council of Canada (SSHRC) is a federal agency that promotes and supports university-based research and training on social, cultural and economic issues. According to the SSHRC website, SSHRC's grant and fellowship programs and policies enable "knowledge sharing and collaboration across research disciplines, universities and all sectors of society."

This appeal is one of several related appeals with this office in which similar requests were submitted to Ontario universities under the *Freedom of Information and Protection of Privacy Act* (the *Act*). Two orders have already been issued with respect to these appeals: Order PO-2836 (Wilfrid Laurier University) was released on October 28, 2009; and Order PO-2842 (University of Ottawa) was released on November 10, 2009.

NATURE OF THE APPEAL:

The University of Guelph (the University) received a request under the *Act* for the following information:

> E-mail communications between, on the one hand, a member of Social Sciences and [Humanities] Research Council (SSHRC) Selection Committee No. 15 (2007/8 competition) from U of Guelph, [named individual and email address] and, on the other hand, SSHRC officials (their list may include but is not limited to: [four individuals' email addresses], other members of this committee and other interlocutors in which my name … is mentioned. The period covered: October 15, 2007 – April 18, 2008…

The University denied access on the basis that responsive records would not be in its custody or under its control. The University explained that the request "… pertains to activities and communications undertaken under the jurisdiction of the [SSHRC]. … [A]ny records obtained or created by [a] faculty member in connection with these [volunteer] activities are not under the custody and control of the University." The University also advised the requester that if there were any responsive records, they would be in the custody or under the control of SSHRC. The University then provided the requester with contact information for the SSHRC and advised him to contact the SSHRC directly to submit his request under the federal *Access to Information Act* [R.S. 1985, c. A-1].

The requester (now the appellant) appealed the University's decision to this office, which appointed a mediator to try to resolve the issues between the parties. Resolution of the appeal through mediation was not possible, and it was transferred to the adjudication stage of the appeal process, where it was assigned to me to conduct an inquiry.

I sent a Notice of Inquiry outlining the facts and the issues to the University, initially, in order to seek representations, which I received. In the Notice of Inquiry, I advised the University that:

> A record found to be in the custody or control of an institution may or may not be subject to the *Act* pursuant to section 65 of the *Act* (see Orders PO-2693 and PO-2694). The question of whether records in the custody or under the control of the University are *excluded* from the application of *Act* pursuant to section 65 (including subsections 65(8.10) – 65(10)) is a matter that will be dealt with at a later stage of this inquiry, if necessary.
>
> Similarly, the question of whether records in the custody or under the control of the University may contain personal information pursuant to section 21 of the *Act*, or be subject to another exemption, are matters that would be dealt with at a later stage of the inquiry, if necessary.

In lieu of representations, the University submitted a request to place this appeal on hold. I denied the University's request with reasons in a letter dated December 22, 2008. The University then submitted representations in response to the Notice of Inquiry dated January 8, 2009, but did not consent to sharing them in their entirety with the appellant. As I concluded that one small portion of the University's representations could be determinative of the appeal, I issued an order on January 19, 2009 in which I determined that it was necessary for me to share with the appellant a certain portion of the University's representations.

Next, I sent a letter to the appellant seeking his representations on the shared portion of the University's representations, which I received. Based on the appellant's representations, I sought reply representations from the University, including an affidavit of search from the faculty member named in the request, which I also subsequently received.

I then sent the affidavit to the appellant in order to seek his sur-reply representations. At that time, I advised the appellant that my authority under the *Act* could not include a review of all of the concerns he may have with the process followed by SSHRC or its committee members in evaluating his application. I confirmed that my inquiry under the *Act* is limited to the review of the University's decision regarding the custody or control of any records that may exist that are responsive to the request. The appellant provided brief submissions in response to the affidavit.

DISCUSSION:

Under the *Act*, an institution has certain statutory obligations, including the obligation to make timely determinations as to whether to grant or refuse access to records that are deemed to be responsive to a request. Where access is refused, the institution is obliged to set out the specific provision of the *Act* under which access is denied and the reason the provision applies to the record. However, where custody or control of requested records is at issue, an institution must first determine the matter in light of section 10(1) of the *Act*, which states, in part:

> Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless . . .

Under section 10(1), the *Act* applies only to records that are in the custody or under the control of an institution. This is an initial threshold question regarding records identified as responsive to a request. Although records in an institution's custody or under its control may be exempt from disclosure or may be excluded from the scope of the *Act* under section 65, these determinations only arise for records found to be in the University's custody or under its control under section 10(1).

The Courts and this office have applied a broad and liberal approach to the custody or control question [*Ontario (Criminal Code Review Board) v. Ontario (Information and Privacy Commissioner),* [1999] O.J. No. 4072 (Ont.C.A.); *Canada Post Corp. v. Canada (Minister of Public Works)* (1995), 30 Admin. L.R. (2d) 242 (Fed. C.A.), Order MO-1251].

Representations

In the University's initial representations, it took the position that the faculty member named in the request did not participate in the review of the appellant's SSHRC application and that there are no responsive records.

The University submits that it responded to the request on the limited basis that it did not have custody or control of the records requested "since any requests relating to SSHRC activities should be directed to SSHRC." Further,

> … the University has no responsive records in its physical possession. Any of the requested records, if they exist, would presumably be in the possession of the SSHRC. … [T]he process of SSHRC grant proposal review is carried out by the SSHRC Selection Committee (the "Committee"). Proposals to be reviewed are sent out in hard copy. Neither the proposals nor the reviews are sent by email. Proposals are vetted at a meeting of the full Committee where the reviewers present their reviews to the full Committee. At the conclusion of the meeting, all the Committee members' notes and documentation are retained by SSHRC or destroyed.

Referring to Order P-239, the University notes that bare possession does not amount to custody in the absence of some right to deal with the records and some responsibility for their care and protection. The University submits that faculty member participation in the SSHRC review process does not result from a mandatory statutory or employment requirement imposed by the University, and the records created are not used for or by the University. Further, the University submits that

> The content of such records would relate to the specific mandate and functions of SSHRC, as a research funding agency, and not to the general educative mandate and functions of the University. Moreover, … the University does not seek to control their use or disposal.

The remainder of the University's initial representations address matters which are not at issue in the circumstances of this appeal, including exemption and exclusion claims.

Having considered the University's representations, I decided to seek the appellant's comments on the University's position respecting the assertion that the named faculty member did not participate in the SSHRC application review and the argument that there were "no records which respond to this request." It was unnecessary to share the remainder of the University's representations for this purpose. The appellant responded by confirming that he wished to continue his appeal of the University's decision. The appellant submits that:

> … [A]ll members of adjudication committees normally take part in deliberations and receive related documents and messages even if they are not assigned to review a particular application (as stated in my representations, I sat at a SSHRC adjudication committee past year). So, the fact that [the named faculty member] did not participate in the review of my application [is not determinative].

At this point, I decided to seek reply representations from the University on the issue of search, as the appellant's representations had raised the possibility that responsive records may exist but had not been located. While the *Act* does not require the University to prove with absolute certainty that records do not exist, the University was still required to provide sufficient evidence to show that it had made a *reasonable* effort to identify and locate responsive records [Order P-624]. Similarly, although an appellant will rarely be in a position to indicate precisely which records the institution has not identified, the appellant must provide a reasonable basis for concluding that such records exist. As I advised the University in my letter seeking reply representations,

> In my view, the appellant's own experience as a member of a SSHRC adjudication committee and his attendant familiarity with the process satisfies me that his belief is reasonable in the circumstances. I have also considered the following statement made in the University's January 8, 2009 representations (at page 2):
>
> > … in the SSHRC grant proposal review [process], each proposal is assigned to two Committee members for review according to their areas of expertise. Proposals are vetted at a meeting of the full Committee where the reviewers present their reviews to the full Committee. The full Committee deliberates and votes on each proposal. Reasons are provided for each decision. …

Based on this information, I sought affidavit evidence from the named professor as to his involvement with the identified SSHRC committee, and the steps taken by him (or on his behalf) to identify responsive records, including evidence with respect to any searches carried out of his email account (current and archived content). I also asked that the affidavit evidence address the issue of the possible destruction of responsive records by stating the following:

> [I]f no records were identified as responsive to the request … is it possible that such records existed but no longer exist? If so please provide details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.

I subsequently received reply representations from the University, which consisted of a three-page affidavit sworn by the faculty member named in the request. In the affidavit, this individual confirmed that he had been a member of the identified SSHRC committee during the time period identified in the request [October 15, 2007 – April 18, 2008]. The professor states:

> In response to this request, I performed a search for any responsive records which I may possess. I advised the University I had no responsive records.
>
> I have been advised by the University that the Office of the Information and Privacy Commissioner … has requested further affidavit evidence from me …
>
> I currently have a SSHRC folder in my email client. All my e-mail relating to SSHRC Committee 15 … was deleted by me after the Committee met in Ottawa to adjudicate the research proposals in April 2008. I have also checked my archived email and have run a full-text search of the name of the appellant and have found no responsive records. …
>
> It is my belief that no responsive records ever existed. While a member of the Committee, there was some email correspondence related mostly to general procedural information for the Committee but this email correspondence was deleted by me after the Committee met in April 2008. To the best of my knowledge, I did not have any contact concerning [the appellant] whatsoever. Any familiarity I currently have with the appellant's name is through this [access to information] request.

When provided with the opportunity to review the named faculty member's affidavit for the purpose of sur-reply, the appellant posed questions regarding the timing of the professor's searches and whether the contents of the professor's SSHRC folder were deleted prior to, or following, the University's receipt of the request. I did not seek additional submissions from the University in response to these questions.

Analysis and Findings

In view of the representations I have received and following careful consideration of the circumstances of this appeal, I have reached several conclusions: first, I am satisfied that the University does not currently possess records that are responsive to the appellant's request; and second, that any records responsive to this request that may have existed were in the custody or under the control of the University, as were such records in the similar appeals which gave rise to Orders PO-2836 and PO-2842. I will begin by addressing this second finding.

In the Custody or Under the Control of the University – Section 10(1) of the Act

In Orders PO-2836 and PO-2842, I made a finding that records responsive to the appellant's request were in the custody of Wilfrid Laurier University and the University of Ottawa for the purpose of section 10(1) of the *Act*. The requests in those appeals were identical to the one submitted to the University of Guelph in the present appeal, with the exception of the faculty member identified.

In both orders, I adopted the reasoning of former Assistant Commissioner Tom Mitchinson in Order PO-1725 with respect to the issue of whether records located on an institution's computer system are in its custody or under its control. In Order PO-2836, also reproduced in Order PO-2842, I stated:

> In Order PO-1725, former Assistant Commissioner Tom Mitchinson reviewed a decision by Cabinet Office regarding the electronic copy of the agenda of an employee in the Premier's Office that contained both personal and professional appointments. While the institution admitted that it had "the general authority to dispose of the database containing the records," it argued that the information in the records relating to the named employee's "personal," as opposed to his employment, activities, was not in its custody or under its control. The former Assistant Commissioner rejected this argument and found that all information in the electronic agenda was in the custody of the Premier's Office since its entries – personal and professional – were created and stored on a computer system that was owned and maintained by the government and used for government business.
>
> In my view, the following line of reasoning in Order PO-1725 provides a useful context for my findings in the present appeal:
>
> > My discussion will focus on whether or not the Premier's Office has custody of these records. If I determine that the Premier's Office has lawful custody of the records, that finding is sufficient to bring the records within the scope of section 10(1)(a) and under the jurisdiction of the *Act*.
> >
> > Two broad principles emerge from the Commissioner's orders dealing with the issue of custody. The first is that bare possession does not amount to custody, absent some right to deal with the records and some responsibility for their care and protection (Order P-239). The second principle is that "... physical possession of a record is the best evidence of custody, and only in rare cases could it successfully be argued that an institution did not have custody of a record in its actual possession" (Order 41).
> >
> > In my view, there are a number of facts and circumstances surrounding the creation, possession and maintenance of the records at issue in these appeals which support the conclusion that

> they are in the custody of the Premier's Office. All entries, whether they contain personal or professional information, were created and stored in the same database. This database is owned and maintained by the government on behalf of the Premier's Office. This factor alone gives the institution both a right to deal with the records and a responsibility for their care and protection, in order to ensure the integrity of the database as a whole and of the information entered into it.
>
> In addition, it is clear that the purpose for which the database exists is for use by employees attending to the business of the Premier's Office. The capabilities of the database in permitting employees to make entries relating to personal matters… are normal features of most electronic calendar management databases and are not inconsistent with the institution's lawful custody of the database and its contents, or with its responsibilities in relation to its records management functions. If an employee of a government institution voluntarily chooses to place information, whether personal or professional in nature, into a government maintained database, it is difficult to conceive how the record containing that information would fall outside the institution's lawful custody, absent the most exceptional circumstances, which I do not find present here.
>
> It is not enough for an institution to assert simply that the named employee has sole authority over access to the records, that there is no protocol in place governing their disposition during the employee's tenure, or that the retention schedule does not specifically deal with these types of records. As the Divisional Court noted in *Ontario (Criminal Code Review Board) v. Ontario (Information and Privacy Commissioner)* (March 7, 1997), Toronto Doc. 283/95 (Ont. Div. Ct.), [aff'd 47 O.R. (3d) 201 (C.A.)], for example, the absence of evidence that an institution has actually exercised control over particular records will not necessarily advance the institution's argument that it, in fact, has no control. If it were otherwise, government institutions would be in a position to abdicate their information management responsibilities under the *Act* by the simple device of failing to implement appropriate information management practices in respect of records in their lawful custody. So long as records are in an institution's custody, that body must deal with them in accordance with all applicable laws, including the provisions of the *Act*.

Similarly, in each of the appeals leading to Orders PO-2836 and PO-2842, I addressed the institution's argument that since SSHRC is a federal agency that is subject to the federal *Access to Information Act*, the appellant's request should be submitted to that agency. The appellant

provided evidence to establish that he did submit such a request to SSHRC under the federal statute and was advised in response that SSHRC did not have custody or control of "copies of e-mails stored on the backup servers of the universities…" In Order PO-2842, I stated:

> In my view, several points are worth making. First, my authority under Ontario's *Freedom of Information and Protection of Privacy Act* clearly does not extend to commenting on the decision letter issued by the SSHRC regarding custody or control under the federal *Access to Information Act*. Second, in my view, SSHRC's decision under the federal statute and the arguments about SSHRC's jurisdiction are not persuasive. It is possible for two institutions to each have custody or control over responsive records under two different access to information regimes. Ultimately, my finding that the University has custody of the responsive records is a threshold issue for proceeding under the Ontario *Act*, and does not affect the authority of the federal Information Commissioner to address any appeal of SSHRC's decision, as may be required.

In the related appeals leading to Orders PO-2836 and PO-2842, both institutions also sought to establish that the SSHRC activity of the named professor was not carried out pursuant to a statutory duty or power of the University, or in respect of its mandate. Both universities argued that any records resulting from their faculty member's SSHRC activity could not, therefore, be considered to relate to its mandate, statutory obligations or powers. In rejecting this argument in both Orders PO-2836 and PO-2842, I reviewed the enabling statute of each university. Focusing on the purpose statement of the enabling statute, I concluded that each professor's participation in SSHRC committee work constituted an activity that was reasonably contemplated by the relevant statute and, additionally, that the activity was inextricably connected to that individual's academic and scholarly pursuits.

In the present appeal, I note that the enabling statute for the University contains language similar to that found in the statutes for Wilfrid Laurier University and the University of Ottawa. The purpose statement of *The University of Guelph Act, 1964* (S.O. 1964, Ch. 120, as amended by *The University of Guelph Amendment Act, 1965*, Ch. 136) refers to "the advancement of learning and the dissemination of knowledge" and "the intellectual, social, moral and physical development of its members and the betterment of society" [sections 3(a) and (b)]. In this appeal, I am similarly satisfied that the named faculty member's involvement with the SSHRC is inseparable from his academic and scholarly pursuits at the University.

Regarding Wilfrid Laurier University's attempt to distinguish between its faculty member's "intra-University" scholarly activities from peer review activities with an external agency (SSHRC) in Order PO-2836, I stated:

> The University acknowledges that engaging in research and scholarly activities is a "core function"" of the University and the work of its faculty members and also admits that faculty members are obligated under the Collective Agreement to engage in "scholarly activities, including research, as well as to engage in academic, professional and University community service." However, the University then argues that research and scholarly activities involving "peer

> review for an external agency" are somehow removed from the realm of scholarly activities that fall within the core function or mandate of the University. In my view, this distinction between internal and external peer review activities is without merit. Rather, I find that the named professor's SSHRC committee participation represents an activity going to the core or central function of the University notwithstanding the fact that it may be with an agency external to the University. I am similarly satisfied that the content of any records created incidentally through faculty participation on a SSHRC adjudication committee is related to the University's scholarship and research mandate.

In my view, this finding is applicable in the present appeal and I adopt it for the purposes of this order.

The use of university computer systems, including servers and databases, for SSHRC-related email correspondence is common to all of these appeals. In Orders PO-2836 and PO-2842, I concluded that each university's computer use policy was relevant to my determination of the custody or control issue. In addressing the implications of Wilfrid Laurier University's *IT Use Policy* in Order PO-2836, I stated:

> The University's computer system is in place to facilitate learning and the pursuit of scholarly research activities. The University's *IT Use Policy* specifically provides for the use of IT resources by faculty "in support of their teaching, research and administrative activities." It also clearly contemplates disciplinary action for unauthorized or inappropriate use of those resources. In the present appeal, therefore, I am satisfied that the University's ability to monitor its computer resources and network under the terms of its *IT Use Policy* accords it the corresponding right to regulate *all* records on its computer system, notwithstanding that it may choose not to do so in circumstances where the use is said to be "authorized," as in this case. As the Divisional Court stated in *Ontario (Criminal Code Review Board)* (cited above), the mere fact that an institution has not exercised control over particular records in the past "will not necessarily advance the institution's argument that it, in fact, has no control." Therefore, regardless of the fact that the University chose not to exercise control through regulation of the named professor's use of University IT resources for SSHRC email communications, it does not follow that the email records are outside the University's custody or control.

Although the University of Ottawa did not present evidence with respect to its *User Code of Conduct for Computing Resources* in Order PO-2842, I took note from my review of that university's Computing and Communications Services internet web pages that all users of all email accounts are subject to the *User Code*. Respecting the present appeal, I have also reviewed the University of Guelph's *Acceptable Use Policy and Guidelines* (January 2005), which is publicly available on the University's website. The *Acceptable Use Policy*

> … applies to the use of any University of Guelph computing and networking facility hereinafter referred to as the "System" by all user, account holders,

> System administrators, and service providers hereinafter referred to as "Users". By using the System, all Users agree to comply with this policy.
>
> The use of the System is in support of research, teaching, learning, administrative, and other intellectual pursuits consistent with the University of Guelph's aims and objectives. In addition, the University permits use of the System for limited personal use so long as such personal use is in keeping with this policy. …
>
> Work being performed by System administrators during maintenance or diagnostics may involve the need to access User files or data. …

Based on the information available to me about the University's *Acceptable Use Policy*, I see no reason to distinguish it from the other two university *Use* policies reviewed in Orders PO-2836 and PO-2842. Accordingly, and as I stated in Order PO-2842,

> I am satisfied that the University's ability to monitor its computer resources, network and servers under the terms of its *User Code of Conduct* accords it the corresponding right to regulate records on its computer system, notwithstanding that it may choose not to do so [see *Ontario (Criminal Code Review Board)* (cited above)]. Moreover, as I stated in Order PO-2836, although the University may not have exercised control through regulation of the named professor's use of university computing resources for SSHRC email communications, it does not follow that the email records are outside the University's custody or control.

Finally, in Orders PO-2836 and PO-2842, I addressed the universities' position that they could not exercise control over the "personal" SSHRC email communications of faculty members, notwithstanding the fact that they may have "bare" possession of such records (see Orders 41 and P-239). In Order PO-2842, I set out and adopted the following passage from Order PO-2836,

> The University also sought to establish that the named professor's SSHRC email communications constitute "personal communication" and are not, therefore, in the University's custody or control. In my view, if it was strictly necessary for me to distinguish between personal and professional (or employment) information, it seems more likely that the SSHRC-related email correspondence would be construed as being "professional communication." In addition, I would refer back to the following finding in Order PO-1725, where former Assistant Commissioner Mitchinson stated:
>
> > All entries, whether they contain personal or professional information, were created and stored in the same database. This database is owned and maintained by the government on behalf of the Premier's Office. This factor alone gives the institution both a right to deal with the records and a responsibility for their care and protection, in order to ensure the integrity of the database as a whole and of the information entered into it.

Moreover, as the former Assistant Commissioner also stated in Order P-267:

> … it is not possible for an institution to remove records in its physical possession from the purview of the *Act* by simply maintaining that they relate to political party [personal] activity. To do so would be inconsistent with the obligation of institutions to properly manage their record holdings in accordance with the intent of the *Act*.

> I agree. In this appeal, the University cannot carve out an exception from the *Act* for records otherwise in its lawful custody simply by asserting that they were created in the author's personal capacity. Moreover, the purported absence of an entitlement on the University's part to view, receive or exercise authority over the named professor's SSHRC-related email correspondence for confidentiality reasons has no bearing on the issue of custody or control within the meaning of section 10(1) of the *Act*. The use to which such correspondence could potentially be put by the University or others is, as previously suggested, not relevant in the context of this inquiry.

I find these reasons applicable in the circumstances of this appeal.

Similarly, in the present appeal, the University sought in its initial representations to establish the application of a number of exclusions or exemptions, including sections 21(1), 49(c.1) and 65(8.1). As I noted in Orders PO-2836 and PO-2842, consideration of these or other provisions of the *Act* does not arise in the circumstances of these appeals. In Order PO-2842, I stated:

> I advised the parties in the inquiry documentation that a finding that records are in the custody or under the control of the University does not necessarily result in the appellant gaining access to them. It may be the case that the records are excluded from the operation of the *Act* pursuant to section 65 or, more specific to the university context, sections 65(8.1) – 65(10). Furthermore, a record in an institution's custody or under its control *and* subject to the *Act* may be withheld if it falls within one of the exemptions under sections 12 to 22. Section 21 exists, for example, to protect individuals from unjustified invasions of personal privacy resulting from disclosure of their personal information. However, these are not matters for determination at this point.

In my view, consistent findings in these related appeals are both appropriate and necessary. Accordingly, for the reasons set out above and with reference to the reasons in Orders PO-2836 and PO-2842 not outlined in this order, I find that the University has both the right and responsibility to deal with records which are responsive to the appellant's request, and that such records are in the custody of the University for the purpose of section 10(1) of the *Act*.

Reasonableness of Search for Existing Responsive Records – Section 24 of the Act

In view of my finding above, therefore, the University is obligated to consider whether any responsive records may exist which may be subject to all applicable laws, including the *Act* [Order PO-1725]. As suggested previously, however, there is evidence before me in the present appeal that provides a basis for distinguishing it from the appeals leading to Orders PO-2836 and PO-2842. In both of those appeals, responsive records had been located or identified. In this appeal, the University claimed from the beginning that there were no records which were responsive to the request. When I sought representations from the appellant regarding the University's position that the named professor had not participated in the review of his SSHRC grant application, the appellant provided submissions in support of his belief that responsive records may exist nonetheless.

Having concluded that the appellant's belief in the existence of records responsive to his request had a reasonable basis, I sought representations from the University on the search issue. Ultimately, where a requester provides sufficient detail about the records that he is seeking and the institution maintains that records do not exist, it is my responsibility to ensure that the institution has conducted a reasonable search to identify any records that are responsive to the request [Orders P-85, P-221, PO-1954-I]. 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 [Orders M-909, PO-2469, PO-2592]. If I am satisfied by the evidence provided that the search carried out was reasonable in the circumstances, this ends the matter. However, if I am not satisfied, I may order the University to carry out further searches.

In this appeal, the appellant posed several questions in his representations with respect to the timing of the deletion of the named faculty member's SSHRC email folder contents, and the University's email record-holdings more generally. The appellant's questioning suggests concern that the University may have deleted responsive email records following the receipt of his request. I note that there is no evidence before me regarding a records retention policy applicable to email accounts. It appears instead that individual users of the University's computer resources may freely manage and organize their email accounts (including the deletion of folder contents) unless there is evidence of contravention of the *Acceptable Use Policy*, at which point the University may investigate and discipline violations by users as warranted. In the appeal before me, moreover, I am not reviewing the University's records retention practices or policies, or the lack thereof. However, based on the University's evidence with respect to the searches it conducted in response to the appellant's request, I see nothing to suggest that the University improperly or intentionally destroyed responsive records.

The University advised this office that the SSHRC grant proposal review is still largely paper based, and that neither the proposals nor the reviews are sent by email. The University further advised that proposals are reviewed at a meeting of the full SSHRC committee, following which "members' notes and documentation are retained by SSHRC or destroyed." In my view, this explains why the appellant, who was familiar with the SSHRC review process, limited the scope of his request to "email communications."

Did the University conduct an adequate search to identify all existing responsive email records? Based on my review of the evidence, particularly the explanation provided by the named faculty member in his affidavit, I am satisfied that email records of the type sought by the appellant no longer exist. In my view, the named professor is "an experienced employee knowledgeable in the subject matter of the request" and I accept that the two searches he undertook pursuant to the University administration's request, constitutes "a reasonable effort to locate records which are reasonably related to the request." Indeed, although the types of records sought by the appellant may have existed at one time, I am satisfied by the evidence before me that they no longer exist.

Accordingly, I find that the University conducted a reasonable search for responsive records in its custody or under its control for the purpose of section 24 of the *Act* and I dismiss this appeal.

ORDER:

1. I find that records responsive to the request would be in the custody of the University.

2. I uphold the University's search for responsive records.

Original Signed By: November 19, 2009
Daphne Loukidelis
Adjudicator