

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3378

Appeal PA13-97-3

University of Ottawa

August 14, 2014

Summary: The appellant sought records relating to him held by a named professor at the university. The university located 957 records and granted partial access to them, withholding information under the personal privacy exemptions in sections 21(1) and 49(b). The appellant did not appeal the university's access decision, but challenged the adequacy of its search for responsive records. In this order, the adjudicator finds the university's search to be reasonable.

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 addresses whether the University of Ottawa (the university) conducted a reasonable search to identify records responsive to an access request submitted under the *Freedom of Information and Protection of Privacy Act* (the *Act*). This request was one of seven submitted concurrently to the university by the same individual, and it sought access to:

... all documents and/or records related to [me], University of Ottawa [specified student number], and, included to but not limited to, sent to/by and/or received to/by and/or in possession physically and/or electronically of:

1. Faculty of Health Science, School of Human Kinetics, [named] Full Professor].¹

[2] The time period specified for the request was September 2007 to January 29, 2013, which was the date of the request.

[3] The university issued a time extension decision under section 27 of the *Act*. The requester appealed that decision to this office, which resulted in the opening of Appeal PA13-97. The appeal was resolved when the university agreed during mediation to issue an access decision by April 17, 2013. On April 23, the appellant again appealed to this office because the university had not issued its access decision. Appeal PA13-97-2 was opened as a deemed refusal appeal. After receiving a Notice of Inquiry from this office, the university issued a decision letter to the appellant on May 6, 2013, which led to the closure of Appeal PA13-97-2.

[4] The appellant subsequently appealed the university's decision to grant partial access to the requested records, and Appeal PA13-97-3 was opened to address the issues. At mediation, the appellant decided not to pursue access to the personal information of other individuals, so the possible application of the personal privacy exemptions in sections 21(1) and 49(b) to this information was removed as an issue. However, the appellant argued that numerous communications between certain professors and staff at the university's School of Human Kinetics had not been located by the university's search, and ought to exist.

[5] The appellant identified certain emails, some of which had come into his possession through the other access requests submitted to the university. An additional search conducted by the named professor based on additional information provided by the appellant resulted in another record being located, bringing the number of records to 958. Other emails of particular interest to the appellant were not found, however, and it proved impossible to resolve the appeal through further mediation.

[6] The appeal was transferred to the adjudication stage and I decided to conduct a written inquiry to resolve the search issue. I sent a Notice of Inquiry to the university, initially, seeking representations to support the "reasonableness" of the searches conducted in response to the request. After I received those representations, I sent a complete copy of them to the appellant, along with a Notice of Inquiry, in order to seek his submissions. The appellant declined to submit representations.

[7] In this order, I accept the evidence of the university as to the reasonableness of its search for responsive records, and I dismiss the appeal.

¹ For ease of reference, this individual is known as "Professor R."

DISCUSSION:

Did the university conduct a reasonable search for records?

[8] The appellant believes that numerous additional records, particularly emails from Professor R to his colleagues, ought to exist and have not been located. He challenges the adequacy of the searches conducted by the university in this request, in part because he obtained records through other (concurrent) access requests to the university under the *Act*, that he suggests are also responsive to this request.

[9] In appeals, such as this one, that involve a claim that additional responsive records exist, the issue to be decided is whether the institution has conducted a reasonable search for the records as required by section 24 of the *Act*. To be considered responsive, a record must be "reasonably related" to the request.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

[10] Although an appellant will rarely be in a position to indicate precisely which records the institution has not identified, he still must provide a reasonable basis for concluding that such records exist.⁴

[11] If I am satisfied that the search carried out by the university was reasonable in the circumstances, I will uphold it. However, I may order further searches if I am not satisfied by the university's evidence that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.⁵

Representations

[12] As noted above, the appellant did not provide representations at the inquiry stage. However, the additional context about the emails that was provided by the appellant (and which set the stage for the university's response) is a useful starting point for the review of this issue.

[13] One record identified by the appellant as not having been located by the university's search was an email to which an evaluation report of his thesis was attached. As evidence that further records exist which have not been identified and located, the appellant also submitted copies of four other emails which were partially disclosed through his other related access requests.

² Order PO-2554.

³ Orders M-909, PO-2469 and PO-2592.

⁴ Order MO-2246.

⁵ Order MO-2185.

[14] The university responded, in part, by confirming that the email with the thesis evaluation attachment had been identified as responsive to another one of the appellant's requests.⁶ Prompted by the additional information, Professor R conducted a further search and located the record, which he provided to the university's FIPPA coordinator.

[15] As the appellant continued to challenge the adequacy of the search for four other emails, the mediator provided the following detailed description of them to Professor R:

- 1- Email reply from [another named professor] to Professor R, sent on November 3, 2011 at 11:55 Subject: Re: [appellant]
- 2- Email from Professor R to [another named professor], sent on November 3, 2011 at 11:24 Subject: [appellant]
- 3- Email from Professor R to [a second named professor], sent on December 17, 2011 at 12:06 pm Subject: Re: [appellant] with attachments (letter to [identified doctor])
- 4- Email from Professor R to [the second named professor], sent on December 18, 2011 at 3:50 pm Subject: FW(Fwd Re: Fwd A request for you please- a paper in our jou[r]nal).

[16] During the inquiry, the university provided affidavit evidence in support of its position that the relevant employees made reasonable efforts to locate the additional records the appellant claimed should exist. The details of the searches conducted in response to this request are essentially the same in the university's representations and Professor R's affidavit, and state as follows:

- The wording of the request was clear and required no clarification;
- Professor R was the "most qualified to perform the searches" because the records, if they exist, would "reside in his email inbox;"
- Professor R's inbox was searched using three variants of the appellant's name;
- Professor R does not keep paper or electronic records relating to his students and all information, apart from his email records, is "transferred to either the School of Human Kinetics or to the Faculty of Graduate Studies and Postdoctoral Studies;"

⁶ Appeal PA13-98-2 was resolved by Order PO-3302. In this appeal, the record was added to the index as record 958; however, it is not at issue in this appeal.

- Professor R conducted three searches: February 20, 2013 (957 records identified); July 9, 2013 (identifying one of the additional records described by the appellant); and July 24, 2013 (for the four emails outlined above, which were not located).

[17] Regarding the four emails, Professor R advised that because the first two of these emails were exchanged through a public computer in South America, they did not exist on the university's server and, therefore, could not be retrieved. Professor R suggested that the third and fourth emails likely no longer exist because they would have been deleted due to the passage of time and in accordance with "his routine practice of email account maintenance to preserve space." The university reiterates that, regardless of the emails not being located by Professor R's searches, the appellant obtained these records as a result of two of his other access requests relating to the same subject matter.⁷

[18] According to the university, "University Policy 90" sets a retention period of one year (minimum) for personal information used by the university, unless the individual to whom it relates consents to earlier disposal. The university also indicates that additional guidance respecting records retention and disposal practices are provided by the university's Archives.⁸

Analysis and findings

[19] As previously stated, in appeals involving a claim that additional records exist, the issue to be decided is whether an institution has conducted a reasonable search for responsive records as required by section 24 of the *Act*. The *Act* does not require the university to prove with absolute certainty that further records do not exist, but it must provide sufficient evidence to show that a reasonable effort was made to identify and locate responsive records.⁹

[20] In turn, an appellant who challenges the adequacy of a search must establish a reasonable basis for concluding that additional responsive records might exist. In this appeal, I conclude that the appellant has not provided such a basis.

[21] Based on the evidence provided in this appeal, I am persuaded that the university made a reasonable effort to identify and locate any existing records that are responsive to the appellant's request respecting Professor R. Moreover, I accept that appropriate university staff conducted searches with knowledge of the nature of the records said to exist, as the appellant's interests were conveyed through the request and during earlier stages of the appeal, if not during this inquiry. I note, in particular,

⁷ Appeal PA13-98-2 (see footnote 6) and Appeal PA13-95-2, resulting in Order PO-3318.

⁸ The university attached copies of the university's Records Retention Schedule, Policy 90 (Access to Information and Protection of Privacy), and another related policy, Policy 14a): Student Record.

⁹ Orders P-624 and PO-2559.

the terms of the university's Records Retention Policy requiring retention of personal information for a minimum of one year. The appellant submitted this access request on January 29, 2013. The last date of the four emails identified by the appellant is December 18, 2011. In this regard, I accept the explanation provided by Professor R and the university that copies of those emails may have existed at one time, but no longer exist in Professor R's email inbox because they had been deleted.

[22] Accordingly, based on the information provided by the university, I find that the search for records responsive to the request was reasonable for the purposes of section 24 of the *Act*.

ORDER:

I dismiss this appeal.

Original signed by: _____
Daphne Loukidelis
Adjudicator

_____ August 14, 2014