Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3576

Appeal PA14-14

Carleton University

February 23, 2016

Summary: The appellant made a multi-part request to the university for records relating to a survey conducted of a specific group of students and faculty. The university denied access to some records on the basis of the research exclusion in section 65(8.1)(a) of the *Act*. The university also identified that no responsive records exist for some parts of the request. The adjudicator finds that the research exclusion does not apply and the university is ordered to issue an access decision. The university's search is upheld as reasonable.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 65(8.1)(a).

Orders and Investigation Reports Considered: PO-2693.

OVERVIEW:

[1] In June of 2010, the President and Vice-Chancellor of Carleton University (the university) announced the creation of the Commission on Inter-Cultural, Inter-Religious and Inter-Racial Relations on Campus (the Commission). The Commission's mandate was to "contribute to a better context for dialogue and understanding on the Carleton campus and in the surrounding community". In the first year of its mandate, the Commission created and implemented a university-wide survey and applied to the Research Ethics Coordinator at the university's Research and Ethics Board (REB) for

approval of the survey.

[2] The Commission filed an Interim Report after its first year and recommended that its mandate be extended a further year to explore issues related to Aboriginal students, and Jewish students and faculty who reported lower satisfaction with the climate of respect on campus. The recommendation was accepted and a Sub-Committee was created to explore these issues and make recommendations to the Commission.

[3] The Sub-Committee created a second survey for Jewish students and faculty of the university. The second survey was conducted and its findings were reported to the Commission and included in the Commission's final report.

[4] The appellant made a request to the university under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to:

1. All email and other correspondence or documents pertaining to The Carleton University Peace and Dialogue Initiative, and the Commission on Inter-Cultural, Inter-Religious and Inter-Racial Relations on Campus, produced by or sent to or from the President and Vice-Chancellor or her staff between August 1, 2009 and November 30, 2012.

2. Minutes of all meetings of the Commission on Inter-Cultural, Inter-Religious and Inter-Racial Relations on Campus from the following months: January 2011, February 2011, April 2011; and from March 2012 until November 2012.

3. Minutes of all meetings of the Commission sub-group that was "formed to create a second survey of Jewish students and employees, and to review and present the results to the Commission." ("Commission of Inter-Cultural, Inter-Religious and Inter-Racial Relations on Campus" pg. 5)

4. Records indicating when the sub-group was formed, by whom it was formed, how its membership was determined, and details of the mandate given to the sub-group.

5. From the Carleton Research Ethics Board all applications, approvals, and other documents pertaining to the Commission's second survey, which was administered to Jewish students and employees at Carleton University.

6. The second survey and its results, as well as an explanation of the survey methodology, who designed the survey, who approved the survey, how it was conducted, and who analyzed the survey results.

7. The raw data gathered by the second survey.

The university identified responsive records for parts 1 and 4 of the request and granted access to them in part, withholding information on the basis of the discretionary exemption in section 13(1) (advice or recommendation) and the

mandatory personal privacy exemption in section 21(1). The university's decision also advised that there were no records responsive to part 3 of the appellant's request. The university also determined that records responsive to parts 1, 2, 6 and 7 were excluded from the *Act* under the research exclusion in section 65(8.1).

[5] The appellant appealed the university's decision. During mediation, the appellant took issue with the university's application of the exclusion in section 65(8.1).[1] The appellant's position is that the responsive records do not relate to research conducted by an employee of an educational institution.

[6] The appellant also challenges the adequacy of the university's search for records responsive to part 3 of his request. The appellant submits that given the magnitude of the report, there should be a number of records responsive to part 3 of his request. The appellant requested that reasonable search be added as an issue in the appeal.

[7] The appellant accepts the university's claim of section 13(1) to portions of the record. Thus, access to this information is not at issue in this appeal.

[8] Further during mediation, the appellant advised that he is not appealing the university's decision to withhold information that has been withheld under section 21(1) of the *Act*. Accordingly, access to this information is not at issue in this appeal.

[9] During the inquiry into this appeal, the adjudicator sought and received representations from the appellant and the university. The representations were shared in accordance with *Practice Direction 7* and section 7 of the IPC's *Code of Procedure*. Also during the inquiry, the university indicated that while its initial decision noted that there were records responsive to part 5 of the appellant's request and they were excluded under section 65(8.1); responsive records did not actually exist. Accordingly, the adjudicator added the search for records relating to part 5 of the request to the scope of the search issue.

[10] The file was then assigned to me to dispose of the issues on appeal.

[11] In this order, I find that the exclusion in section 65(8.1)(a) does not apply and I order the university to issue an access decision to the appellant. I also find that the university's search for responsive records was reasonable in the circumstances.

RECORDS:

[12] There are 217 pages of records at issue, which are the records identified as responsive to parts 2, 6 and 7 of the request.

[1] Although the university's decision letter states section 65(8.1) and the exclusion has four paragraphs, it only submitted representations on the application of paragraph (a) in this appeal.

ISSUES:

A. Are the records excluded from the scope of the *Act* under section 65(8.1)(a)?

B. Did the university conduct a reasonable search for responsive records?

DISCUSSION:

Issue A: Are the records excluded from the scope of the *Act* under section 65(8.1)(a)?

[13] Section 65(8.1)(a) states:

> This Act does not apply,
>
> > to a record respecting or associated with research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution; or

[14] Sections 65(9) and (10) create exceptions to the exclusion found at section 65(8.1)(a). In the circumstances, the appellant did not argue the application of these exceptions and I find that they do not apply.

[15] Research is defined as "… a systematic investigation designed to develop or establish principles, facts or generalizable knowledge, or any combination of them, and includes the development, testing and evaluation of research." The research must be referable to specific, identifiable research projects that have been conceived by a specific faculty member, employee or associate of an educational institution.[2]

[16] This section applies where it is reasonable to conclude that there is *some connection* between the record and the specific, identifiable "research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution."[3]

Representations

[17] The university submits that the survey conducted by the Sub-Committee is research as contemplated in section 65(8.1)(a) of the *Act* because the survey was a systematic investigation. It states:

> In particular, it was methodical, planned and calculated. The survey consisted of qualitative and quantitative methods of inquiry and included a detailed demographic questionnaire. The research survey was presented to targeted participants for the purpose of establishing facts or

[2] Order PO-2693.
[3] Order PO-2942; see also *Ontario (Attorney General)* v. *Toronto Star*, 2010 ONSC 991 (Div. Ct.).

> generalized knowledge about why Jewish students and faculty at the university were reporting lower satisfaction with the climate of respect on the university's campus.

[18] The university further submits that there can be no question that the survey was conducted or proposed by an employee of an educational institution or by a person associated with an educational institution, given that the survey was proposed by the Sub-Committee. The university notes that the Sub-Committee was comprised of two members from the university's Equity Services Department, one member from its International Student Services Department, one member from the Department of Psychology, one member from university communications, one former professor and one former student.

[19] The university disputes the appellant's argument that section 65(8.1)(a) does not apply because more than one individual conducted or proposed the research. The university submits that the *Act* does not limit research to research conducted or proposed by a single individual and the exclusion should not be read so narrowly. The university submits that this narrow interpretation would "eliminate the academic freedom that is required for a team of researchers to work on a research project."

[20] The university also submits that there is no basis in the *Act* for the appellant's argument that section 65(8.1)(a) does not apply because the research was not conducted for scholarly purposes, "but instead was conducted for the institution by several people who were members of a formally constituted commission and who acted in that role rather than as independent scholars."

[21] The appellant submits the fact that the university did not submit an application to its Research Ethics Board (REB) for the second survey is a significant factor against its argument that the records are excluded under section 65(8.1)(a). The appellant further notes that the sub-committee conducting the second survey did not submit an application to the University Survey Committee although required to under its survey policy. The university explained that the sub-committee did not apply to the REB for the second survey because the members considered the second survey to be a follow-up from the first survey.

[22] The appellant submits that the university's claim that it is applying the exclusion in section 65(8.1)(a) to protect academic freedom is without basis. He states:

> Academic freedom is not impinged upon by asking to examine researchers' methodologies and data in order to ascertain the quality of their research. For example, no researcher would claim a violation of academic freedom when a journal editor requires them to describe their methodology and provide data when submitting an article for publication.
>
> Should paragraph 65(8.1)(a) be applied to institutional research such as that done for the Commission report, anyone involved in conducting that research could insist (on the basis of academic freedom or any other

> reason) that the methodologies and findings of that research be with-held from community scrutiny. This of course runs counter to the purposes and principles of FIPPA, and especially those which state that: i) information should be available to the public, and ii) necessary exemptions from the right of access should be limited and specific.

[23] The appellant further submits that the university's President, Roseann Runte has publicly affirmed the university's commitment to public accountability. The appellant describes how, on Carleton's website, the university has links to several of its studies which include their methodologies and data.

[24] Finally, the appellant distinguishes the present appeal from the appeals that resulted in Orders PO-2825 and PO-2942. The appellant notes that both of these cases involve scholarly research and not institutional research as carried out by the Commission in the present appeal.

[25] The university submits that the appellant's proposed narrowing of section 65(8.1)(a) to include "purely academic research" is contrary to the provisions of the *Act* as the *Act* does not distinguish between various forms of research. The university submits that such an interpretation would also be patently unreasonable and contrary to the purpose of the *Act* and the purpose of the section 65(8.1)(a) exclusion.

Analysis and Findings

[26] Former Senior Adjudicator John Higgins in Order PO-2693[4] considered the application of the exclusion in section 65(8.1)(a) for the first time. Senior Adjudicator Higgins applied the "modern" principle of statutory interpretation to determine the meaning of the section as a whole, which required that he take into account not only the meaning of the words within the section within the context of the *Act* as whole, but he must also consider its legislative purpose. The Senior Adjudicator cited the Supreme Court of Canada in *Rizzo* v. *Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27 where Justice Bastarache states as follows:

> Although much has been written about the interpretation of legislation [citations omitted], Elmer Driedger in Construction of Statues (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:
>
> > Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the

[4] Order PO-2694 was jointly issued with Order PO-2693 and also dealt with the application of the exclusion in section 65(8.1)(a) but for the purposes of this order, I will be referring to the analysis in PO-2693 only.

> scheme of the Act, the object of the Act and the intention of Parliament.

[27] The Senior Adjudicator noted that in *Ontario(Ministry of Correctional Services)* v. *Goodis*, [2008] O.J. No. 289 (Div. Ct.), Justice Swinton expressly applied this approach to the interpretation of section 65(6). Section 65(6) is another exclusion from the application of the *Act* that applies to labour relations and employment-related records. In that case the institution had claimed that section 65(6) applied to records describing employee actions, on the basis that those actions could give rise to vicarious liability on the part of the Crown. The Senior Adjudicator further noted that Justice Swinton, after setting out the purposes of the *Act* in section 1, rejects the institution's application of section 65(6) and states:

> The interpretation suggested by the Ministry in this case would seriously curtail access to government records and thus undermine the public's right to information about government. If the interpretation were accepted, it would potentially apply whenever the government is alleged to be vicariously liable because of the actions of its employees. Since government institutions necessarily act through their employees, this would potentially exclude a large number of records and undermine the public accountability purpose of the *Act* (*Ontario (Ministry of Transportation)* v. *Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 4047 (C.A.)

[28] Accordingly in Order PO-2693, the Senior Adjudicator went on to consider the purposes of the *Act* and the legislative purpose underlying the addition of section 65(8.1) to the *Act* as set out in statements made by M.P.P. Wayne Arthurs in the third reading of the *Budget Measures Act, 2005* (Bill 197):

> …[T]his bill proposes to make Ontario's universities subject to the provisions of the Freedom of Information and Protection of Privacy Act and ensure that Ontario's public funded post-secondary institutions are even more transparent and accountable to the people of Ontario. That will be both our universities and our colleges of applied arts and science. So as not to jeopardize the work being done at these institutions, though, the freedom-of-information provision would take into account and respect academic freedom and competitiveness. Clearly we understand the importance of the university post-secondary sector when it comes to doing research and innovative study programs. Thus we wouldn't want to jeopardize that academic freedom, or the competitive environment that is created accordingly.

[29] Bearing in mind both the purposes of the *Act* and the legislative purposes of section 65(8.1), the Senior Adjudicator concluded the following:

> …the Legislature did not intend to create an exclusion from the application of the Act whose reach would be broader than is necessary to accomplish

> these stated objectives. It is important to note, in that regard, that section 65(8.1)(a) only relates to the question of whether the Act applies to the records. If the Act is found to apply, this does not automatically lead to disclosure. Where the Act applies, the records could be subject to one of the mandatory and/or discretionary exemptions from the right of access, which are found in sections 12 through 22 of the *Act*.

[30] The Senior Adjudicator then determined that he must define the term *research* as no definition of that term is provided in the *Act*. In order to do so he considered past cases, but; he determined that the definition of research found in the *Personal Health Information Protection Act* was most suitable to the legislative purposes set out above and the modern rule of statutory interpretation. This is definition is set out above in paragraph 15.

[31] Finally, the Senior Adjudicator noted that the meaning of research was further informed by the remaining text of section 65(8.1) (a) which states that the research be "conducted or proposed by an employee of an education institution or a person associated with an educational institution." From these words he stated the following:

> Seen in the context of the purpose of this provision, that is, to protect academic freedom and competitiveness, the use of the words, "conducted or proposed", and the inclusion of specific references to employees or persons associated with the University, leads me to conclude that "research" must be referable to specific, identifiable research projects that have been conceived by a specific faculty member, employee or associate of the University.

[32] The Senior Adjudicator's interpretation has been followed by this office in numerous orders where an institution has claimed the exclusion in section 65(8.1)(a). In the present appeal, the university submits that if I find that the exclusion does not apply, I will be, in effect, narrowing the definition of research used by this office. Whereas, the appellant argues that the Sub-Committee's second survey does not count as research for the purposes of the exclusion, in this particular appeal.

[33] Based on my review of the records and the parties' representations, I find that the Sub-Committee's survey of Jewish students and university faculty does not constitute "research" for the purposes of section 65(8.1)(a) of the *Act*. As stated above, research is "… a systematic investigation designed to develop or establish principles, facts or generalizable knowledge, or any combination of them, and includes the development, testing and evaluation of research." The research must be referable to specific, identifiable research projects that have been conceived by a specific faculty member, employee or associate of an educational institution.

[34] In the present appeal, I find that the purpose of the survey, specifically, to measure the level of satisfaction of Jewish students and faculty on the university campus with respect to university services, cannot be said to be referable to the establishment of generalizable knowledge or principles. Past decisions of this office

have applied the exclusion to the following types of research projects:

- Clinical trials (Order PO-2693)
- Social Sciences and Humanities Research Council of Canada (Order PO-2942)
- Grant application for non-human primate transplantation (Order PO-3161)
- Bird Wind Tunnel (Order PO-2694)
- Peer review of research proposal (Order PO-2825)

[35] In my view, the "generalizable knowledge" identified by the university, specifically the reasons why Jewish students and faculty reported lower levels of satisfaction about the campus, is not the same as the types of generalizable knowledge identified in the examples above. I find that the purpose of the survey which is the subject of the records at issue in this appeal was to discern the particular experience of a specific cultural and religious group at the university and not to develop a generalizable body of knowledge about the experience of Jewish peoples in Canadian universities. This is substantiated by the survey findings set out in the university's representations which refer to the following:

- Jewish students feel that public venues on campus are not always welcoming and safe places.
- Jewish students sometimes feel excluded in the classroom by some professors and teaching assistants

[36] I find the survey is akin to "market research" in that it was conducted to measure the level of satisfaction of a particular religious and cultural group with the services being offered by the university and to identify areas for improvement. I appreciate that the Sub-Committee's findings were in aid of the Committee's overall mandate to promote and ensure a more inclusive experience at the university. However, it is evident that the survey results were for the university's benefit and to be used in improving its services. The Sub-Committee was not attempting to formulate a generalizable body of knowledge. Accordingly, I find that the survey is not the type of *research* that is protected for the purposes of the exclusion in section 65(8.1)(a) of the *Act*.

[37] I also considered the university's general concerns that any limit on the scope of the type of research protected by the exclusion would "erode academic freedom and competitiveness". The university states:

> Currently, researchers have complete autonomy in determining whether or not their work will be submitted for publication and peer review. The uncertainty that would result from the interpretation advanced by the Appellant, however, would undoubtedly cause a significant curtailment of research activity at Ontario's publicly funded post-secondary institutions.

> Researchers would be reluctant to take on research projects, knowing that they would have no say in whether their work would be made available to the public and knowing that their hard work and the data they have gathered could be obtained by members of the public and other professors through FIPPA requests. The change could also result in researchers prematurely publishing work to preserve copyrights that could be prejudiced by FIPPA requests, which would reduce the quality of research being published at Ontario's publicly funded post-secondary institutions. This new reality would also discourage individuals from participating in research.

[38] The university also listed a number of consequences that would arise if research is limited to purely academic research, including:

- Third parties looking to retain university researchers in consulting engagements would undoubtedly choose to retain researchers who are not based in publicly funded post-secondary institutions in Ontario, so as to avoid the risk of the research being obtained by members of the public, including their competitors.

- Third parties retaining university researchers in publicly funded Ontario-based post-secondary institutions will insist that the agreement between the third party and the researcher stipulate that the researcher and institution has no property in the work, including the research data for the same reason. As a result, researchers at these institutions would be prevented from using this data to make advancements in their respective fields thus building the reputation of their institutions.

- Competitors of these third parties may request research records purely to gain an unfair advantage in the marketplace.

- Researchers could obtain research records through *FIPPA* requests to gain an unfair advantage over other researchers.

- The IPC could find itself regularly adjudicating ownership disputes over research records that have been requested from publicly funded post-secondary institutions in Ontario.

- The fact that a research record has been disclosed to a third party as a result of a *FIPPA* request may, in fact, interfere with the researcher's right to obtain a patent.

[39] In my view, the university's arguments relate to research records that concern academic research or more specifically, the types of research past orders of this office have dealt with and which I identify in paragraph 34.

[40] The research in the present appeal was conducted to ensure that the university's campus and services are inclusive to individuals of varying religious, ethnic and cultural backgrounds. The records at issue are Committee meeting minutes, the actual survey and survey results. My finding that the exclusion does not apply to the records means that the *Act* does apply to them, and the university must issue an access decision. As I quoted above in paragraph 29, where section 65(8.1)(a) is found not to apply, the records could be subject to one of the mandatory and/or discretionary exemptions from the right of access which are found in sections 12 through 22 of the *Act*.

[41] As stated above, the Senior Adjudicator recognized that the Legislature did not intend to create an exclusion whose reach was broader than is necessary to accomplish the objectives of protecting academic freedom and competitiveness. In my view, the university's representations suggest an interpretation of the word *research* that is broader than necessary to protect academic freedom and competitiveness.

[42] Accordingly, I find that the exclusion in section 65(8.1)(a) does not apply and I will order the university to issue an access decision to the appellant.

Issue B: Did the university conduct a reasonable search for responsive records?

[43] 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.[5] 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.

[44] 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.[6] To be responsive , a record must be "reasonably related" to the request.[7]

[45] 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.[8]

[46] 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.[9]

[47] The university was asked to provide a written summary of all steps taken in response to searching for the records that were responsive to parts 3 and 5 of the

[5] Orders P-85, P-221 and PO-1954-I.
[6] Orders P-624 and PO-2559.
[7] Order PO-2554.
[8] Orders M-909, PO-2469 and PO-2592.
[9] Order MO-2185.

request, which are as follows:

> Minutes of all meetings of the Commission sub-group that was "formed to create a second survey of Jewish students and employees, and to review and present the results to the Commission."
>
> From the Carleton Research Ethics Board all applications, approvals, and other documents pertaining to the Commission's second survey, which was administered to Jewish students and employees at Carleton University.

[48] During the inquiry, the adjudicator noted that the university, at mediation, appeared to have accepted that the appellant sought other types of records than *minutes* for part 3 of his request.

[49] The university submitted representations, a number of exhibits, and three affidavits in support of its search for records. The affidavits are from the university's Privacy Coordinator, the Director Equity Services[10], and the Associate Vice-President (Research Planning and Operations) at the university.

[50] The Privacy Coordinator affirmed that he has no recollection of agreeing to expand the scope of part 3 of the request to include records other than minutes. The university submits that the appellant's request was clear and unambiguous on the scope of this part of his request and no clarification was necessary.

[51] In order to substantiate the university's search for records, the Privacy Coordinator's details an earlier request made by the appellant in June 2013. The Privacy Coordinator notes that this request was broader than the one that the appellant subsequently submitted, and is the subject of the present appeal. That earlier request read as follows:

> I wish to request all emails and other correspondence, memos, reports, presentations, meeting minutes and agendas, survey documents, survey results and data, and any other records pertaining to the Commission on Inter-Cultural, Inter-Religious and Inter-Racial Relations on Campus, produced or sent to or from employees based in Equity Services, produced or sent to or from the President and Vice-Chancellor or her staff, produced by or sent to or from employees based in the Office of the Carleton Board of Governors, produced by or sent to or from [named professor], and produced by or sent to or from Distinguished Research [named professor]. I request all such materials produced, sent, or received at any time between the period of August 12, 2009 and December 31, 2012.
>
> I also wish to request from the Carleton Research Ethics Board all applications, approvals, and other documents pertaining to research

[10] This individual was also a member of the Committee and Sub-Committee.

> conducted as part of or in relation to the Commission on Inter-Cultural, Inter-Religious and Inter-Racial Relations on Campus.

[52] The Privacy Coordinator affirms that in response to the earlier request, he consulted with the university's General Counsel to determine the location of the records and then sent emails to individuals who may be in possession of the responsive records. After sending the emails he then scheduled and attended meetings with the General Counsel and the various individuals in order to facilitate the search and ensure that he received all of the records that would be responsive to this request.

[53] As a result of these searches, the Privacy Coordinator received boxes of documents containing more than a thousand records. The appellant did not pursue access to those records.

[54] The Privacy Coordinator notes that the appellant then made the second request to the university, which is the subject matter of the present appeal. After receiving this request, the Privacy Coordinator did not seek clarification of the request because, he affirms, it was sufficiently clear and he was instructed by General Counsel to take a broad, liberal and literal interpretation of the request.

[55] The Privacy Coordinator affirms that based on his interpretation of the request, he understood that records responsive to the present request were the same as those records that had been responsive to the earlier request in June 2013. Accordingly, he affirms:

> Consequently, I believed that all of the records responsive to the Request had been located and gathered. However, out of caution, I followed the standard practice, when searching for records responsive to a *FIPPA* request.

[56] In order to conduct the search, the Privacy Coordinator affirmed the following:

- He consulted with General Counsel to identify places where responsive records would be located and determined that the university's Director of Equity Services and another employee of that department would either possess the responsive records or know where the responsive records would be located.

- Both the Director of Equity Services and the employee were members of the Commission on Inter-Cultural, Inter-Religious and Inter-Racial Relations on Campus and were members of the Sub-group formed to create a second survey for Jewish students.

- He sent an email to these two individuals as wells as the President, her Executive Assistant and General Counsel setting out the request and asking that additional help is required to locate specific responsive records to the new request.

- As the records responsive to the request had already been delivered to the Privacy Coordinator in response to the June 2013 search, the Privacy Coordinator requested that the Director of Equity Services and other individuals vet the records in order to identify the records responsive to the present request.

[57] The Director of Equity Services at the university affirmed the following regarding the June 2013 search for responsive records:

> It was quite logical to me that I would be the person who would be contacted as a result of the request because it was Equity Services, and more particularly me, who was responsible for administratively supporting the Commission and the Sub-Committee. Therefore, most, if not all, of the records responsive to this request were located in Equity Services, specifically my office (which includes my assistant) and the office of [named individual], who was also an employee of Equity Services and a member of the Commission and the Sub-Committee. Furthermore, I was and I am the person who has the most knowledge about the records that were responsive to that request, due to my roles as both a member of the Commission and as the Chair of the Sub-Committee and due to the fact that I have the most knowledge of the Commission and Sub-Committee's record keeping practices.
>
> …I am advised by [counsel for the university] that the details of the steps taken pursuant to the search for records responsive to the June 2013 Request were not requested in the Notice of Inquiry. Consequently, I have not included these details in my affidavit. I can say that I expended a significant amount of effort participating in the search for those records, which included downloading all email and drive files, which were previously organized by me in folders pertaining to the Commission and the Sub-Committee and by searching my computer system for records with the words (Commission, [named individual], inter-cultural, inter-religious and inter-racial) and by scouring my office for responsive records. I also saw that my administrative assistant and [named individual] conducted the same searches.

[58] The Director of Equity Services also affirms that in regard to the search that is at issue in the present appeal, she expended time and effort participating in the search for records responsive to this request.

[59] With regard to part 3 of the appellant's request, the Privacy Coordinator affirmed the following:

> I specifically recall being told by [the Director Equity Services] that the Sub-Committee did not keep minutes. While I cannot recall at what point in the search I was so advised, I can attest that it would have either been during one of the telephone conversations I had with [the Director of Equity Services] during the second search or when [the Director of Equity

> Services] delivered to me the records that were responsive to the Request under appeal. In any event, I have and never have had any concerns about the veracity of this statement for the following reasons. Firstly, [the Director of Equity Services] was a member of the Commission; she was responsible for administratively supporting the Commission; and she was the Chair of the Sub-Committee. Therefore, she would know if minutes of Sub-Committee meetings existed.

[60] The Privacy Coordinator further confirms that he has no reason to believe that minutes existed because of his discussions and communications with the employee of Equity Services who was also both member of the Commission and Sub-committee.

[61] With respect to part 5 of the appellant's request, the Privacy Coordinator affirms that this request was similar to records requested as part of the June 2013 request, albeit narrower.

[62] The Privacy Coordinator affirms that the decision letter sent to the appellant implies that the university had possession of records responsive to Part 5 of the request but this was a mistake because:

- His assumption that there were records responsive to Part 5 was wrong.
- He did not verify the content of the records in order to ensure that there were records responsive to Part 5 of the request.

[63] The Director of Equity Service affirms that, with respect to part 3 of the appellant's request, she did not search for minutes of all the meetings of the Sub-Committee because she knew these records did not exist. She affirms:

> As the Chair of the Sub-Committee, I can attest that the Sub-Committee had very little time to fulfill its mandate and, consequently, we had to operate efficiently. It is for this reason that no minutes of our meetings were prepared.

[64] For records responsive to part 5 of the appellant's request, the Director of Equity Services also affirms the following:

> …I know that, when the first survey was created by the Carleton University Survey Centre, one of the members of the Commission, who was also a member of the Office of Institutional Research and Planning, and employees of the Carleton University Survey Centre believed that the Commission would have to apply to the REB for approval, which occurred, However, with respect to the second survey, there was discussion among the members of the Sub-Committee about whether there was a need to apply to the REB. The Sub-Committee concluded that a second application to the REB was not necessary for a number of reasons and we did not contact the REB with respect to the second survey as a result.

> Consequently, I did not search for records responsive to part 5 of the Request because I knew and I know that they do not exist.
>
> I am advised by [counsel for the university] that the University's decision in response to the request indicates that there are records that are responsive to part 5 of the request. I can unequivocally state that this was a mistake.

[65] The Director of Equity Services affirms that the confusion regarding the existence of responsive records may have occurred because she provided two copies of the REB records to the Privacy Coordinator: one set of records for the June 2013 request and one set of records for the subsequent request. She specifically recalls that she informed the Privacy Coordinator that there were no records relating to parts 3 and 5 of the subsequent request but she says that this may not have been noted by the individuals in the office.

[66] The university submits that its representations and evidence support a finding that it made reasonable efforts to identify and locate responsive records to parts 3 and 5 of the appellant's request.

[67] The appellant's representations indicate that he believes that additional documents pertaining to part 1 of his request exist and have not been released. The appellant submits that it appears that the issue of reasonable search was narrowed by this office to only include records relating to parts 3 and 5 of his request. The appellant states:

> To elaborate, the Peace and Dialogue Initiative and the Commission were of such scope and duration, that much communication would have occurred with the university president who established and oversaw them. There would have been discussions and other communications about: the rationales for establishing the P & D Initiative as well as the Commission; determining their mandates and how they should operate and the activities they would undertake; recruitment of Commission members; progress being made; how to release the Commission report; etc. For instance, the minutes of the Carleton University Senate for November 30, 2012 state that: The Chair [the President and Vice-Chancellor] reminded Senators that the membership of the Commission was inclusive with broad representation as a result of many requests to serve on the Commission. Senate was consulted and members were invited to serve…Though there were *many requests*, none of these appear in the information provided to me.

[68] Based on my review of the university's representations and evidence, I find that its search for responsive records was reasonable. It does appear to me that there was some confusion as to the scope of the issue relating to the university's search. I note that the mediator's report was amended to add in the reference to part 3 of the appellant's request. The reference to part 5 of the request was added by the previous

adjudicator during the inquiry of this appeal. However, I find that the university has provided me with sufficient representations to establish that its search for all the parts of the appellant's request was reasonable.

[69] I accept the university's explanations as to the reasons why there are no records responsive to parts 3 and 5 of the appellant's request. I further accept the university's representations that it completed two searches for the records at issue. The first search was conducted to respond to the appellant's earlier broader request, and the subsequent search was conducted in response to the request that is the subject of this appeal. The university's submissions about these searches and the affidavit evidence establish that experienced members of the university conducted the search of their record holdings to identify responsive records. Furthermore, the appellant has not provided the basis for his belief that records should exist for these two parts of his request. He has only identified his belief that, given the magnitude of the report, his assumption is that additional records should exist that are responsive to Part 1 of his request.

[70] The university was not asked to provide representations on its search for records responsive to Part 1 of the appellant's request. However, given the overlap between the initial broader request and part 1 of the subsequent request, I find that the university's representations on its search for records provide sufficient evidence of its search for responsive records in general. Accordingly, I uphold the university's search for records.

ORDER:

1. I order the university to issue an access decision to the appellant for records responsive to parts 2, 6 and 7 of the appellant's request, in accordance with sections 26, 27 and 28 of the *Act*, treating the date of this order as the date of the request.

2. I uphold the university's search for responsive records to be reasonable.

Original Signed By: February 23, 2016

Stephanie Haly
Adjudicator