

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3603

Appeal PA14-524

University of Toronto

April 29, 2016

Summary: The issue to be resolved in this appeal is whether the University of Toronto conducted a reasonable search for records. The appellant submitted an access request under the *Act* to the university for information relating to the admission of students at the Department of Immunology, including the grade point average of each admitted student into the MSc and direct PhD programs for each admission cycle and the number of admitted students that were interviewed as part of the admissions process for each admission cycle. The time frame for his request was for records from 1983 to 2014. The university located responsive records from the fall of 2011 to 2014. The appellant claimed that additional records exist beyond those identified by the university. In this order, the adjudicator finds that the university conducted a reasonable search for records as required by section 24 of the *Act*, and he dismisses the appeal.

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

OVERVIEW:

[1] The appellant submitted a request to the University of Toronto (the university) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information from the Department of Immunology:

Records from 1983 to 2014

1. The total number of applications made to the department for admission into the MSc and direct PhD programs for each admission cycle.
2. The number of students admitted into the MSc and direct PhD programs for each admission cycle.
3. [Grade point average (GPA)] of each admitted student into the MSc and direct PhD programs for each admission cycle.
4. The number of admitted students that were interviewed as part of the admissions process for each admission cycle.
5. The time of degree completion for each PhD and Master's graduate for each admission cycle.

Please note, I am not requesting any confidential information including names or any identifiers of any students/alumni and as such each data point can simply be presented as a combination of letters and numbers at your discretion.

[2] The university issued an interim access decision containing a fee estimate of \$600 based on 20 hours of search time. In its decision, the university stated the following:

The responsive records are expected to be fully accessible to you. Please note however, that the university does not track the GPA of each admitted student into the MSc and direct PhD programs. Also, the university did not track the number of admitted students that were interviewed as part of the admission process prior to September 2011.

[3] The appellant appealed the university's interim access decision to this office, which assigned a mediator to assist the parties in resolving the issues in dispute. During mediation, the appellant stated that he was appealing the fee estimate of \$600 and indicated that he was of the view that responsive records should exist with respect to parts 3 and 4 of his access request.

[4] The mediator discussed the issues with the university and the parties participated in a conference call in an attempt to resolve the appeal. During the teleconference, the university advised the appellant that it only had electronic transcripts going back to the fall of 2011.

[5] The university subsequently issued a final access decision which stated that it would grant the appellant full access to some of the responsive records that it located for a fee of \$90, representing three hours of search and preparation time. In this decision, the university explained that it has some information responsive to parts 3 and 4 of the request but attempting to respond to these parts going back to 1983 would

involve the creation of new records that would be incomplete because only some of the data exists.

[6] The appellant advised the mediator that he wished to pursue the appeal on the basis that all of the requested information for parts 3 and 4 of his access request should exist. Consequently, whether the university has conducted a reasonable search for records that are responsive to those parts of his access request is the issue to be resolved in this appeal.

[7] This appeal was not resolved during mediation and was moved to adjudication for an inquiry. An adjudicator sought and received representations from the parties on the issue of reasonable search and shared them between the parties in accordance with *IPC Practice Direction Number 7*. This appeal was then transferred to me for a decision.

[8] In this order, I find that the university has conducted a reasonable search for records that are responsive to parts 3 and 4 of the appellant's access request, and I dismiss the appeal.

DISCUSSION:

SEARCH FOR RESPONSIVE RECORDS

Did the university conduct a reasonable search for records?

[9] 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 of the *Act*.¹ If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[10] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.²

[11] 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 Consequently, it must be determined whether the university employees who carried out the searches for responsive records were experienced and knowledgeable in the subject matter of the appellant's request and if

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Orders M-909, PO-2469 and PO-2592.

so, whether they expended reasonable efforts to locate records which are reasonably related to parts 3 and 4 of his request.

Employees who directed/conducted searches

[12] The university provided sworn affidavits from the following two university employees who directed searches for records that are responsive to parts 3 and 4 of the appellant's access request:

- 1) the Business Manager of the Department of Immunology; and
- 2) the Associate Director, Student Services – Student Systems & Records, School of Graduate Studies.

[13] In her affidavit, the Business Manager states that she is aware of the records that the department maintains of admitted students into the MSc and PhD programs, including their GPAs (part 3 of the appellant's request), and the records of admitted students who were interviewed as part of the admissions process (part 4 of the appellant's request).

[14] In addition, she states that she based her affidavit on information received from five university employees and believes that these individuals conducted "thorough and careful searches" with the intent of finding all records that are responsive to the appellant's access request. In particular, she relied on information that she received from the department's Graduate Admission Assistant, who searched the university's on-line application program, the Repository of Student Information (ROSI), and hard copy official student files.

[15] The university provided a second affidavit that was sworn by the Associate Director Student Services – Student Systems & Records, School of Graduate Studies. The Associate Director states that she is also the graduate studies representative for ROSI, the university's student information system. In addition, in her previous position as Senior Client Representative, Student Information Systems, she was responsible for supporting the university's academic and administrative divisions in their use of ROSI and associated student record systems.

[16] She states that she based her affidavit on information received from the Student and Administrative Support Representative at the School of Graduate Studies, who carried out searches for records that are responsive to the appellant's access request.

[17] The appellant submits that neither individual who provided an affidavit is directly involved in the admissions process or serves on the department's admissions committee. Consequently, they would not have sufficient knowledge or experience to attest to the searches that were conducted for the records that he is seeking.

[18] In response to the appellant's arguments, the university provided detailed information about the two employees who submitted affidavits regarding the searches for records that were carried out. With respect to the qualifications of the department's Business Manager, the university states that she:

- has been in her position since 2001;
- is responsible for operations of non-academic functions of the department, including management of the administrative offices and staff; and
- is aware, because of her job duties, of the records maintained of students admitted into the MSc and PhD programs, including GPAs, and of records of admitted students who were interviewed as part of the admissions process.

[19] With respect to the qualifications of the Associate Director, Student Services – Student Systems & Records at the School of Graduate Studies, the university states that she:

- oversees graduate student records, admissions, and registration (including course enrolment and grades);
- is responsible for advising graduate departments on registration matters;
- is the graduate studies representative for the ROSI database, which contains student information; and
- was previously (from 2005 to 2013) the Senior Client Representative, Student Information Systems, which involved supporting the university's academic and administrative divisions in their use of ROSI.

[20] I am satisfied that the university employees who directed and carried out the searches for responsive records are experienced and knowledgeable in the subject matter of the appellant's request. It is clear from their job duties and qualifications that both the Business Manager at the department and the Associate Director at the School of Graduate Studies are intimately familiar with the admissions process for the MSc and direct PhD programs and the records holdings where information about applicants is stored.

[21] Both individuals directed other employees who are experienced and knowledgeable in the subject matter of the appellant's request to carry out searches for records that are responsive to parts 3 and 4 of that request. I am not persuaded by the appellant's argument that because neither individual who provided an affidavit is directly involved in the admissions process or serves on the department's admissions committee, they would not have sufficient knowledge or experience to attest to the searches that were conducted for the records that he is seeking. In my view, the fact

that these individuals do not participate in the evaluation or selection of students for the MSc and PhD programs does not diminish the knowledge and expertise that they clearly have with respect to how the information about the applicants for these programs is collected and stored by the university.

The university's efforts to locate records

[22] I will now determine whether the university's employees expended reasonable efforts to locate records which are reasonably related to parts 3 and 4 of the appellant's request. This involves assessing the quality of the searches that were carried out to locate responsive records.

[23] The department's Business Manager provided the following evidence about the searches that were conducted:

In response to Part 3 of the request, [the Graduate Admission Assistant] informed me that she searched diligently for electronic records relating to the GPA of admitted students into the MSc and PhD programs for the Department of Immunology, in the university's on-line application program, Repository of Student Information (ROSI), and hard copy official student files where [the Graduate Admission Assistant] and I knew such records would be located, if they existed. [She] located 63 GPAs for students admitted into the MSc program and 13 GPAs for students admitted into the direct PhD program which were recorded in scanned transcripts dating back to September 2011. The School of Graduate Studies on-line application permitting uploading of students documents including scanning of transcripts began in 2011. These were all the responsive records that [she] was able to locate.

With respect to part 4 of the request . . . [she] informed me that she searched diligently on the Immunology Graduate Database for the number of admitted students who were interviewed as part of the admissions process. [She] located records going back to September 2011 related to the number of admitted students who were interviewed as part of the admissions process where [she] and I knew such records would be located, if they existed. These were all the responsive records that [she] was able to locate.

[24] The Associate Director at the School of Graduate Studies provided the following evidence about the searches that were conducted:

In response to Part 3 of the request, [the Student and Administrative Systems Support Representative] informed me that she searched diligently for electronic records relating to the GPA of admitted students

into the MSc and direct PhD programs for the Department of Immunology, in ROSI, where [she] and I knew such records would be located, if they existed. [She] located only 24 GPAs for students admitted into the MSc program and four GPAs for students admitted into the direct PhD program. These were all the responsive records that [she] was able to locate. I believe that some additional information relating to the GPA of admitted students into the MSc and PhD programs for Immunology may be located in the official hard copy student files dating back to 1983 in the Department of Immunology.

With respect to Part 4 of the request, I know that the university does not maintain centrally a record of the number of admitted students who were interviewed as part of the admissions process for each admission cycle from 1983 to 2014. The number of admitted students who were interviewed as part of the admissions process for each admission cycle is not recorded in ROSI and is not kept in electronic nor hard copy form at the School of Graduate Studies. It is possible that some information relating to the number of admitted students who were interviewed as part of the admissions process may be located in the official student files in the Department of Immunology.

[25] In summary, the university asserts that its employees expended reasonable efforts to locate records which are reasonably related to parts 3 and 4 of the appellant's request. It states that even though the appellant has requested records that cover the years 1983 to 2014, it only has electronic records from the fall of 2011 to 2014. It states:

With respect to Part 3 of the request, the university does not have a record of the GPA of each admitted student into the MSc and direct PhD programs for each admission cycle from 1983 to 2014. The university located responsive electronic records of GPAs, mostly since the fall of 2011, which will be provided to the appellant on payment of the fee.

With respect to Part 4 of the request, the university does not have a record of the number of admitted students who were interviewed as part of the admissions process for each admission cycle from 1983 to 2014. Responsive records were located from the fall of 2011 to 2014 and will be provided to the appellant on payment of the fee.

To attempt to respond to Parts 3 and 4 of the request going back to 1983 would involve the creation of new records from hard copy information, which is not required by [the *Act*]. Such records would be significantly incomplete as we know that only a small part of the data necessary for their creation exists. . . .

[26] Finally, the university also states that it is likely that some information going back to 1983 has been deleted or destroyed over the intervening years.

[27] In his representations, the appellant challenges the university's claim that it does not have responsive records before the fall of 2011. He points out that the School of Graduate Studies requests both a hard copy and an electronic version of an applicant's transcripts. Given that the electronic version is stored, it should be easily accessible "since the age of the internet." He states that he would be willing to set the lower limit for his request for the GPAs of admitted students to the beginning of the internet era.

[28] In addition, he submits that the information he is seeking is tracked and maintained by the university and should readily accessible for the following reasons:

- The GPAs/grades of each applicant to the MSc and PhD programs are a "critical component" of the department's admissions criteria.
- The department's website sets out minimum GPAs that are required for admission to both programs. Consequently, GPAs/grades are a deciding factor in the admissions process and this information must be both tracked and maintained by the department.
- It is implausible that the department does not track all data about its present and previous students because such data is critical to monitoring and improving graduate training over time.
- It is impossible for the department to calculate admissions statistics without the requested data.
- Many other departments at the university track everything about their students, including GPAs and grades.

[29] The appellant's representations focus largely on whether the university has conducted a reasonable search for records that are responsive to part 3 of his request (the GPA of each admitted student into the MSc and direct PhD programs for each admission cycle). He also expresses a willingness to withdraw part 4 of his access request (the number of admitted students that were interviewed for each admission cycle). Consequently, the following analysis will focus largely on part 3 of the appellant's request but I will also consider whether the university has conducted a reasonable search for records that are responsive to part 4.

[30] I have considered the evidence submitted by both the university and the appellant and for the reasons that follow, find that the university's employees expended reasonable efforts to locate records which are reasonably related to parts 3 and 4 of the appellant's access request.

[31] With respect to part 3 of his request, the department's Graduate Admission Assistant searched for electronic records containing the GPAs of admitted students into the MSc and PhD programs in ROSI, the university's on-line application database, and hard copy official student files. She located GPAs for students admitted into these programs, which were recorded in scanned transcripts dating back to September, 2011 but not before. With respect to part 4 of the appellant's access request, she searched the Immunology Graduate Database for the number of admitted students who were interviewed as part of the admission process and also located records going back to September, 2011 but not before. The Student and Administrative Support Systems Representative at the School of Graduate Studies also conducted searches but did not locate the same quantity of responsive records as the department's Graduate Admission Assistant.

[32] In my view, the university's employees and particularly the department's Graduate Admission Assistant, identified the places where responsive records would most likely be located (e.g., the ROSI database) and then undertook searches for those records. From a qualitative perspective, I find that these searches constitute reasonable efforts to locate records that are responsive to parts 3 and 4 of the appellant's request.

[33] The gist of the appellant's representations is that he believes that the university did not conduct a reasonable search and should have records stretching back several years before September, 2011. At a minimum, it should be able to provide him with electronic records containing the GPAs of admitted students into the MSc and PhD programs (part 3 of his request) from the start of the internet era.

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

[35] To an extent, I understand the appellant's feeling of incredulity that the university does not have electronic records that contain the GPAs of students who were admitted to the department's MSc and PhD programs before the fall of 2011, particularly since electronic records have been existence for decades. The reasons that he cites for asserting that such records should exist and be accessible to him have an air of logic. However, it is an unfortunate reality that the manner in which records are organized and retained in institutions does not always accord with the particular access needs of a requester, particularly if he or she is seeking older records.

[36] The appellant provides a number of reasons why he believes that additional electronic records should exist before the fall of 2011, such as the fact that the GPAs/grades of each applicant to the MSc and PhD programs are a "critical component"

⁴ Order MO-2246.

of the department's admissions criteria, and that it is impossible for the department to calculate admissions statistics without the requested data. He further asserts that the Graduate Admission Assistant who conducted searches has been employed by the university since 2011, which perhaps explains why she was only able to locate records going back to that year.

[37] However, the university has provided a clear explanation as to why it does not have electronic records containing the GPAs of admitted students before the fall of 2011. In particular, the Graduate Admission Assistant was only able to locate records going back to 2011 because the uploading of student documents into the ROSI database, including the transcripts of applicants to the MSc and PhD programs, only began in that year. The appellant has not provided me with any persuasive evidence to show that this assertion is misleading or false.

[38] The appellant also asserts that the department Chair informed him in writing that the information he seeking is tracked and would be made available to him. In particular, he highlights an email that he received, dated January 30, 2014, in which the Chair states, "I have no issues providing this information to you, with the idea that you would provide back to us any and all analyses that made use of this information." The appellant suggests that this is evidence that electronic records containing the GPAs of admitted students before the fall of 2011 should exist.

[39] I do not find this submission persuasive. In my view, the purpose of the Chair's email was to provide a preliminary response to the appellant's request for information and should not be interpreted as an ironclad guarantee that the university had responsive records that it would disclose to him that cover the years 1983 to 2014. In addition, his email must be read in its full context. Although the Chair signaled an intention to disclose the requested information to the appellant, he also cautioned that "we may not have any of it readily accessible."

[40] Finally, the appellant asks a series of "outstanding questions" that should be answered by the university and alleges that because the university's freedom of information staff and other individuals are employed by the university, they are in a possible conflict of interest. In my view, this latter argument does not have any merit. Section 24 of the *Act* requires a requester to provide sufficient detail to enable "an experienced employee of the institution," upon a reasonable effort, to identify responsive records. Given that the *Act* specifically contemplates that an experienced university employee is responsible for identifying responsive records, it is difficult to see how such an individual would be in a conflict of interest by carrying out his or her statutory duties.

[41] In summary, I find that the university does not have electronic records prior to the fall of 2011 that are responsive to parts 3 and 4 of the appellant's request. In addition, any hard copy records that might exist for that time period are largely

incomplete.

[42] In my view, experienced university employees knowledgeable in the subject matter of the appellant's request expended reasonable efforts to locate records which are reasonably related to parts 3 and 4 of that request. I am not convinced that the appellant has provided a reasonable basis for concluding that additional responsive records exist prior to the fall of 2011. Consequently, I find that the university has conducted a reasonable search for records as required by section 24 of the *Act*.

ORDER:

I uphold the university's search for records and dismiss the appeal.

Original Signed by: _____
Colin Bhattacharjee
Adjudicator

_____ April 29, 2016