Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3615

Appeal PA14-542

University of Ottawa

May 30, 2016

Summary: The university received a request under the *Act* for records relating to the requester's application for admission to a PhD program. The university granted partial access to the responsive records. It denied access to some of them, pursuant to the discretionary exemptions at section 49(a) (discretion to refuse a requester's own personal information), read in conjunction with section 19 (solicitor-client privilege), and section 49(c.1)(ii) (discretion to refuse a requester's own personal information if it relates to evaluative or opinion material regarding academic admission) of the *Act*, and on the basis that portions of one record are not responsive to the request. The requester appealed the university's decision to deny access to some of the records and took issue with the reasonableness of the university's search for responsive records. In this order, the adjudicator upholds the university's decision to deny access to the responsive records pursuant to the exemptions claimed and on the basis that portions of one record are not responsive to the request. The adjudicator also upholds the university's search. The appeal is dismissed.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of "personal information"), 2(3), 19, 24, 49(a), and 49(c.1)(ii).

Orders and Investigation Reports Considered: Orders PO-2909-I and PO-3248.

OVERVIEW:

[1] The University of Ottawa (the university) received the following request under the *Freedom of Information and Protection of Privacy Act* (the *Act*):

> I hereby request all records about me in the offices of:
>
> 1. [named individual], Vice-Dean, Graduate Studies, Faculty of Science,
>
> 2. [named individual], Chairman, Department of Physics,
>
> 3. [named individual], Assistant Chairman, Graduate Studies, Department of Physics.

[2] The appellant specified that he sought access to records dated from March 15, 2014, to the date of his request.

[3] The university located 27 records responsive to parts 1 to 3 of the request and granted partial access to them. It denied access to some of them, in their entirety, pursuant to the discretionary exemptions at section 49(a) (discretion to refuse a requester's own personal information), read in conjunction with section 19 (solicitor-client privilege), and section 49(c.1)(ii) (discretion to refuse a requester's own personal information if it relates to evaluative or opinion material regarding academic admission) of the *Act*. The university also claimed that portions of one record were not responsive to the request. The university advised that it did not locate any responsive records in the office of the individual identified in part 2 of the request. It stated:

> With respect to the records located in the office of [the Chairman of the Departments of Physics], there is no such record and as such, access cannot be given. I am informed by [the Chairman of the Department of Physics] that he searched for records but could not locate any and that he was unable to retrieve them from his University of Ottawa email account. The University's Computing and Communications Services conducted a search of the University of Ottawa's server backup system. I am informed by Computing and Communications Services that no records were located on the servers that respond to your request for records located in the office of [the Chairman of the Department of Physics].

[4] The requester appealed the university's decision to deny access to the records that it withheld and also indicated that he took issue with the reasonableness of the university's search for records relating to part 2 of his request.

[5] As mediation did not resolve the appeal, the file was transferred to the adjudication stage of the appeal process for an adjudicator to conduct an inquiry. During my inquiry into this appeal I sought representations from the parties on the facts and issues on appeal. I received representations from both parties and they were shared in accordance with this office's procedure on sharing as set out in *Practice Direction 7*.

[6] At several points in his representations, the appellant submits that he seeks access to the "names of the admission committee members," and argues that he ought

to have access to these names. On my review of the records at issue, I note that they do not specifically refer to an admissions committee, nor do they identify whether any of the university employees who are identified in the records could be described as "admission committee members." Although the appellant's initial request for the records at issue also referred to his belief that the records would identify the committee members, at issue before me are the specifically requested records remaining at issue in this appeal. Accordingly, the names of admission committee members are not before me and I will not address them further in this appeal.

[7] In this order, I dismiss the appeal. I uphold the university's decision to deny access to some of the responsive records pursuant to the exemptions claimed and on the basis that portions of one record are not responsive to the request. I also uphold the university's search as reasonable.

RECORDS:

[8] The university identified 27 records as responsive to the appellant's request. The following records remain at issue. All of them consist of email communications. I have identified the exemptions that are being claimed for each record:

- Record 3 – June 24, 2014: section 49(c.1)(ii)
- Record 4 – July 10, 2014: section 49(a)
- Record 5 – July 11, 2014: section 49(a)
- Record 6 – July 14, 2014: section 49(c.1)(ii)
- Record 7 – July 14, 2014: section 49(a)
- Record 8 – July 15, 2014: section 49(a)
- Record 10 – July 20, 2014: section 49(a)
- Record 11 – July 22, 2014: section 49(a)
- Record 12 – July 22, 2014: section 49(a)
- Record 13 – July 24, 2014: section 49(a)
- Record 15 – July 31, 2014: section 49(a) (also, portions withheld as not responsive)
- Record 16 – August 1, 2014: section 49(c.1)(ii)
- Record 17 – August 1, 2014: section 49(c.1)(ii)
- Record 19 – August 20, 2014: section 49(c.1)(ii)

- Record 20 – August 21, 2014: section 49(a)
- Record 22 – August 26, 2014: section 49(a)
- Record 24, September 9, 2014: section 49(a)

ISSUES:

A. Do the records contain "personal information" as defined by section 2(1) and, if so, to whom does it relate?

B. Does the discretionary exemption at section 49(a), read in conjunction with section 19, apply to the information at issue?

C. Does the discretionary exemption at section 49(c.1)(ii) apply to the information at issue?

D. Are portions of record 15 not responsive to the request?

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

DISCUSSION:

A. Do the records contain "personal information" as defined by section 2(1) and, if so, to whom does it relate?

[9] In order to determine which sections of the *Act* may apply, it is necessary to determine whether the record contains "personal information" and, if so, to whom it relates. The term is defined in section 2(1) as follows:

> "Personal information" means recorded information about an identifiable individual, including,
>
> > (a) information relating to the race, national or ethic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
> >
> > (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
> >
> > (c) any identifying number, symbol or other particular assigned to the individual,
> >
> > (d) the address, telephone number, fingerprints or blood type of the individual,

> (e) the personal opinions or view of the individual except if they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

[10] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.[1]

[11] Section 2(3) also relates to the definition of personal information. That section states:

> (3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

[12] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" and individual.[2]

[13] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.[3]

[14] To qualify as personal information, it must be reasonable to expected that an individual may be identified if the information is disclosed.[4]

Representations

[15] The university submits that records at issue contain the views and opinions of identifiable individuals about the appellant's academic thesis proposal and his eligibility

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[1] Order 11.
[2] Orders P-257, P-427, P-1412, P-1612, R-980015, MO-1550-F and PO-2225.
[3] Orders P-1409, R-980015, PO-2225 and MO-2344.
[4] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe,* [2002] O.J. No. 4300 (C.A.).

and suitability for admission to the PhD program. It submits that these views and opinions were solicited by and sent to the university in confidence. The university further submits that the information contained in the records falls within paragraphs (b) (education), (f) (correspondence sent to an institution in confidence) and (g) (the views or opinions of another individual about the individual) of the definition of personal information set out at section 2(1) of the *Act*.

[16] The appellant submits that the records should contain his own personal information.

Analysis and finding

[17] I have reviewed the records at issue and find that all of them contain the appellant's personal information. This personal information amounts to the appellant's name, where it appears with other personal information relating to him (paragraph(h)) as well as the view or opinions of other individuals about the appellant (paragraph (g)) and, in some instances, information relating to the appellant's education (paragraph (b)).

B. Does the discretionary exemption at section 49(a), read in conjunction with section 19, apply to the information at issue?

[18] Under the *Act,* different exemptions may apply depending on whether a record at issue contains or does not contain the personal information of the requester.[5] In the circumstances of this appeal, as the records contain the requester's own personal information, access to the records is addressed under Part III of the *Act* and the discretionary exemptions at section 49 may apply.

[19] Section 47(1) gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right.

[20] Section 49(a) states:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > where section 12, 13, 14, 14.1, 14.2, 15, 16, 17, 18, **19**, 20 or 22 would apply to the disclosure of that personal information. [emphasis added]

[21] Section 49(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information.[6]

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[5] Order M-352.
[6] Order M-352.

[22] Where access is denied under section 49(a), the institution must demonstrate that, in exercising its discretion, it considered whether a record should be released to the requester because the record contains his or her personal information.

[23] In this case, the university relies on section 49(a), read in conjunction with the solicitor-client privilege exemption at section 19. Specifically, the university submits that records 4, 5, 7, 8, 10, 11, 12, 13, 15, 20, 22 and 24 are subject to solicitor-client privilege as set out in sections 19(a) and (c) of the *Act*.

Solicitor-client privilege

[24] Sections 19(a) and (c) of the *Act* state:

> A head may refuse to disclose a record,
>
> > (a) that is subject to solicitor-client privilege;
> >
> > ...
> >
> > (c) that was prepared by or for counsel employed or retained by an educational institution.

[25] Section 19 contains two branches. Branch 1 is based on the common law and is set out in section 19(a). Branch 2, in the context of educational institutions, is a statutory privilege and is set out in section 19(c). The university must establish that one or the other (or both) branches apply. In the circumstances of this case, the university submits that both branches apply.

Branch 1: common law privilege

[26] At common law, solicitor-client privilege encompasses two types of privilege: (i) solicitor-client communication privilege; and (ii) litigation privilege. In the circumstances of this appeal, the university submits that the information is exempt under solicitor-client communication privilege.

Solicitor-client communication privilege

[27] Solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining or giving professional legal advice.[7] The rationale for this privilege is to ensure that a client may freely confide in his or her lawyer on a legal matter.[8] The privilege covers not only the document containing the legal advice, or the request for advice, but information passed between the solicitor and client aimed at keeping both informed so that advice can be sought and given.[9] The privilege may also

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[7] *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (SCC).
[8] Orders PO-2441, MO-2166 and MO-1925.
[9] *Balabel v. Air India,* [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.).

apply to the legal advisor's working papers directly related to the seeking, formulating or giving legal advice.[10]

[28] Confidentiality is an essential component of the privilege. Therefore, the institution must demonstrate that the communication was made in confidence, either expressly or by implication.[11]

Branch 2: statutory privileges

[29] Branch 2 is a statutory privilege that applies where the records were prepared by or for Crown counsel or counsel employed or retained by an educational institution or hospital "for use in giving legal advice or in contemplation of or for use in litigation." The statutory exemption and common law privileges, although not identical, exist for similar reasons. In the circumstances, the university submits that the statutory solicitor-client communication privilege applies to the records at issue.

Representations

[30] The university submits that the records at issue in this appeal that were withheld on the basis of solicitor-client privilege are communications in which employees of the university sought advice from university legal counsel regarding the appellant and his application to the PhD program. It submits that legal counsel communicated with the employees referenced in the emails for the purpose of providing advice.

[31] The university also submits that in some of the records for which section 19 was claimed, "legal advice is not specifically sought or received." It submits that as noted in Order PO-3248 by Adjudicator Colin Bhattacharjee, a record does not become privileged simply because legal counsel is copied on that communication. However, it submits that in the present case, as was the case in Order PO-3248, legal counsel was copied on the communications at issue in the course of a continuum of communications in which legal advice was given, and in order to permit that advice to be sought and received.

[32] The university submits that these communications between its employees and legal counsel were under "implied assurances of confidentiality." It submits that legal counsel owes a professional obligation to maintain confidentiality in respect of communications with their client, the university, and that this is fundamental to their ability to provide advice on an ongoing basis.

[33] Finally, the university submits that the solicitor-client privilege has not been waived in this case and the communications were kept confidential at all times.

[34] The appellant requests that I review the records at issue to determine whether the information falls within solicitor-client communication privilege. He points to Interim Order PO-2909-I where a number of individuals were copied on an email that was sent to counsel. In that order, Adjudicator Diane Smith found that there was "no indication"

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[10] *Susan Hosiery Ltd. v. Minister of National Revenue,* [1969] 2 Ex. C.R. 27.
[11] *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.

in the email that legal advice was being sought or given and stated that "[m]erely sending a copy of a record to a solicitor in and of itself does not automatically result in privilege being attached to it."

[35] The appellant also notes that the university states that some of the information at issue is not specifically advice being sought or received by the university but information that was provided in the course of a continuum of communications in which legal advice was given and was required to permit that advice to be sought and received. The appellant again refers to Interim Order PO-2909-I in which Adjudicator Smith "ordered information released 'even though there may have existed a continuum of communication between the university and the law firm.'" He once again requested that I review the information at issue and consider whether the "continuum" that the university describes in this appeal "is similar enough in nature to the continuum in Order PO-2909-I such that information should be released."

Analysis and finding

[36] On my review of the records I accept the university's claim that they are privileged communications between a lawyer and her client. All of the records are communications between the university's legal counsel and university employees or officials. While I acknowledge that, as stated by Adjudicator Bhattacharjee in Order PO-3248, not all records are privileged simply because legal counsel is copied, having reviewed the content of the records at issue I accept that it falls within the requirements of both sections 19(a) and (c). In my view, all of the information amounts to either direct communications of a confidential nature exchanged in the course of giving and receiving legal advice, or falls within the type of information that can be characterized as part of a continuum of communications between lawyer and client, necessary in order to permit advice to be sought and received. Additionally, in the context of this appeal, the lawyer is counsel employed by the university.

[37] Although the appellant refers to Order PO-2909-I in which Adjudicator Smith found that some of the information before her was not part of a continuum of communications as contemplated by this privilege, I do not accept that the same circumstances are before me in this appeal. In the record that was before her in Order PO-2909-I, Adjudicator Smith explains that there was no indication in the email that legal advice was being sought or given. With respect to the records that are before me in this appeal, from my review of their content, I accept that although in some circumstances the information might not amount to direct communications revealing legal advice that is sought or received, its subject matter falls within the continuum of communications between lawyer and client, necessary for legal advice to be sought and received.

[38] Additionally, the appellant has not alleged, nor have I any evidence before me that the university has waived its privilege in these records. Accordingly, I find that the solicitor-client privilege at both common law (section 19(a)) and pursuant to the statute (section 19(c)), apply to the information for which it has been claimed.

[39] As mentioned above, section 49(a) is a discretionary exemption which permits an institution to disclose the information, despite the fact that it could withhold it. On appeal, this office may review the exercise of discretion and determine whether the institution erred by acting in bad faith or for an improper purpose, taking into account irrelevant considerations, or failing to take into account relevant ones. This office may not, however, substitute its own discretion for that of the institution.[12]

[40] With respect to applying its exercise of discretion to apply section 49(a), read in conjunction with section 19, to withhold the information that falls within solicitor-client privilege, the university submits that it considered the importance of that privilege with respect to protecting the ability of the university and its employees to communicate with in house legal counsel, in confidence, for the purpose of obtaining legal advice. It submits that it weighed the importance of the privilege against the benefit of disclosing the information and chose to exercise its discretion not to disclose the information.

[41] Considering the evidence before me, the content of the records and the importance of maintaining the integrity of solicitor-client privilege, I accept that the university's exercise of discretion in its application of section 49(a), read in conjunction with section 19, was reasonable and that it considered relevant factors and did not considered irrelevant ones.

[42] Therefore, I accept that the university properly exercised its discretion in withholding the information at issue under section 49(a), read in conjunction with section 19 of the *Act*.

C. Does the discretionary exemption at section 49(c.1)(ii) apply to the information at issue?

[43] The university claims that records 3, 6, 16, 17 and 19 are exempt under section 49(c.1)(ii).

[44] Under section 49(c.1), the university may refuse to disclose evaluative or opinion material in certain circumstances. The university claims that section 49(c.1)(ii) applies in the circumstances of this appeal. That section reads:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > (c.1) if the information is supplied explicitly or implicitly in confidence and is evaluative or opinion material compiled solely for the purpose of,
> >
> > (ii) determining suitability, eligibility or qualifications for admission to an academic program of an educational institution.

Representations

[12] Section 54(2).

[45] The university submits that the records that it has withheld under section 49(c.1)(ii) "consist of correspondence from faculty members and a potential thesis supervisor containing the confidential opinions, evaluations and assessments of the appellant's request for admission to the PhD program." The university takes the position that "[t]he correspondence was solicited and provided in confidence for the purposes of determining the appellant's suitability, eligibility and qualifications for the university's PhD program."

[46] The university submits:

> [T]he disclosure of these records would undermine the integrity of the academic admissions process, whereby faculty members and academics are required to candidly provide their evaluative opinion with respect to a candidate's request for admission. These solicited communications have always been treated as highly confidential, and in providing a candid opinion, the referees understand that it will not be disclosed, and in particular that it will not be disclosed to the applicant. The university further submits that candidates and academic professionals understand this long standing practice and it is consistent with the practice of other universities.

[47] In support of its position, the university references Order PO-3089-F in which Adjudicator Cathy Hamilton stated:

> …I find that evaluations and assessments such as the information the appellant seeks in this appeal is precisely the type of information at which section 49(c.1)(ii) is aimed and that this exemption is clearly related to the legislative objective of allowing frank, candid and complete information about a candidate's suitability, eligibility and qualifications for admission to an academic program of an educational institution to be reviewed and held in confidence.

[48] The university submits that the disclosure of evaluative or opinion information such as that in issue in this case would have a chilling effect on the willingness of individuals to provide the sort of candid, frank evaluations on which it relies to make the best possible decision about applications for admissions.

[49] The appellant does not make any specific representations addressing the possible application of the discretionary exemption at section 49(c.1)(ii).

Analysis and finding

[50] Having reviewed the records for which section 49(c.1)(ii) has been claimed, I accept that all of the information for which the exemption has be claimed relates to the evaluation and assessment of the appellant's suitability, eligibility and qualifications for admission to the PhD program in Physics at the university. As a result, I find that section 49(c.1)(ii) applies to these records.

[51] The records at issue are emails containing evaluations and assessments with respect to the appellant's suitability for admission to the PhD program. In my view, this is precisely the type of information at which section 49(c.1)(ii) is aimed to achieve the legislative objectives of allowing the free flow of frank, candid and complete information about a candidate's suitability, eligibility and qualifications for admission into a specific academic program by maintaining the confidence of that information.

[52] As section 49(c.1)(ii) is a discretionary exemption, I have considered the whether the university has exercised its discretion in good faith, having considered all the relevant factors, including but not limited to the purposes of the *Act*.

[53] The university submits that in making its decision to withhold information under section 49(c.1)(ii) it considered the purpose of the exemption, the expectation of confidentiality held by the individuals providing the evaluations, and the chilling effect that the disclosure of the information would have on individuals charged with the task of assessing applications and providing evaluations. The university submits that it also considered established practices of the university and the academic community at large with respect to the confidentiality of this type of information. It submits that it also considered the significance and the sensitivity of the information to the individuals who were tasked with providing it.

[54] Considering the evidence before me and the content of the records, I accept that the university's exercise of discretion in its application of section 49(c.1)(ii) was reasonable and that it considered relevant factors and did not considered irrelevant ones.

[55] Accordingly, I find that section 49(c.1)(ii) applies to the information for which it was claimed and I uphold the university's decision to withhold it.

D. Are portions of record 15 not responsive to the request?

[56] The university submits that portions of record 15 are not responsive to the appellant's request.

[57] Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

> (1) A person seeking access to a record shall,
>
> > (a) make a request in writing to the institution that the person believes has custody or control of the record;
> >
> > (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;
>
> …

> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[58] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.[13]

[59] To be considered responsive to the requester, records must "reasonably relate" to the request.[14]

Representations

[60] With respect to the portions of record 15 which the university severed as non-responsive to the request, the university submits that while it accepts the legal principles regarding the responsiveness of information, "the portions of the record withheld as non-responsive did not result from a particular interpretation of the appellant's request." Rather, it submits that those portions are, "simply on their face not reasonably requested to the appellant's request."

[61] The appellant submits that based on the index of records that was provided to him, the university identified one record as having severances that were not responsive to his request. He states that he requests that I review this record with regards to the issue of responsiveness.

Analysis and finding

[62] I have reviewed record 15 above and have found that it contains privileged communications between the university and its legal counsel, therefore qualifying for exemption under section 49(a), read in conjunction with section 19 of the *Act*. However, the university has also identified portions of that record as being severed on the basis that they are not responsive to the request. Having found that section 49(a) applies to record 15 in its entirety, it is not necessary for me to review the specific portions that the university has severed as not responsive. However, as the appellant has requested that I review the record with regards the responsiveness of those portions, I will do so.

[63] From my review of record 15, the record consists of an email exchange between the university and its legal counsel. While some parts of the text relate to the appellant and his bid for admission into the university's PHD program in the Department of Physics, other portions relate to matters that are completely unrelated to him. Accordingly, I accept that the portions of record 15 which were identified by the university as not responsive to the request, are indeed not responsive, and were

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[13] Order P-134 and P-880.
[14] Orders P-880 and PO-2661.

appropriately severed.

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

[64] 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.[15] 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.

[65] 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.[16] To be responsive, a record must be "reasonably related" to the request.[17]

[66] 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.[18]

[67] 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.[19]

[68] Although a requester will rarely be in a position to indicate precisely which records an institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.[20]

Representations

[69] The university submits that the requester sought records about himself located in the offices of three named individuals. It submits that in the course of its search it did not locate any responsive records in the office of one of the individual's named in the request. The university submits that its understanding is that the appellant's concern with the university's search for responsive records is limited to its search for records within that specific individual's office.

[70] The university submits that the search for records responsive to the portion of the request that sought records in the office of the Chairman, Department of Physics was conducted by the Chairman himself who neither located any paper record nor was able to retrieve such records from his university email account. The university submits that, consequently, its Computing and Communications Services was tasked with

[15] Orders P-85, P-221 and PO-1954-I.
[16] Orders P-624 and PO-2559.
[17] Order PO-2554.
[18] Orders M-390, PO-2469 and PO-2592.
[19] Order MO-2185.
[20] Order MO-2246.

conducting a search of the computer server back up system.

[71] With its representations, the university enclosed an affidavit of a systems analyst with the university's Computing and Communications Services who conducted a search of the email server for records responsive to the office of the individual named in part 2 of the request. In that affidavit, the systems analyst affirms that he "conducted a search of the University of Ottawa's email logs and searched the backup of the email logs." He states that "[a]s a result of this search, no emails were located on the servers that responded to the request in the uOttawa email accounts listed above."

[72] Finally, the university submits that its search for records was reasonable. It states that the burden is on the appellant to provide a reasonable basis for concluding that further records exist and he has not provided any basis upon which to make such a conclusion. In the absence of such evidence, it submits that there is no basis to conclude that it's search was not reasonable but that it has "nonetheless demonstrated that its search was reasonable through the [affidavit of the systems analyst]."

[73] The appellant submits that during mediation the university indicated that it would provide him with an affidavit detailing its search for records responsive to part 2 of his request. He submits that as it did not do so by the conclusion of mediation, he requested that the issue of search be included in the scope of the appeal. He states that now that the university has included such affidavit as part of its representations, "[t]his issue is therefore resolved."

Analysis and finding

[74] Having considered the representations of the parties, I accept that the university conducted a reasonable search for records responsive to part 2 of the request and uphold it.

[75] Having considered the representations of the university, as well as the affidavit submitted by the systems analyst who conducted a search of the university's back-up email logs, I accept that I have been provided with sufficient evidence to demonstrate that searches were conducted by experienced employees who undertook reasonable efforts to identify and locate responsive records that are reasonably related to the request.

[76] Additionally, not only has the appellant not provided a reasonable basis for concluding that additional records responsive to part 2 of the request exist, in his representations, he appears to no longer take issue with the university's search.

[77] Accordingly, I uphold the university's search for records responsive to part 2 of the request as reasonable.

ORDER:

I uphold the university's decision and dismiss the appeal.

Original Signed by: May 30, 2016

Catherine Corban
Adjudicator