

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## FINAL ORDER PO-4094-F

Appeal PA15-265

Lakehead University

December 15, 2020

**Summary:** The university received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to the appellant as a doctoral student. In Order PO-3893-I, the adjudicator upheld the university's decision, in part, but found that its search was not reasonable and ordered it to conduct a further search for responsive records. In this final order, the adjudicator finds that the university's search is reasonable.

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

### BACKGROUND:

[1] Lakehead University (the university) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to the appellant as a doctoral student.<sup>1</sup>

[2] In Interim Order PO-3893-I, I upheld the university's decision to exclude some of the records pursuant to section 65(6)1 and section 65(8.1)(a). I also upheld the university's claim of section 49(b) for most of the records, while others were found to not contain the personal information of affected parties and were ordered disclosed. Finally, I found that the university's search for responsive records was not reasonable

---

<sup>1</sup> The appellant's request and the university's decisions are set out in Interim Order PO-3893-I.

because it had not consulted with the technology services centre (the TSC) to inquire if it would be possible to retrieve deleted emails.

[3] Subsequent to the issuance of Order PO-3893-I, the university conducted a further search locating the records thought to be deleted and issued an access decision to the appellant. The university provided representations including an affidavit concerning its search which were shared with the appellant. The appellant continues to be of the view that further responsive records should exist and further representations were sought from both parties which when received were shared in accordance with the IPC's *Code of Procedure*.

[4] In this order, I find that the university's search is reasonable and dismiss the appeal.

## **DISCUSSION:**

[5] The sole issue remaining before me in this appeal is whether the university's search for records responsive to the appellant's request was reasonable.

[6] 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.<sup>2</sup> 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.

[7] 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.<sup>3</sup> To be responsive, a record must be "reasonably related" to the request.<sup>4</sup>

[8] 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.<sup>5</sup>

[9] 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

---

<sup>2</sup> Orders P-85, P-221 and PO-1954-I.

<sup>3</sup> Orders P-624 and PO-2559.

<sup>4</sup> Order PO-2554.

<sup>5</sup> Orders M-909, PO-2469 and PO-2592.

of the responsive records within its custody or control.<sup>6</sup>

[10] 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.<sup>7</sup>

## **Representations**

[11] Subsequent to the issuance of PO-3893-I, the university conducted its search and provided an affidavit, sworn by the director of risk management and access to information (the FOI co-ordinator), setting out its search results. The FOI co-ordinator attests that prior to the search for the deleted emails, he received the consent of the various professors to do so. He submits that he then worked with the TSC in order to retrieve the emails that were referenced as deleted. The TSC was only able to locate the deleted emails for one of the two professors. In the course of the search, it was determined that one of the professors had not actually deleted her emails and that they still existed in another folder in the professor's email system.

[12] In the affidavit, the university confirmed that it was able to retrieve two deleted emails that were responsive for one professor as well as retrieving seven responsive records<sup>8</sup> from the professor who did not delete her emails.

[13] The appellant provided representations outlining various occurrences and/or reasons why further records should exist.

[14] In her representations, the appellant also made several submissions on issues that I dealt with in Interim Order PO-3893-I or that are not relevant to the issue of the university's search. I will not be considering these submissions in this order.

[15] The appellant refers to a specified professor and submits that it is not credible that the emails released to her would be the only communication that the professor would have regarding her dissertation process. The appellant submits that both she and her lawyer met with this professor. The appellant speculates that as this meeting took place without the professor's supervisor, the professor would have communicated information about this meeting to others.

[16] The appellant refers to her representations made during the earlier inquiry and submits that the university continues to not disclose certain key documents to which she is entitled that would include communications involving information that disputes a specified professor's assessment of her dissertation.

---

<sup>6</sup> Order MO-2185.

<sup>7</sup> Order MO-2246.

<sup>8</sup> Emails including attachments were located.

[17] The appellant submits that there are many red flags that suggest the university's search is not reasonable. She submits that the evidence that two specified individuals deleted files despite an ongoing FOI process is an example of this. The appellant also refers to the ongoing process of attempting to obtain the requested information with the university releasing bits of information along the way. The appellant takes issue with the university's submission that omissions were largely due to computer search complexities.

[18] The appellant submits that the university indicated in its affidavit that it did not contact the president of the university because he was not a party to any matters related to the appellant's dissertation. The appellant submits that the president was knowledgeable about the difficulties she was having with her faculty and was in a position during the material time to be informed of the situation. The appellant submits that it is more than reasonable to believe that the president would have been informed and regularly updated on her situation. The appellant submits that by email, she requested a meeting with the president (which she attached to her representations) and was informed by a reply email from a specified professor that she would not be given access to meeting the president.

[19] The appellant submits that she has not been provided with records from the Joint Secretariat that oversees the Joint Doctoral Program between Lakehead University, Brock University, and Windsor University.<sup>9</sup> The appellant submits that the university suggested that responsive records from the Joint Secretariat that oversees the joint doctoral program between Lakehead, Brock and Windsor universities have been provided to her. The appellant submits that she fully believes that there are important documents that have not been released, including those involving senior administration.

[20] The appellant refers to her attempt to locate a record from the university which contains a specific quote and submits that Record 144 may not be the source of the quote as the university suggests. She submits that since the quote relates to her readmission it would seem likely that it came from a senior administrator and not a faculty member as the latter cannot set conditions for readmission. The appellant submits that regardless of who is quoted, she believes that a document has to exist containing that quote unless it has been deleted. The appellant submits that the original full record containing the aforementioned quote has not been provided and submits that document is critical in that it refers to conditions for her readmission.

[21] The appellant submits that the FOI co-ordinator, in his affidavit, swore that he "verily believes" that he has received everything available. The appellant submits that while she has no doubt that the FOI co-ordinator contacted the relevant parties his true

---

<sup>9</sup> The appellant notes that previously Western University was also part of the Joint Program.

belief is not proof or evidence that further records do not exist.

[22] The appellant's representations were shared with the university who provided further representations in response. The university submits that extensive, exhaustive, and, in some cases, repeated searches have been undertaken to try to track down all records responsive to the appellant's request. It submits that the searches it conducted were arduous due to the wide bounds of the request, which provided no identification of individuals that might have responsive records and the inclusion of complex email networks (chains). The university submits that it has provided all records it found to the appellant with the exception of information it found to be excluded or exempt under the *Act*.

[23] In his affidavit, the FOI co-ordinator attests to not initially contacting the university's president and explains that in reviewing the records there was no email correspondence between a specified professor and the president in that specified professor's responsive emails. In addition, the FOI co-ordinator states that when he received the emails from the other professors who conducted a search of their own email systems, there was no email correspondence involving the president of the university. However, the FOI co-ordinator further submits that after reviewing the appellant's representations, he approached the president's executive assistant who conducted searches of email accounts of the specified past president and the current president of the university, using the relevant terms. The FOI co-ordinator submits that the president's executive assistant provided three emails to him after the search was complete. The FOI co-ordinator submits that he believes that these records were already disclosed to the appellant, but he has provided another copy of those records to the appellant.

[24] The FOI co-ordinator submits that the executive assistant to the president informed him that the specified president also completed a search and found no records in his emails that were responsive to the search terms. The university submits that the results of this search are not surprising as normally academic issues involving students are handled within a faculty. The university submits that the appellant's own representations prove this, as the response to her email to the president reveals that the president followed this practice by referring the matter to the provost.

[25] The university submits that with regard to a record containing the specific quote cited by the appellant, the FOI co-ordinator reviewed his correspondence with the relevant professor and concluded that the quoted text originated from a form of the office of graduate studies and was signed by two specified professors. The co-ordinator submits that the text appears in the "admission recommendation" box on the form and was identified as Record 120 and has already been disclosed to the appellant. The records claimed to have already been provided to the appellant were attached with the university's representations following its additional search. As stated above, both the representations and attached records were provided to the appellant.

[26] Shortly after providing its representations, the university copied the IPC on a

letter to the appellant concerning its search and indicated that after considering the appellant's representations with regard to the Joint Secretariat, the FOI co-ordinator requested a search through the appellant's secretariat file. As a result, the university submits that six new records were found and disclosed to the appellant.

[27] The appellant provided a reply to the university's representations and in my review of same, I find that she reiterated many of her earlier points which I will not set out here.

[28] The appellant refers to a meeting which took place between her supervisor and the dean of graduate studies on a specified date and makes submissions that she should be entitled to receiving this record.<sup>10</sup>

[29] The appellant continues to submit that given the situation with her dissertation, the president of the university should have more records.

[30] The appellant refers to a meeting she attended with her lawyer that took place with the dean of the faculty of education, the chair of education graduate studies and another specified professor and submits that records should exist concerning this meeting. In response, the university submits that this meeting took place after the appellant's request and therefore any records concerning this meeting would not be responsive. The appellant submits that she has filed a subsequent request with the university, suggesting that this record would be responsive to the request that is the subject of this appeal.

[31] The appellant submits that the records provided to her from the Joint Secretariat are not fully responsive. She submits that the Joint Secretariat is required to keep a full and ongoing record of the student's progress in the joint PhD program, including substantive decisions regarding the student's standing in the program. She submits that the Secretariat must keep these records intact for five years after graduation of the student. The appellant submits that she is concerned that files may have been deleted from the Secretariat's record holdings.

[32] The appellant also submits that the form the university has provided to her with a specified quote is not the correct record and submits that another record with this specified quote must exist.

## **Finding**

[33] For the reasons that follow, I find that the university has now conducted a reasonable search for responsive records pursuant to Interim Order PO-3893-I.

---

<sup>10</sup> In my review of the university's index it appears that the appellant is referencing Record 93.

[34] In the interim order, I found that the university had not provided sufficient evidence to establish that its search for deleted emails was reasonable and ordered it to approach the IT department for a search of its backup drive. However, I found the remainder of the university's search was reasonable.

[35] Based on the university's affidavit, it is evident that the university's IT department located the emails that were believed to be deleted. The university provided an access decision to the appellant with regard to these emails.

[36] As noted, after receiving the university's representations, including its affidavit regarding its search, the appellant submitted that further responsive records should exist. In my review of the appellant's representations, I find that I addressed many of her submissions in Interim Order PO-3893-I.

[37] As stated above, the appellant's representations contain several arguments about my findings in Interim Order PO-3893-I. In this final order, I am addressing the outstanding issue of the university's search for emails only and will not be addressing the appellant's arguments about the interim order.

[38] With regard to the remainder of the university's search, although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response, the appellant must, nevertheless, provide a reasonable basis for concluding that such records exist. When reviewing the appellant's representations in response to the university's additional search, it is apparent that she is referring to many of her earlier submissions made prior to the interim order, as to why further records should exist.

[39] The appellant has restated that further records should exist from specified professors. However, I accept the university's submission that in many cases these individuals were approached more than once to search for responsive records and I find its search reasonable with regard to these individuals.

[40] In her representations, the appellant referred to records that might be in the possession of the university's president. In its submissions, the university explains that it did not initially contact the president's office because matters involving academic issues are handled by the faculty. The university submits that it proceeded to contact the president's office after reviewing the appellant's representations and although records were located they consisted of the appellant's emails to the president and any subsequent reply referring the appellant to the provost. Although the appellant continues to maintain that further records may exist with the president, I accept that the university has now conducted a search for responsive emails in the president's office as set out in its affidavit. I have no reason to believe that further records would be located if the university conducted another search. I find that the university's search with regard to records in the president's office is reasonable.

[41] In addition, the university located additional records when it contacted the Joint

Secretariat. As the university explained, it was originally unaware that the Secretariat of the Joint PhD programs at Brock, Windsor and Lakehead Universities was located at Lakehead. The university submits that after realizing this, it proceeded to request a search through the appellant's Secretariat file and six records were located that have now been provided to the appellant. In her reply, the appellant suggests that the records from the Secretariat did not appear to be fully responsive to her request. However, I have reviewed the emails the university sent to the Secretariat before and after it conducted the search and, in my view the Secretariat provided a reasonable explanation to the university as to why further records were not located.

[42] The appellant submits that a document with a specific quote was not provided to her even though a record with the specific quote was disclosed. The appellant submits that the record that was provided to her could not be the source of the specific quote. The university provided a copy of the FOI co-ordinator's emails to a specified professor before and after the record was identified and it is clear that he attempted to locate another record with this specified quote but was unable to.

[43] Finally, the appellant submits that records should exist for a meeting between herself, her lawyer, and a professor which took place after she had submitted her request that is the subject matter of this appeal. Although the appellant submits that she made another FOI request for records subsequent to the request in this appeal, I agree with the university that since the meeting the appellant refers to took place after her request for records, any information about this meeting would not be responsive to the request at issue in this appeal.

[44] As noted, the *Act* does not require the university to prove with absolute certainty that further records do not exist and I find that it has provided sufficient evidence to show that it made a reasonable effort to identify and locate responsive records. In addition, I find that the university has made reasonable efforts to respond to the appellant's submissions by continuing its search and contacting the president and the Secretariat as mentioned above.

[45] Accordingly, I uphold the university's search as reasonable and dismiss the appeal.

[46] Finally, the appellant submits that Record 93<sup>11</sup> was not disclosed to her in compliance with the interim order. The university submits that it was disclosed to the appellant. I make no finding on this record and simply note that my decision on Record 93 is contained in the interim order.

---

<sup>11</sup> The appellant refers to a record involving an email between her supervisor and a specified professor which I have identified from the university's index of records as Record 93.



**ORDER:**

The remainder of the appeal is dismissed

Original signed by: \_\_\_\_\_

Alec Fadel  
Adjudicator

December 15, 2020 \_\_\_\_\_