Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4528

Appeal PA22-00449

Toronto Metropolitan University

July 12, 2024

Summary: Toronto Metropolitan University (which was previously called Ryerson University) received a request under the *Act* for briefs or communications made to it during a public engagement period relating to Egerton Ryerson. After the appellant received disclosure of the responsive emails (without identifying details), she raised the issue of reasonable search. In this order, the adjudicator upholds the reasonableness of the university's search and dismisses the appeal.

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

OVERVIEW:

[1] In 2021, Ryerson University, as it was previously named, established the "Standing Strong Task Force" (SSTF) with the mandate to conduct outreach and engagement both within and outside the university community for feedback on the issues of the Egerton Ryerson statue and the legacy, reconciliation, and commemoration in the university community.[1] The university has since been renamed as Toronto Metropolitan University (the university). This appeal arises out of a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for submissions made to the university during that engagement process, and in particular, from stakeholders listed in an appendix to a report

[1] The outreach program ran from March 16, 2021 to May 16, 2021.

that analyzed the engagement that the university received.

[2] The request was clarified to be as follows:

> All briefs or communications sent to the Standing Strong Task Force on the name change.
>
> All briefs and letters that were sent to Dr. Lachemi or the co-chairs on the name change (Joanne Dallaire and Catherine Ellis).
>
> This should include all the organizations and individuals listed in Appendix B of the Task Force Report (see detailed stakeholder list, p 71-73).
>
> The time period is November 2020 to September 2021.
>
> Names to look for: Indigenous Students Association, Yellowhead Institute, Aboriginal Education Council, and all others that may be relevant.

[3] The university identified 234 records (emails and, in some cases, attachments) responsive to the request and issued a decision to the requester. It fully withheld all the responsive records from disclosure under an exclusion and a several exemptions,[2] including the mandatory exemption at section 21(1) (personal privacy).

[4] The requester, now the appellant, appealed the university's decision to the Information and Privacy Commissioner of Ontario (IPC).

[5] I conducted a written inquiry under the *Act* into the issues on appeal.[3] The university revised its decision and granted partial access to the records at issue. The appellant raised the issue of reasonable search, arguing that certain submissions were not disclosed to her. I decided to include the issue of reasonable search in the appeal because the appellant did not have any sense of what had been identified as responsive beforehand since the university had initially withheld all records in full. The parties provided representations on the issue of reasonable search.[4]

[6] For the reasons that follow, I uphold the university's search as reasonable in the circumstances and dismiss the appeal.

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[2] The university cited section 65(6) but used wording associated with section 65(6)3 in its decision letter. The university also claimed the discretionary exemptions at section 13(1) (advice or recommendations) and at sections 18(1)(a), 18(1)(c), and 18(1)(d) (economic or other interests) of the *Act*.

[3] This included the possible application of the public interest override at section 23 of the *Act*, which the appellant raised as an issue at IPC mediation.

[4] The university also provided representations related to the redacted information, but that information was later removed from the scope of the appeal when the appellant confirmed that she is not pursuing personal information.

DISCUSSION:

[7] The only remaining issue in this appeal is whether the university conducted a reasonable search for responsive records.

[8] If a requester claims that additional records exist beyond those found by the institution (as the appellant does here), the issue is whether the institution has conducted a reasonable search for records as required by section 24 of the *Act*.[5] If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision. Otherwise, it may order the institution to conduct another search for records.

[9] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.[6]

[10] The *Act* does not require the institution to prove with certainty that further records do not exist. However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;[7] that is, records that are "reasonably related" to the request.[8]

[11] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are reasonably related to the request.[9] The IPC will order a further search if the institution does not provide enough evidence to show that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[10]

[12] Before proceeding to summarize the parties' positions, it may be useful to clarify something at the outset: there are two things called "Appendix B" in the context of this appeal. The stakeholder list that the appellant speaks of is called "Appendix B: Detailed stakeholder list." That is an appendix to a document called "Appendix B: What we learned." The latter is an almost 80-page document, subtitled "Engagement overview and analysis."

The appellant's position

[13] After receiving disclosure of the records that the university identified as responsive to the request, the appellant submitted that there should be additional responsive records. The basis for her belief is the fact that "Appendix B: What we learned" included

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[5] Orders P-85, P-221 and PO-1954-I.
[6] Order MO-2246.
[7] Orders P-624 and PO-2559.
[8] Order PO-2554.
[9] Orders M-909, PO-2469 and PO-2592.
[10] Order MO-2185.

a detailed list of stakeholders at Appendix B of the report.[11] The appellant submits that the "briefs" filed by these stakeholders were not identified and disclosed to her as responsive records (except for one). She also states that two other briefs that were shared with her by their authors (who are listed as stakeholders) were not identified as responsive records because certain words that they used are not in any of the released records.

The university's evidence

[14] The university explains that since the scope of the request was for "communication to the Task Force [SSTF] on the name change" of the university, the records that it identified as responsive to the request contain communication from individuals or organizations received by the university regarding name change.

[15] The university submits that it is important to keep in mind that the stakeholders listed in Appendix B are stakeholders that the university *invited* to provide feedback and *not* a list of stakeholders who *did* provide feedback or communication to the university regarding the SSTF and its mandate. The university explains that the process for the university to receive communication from individuals or organizations about the name change was voluntary. As a result, those who received the notice about the engagement program may or may not have provided feedback to the SSTF.

[16] In addition, the university submits that it may be that individuals from stakeholder groups provided feedback but did so as individuals and not on behalf of any stakeholder entity. The university explains that in such circumstances, it cannot trace responses back to persons or organizations where feedback was provided.

[17] The university provided further details about its search efforts though the affidavit of its Privacy and Compliance Administrator (the affiant).

[18] Regarding scope, the affiant notes the clarified wording of the request and states that she sent a "Notice for Search of Records" to the SSTF's engagement manager.

[19] Regarding who would be an experienced university employee knowledgeable in the subject matter of the request to conduct a search, the affiant explains that she considered the SSTF engagement manager to be that employee. The reason for this is that the SSTF engagement manager was responsible for and oversaw the SSTF's communications, the facilitation of opportunities for community engagement, and management of the SSTF's official email account.

[20] The affiant explains that she and the SSTF engagement manager met over a Zoom call to discuss the clarified request. At this meeting, the SSTF engagement manager

[11] See pages 71-73 of "Appendix B: What we learned" for "Appendix B: Detailed stakeholder list," which can be accessed here: https://www.torontomu.ca/content/dam/next-chapter/Report/Appendix-B-What-we-learned-Aug-17.pdf

confirmed that they would conduct a search in the official SSTF email because, this is where responsive records would be found, based on their knowledge and experience.

[21] The SSTF engagement manager searched the SSTF's email account with the keyword "name" between September 19, 2022 to September 23, 2022.

[22] The SSTF engagement manager then emailed the affiant that they had completed their search for responsive records with the following results:

> There were 109 emails that came to standingstrong@ryerson.ca that came up when searching the word "name" that shared a perspective about the name of the institution. Emails that included attachments have the attachments saved as the same file name as the email with a or b added. I have put these PDF files in the provost folder as there was not an SSTF folder. Emails include form submissions through the contact page during the Task Force's active period (November 2020 - August 26, 2021).[12]

[23] I pause here to note that the above explains why even though 109 emails were retrieved through the search, 234 records were identified as responsive (attachments were counted separately).

[24] In addition, the affiant explains that there is no indication that the records requested may have once existed but no longer do, or that responsive records had been destroyed. She explains that records have been maintained in accordance with the authorized (and publicly available) records retention schedule.[13]

[25] The affiant swears that to the best of her knowledge and belief, in light of the communications with the SSTF's engagement manager, that all reasonable steps have been taken to identify and locate responsive records and that there are no further responsive records.

The appellant's reply

[26] The appellant reiterates that the 234 records disclosed do not correspond to the list of stakeholders in Appendix B of the SSTF report, saying that most records disclosed to her were written by individuals but the Appendix B briefs were not. She states that only one of the emails disclosed to her (in part) appears in full on the website Friends of Egerton Ryerson, and that she has the copy of two briefs (shared with her by their authors) who were listed on Appendix B but which were not included in the 234 records disclosed.

[27] Regarding the university's explanation that Appendix B was a list of organisations contacted and not briefs that were sent in, she says that the SSTF uses the words "what

[12] Links to the email address and the contact page were included in the original.
[13] This can be accessed here: https://www.torontomu.ca/gcbs/what-we-do/records/records-retention/.

we learned," which the appellant says is "as if they [the SSTF] had received and used the material." She states that if Appendix B is a "fake" list of "what we learned" because no one sent in "the invited briefs (or communications of some kind)," then the university should admit that.

Analysis/findings

[28] Based on my review of the representations of the parties and the university's affidavit evidence, I uphold the university's search efforts as reasonable in the circumstances.

[29] The basis of challenging the reasonableness of the university's search is the appellant's belief that each of the "items" listed in "Appendix B: Detailed stakeholder list" is a list of organizations that made submissions to the university about issues related to the name change. Since the 234 records disclosed to her do not correspond to that list, she submits that the university is holding something back or "Appendix B: What we learned" is based on a fabrication.

[30] I find that the appellant has not established a reasonable basis to conclude that additional records should exist. The appellant's concerns are based on her characterization of the "Appendix B: Detailed stakeholder list" as a list of the organizations that actually submitted "briefs" (or comments) on the issues related to changing the name of the university. Whether this characterization of the list stems from an assumption or a misunderstanding of what the list is, that characterization is not substantiated by the evidence before me. Therefore, I find no basis for accepting it and I find that it is not a reasonable basis on which to believe that additional responsive records exist.

[31] Rather, I accept the university's explanation of what the "Appendix B: Detailed stakeholder list" is (and, importantly, what is not). I find that this explanation is consistent with how "Appendix B: What we learned" describes the list:

> As part of an inclusive engagement program, we offered several mechanisms for community to share their input. The goal was to ensure people could respond in a way that felt safe, comfortable, and culturally relevant. All engagement was supported by tailored communications to the public and stakeholder groups, including two public presentations. To reach focus communities within the university and the broader public, the Task Force used a variety of communications channels and techniques to share information and opportunities for engagement. Please see *Appendix B* for a detailed stakeholder list, including each individual and organization **who received communications about the engagement program**. [Emphasis added.][14]

[14] See page 7 of "Appendix B: What we learned," which can be accessed here: https://www.torontomu.ca/content/dam/next-chapter/Report/Appendix-B-What-we-learned-Aug-17.pdf

[32] In addition, the appellant's submissions do not challenge the reasonableness of the steps that the university took:

- in choosing which employees to respond to the search,
- the wording of the clarified request used,
- the location searched, and
- the key search term used.

[33] Based on my review of the university's evidence, I find that all of these aspects of its search efforts were reasonable in the circumstances. More specifically, I find that it was reasonable for the Privacy and Compliance Administrator to be involved, and in turn, to ask the SSTF's engagement manager to conduct a search for responsive records because of the nature of that individual's role in overseeing and being responsible for the engagement process. I find that the SSTF engagement manager is an experienced employee knowledgeable in the subject matter of the request (communications sent to the university during the consultation engagement period about a name change). In addition, since there was an email account dedicated to SSTF engagement, I find that searching that email account was reasonable. I also find that using the keyword "name" was also reasonable, in light of the subject matter of the request.

[34] I acknowledge the appellant's submission that she has received two briefs submitted to the university from the authors of the briefs, and not through the university's disclosure to her. When I consider the thorough and methodical approach used by the university to search for records, that fact does not lead me to conclude that the university's search efforts were not reasonable. I have no information, for example, about whether those briefs were submitted to the SSTF committee, when or how. In any event, the *Act* does not require the institution to prove with certainty that further records do not exist. However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records,[15] and for the reasons set out above, I find that it has.

ORDER:

I uphold the university's search as reasonable and dismiss the appeal.

Original signed by: July 12, 2024
Marian Sami
Adjudicator

[15] Orders P-624 and PO-2559.