



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER PO-2650

Appeal PA-050020-2

Seneca College of Applied Arts and Technology



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NATURE OF THE APPEAL:

Seneca College of Applied Arts and Technology (the College) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information regarding the requester and his dealings with the College. The request consisted of eight general sections containing a total of 42 items.

The College located responsive records and issued a decision letter granting partial access to these records. The requester, now the appellant, appealed the College's decision on the basis that additional records existed and appeal file PA-050020-1 was opened. The sole issue in that appeal was whether the College had conducted a reasonable search for records responsive to the appellant's request. I adjudicated that appeal and issued Order PO-2552 on February 28, 2007. In Order PO-2552, I upheld part of the College's search for records and ordered the College to conduct a new search for other records.

The College located responsive records in response to Order PO-2552 and issued a decision letter dated March 27, 2007, granting the appellant with partial access to these records. The College applied the mandatory exemption in section 21 (personal privacy) of the *Act* to withhold portions of these records.

The appellant appealed the College's decision of March 27, 2007.

During the course of mediation, the College disclosed some additional records to the appellant. The appellant also clarified that he did not take issue with any of the severances made to records pursuant to section 21 of the *Act*. Accordingly, severances pursuant to section 21 of the *Act* are not at issue in this appeal.

Mediation did not fully resolve the issues in this appeal as the appellant was of the view that the searches conducted by the College in response to provisions 1(a) and 1(c) of Order PO-2552 were inadequate. These provisions order the College to conduct another search for:

- (a) the appellant's re-marked module 5 exam and any written comments made concerning the re-marking of this exam by the module 5 instructor; and,
- (c) any records in the possession of the College's Corporate Secretary responsive to the appellant's entire request.

The file was transferred to me to conduct an inquiry into the reasonableness of the College's search for records responsive to provisions 1(a) and (c) of Order PO-2552. I sent a Notice of Inquiry setting out the facts and issues in this appeal to the College, seeking its representations. I received representations from the College. A complete copy of the College's representations, affidavit in support and the index for the package of documents that accompanied the College's representations were sent to the appellant, along with a Notice of Inquiry. The appellant provided representations in response.

DISCUSSION:

SEARCH FOR RESPONSIVE RECORDS

The reasonableness of the College's search for records responsive to provisions 1(a) and (c) of Order PO-2552 is the only issue in this appeal. These provisions order the College to search for:

- the appellant's re-marked module 5 exam and any written comments made concerning the re-marking of this exam by the module 5 instructor; and,
- any records in the possession of the College's Corporate Secretary responsive to the appellant's entire request.

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 [Orders P-85, P-221, PO-1954-I]. 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.

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 [Order P-624].

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.

The College was asked to provide a written summary of all steps taken in response to the request. In particular, the College was asked to respond to the following preferably in affidavit form:

1. Did the College contact the requester for additional clarification of the request? If so, please provide details including a summary of any further information the requester provided.
2. If the College did not contact the requester to clarify the request, did it:
 - (a) choose to respond literally to the request?
 - (b) choose to define the scope of the request unilaterally? If so, did the institution outline the limits of the scope of the request to the requester? If yes, for what reasons was the scope of the request defined this way? When and how did the institution inform the requester of this decision? Did the institution explain to the requester why it was narrowing the scope of the request?

3. Please provide details of any searches carried out including: by whom were they conducted, what places were searched, who was contacted in the course of the search, what types of files were searched and finally, what were the results of the searches? Please include details of any searches carried out to respond to the request.
4. Is it possible that such records existed but no longer exist? If so please provide details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.

The College was asked that if it provides an affidavit, the College should provide the affidavit from the person or persons who conducted the actual search. It should be signed and sworn or affirmed before a person authorized to administer oaths or affirmations.

In response to the Notice of Inquiry, the College provided representations, including an affidavit from the Secretary to the Board of Governors for the College (also known as the College's Corporate Secretary) concerning her search for responsive records as a result of Order PO-2552. In this affidavit, the Corporate Secretary stated that her duties include maintaining a filing system for all documents that are sent to the Board Chair and that she has access to and knowledge of the documents that are filed within the Board of Governors' office. All documents that relate to the appellant are filed in one location under the appellant's name. The Corporate Secretary affirmed that to her knowledge, none of the documents that have been sent to the Board of Governors' office relating to the appellant have been destroyed. The Corporate Secretary copied all of the documents in the appellant's file and sent them to the College's Freedom of Information and Privacy Protection Officer.

In the Notice of Inquiry sent to the appellant, I stated the following:

With reference to the College's representations, please provide me with information as to the reasons for your belief that additional responsive records exist.

In response, the appellant provided lengthy representations on a number of issues. I have carefully reviewed the appellant's representations, including the documents enclosed therewith. Although the appellant has a disagreement with the College on a number of issues related to this appeal and the request that formed the basis of the appeal in Order PO-2552, he did not directly address the reasonableness of the College's search for records responsive to provisions 1(a) and (c) of Order PO-2552.

Enclosed with the College's representations was a 35-item package with a covering index. Many of the items in this package included numerous documents. This package contained all of the records produced the appellant in response to Order PO-2552, including the records that the College claims are responsive to the two provisions of Order PO-2552 that are the subject of this appeal. In the Notice of Inquiry, the appellant was provided with a copy of the index for this

package of documents and asked to advise me if he did not have copies of any of these documents, as the College had advised that the appellant had copies of these documents already. The appellant did not ask to be provided with copies of the documents from this package.

Upon my review of the parties' representations, along with the records provided by the College in response to the two provisions at issue from Order PO-2552, I find that the appellant has not provided a reasonable basis for me to conclude that additional records exist beyond those already identified by the College. The package of documents that accompanied the College's representations in this appeal, not only includes numerous responsive records, but also includes numerous emails between College staff and between the College and the appellant. This package documents the significant effort made by the College to comply with the Order provisions in Order PO-2552.

I find that the College has provided sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records. The appellant has not provided a reasonable basis for concluding that additional responsive records exist. Accordingly, I find that the College has performed a reasonable search for responsive records.

ORDER:

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

Original Signed by: _____
Diane Smith
Adjudicator

_____ March 13, 2008