

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3678

Appeal PA16-172

Mohawk College of Applied Arts and Technology

December 13, 2016

Summary: Mohawk College of Applied Arts and Technology (Mohawk or the college) received a request under the *Freedom of Information and Protection of Privacy Act (FIPPA)* for copies of any complaints or negative comments received about a specific course. The college located responsive records, however, the appellant claimed that additional responsive records exist. This order upholds the college's search for records as reasonable.

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

OVERVIEW:

[1] Mohawk College of Applied Arts and Technology (Mohawk or the college) received a request under the *Freedom of Information and Protection of Privacy Act (FIPPA or the Act)*, the following request:

I am requesting access to general records (non-personal information) under [the *Act*].

[The college] had a course [the course] as part of the Computer Engineering Technology program. This course was taught by [name (the course instructor)].

I would like to obtain copies of any complaints or negative comments received about this course. These may be from students as course comments, but also please include any complaints received by any management of [the college].

This information could be from January 1, 2010 to December 26, 2015.

[2] The college issued a final access decision in which it granted partial access to 11 responsive records. The college advised that it severed portions of the records that are not responsive to the request, and portions that contain the personal information of other individuals. The college provided an index which identified the 11 responsive records and the basis for the severances made to each record.

[3] The requester (now the appellant) appealed the college's decision.

[4] During mediation, the appellant advised the mediator of his desire to pursue full access to Records 1 and 7 and of his belief that additional responsive records should exist.

[5] After further discussions between the mediator and each of the parties, the college issued a revised decision to the appellant granting full access to Record 1, partial access to Record 7 and providing additional information regarding the college's searches for responsive records.

[6] The appellant advised the mediator that he no longer wished to pursue additional access to the records that have already been disclosed. However, the appellant continued to believe that additional responsive records should exist.

[7] Since no further mediation was possible, the appellant asked for this appeal to be transferred to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry. On November 24, 2016, I conducted an oral inquiry by telephone with the college and the appellant.

[8] In this order, I uphold the college's search for responsive records as reasonable and dismiss the appeal.

DISCUSSION:

Did the college conduct a reasonable search for responsive records?

At the hearing, the college was represented by counsel and evidence was given orally by the following three college witnesses:

- the Corporate Policy & Risk Management Analyst (the analyst),

- the Email and Server Systems Specialist, and
- the Manager of Applications Development.

[9] The appellant represented himself at the hearing and was the only one to testify on his behalf.

[10] The Notice of Inquiry advised the parties that if they intend to rely on written documentation at the oral inquiry, they should provide this documentation to the adjudicator with a copy to the other party by no later than one week before the oral inquiry. Only the college provided this documentation, which consisted of 34 email chains and one document entitled "Discovery Attender Search Summary".¹

[11] The appellant testified first. He stated that he believes that additional responsive records exist for the following reasons:

- The appellant submits that the college has not disclosed all of the student surveys on the course and the course comments from college's eLearn system.²
- The college restricted its search to searching for official complaints and did not search for negative comments it had received about the course.
- The college's Manager of Student Rights and Responsibilities did not produce all of her responsive records.

[12] The college's oral evidence was provided by all three of its witnesses, listed above. Primarily, the analyst provided evidence as she was the co-ordinator of the search and sent the emails in the document package to the college staff concerning the searches to be undertaken.

[13] In her testimony the analyst reviewed each of the 35 documents in the college's document package, as well as specific information in Record 1 containing survey results.

[14] The analyst provided copies of the emails, where she quoted the appellant's request, and sought any responsive records of various college officials, including those of:

- the Dean of Engineering Technology and Skilled Trades (the dean)
- the Corporate Research Analyst at the Institutional Research Department

¹ Documents 1 to 35 in the document package.

² According to the college's website, eLearn is a learning management system (LMS) designed to create an online learning space for students where Mohawk students use eLearn to access course materials, assignments, quizzes, class discussions, grades and more.

- the Administrative Assistant to the former Vice-President of Academics
- the Director of Academic Operations
- the Course Instructor
- the Registrar
- the Manager of Student Rights and Responsibilities
- the Dean of Students
- the Manager of Operations and Service Enhancements

[15] The analyst also asked the Email and Server Systems Specialist to search the electronic records of the following nine college officials for records responsive to the request:³

- the Dean of Students
- the Manager of Student Rights and Responsibilities
- the former Director of Academic Operations
- the Registrar
- the Course Instructor
- the Dean of Engineering and Skilled Trades
- the Associate Dean of Engineering Technology
- the former Vice-President of Academics
- the Associate Dean of Electric and Computer Engineering

[16] The only person who was able to locate responsive records was the Manager of Student Rights and Responsibilities, who located 11 records,⁴ which were disclosed to the appellant with the college's decision letter.⁵

[17] After the appeal of the college's decision was filed by the appellant with this office, the analyst did a secondary comprehensive search utilizing the college's new

³ The analyst quoted the request in her email, Document 8 of the college's document package.

⁴ Document 17.

⁵ The responsive information in the 11 records was disclosed with severances of personal information of other individuals.

software.⁶ This software allowed the analyst to search directly for electronic records responsive to *FIPPA* requests.

[18] The analyst also emailed the Manager of Student Rights and Responsibilities⁷ and the Director, Libraries and Centre for Teaching and Learning⁸ asking the following questions:

Are you aware of any alternative ways that students can submit complaints about courses outside of the regular email driven complaints, the student complaint procedure or as per the 'Student Feedback on Teaching Policy?'

The appellant is advocating that there is an eLearn specific complaint mechanism – which IT⁹ has confirmed does not exist (unless you understand otherwise).

[19] The Manager of Student Rights and Responsibilities responded advising that she is not aware of a specific eLearn complaint platform.¹⁰ The Director, Libraries and Centre for Teaching and Learning responded that there is no complaint tool in eLearn.

[20] The analyst then made inquiries to the college's IT department, specifically to the Manager of Applications Development and the Senior Business Analyst, as to whether eLearn offers a specific complaint mechanism. They responded that they are not aware of a specific complaint mechanism in eLearn.

[21] The Senior Business Analyst also stated that such a mechanism is not mentioned in the eLearn website link that provides information to students for help and support. The Manager of Applications Development responded that course feedback is collected by the Institutional Research Department and not within eLearn.¹¹

[22] The analyst testified that the responsive records of the Institutional Research Department were included in the 11 records disclosed to the appellant.

[23] The analyst also explained that the college had two email systems, one referred to as @mohawkcollege.ca and another email system within the eLearn system. She stated that the eLearn system was decommissioned in late August 2015 and that she did not have the ability herself to search that system.

[24] The analyst stated that she had arranged for the @mohawkcollege.ca email

⁶ This software was purchased by the college after the college's decision letter in this appeal.

⁷ Document 21.

⁸ Documents 34 and 35.

⁹ Information Technology.

¹⁰ Document 22.

¹¹ Documents 24 to 26.

system to be searched in the initial searches prior to the decision letter. After the appeal was filed, she also arranged for the eLearn email system to be searched.¹² No responsive records were located in the eLearn email system.

[25] The analyst provided evidence that there were only three ways for students to provide the college with feedback on courses:

- contacting the Manager of Student Rights and Responsibilities directly,
- completing an optional end of course survey, which is managed through the Institutional Research Department, and
- via an email to a college official.

[26] The analyst testified that all three of these systems had been searched and that the only responsive records located had been disclosed to the appellant.

[27] The analyst referred specifically to Record 1, which contained the survey results for the course for 2010 through 2015. She pointed out that this record shows that only a small percentage of students completed the course survey, indicating that the completion of a course survey is optional, not mandatory as claimed by the appellant.

[28] In reply to the college's evidence, the appellant was concerned that any acronyms or short forms for the course name were not searched during the searches of email records. He could not provide any evidence of such acronyms or short forms. The appellant also insisted that eLearn had a mandatory survey requirement for students completing courses at the college. The appellant was also concerned that any item deleted from a college official's email trash folder would not have been located in the college's search.

[29] In response, the college submitted that there were not any acronyms or short forms for the course name and, even if there were, records that contained these would have been captured in the electronic and paper copy searches. It also repeated that the surveys completed by students at the end of courses was optional, not mandatory.

[30] Concerning items deleted from email trash folders, the college evidence was that any hard copy records or emails located on hard drives would have been located in its search.

Analysis/Findings

[31] Based on the extensive evidence of the college in particular, I find that the college has conducted a reasonable search for responsive records. The college has

¹² Documents 27 to 29.

explained in detail its efforts to locate responsive records, as set out above.

[32] In addition, the college has provided an explanation addressing the appellant's concerns. In particular, in responding to the appellant's concerns the college explained that:

- its end of course surveys were not mandatory as evidenced by the information in Record 1,
- it searched its record-holdings for all of the records mentioned in the appellant's request,
- numerous college officials in various departments were contacted to provide responsive records,
- the Manager of Student Rights and Responsibilities located all of the responsive records, copies of which were provided to the appellant,¹³
- no acronym or short form for the course exists and the course name was included in the searches,
- all email folders that may have held responsive records were searched, and
- besides the @mohawkcollege and eLearn email systems, both electronic and paper records were searched for responsive records.

[33] 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 24.¹⁴ 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.

[34] 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.¹⁵ To be responsive, a record must be "reasonably related" to the request.¹⁶

[35] 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

¹³ Records 1 to 11, less any severances for non-responsive information and for personal information as noted above.

¹⁴ Orders P-85, P-221 and PO-1954-I.

¹⁵ Orders P-624 and PO-2559.

¹⁶ Order PO-2554.

are reasonably related to the request.¹⁷

[36] 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.¹⁸

[37] 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.¹⁹

[38] In this appeal, based on my consideration of both the college's and the appellant's evidence, I find that the college has conducted a reasonable search for responsive records. As detailed above, the college has conducted a comprehensive search throughout its record holdings for responsive records.

[39] I find that the college has provided sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records. I also find that the appellant has not provided a reasonable basis for me to conclude that additional responsive records exist.

[40] Accordingly, I am upholding the college's search for responsive records and dismissing the appeal.

ORDER:

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

Original Signed by: _____
Diane Smith
Adjudicator

December 13, 2016 _____

¹⁷ Orders M-909, PO-2469 and PO-2592.

¹⁸ Order MO-2185.

¹⁹ Order MO-2246.