

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4318

Appeal PA21-00147

Algonquin College of Applied Arts and Technology

October 28, 2022

Summary: The Algonquin College of Applied Arts and Technology received a request for access to records relating to a specified student's withdrawal from its Veterinary Technician program in 2010. The college conducted a search and granted full access to the responsive record it located. The requester appealed the college's decision on the basis that additional records should exist. In this order, the adjudicator finds that the college conducted a reasonable search for responsive records and dismisses the appeal.

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

Order Considered: Order M-909.

OVERVIEW:

[1] This order disposes of the issues arising from a request for access made to the Algonquin College of Applied Arts and Technology (the college) under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requester sought access to records relating to the withdrawal of a specified student from the Veterinary Technician program (the program) in 2010. The request was for the following:

1. PPW/A (Permanent Program Withdraw/Academic) [specified student number]
2. Written request for program withdrawal (submitted by Student March, 2010)

3. Any/all documentation pertinent to [specified student number] withdrawal from Veterinary Technician Program (Mar/2010).

[2] The college conducted a search and located an email chain, which was disclosed to the requester in full.

[3] Upon receipt of the disclosure package from the college, the requester stated that they believe records should exist in addition to those disclosed by the college. In particular, the requester states that a PPW/A record for the student's withdrawal should exist.

[4] The requester, now the appellant, appealed to the Information and Privacy Commissioner (IPC) and a mediator was appointed to explore resolution.

[5] The mediator spoke to the appellant and the college. The appellant advised that they wish to pursue access to additional records that they believe should exist. The college conducted a further search for responsive records and advised the mediator that it had not located additional responsive records. The college explained that there were no additional records due to the fact that the specified student was withdrawn from the program at the request of the academic department.

[6] The appellant advised that they believe additional records should exist and, as a mediated resolution was not achieved, the appeal was transferred to the adjudication stage, where an adjudicator may conduct an appeal.

[7] The adjudicator originally assigned to the appeal decided to conduct an inquiry and sought and received representations from both parties and reply representations from the college. The adjudication of the appeal was then transferred to me. I decided that the appellant ought to be provided with an opportunity to respond to the college's reply representations, which included affidavits from the individuals who had conducted searches for responsive records. I therefore invited and received sur-reply representations from the appellant.

[8] At each stage of the inquiry, the parties' representations were shared in accordance with section 7 of the IPC's *Code of Procedure* (the *Code*) and Practice Direction 7.

[9] In this order, I find that the college conducted a reasonable search for records responsive to the appellant's request and I dismiss the appeal.

DISCUSSION:

Did the college conduct a reasonable search for responsive records?

[10] 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; and

...

- (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).

[11] Where a requester claims that additional records exist beyond those identified by an institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24 of the *Act*.¹ 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 a further search for records.

[12] 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.²

[13] 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;³ that is, records that are "reasonably related" to the request.⁴

Parties' representations

[14] The college's position is that it has conducted multiple searches to locate records responsive to the appellant's request. The college states that staff in the Registrar's Office conducted the initial search and located one responsive record, which was an email chain. Additional searches were carried out by staff in the Veterinarian Technology department. The college states that its Risk Manager, the former Chair of the Veterinarian Technology program, the acting Chair in the Allied Health programs,

¹ Orders P-85, P-221 and PO-1954-I.

² Order MO-2246.

³ Orders P-624 and PO-2559.

⁴ PO-2554.

the Dean of the Faculty of Health, Public Safety and Community Studies and the former Manager of Information Security and Privacy all confirmed that their searches did not locate any responsive records.

[15] The college explains that the specified student's withdrawal from the program in 2010 was not initiated by the student. The college states that staff in the records department explained that the specified student was withdrawn from the program at the request of the department and that this is considered a college-initiated program withdrawal. The college states that the email request from the department to withdraw the student has been disclosed to the appellant and it has also provided the appellant this explanation for why there are no additional records.

[16] In their initial representations, the appellant provides context for their request and sets out their broader concerns regarding the specified student's withdrawal from the program. The appellant states that in March 2010, staff in the Veterinary Technology department asked the Registrar's Office to permanently withdraw the student from the program. The appellant submits that they believe that this withdrawal request and the reasons for the withdrawal should be set out in a letter from the academic department to the Registrar's Office, dated March 9, 2010.

[17] The appellant refers to sections of the college's handbook and identifies three documents that they submit should exist as a matter of due process when a student is withdrawn from a program. The appellant submits that the college has avoided producing these documents in a number of other proceedings, including proceedings in the Human Rights Tribunal of Ontario (HRTO). The appellant asks the IPC to make findings regarding irregularities in the withdrawal process based upon the college's submission that no additional responsive records have been identified.

[18] In its reply representations, the college submits that the appellant's request was made in February 2021, which is more than ten years after the specified student was enrolled at the college. The college submits that records that could have existed during the student's enrollment may no longer exist given the passage of time since their withdrawal from the program.

[19] The college describes the searches that were conducted in response to the appellant's request, including the search terms used to conduct the searches on its student information system, the documentary repository and on network drives.

[20] The college provided an affidavit from the college's risk manager that sets out the instructions to conduct searches that they provided to staff in different departments. The college also submitted affidavits from the Assistant Registrar in Enrollment Systems Operations, the Associate Director of IT Operations and the Chair of Wellness Research and Innovation and Academic Chair of the Veterinary Technician program. In these affidavits the staff describe the college's usual search procedures and the searches carried out in response to the appellant's request.

[21] In sur-reply representations, the appellant submits that the affidavits from the college staff do not include an affidavit from the academic staff member who instructed the registrar's office to withdraw the specified student. The appellant cites an HRTO file from 2017 and states that this application was only four years before they submitted their request under the *Act*. The appellant argues that the fact that the college cannot now locate those responsive records is evidence of its mishandling of academic records.

[22] In conclusion, the appellant submits that "the manner in which the college processed the request is consistent with the *Act*. The college search to locate records responsive to the request is reasonable."

Analysis and findings

[23] For the reasons that follow, I find that the college has discharged its responsibilities under section 24 of the *Act* and conducted a reasonable search for all records responsive to the appellant's request.

[24] The college submits, and the appellant agrees, that the college's search for responsive records was reasonable. However, given the context of this appeal, this agreement between the parties does not conclude the matter and I have considered the evidence from the college about the searches it carried out in response to the appellant's request.

[25] In Order M-909, Adjudicator Laurel Cropley considered the equivalent provision to section 24 in the municipal version of the *Act* and summarised an institution's obligation to conduct a reasonable search for records, as follows:

In my view, an institution has met its obligations under the *Act* by providing experienced employees who expend a reasonable effort to conduct the search, in areas where the responsive records are likely to be located. In the final analysis, the identification of responsive records must rely on the experience and judgment of the individual conducting the search.

[26] I adopt this approach in this appeal. From my review of the college's representations and the affidavits of its staff, I am satisfied that the college has demonstrated that experienced employees have expended reasonable effort to conduct searches in different college departments where responsive records are likely to be located. The college has provided evidence from individuals in the registrar's office, the academic department where the specified student was enrolled and the IT department, who have knowledge of the subject matter of the request and the college's search procedures. The evidence includes descriptions of the types of records searched in the student information system, the documentary repository and on network drives, and the search terms used to identify responsive records.

[27] Notwithstanding that the appellant agrees that the college's search for

responsive records was reasonable, they submit that the college has not provided an affidavit from individual holding the position of program chair at the time that the student was withdrawn from the program. I find the college has provided sufficient information to demonstrate that it has discharged its duty under the *Act* without an affidavit from the program chair at the relevant time. The college has provided an affidavit from the current chair in the academic department for the program in which the student was enrolled. I am satisfied that the individuals who conducted the college's searches are familiar with the subject matter of the request.

[28] In light of the appellant's representations, however, I am not satisfied that there is a reasonable basis for the appellant's continued belief that additional responsive records exist in respect of the specified student's withdrawal from the program.

[29] The appellant submits that, as a matter of due process, additional documents *should* exist. From my review of the entirety of the appellant's representations, including their submission that the college has conducted a reasonable search for the records, the appellant relies upon the "missing records" *not* being in existence as the basis for advancing broader concerns regarding the college's processes.

[30] This appeal to the IPC is not the appropriate forum for the determination of the broader concerns raised by the appellant. The validity or otherwise of the specified student's withdrawal from the program and any issues pertaining to the regularity of the college's processes are not for me to determine in this appeal. Accordingly, I make no finding concerning the college's explanation for how or by whom the specified student's withdrawal from the program was initiated or documented.

[31] However, from my review of the appellant's representations and the circumstances of this appeal, I find that they provide no reasonable basis for concluding that responsive records exist in addition to those already disclosed by the college.

[32] In its reply representations, the college states that the specified student was enrolled at the college from 2006 to 2010. The college submits that records that could have existed at the time the student was enrolled may no longer exist given the passage of time. The appellant cites an HRTO application in their sur-reply representations. They submit that they requested the records from the college in the HRTO application that took place in 2017, which was only four years prior to the access request made under the *Act* in 2021. I understand from this submission that the appellant infers that additional records existed at the time of the HRTO application. I also note the appellant's submission that the college has "avoided inquiry" regarding the records in other proceedings, including before the HRTO.

[33] Apart from the citation for the HRTO application, the appellant has not provided me with any other information regarding the relevance of the HRTO application to the requested records. There is no evidence before me that the records sought by the appellant in this appeal were disclosed or otherwise formed part of the earlier

proceedings referred to by the appellant in their representations. In particular, there is no evidence before me that the additional records sought by the appellant were part of the HRTO application in 2017 or that they existed at that time. The appellant simply states that they made a request for the records as part of the HRTO application.

[34] I am not persuaded that the fact of the application before the HRTO or that an earlier request for the records was made as part of that application is evidence of the existence of additional responsive records in 2017.

[35] Accordingly, I accept the college's explanation that records that could have existed at the time of the specified student's enrolment may no longer exist due to the passage of time. As noted above, the *Act* does not require an institution to prove with certainty that additional records do not exist, only to demonstrate that it has made a reasonable effort to identify and locate responsive records. I have found that the college has discharged its obligation under the *Act*.

[36] Accordingly, I find that the college's search for records responsive to the appellant's request was reasonable and I uphold it.

ORDER:

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

Original Signed by: _____
Katherine Ball
Adjudicator

_____ October 28, 2022