

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4463

Appeal PA21-00511

Ministry of Public and Business Service Delivery

November 30, 2023

Summary: The appellant made a continuing access request under the *Act* to the ministry for the current business contact information for the heads of two named colleges, clarified as the chairs of the boards of governors. The ministry issued a decision to the appellant denying access to the requested information under section 22(a), claiming the information is publicly available. The appellant appealed the ministry's decision. During mediation, the appellant claimed the ministry failed to fulfil its obligations under sections 31(b) (publication of information re institutions), 32(c) (publication of types of records of the institution), 35(1) (documents made available), and 36(2) (annual review) of the *Act*. In this order, the adjudicator finds the discretionary exemption in section 22(a) does not apply to the requested information and orders the ministry to disclose it to the appellant. Accordingly, she finds the appellant's request qualifies for continuing access under section 24(3) of the *Act* and orders the ministry to provide the appellant with a proposed schedule for continuing access. In addition, the adjudicator finds the ministry fulfilled its obligations under sections 31(b), 32(c), 35(1) and 36(2) of the *Act*.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.F.31, sections 2 (definition of "head"), 22(a), 24(3), 31(b), 32(c), 35(1), 36(2), and 62(1), and Regulation 460 Schedule. *Ontario Colleges of Applied Arts and Technology Act, 2002*, S.O. 2002, Chapter 8, Schedule F, Regulation 34/03, sections 4(6) and 4(8).

OVERVIEW:

[1] The appellant filed a request under the *Freedom of Information and Protection of*

Privacy Act (the *Act*) with the Ministry of Public and Business Service Delivery¹ (the ministry) for the following information:

...access to the accurate, complete and up-to-date business contact information including the business telephone number of (1) the head of the St. Lawrence College of Applied Arts and Technology and (2) the head of the Collège d'arts appliqués et de technologie La Cité collégiale, namely the chairs of the boards of governors of these two colleges.

This access request shall, if granted, continue to have effect for a period of two years. For clarity, this is a request for continuing access to record under subsection 24(3) of the FIPPA.

The appellant's time frame for the request was September 10, 2021 to September 10, 2023.

[2] The ministry issued a decision to the appellant denying him access to the records in full. The ministry claimed the exemption in section 22(a) (information publicly available) and advised,

...access cannot be granted under section 22(a) as the information you are requesting is publicly available in the Directory of Institutions and no additional records exist. As a result, your file is being closed. You may obtain the information you are requesting by following the link below: <https://www.ontario.ca/page/directory-institutions>. Additionally, below is the contact information I shared with you on August 23, 2021, on how to contact the Board Chairs of the institutions in your request.

[3] The ministry further stated,

Under section 62(1) of FIPPA, each institution may delegate authority to another officer or institution. The Directory of Institutions contains the most up-to-date information provided by the institutions. If you believe the Directory of Institutions is not up-to-date or that the institutions in question have improperly delegated their authority or have not provided the Ministry of Government and Consumer Services with the appropriate information, you may contact the institution directly or raise the issue with the Information and Privacy Commissioner. Regarding your request for continuing access under section 24(3), we are denying your request since the records are publicly available.

[4] The appellant appealed the ministry's decision to the Office of the Information and Privacy Commissioner of Ontario (the IPC).

¹ At the time of the request, the ministry was the Ministry of Government and Consumer Services.

[5] During mediation, the appellant raised the application of sections 31(b) (publication of information re institutions), 32(c) (publication of types of records of the institution), 35(1) (documents made available), and 36(2) (annual review) of the *Act*. Accordingly, these sections were added to this appeal. The appellant confirmed his interest in proceeding with the appeal to obtain access to the information he requested and to review the ministry's compliance with the *Act*.

[6] Mediation did not resolve the issues and the appeal was transferred to the adjudication stage of the appeals process, in which an adjudicator may conduct an inquiry under the *Act*. The adjudicator originally assigned to the appeal decided to conduct an inquiry. The adjudicator sought and received representations from the ministry and appellant. Representations were shared between the parties in accordance with *Practice Direction Number 7* of the IPC's *Code of Procedure*.

[7] The appeal was then transferred to me to complete the inquiry. I reviewed both parties' representations² and decided I did not need any further representations.

[8] In the discussion that follows, I find the discretionary exemption in section 22(a) does not apply to the requested information and order the ministry to disclose the contact information of the heads of St. Lawrence and La Cité to the appellant. I also find the appellant's request qualifies for continuing access under section 24(3) of the *Act* and order the ministry to provide the appellant with a proposed schedule for continuing access. In addition, I find the ministry fulfilled its obligations under sections 31(b), 32(c), 35(1) and 36(2) of the *Act*.

ISSUES:

- A. Does the discretionary exemption at section 22(a) of the *Act* for published information or information available to the public apply to the requested information?
- B. Is continuing access available under section 24(3) of the *Act*?
- C. Has the ministry met the requirements under section 31(b), 32(c), 35(1) and 36(2) of the *Act* by publishing certain information and making it available?

² I note there were a number of delays in the appellant's submission of his sur-reply representations. The appellant was granted a number of extensions, all of which he failed to meet. The appellant's sur-reply representations were submitted late and the adjudicator made it clear to the appellant that she would not consider any late representations. The appellant's delays and failure to adhere to deadlines are unfortunate. However, I confirm I reviewed all of the representations he submitted.

DISCUSSION:

Issue A: Does the discretionary exemption at section 22(a) of the *Act* for published information or information available to the public apply to the requested information?

[9] Section 22 of the *Act* allows an institution to withhold requested information if the information has been published or is already available to the public, or if it is soon to be published. This exemption is intended to allow an institution to refer a requester to a publicly available source of information, and to protect information that has not yet been published.

[10] Section 22(a) states:

A head may refuse to disclose a record if,

the record or the information contained in the record has been published or is currently available to the public.

[11] Section 22(a) is intended to provide an institution with the option of referring a requester to a publicly available source of information where there is a more convenient way to access the information. It is not intended to be used to avoid an institution's obligations under the *Act*.³

[12] In order to rely on the section 22(a) exemption, the institution must take adequate steps to ensure the record they allege is publicly available is the same record that was requested.⁴

[13] Section 22(a) does not permit an institution to withhold a small amount of publicly-available information from a larger record, particularly where the entire record is otherwise subject to disclosure under the *Act*. A requester should not be required to compile small pieces of information from a variety of sources to obtain a complete version of a record that could be disclosed.⁵

[14] The institution must establish the record is available to the public generally, through a *regularized system of access*, such as a public library or a government publications centre.⁶

[15] To establish that a regularized system of access exists, the institution must show that (1) a system exists, (2) the record is available to everyone, and (3) there is a

³ Orders P-327, P-1114 and MO-2280.

⁴ Order MO-2263.

⁵ Order PO-2641.

⁶ Orders P-327, P-1387 and MO-1881.

pricing structure applied to all who wish to obtain the information.⁷

[16] The appellant seeks access to the business contact information of the head of St. Lawrence College of Applied Arts and Technology (St. Lawrence) and the head of the Collège d'arts appliqués et de technologie La Cité collégiale (La Cité).

[17] The ministry submits the business contact information of these parties is publicly available via the Directory of Institutions (the directory).⁸ The ministry submits the directory contains a list of the addresses and telephone numbers of the contacts for the head of each institution under the *Act*. Given these circumstances, the ministry submits the information requested is publicly available and section 22(a) applies.

[18] The ministry also submits it reached out to St. Lawrence and La Cité to obtain additional information for the appellant to use to contact the head of each institution. The ministry provided the contact information for the chairs of both institutions to the appellant in its decision letter dated September 17, 2022. The ministry notes this information can also be found on the websites of St. Lawrence and La Cité. The ministry also provided the contact information for both chairs in its representations. However, I note the contact information for each of the chairs provided is through the care of an executive assistant or a coordinator.

[19] The appellant submits the exemption at section 22(a) does not apply to the information he requested. The appellant submits the "accurate, complete and up-to-date business contact information of the chairs of board of governors" for St. Lawrence and La Cité have not been published and are not currently available to the public. The appellant submits he seeks access to the contact information of the incumbent board chairs of the two colleges, not the business identity information of a contact (such as an executive assistant) for the chairperson nor the general contact information of the colleges. The appellant confirms he does not seek access to the business identity information of a contact for the college board chair; rather, he seeks the specific contact information of the incumbent board chairs of the two colleges.

[20] The appellant submits the directory does not contain the college board chair's own contact information. Rather, the directory only has the name of the college, the title of the college's Freedom of Information (FOI) contact, the college's generic phone and fax numbers, and the college's address. The appellant submits none of this information is responsive to his request.

[21] Based on my review of the parties' representations, I find section 22(a) does not apply to the contact information of the chairs of the board of governors of the two colleges identified in the appellant's request. The ministry referred to the directory in its representations. However, as the appellant states, the directory does not contain the

⁷ Order MO-1881.

⁸ The ministry provided the following link to the directory: <https://www.ontario.ca/page/directory-institutions>.

contact information of the chairs of the board of governors of either college. Rather, the directory contains the general contact information for the colleges and their FOI contact information. Furthermore, I confirm neither college's website has the direct contact information for its chair of the board of governors. In the case of St. Lawrence, the contact information is for the Executive Assistant to the Board of Governors. The contact information for La Cité is for the Coordinator in the Office of the President and Board of Directors. Therefore, contrary to the ministry's representations, the contact information for the colleges' chair is not publicly available as per section 22(a) of the *Act*.

[22] Given these circumstances, I find the ministry failed to establish the application of the section 22(a) discretionary exemption to the contact information for the chairs of St. Lawrence and La Cité's Board of Governors. Because the ministry has not claimed any other exemption to withhold this contact information and I find the information would relate to the chairs in a professional or official capacity,⁹ I will order the ministry to disclose it to the appellant.

Issue B: Is continuing access available under section 24(3) of the Act?

[23] Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for continuing access to records. The relevant portions of this section state, in part:

(3) The applicant may indicate in the request that it shall, if granted, continue to have effect for a specified period of up to two years.

(4) When a request that is to continue to have effect is granted, the institution shall provide the applicant with,

(a) a schedule showing dates in the specified period on which the request shall be deemed to have been received again, and explaining why those dates were chosen; and

(b) a statement that the applicant may ask the Commissioner to review the schedule.

(5) This Act applies as if a new request were being made on each of the dates shown in the schedule.

[24] The right to request continuing access should be interpreted broadly, and not restricted to records produced *in series*.¹⁰

⁹ See section 2(3) of the *Act*, which states, "Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity."

¹⁰ Order PO-2730.

[25] The degree of access to be given (i.e. whether exemptions/exclusions should be claimed) on each scheduled access date is to be decided at that time – as mandated by section 24(5).¹¹

[26] A possible exception to the application of section 24(3) arises in the case of a request where it is impossible or highly unlikely that further responsive records would come into existence during the continuing access period. In that case, the institution would have the option of refusing the continuing access request or issuing a schedule with very few dates on it.¹²

[27] A second exception arises from the inclusion of the words *if granted* in section 24(3); if access is fully denied in response to the initial request, these words indicate that section 24(3) does not apply.¹³

[28] The ministry takes the position that continuing access is not available under section 24(4) of the *Act* because of the application of section 22(a) of the *Act*. However, I have found section 22(a) does not apply to the information requested. Accordingly, I will consider whether continuing access under section 24(4) is available to the appellant.

[29] In his representations, the appellant takes the position that the boards of governors at the colleges are shuffled annually. The appellant bases his claim on section 4(8) of Ontario Regulation 34/03 of the *Ontario Colleges of Applied Arts and Technology Act, 2002*,¹⁴ which states the members of a board of governors of St. Lawrence and La Cité are required to take office on September 1 of the year of their appointment or election. The appellant claims the contact information of the chairs of the boards of governors would be updated every year.

[30] The appellant seeks access to the contact information of the chairs of the boards of governors at St. Lawrence and La Cité for an access period of two years, thereby raising the application of section 24(3). As stated above, there are two exceptions to the application of section 24(3). The first exception arises in the case of a request where it is impossible or highly unlikely that further responsive records would come into existence during the continuing access period. I find this exception does not apply. The appellant claims the board of governors at the colleges are shuffled annually, with the board members taking office on September 1 of the year of their appointment. However, section 4(8) of Ontario Regulation 34/03 of the *Ontario Colleges of Applied Arts and Technology Act, 2002*, does not actually state the board of governors is shuffled annually. Section 4(8) of the regulation states,

¹¹ Order PO-2730.

¹² Order PO-2730.

¹³ Order PO-2730.

¹⁴ S.O. 2002, Chapter 8, Schedule F.

The members of a board of governors shall take office on the 1st day of September in the year of their appointment or election, as the case may be.

[31] I refer the parties to section 4(6) of Ontario Regulation 34/03 of the *Ontario Colleges of Applied Arts and Technology Act, 2002* which states,

A member of a board of governors appointed under subsection (2) or elected under clause (1) (c), other than a member elected by the students, shall hold office for a term not to exceed three years and shall not serve for more than six years consecutively but is eligible for reappointment or re-election, as the case may be, after two years absence from the board for successive terms not to exceed six years in total.

[32] Therefore, it appears the chairs of the boards of governors at the colleges may hold office for up to six years consecutively. Neither party provided confirmation as to when the chairs of the boards of governors at St. Lawrence and La Cité were elected or when their terms expire. Given these circumstances, it is not impossible or highly unlikely that further responsive records (i.e., the contact information of the current chair of the board of governors) would come into existence during the continuing access period of two years.

[33] The second exception arises where access to the requested information is fully denied. However, I found section 22(a), which is the sole exemption claimed by the ministry, does not apply to the information. The ministry did not claim any other discretionary exemption to deny the appellant access to the record and I find no mandatory exemption is applicable. Given these circumstances, I find the second exception to the application of section 24(3) does not apply.

[34] As neither exception to section 24(3) applies, I find the appellant's request qualifies for continuing access under section 24(3), (4), and (5) and I will order the ministry to provide a proposed schedule to the appellant as contemplated by section 24(4). I note there may not be a shuffle of the boards of governors at the colleges during the continuing access period. If this is the case, the ministry may confirm this in its decision letter and advise that further responsive records will not be created during the continuing access period.

Issue C: Has the ministry met the requirements under section 31(b), 32(c), 35(1) and 36(2) of the Act, by publishing certain information and making it available?

[35] During mediation, the appellant raised concerns that the ministry failed to discharge its responsibilities pursuant to sections 31(b), 32(c), 35(1) and 36(2) of the *Act*. These sections state:

31. The responsible minister shall cause to be published annually a compilation listing all institutions and, in respect of each institution, setting out,

(b) the name and office of the head of the institution;

32. The responsible minister shall cause to be published annually an indexed compilation containing,

(c) the title, business telephone number and business address of the head of each institution;

35(1) The responsible minister shall cause the materials described in sections 31, 32 and 45 to be made generally available for inspection and copying by the public and shall cause them to be made available to the public on the Internet or in the reading room, library or office designated by each institution for this purpose.

36(1) Every head shall provide to the responsible minister the information needed by the responsible minister to prepare the materials described in sections 31, 32 and 34.

(2) Every head shall conduct an annual review to ensure that all the information the head is required to provide under subsection (1) is provided and that all such information is accurate, complete and up to date.

[36] These sections of the *Act* outline the requirements for a responsible minister (and in some cases, a head of an institution) related to publishing certain information and making it available.

[37] The ministry claims it has fulfilled its obligations under sections 31, 32, 35 and 36 of the *Act*. The ministry submits that under section 62 of the *Act*, the head may delegate their powers to an officer of the institution, subject to any conditions and requirements as set out in the delegation. In the case of the colleges identified in the appellant's request, the ministry submits there is a need for the chairs of the boards to delegate their duties and responsibilities under the *Act* because the chairs do not work for the colleges on a day-to-day basis. As such, the ministry submits the chairs do not have direct contact information for the purposes of exercising their duties under the *Act*. In these circumstances, the chairs delegate their authority to the office of the Freedom of Information Coordinator. The ministry submits the contact information of those with the delegated authority amounts to the contact information of the head because these individuals have the delegated responsibility to fulfil the head's obligations under the *Act*.

[38] The ministry submits the manner in which the colleges provide this information is

consistent with the information provided for the ministries and their respective heads. As noted in section 2 of the *Act*, the head of each ministry is the Minister presiding over the ministry. The ministry submits the information provided in the Directory of Institutions is not the direct contact information of the relevant Minister; rather, the director provides the information of the official with the delegated authority to carry out the Minister's responsibilities under the *Act* as the head of the institution. Similar to a Minister of a ministry, the ministry submits the chairs of the board of the colleges delegated their responsibilities under the *Act* to specific individuals.

[39] In light of these circumstances, the ministry submits it has included the relevant contact information in the directory for the individual with the delegated authority to fulfil each college's obligations under the *Act*. With regard to section 31(b), the ministry submits the schedule to Regulation 460 of the *Act* contains the name of the head of the institution and the directory contains the office of the head of the institution. The ministry submits the heads of St. Lawrence and La Cité have delegated their authority to the Freedom of Information Coordinator. As such, the contact information for the Freedom of Information Coordinator's office is the appropriate information to include in the directory.

[40] With regard to section 32(c), the ministry submits the head of each college has delegated their authority to the Freedom of Information Coordinator. As such, the directory will contain the contact information of the office of the Freedom of information Coordinator, thereby meeting the requirements of section 32(c).

[41] The ministry submits the information under sections 31 and 32 are publicly available for inspection and copy via the directory, thereby meeting the requirement in section 35(1). Finally, the ministry claims it fulfils its obligations under section 36(2) by ensuring the indexes are kept up to date as institutions provide new updated information.

[42] The appellant claims the ministry failed to fulfil its obligations under the *Act* because it excluded the business identity information of the "rightfully designated heads from the prescribed annual compilations that are subject to public inspection and copying." The appellant makes a number of submissions on this matter in which he offers novel interpretations of the relevant sections of the *Act*. I have reviewed all of the appellant's submissions but will only summarize those relevant to this issue. The appellant claims the head of the institution's own contact information must be published to fulfil the ministry's obligations under the *Act* and the publication of the Freedom of Information Office's information is insufficient.

[43] The appellant also claims the ministry misapplied section 62(1) and has delegated the head's authority to abdicate its responsibilities under the *Act*. The appellant further claims the delegation of authority does not make the delegated individuals (i.e. the Freedom of Information Coordinators) *heads* of the institution and the delegation of power does not authorize or transfer the power of the head. The

appellant did not provide any evidence to support this claim other than his own interpretation of section 62(1). There is no evidence to support the appellant's claim that the heads of St. Lawrence and La Cité improperly delegated their authority to the relevant Freedom of Information Coordinator. The ministry submits the heads of both colleges did so properly and as such, the Freedom of Information Coordinator's office is the appropriate contact to be listed in the directory and is properly reported pursuant to its obligations under the *Act*.

[44] I have reviewed the parties' representations and the directory. Upon this review, I find the ministry satisfied its obligations under sections 31(b), 32(c), 35(1) and 36(2) of the *Act*. Specifically, the schedule to Regulation 460 of the *Act* contains a list of the institutions and the job title of the head of the institution and the Directory of Institutions contains the name and contact information for the head (or delegated head) of the two colleges in fulfilment of the ministry's obligations under section 31(b) of the *Act*. In addition, the directory contains the title, business information and address of the head (or delegated head) of the two colleges pursuant to sections 32(c) and 35(1) of the *Act*. I find the contact information provided in Regulation 460 and the directory are sufficient for an individual to contact in relation to issues relating to the *Act*. While the appellant claims the contact information should be associated with a specifically identified person rather than an office, I find the contact information is for the Freedom of Information Coordinator's office and that satisfies the requirements of the *Act*. Finally, I am satisfied the ministry updates the information for the colleges as the institutions provide new updated information in fulfilment of section 36(2) of the *Act*.

[45] It appears the appellant takes the position the ministry cannot have fulfilled these obligations because the delegation of authority under section 62 of the *Act* was improper. However, there is no evidence to support this claim. Given these circumstances and upon review of the materials before me, I find the ministry has satisfied its obligations under sections 31(b), 32(c), 35(1) and 36(2) of the *Act*.

ORDER:

1. I order the ministry to disclose the business contact information for the chairs of the boards of governors of St. Lawrence College of Applied Arts and Technology and Collège d'arts appliqués et de technologie La Cité collégiale.
2. I find the appellant's request qualifies for continuing access. I order the ministry to provide a proposed schedule for continuing access to the appellant as contemplated by section 24(4), no later than **December 21, 2023**. For greater certainty, the ministry may charge applicable fees under the *Act* for each access decision under the continuing access regime.

3. I find the ministry has fulfilled its obligations under sections 31(b), 32(c), 35(1) and 36(2) of the *Act*.
4. In order to verify compliance with order provisions 1 and 2, I reserve the right to require the ministry to provide me with a copy of information disclosed to the appellant and the proposed schedule for continuing access.

Original signed by: _____

Justine Wai
Adjudicator

_____ November 30, 2023