

Information and Privacy Commissioner,  
Ontario, Canada



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

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## INTERIM ORDER PO-4512-I

Appeal PA21-00547

Sheridan College Institute of Technology and Advanced Learning

April 22, 2024

**Summary:** The appellant sought access to all notes and correspondence from two Associate Deans of the college pertaining to him. The college granted the appellant full access to correspondence it located from one Associate Dean and said that it did not identify other responsive records. The appellant challenged the reasonableness of the college's search for responsive records.

In this interim order, the adjudicator finds that, aside from one aspect of the request, the college did not conduct a reasonable search for responsive records. The adjudicator orders the college to conduct a further search and issue a new access decision.

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

### OVERVIEW:

[1] The appellant made an access request to Sheridan College Institute of Technology and Advanced Learning (the college) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for:

“all notes that pertained to me from [Associate Dean 1] (the Associate Dean of Student Affairs) and [Associate Dean 2] (the previous Associate Dean of [specified faculty]). I had a [specified meeting] with multiple people, including both of them, and was also in contact with and had meetings with

[Associate Dean 2] multiple other times over the course of my time at Sheridan”.

[2] In response, the college issued a decision describing the appellant’s access request as one for “notes and correspondence.” The college’s decision granted the appellant complete access to 7 records, all emails from Associate Dean 2 sent in two different years. In its decision, the college stated that there were no responsive records with respect to Associate Dean 1 or from the specified meeting.

[3] The appellant was not satisfied with the college’s decision and appealed it to the Information and Privacy Commissioner of Ontario (the IPC).

[4] The IPC attempted to mediate the appeal. During the mediation, the appellant asserted that additional records should exist. The appellant provided copies of email communications that he believed should have been identified as responsive records; these email communications were shared with the college. The college confirmed that no further responsive records existed and maintained its position that it conducted a reasonable search.

[5] A mediated resolution was not possible, and the appeal proceeded to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry. An IPC adjudicator sought and received representations from the parties and shared them in accordance with the IPC’s *Code of Procedure* and *Practice Direction 7*. The appeal was then transferred to me to continue the inquiry. I reviewed the records and the materials exchanged in the inquiry and determined that I did not need to hear from the parties further before making my decision.

[6] For the reasons that follow, I do not uphold the reasonableness of the college’s search and I order the college to conduct a further search for responsive records and to issue a new access decision to the appellant.

## **DISCUSSION:**

[7] The sole issue in this appeal is whether the college conducted a reasonable search for responsive records as required by section 24 of the *Act*.<sup>2</sup> 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.<sup>3</sup>

[8] 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

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<sup>1</sup> Representations of both parties contained confidential portions which were withheld from the other party in accordance with the *Practice Direction 7*.

<sup>2</sup> Orders P-85, P-221 and PO-1954-I.

<sup>3</sup> Orders M-909, PO-2469 and PO-2592.

made a reasonable effort to identify and locate responsive records;<sup>4</sup> that is, records that are “reasonably related” to the request.<sup>5</sup>

[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.<sup>6</sup>

## **The parties’ representations**

### ***College’s representations***

[10] The college submits that it conducted a thorough search in response to the appellant’s request and that the appellant did not provide a reasonable basis to conclude that additional responsive records exist. The college explains that the two Associate Deans referenced in the request were no longer at the college when it received the appellant’s access request. In their absence, the college’s Manager of Privacy, Records & Information Management engaged two members of the IT Security Team to assist with the request. A member of the IT Security Team conducted a search for correspondence and documentation from the two Associate Deans pertaining to the appellant using the Microsoft eDiscovery tool. The results of the search were disclosed to the appellant. As of the time of the inquiry, the Manager of Privacy, Records & Information Management who responded to the access request was no longer at the college. Another member of the college’s administration dealt with the appeal.

### ***Appellant’s representations***

[11] The appellant disputes that the college’s search was reasonable on the basis that responsive records from Associate Dean 1 should exist. The appellant says that he has, including through a previous access request made to the college, multiple emails to and from Associate Dean 1 or related to Associated Dean 1 that relate to him. In support of his assertion, the appellant provides a copy of an email authored by Associate Dean 1 that he argues is responsive to the request.

[12] The appellant also submits that additional records from Associate Dean 2 should exist. In support of his assertion, the appellant provides examples of emails already in his possession from Associate Dean 2 that were not identified by the college as responsive records but ought to have been: the first email was addressed to the appellant and the second was copied to the appellant. The appellant also says that he had meetings with Associate Dean 2 throughout his time at the college. The appellant highlights that the college did not produce any records for one specific year, a year when the appellant exchanged many emails and had multiple meetings with Associate Dean 2 about important issues. Further, the appellant notes that the correspondence the college

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<sup>4</sup> Orders P-624 and PO-2559.

<sup>5</sup> Order PO-2554.

<sup>6</sup> Order MO-2246.

disclosed to him covers mundane topics and not the important topics that he raised with Associate Dean 2.

[13] With respect to the specified meeting, the appellant submits that records from that meeting ought to exist because he raised an important topic at the meeting, it was attended by two senior college officials, and was later discussed on multiple occasions by an office within the college and two college officials. Further, the appellant submits that Associate Dean 1 was specifically invited to attend the meeting to take notes and the appellant witnessed Associate Dean 1 take notes at the meeting.

[14] In his representations, the appellant outlines concerns he has about how some correspondence responsive to his request appeared in the deleted folder of his college email account. I do not need to decide how the correspondence appeared in that folder because it is not relevant to whether the college conducted a reasonable search and therefore I will not address this concern any further.

### ***College's reply representations***

[15] In support of its initial representations, the college provides two affidavits from individuals who assisted with coordinating the searches. The first affidavit is sworn by the college's Senior Information Security Analyst, who has been in the position since 2018. The analyst's affidavit explains that he searched the two Associate Deans' inboxes using Microsoft eDiscovery tool. The analyst also searched the appellant's college email account for a certain time period using the same tool. Both searches were done using the following keywords: the appellant's student number, the appellant's last name, and the appellant's first and last names. The results of the searches were provided to the former Manager of Privacy, Records & Information Management. The college adds in its representations that it produced the results of this search to the appellant and since the appellant has access to his college email account, he can access on his own correspondence between him and Associate Deans. The college further asserts that it is not withholding any information from the appellant.

[16] The second affidavit is sworn by the college's Dean of Students, who has held this position since 2013 and was a former manager of Associate Dean 1. The Dean of Students confirms that she searched for responsive records related to Associate Dean 1 by searching physical records and coordinating a search through the college's software platform where notes would typically be saved. The Dean of Students states that no responsive records, including records related to the specified meeting, were found as a result of these searches.

[17] The college also provides emails between the former Manager of Privacy, Records & Information Management and the Director of Information Security, and between the former Manager of Privacy, Records & Information Management and the Dean of Students. The college asserts that these two emails confirm that it conducted eDiscovery and physical searches, a search of its software platform where notes are housed, and

that it requested a search of shared folders.

[18] The college does not explain in its reply why it did not find through its search the correspondence that the appellant had received from a previous access request or correspondence from the specific year referenced by the appellant. The college also does not address the appellant's statement that the records that were disclosed did not contain a discussion of important topics that he raised with Associate Dean 2.

### ***Appellant's sur-reply representations***

[19] In sur-reply, the appellant says that he has evidence to support his initial representations, including emails that ought to have been found by the college through its search, some of which he had provided during this appeal. The appellant speculates that, given that the college did not disclose all responsive emails, particularly those that discuss important issues the appellant raised with the college, the college might be withholding or might have destroyed some responsive records. The appellant says that he cannot be certain about what happened with the records the college found through its search because the Manager of Privacy, Records & Information Management who dealt with the appellant's request is no longer at the college.

### **Analysis and finding**

[20] I find that the college has not provided sufficient evidence to establish that it conducted a reasonable search for responsive records, with the exception of one aspect of the request.

[21] The parties interpreted the request to include two components: notes and correspondence. I will address each below.

### ***Notes***

#### *Notes of Associate Dean 1 related to the appellant*

[22] Aside from the search for notes from the specified meeting, I am not satisfied that the college's search for the notes of Associate Dean 1 was reasonable.

[23] I accept that the search conducted by the Dean of Students was conducted by an experienced employee knowledgeable in the subject matter of the request. I also accept that the college searched in locations where notes would reasonably be found, namely physical records and the college's software platform where notes would typically be saved. There is evidence in the confidential portions of college's representations that during the search for the notes of Associate Dean 1, the college considered whether the notes could be in shared folders and decided that they would not be. An institution is only obligated to search where records might reasonably be located.

[24] However, based on the evidence before me, including confidential representations

provided by the college, I am not convinced that the college searched for all responsive documents. The access request is for "all notes" authored by Associate Dean 1 related to the appellant. This includes the notes of Associate Dean 1 from the specified meeting and any other notes of Associate Dean 1 that in any manner relate to the appellant. Based on the appellant's representations, I am satisfied that Associate Dean 1 was involved with issues related to the appellant beyond the specified meeting.

[25] Further, based on the confidential evidence provided by the college, I find that the former Manager of Privacy, Records & Information Management inappropriately narrowed the scope of the appellant's request when it was communicated to the Dean of Students. The affidavit of the Dean of Students states that the search that she conducted was for "responsive records" but does not specify what information she deemed responsive, aside from the notes from the specified meeting. Therefore, there is a reasonable basis to conclude that further searches will yield responsive notes involving Associate Dean 1.

*Notes of Associate Dean 2 related to the appellant*

[26] I am not satisfied that the college conducted a reasonable search for the notes of Associate Dean 2 related to the appellant as there is no indication that physical records, the college's software platform, or the shared folders were searched for records involving Associate Dean 2. While the direction from the former Manager of Privacy, Records & Information Management to IT Security Team was to search for, in part, "documentation" in shared folders, the affidavit from the Senior Information Security Analyst does not indicate that a search of shared folders was conducted.

[27] Furthermore, the appellant's submission that he had multiple meetings with Associate Dean 2, including the specified meeting at which an important topic was discussed, provides a reasonable basis for me to conclude that additional responsive records from Associate Dean 2 should exist.

***Correspondence of named individuals related to the appellant***

[28] As I understand the college's position, responsive correspondence will be found exclusively in the college's email system. The appellant does not dispute this, and I accept therefore that all responsive correspondence will be found in the college's email system.

[29] While I accept that the analyst who conducted the search was an experienced employee knowledgeable in the subject matter of the request, I do not find that the search for correspondence (emails) involving Associate Deans and the appellant was reasonable.

[30] First, it does not appear that Microsoft eDiscovery tool was effective in identifying all responsive emails. The search using Microsoft e-Discovery tool did not find at least one email from Associate Dean 2 that the appellant shared with the college in mediation, which contained the appellant's full name (one of the keywords used in the search) in a recipient or cc line.

[31] Second, I find that the keywords used were too narrow. The search terms used were first and last name; however, I am persuaded by the appellant's representations that there may be emails that use only the appellant's first name. I am also persuaded by the appellant's representations that there may be responsive emails that do not include reference to the appellant's first or last name. This would include emails that discuss the appellant but do not use his name. The searches that were conducted would not identify these records. Lastly, there is insufficient evidence before me about what specific folders within inboxes of Associate Deans were searched. Given that the request is for notes "from" Associate Deans, their "sent" folder ought to have been searched.

[32] I also do not accept the college's submission that given that the appellant has access to his college email account, the college has fulfilled its obligation under the *Act* by providing the records it found through its search. First, the appellant's request is broader than a request for email correspondence between him and Associate Deans. Second, an institution has an obligation to conduct a reasonable search for records in its custody and/or control upon receipt of an access request. An appellant's ability to independently access some of the responsive records does not change an institution's duty to conduct a reasonable search.

[33] While it appears that more responsive records than what the college has provided to the appellant ought to exist, this does not lead to a conclusion that the college intentionally withheld or destroyed them. In fact, the issues that I have identified with the college's search explain why some responsive records might not have been found. Although the former Manager of Privacy, Records & Information Management is no longer at the college, it is clear from the evidence that she coordinated the search for responsive records, received the results of the searches and issued the college's decision, which explained the results of the searches.

### ***Conclusion***

[34] In summary, I am satisfied that the college conducted a reasonable search for the notes of Associated Dean 1 from the specified meeting. I am not satisfied that the college's search was reasonable with regards to all other aspects of the access request, including notes of Associate Dean 1 that pertain to the appellant; notes of Associate Dean 2 that pertain to the appellant; and emails of both Associate Deans that pertain to the appellant.

### **ORDER:**

1. I order the college to conduct a further search for responsive records, based on my findings outlined above.
2. I order the college to issue, in accordance with all applicable provisions of the *Act*, an access decision to the appellant regarding any records located in its further

search(es), treating the date of this order as the date of the request for administrative purposes. To be clear, the college should issue a decision even if no records are located as a result of the search(es) conducted in compliance with this order.

3. I order the college to provide me with an affidavit sworn by the individual(s) who conducted the college's search(es) pursuant to this order by **May 22, 2024**, describing the search efforts. At minimum, the affidavit(s) should include the following information:
  - a. The names and positions of the individual(s) who conducted the search(es) and their knowledge and understanding of the subject matter and the scope of the request;
  - b. The dates the search(es) took place and the steps taken in conducting the search(es), including:
    - i. the places that were searched;
    - ii. the individuals that were contacted in the course of the search;
    - iii. the types of records searched;
    - iv. steps taken during the search;
    - v. the results of the search;
    - vi. If it appears that no further responsive records exist after further search(es), a reasonable explanation for why further records do not exist;
    - vii. If additional records existed but no longer exist, a reasonable explanation for why those records no longer exist. The college must provide details of when such records were destroyed, including information about record maintenance policies and practices, such as evidence of retention schedules.

The college's affidavit will be shared with the appellant, unless there is an overriding confidentiality concern as set out in *Practice Direction Number 7*, which is available on the IPC's website. The college should indicate whether it consents to the sharing of its affidavit with the appellant.

4. I remain seized of this appeal in order to deal with any outstanding issues arising out of provisions 1 to 3 of this order.
5. In order to verify compliance with the provision 1 of this order, I reserve the right to require the college to provide me with a copy of the access decision referred to in provision 2 and any records disclosed with that access decision.



Original Signed By: \_\_\_\_\_  
Anna Kalinichenko  
Adjudicator

\_\_\_\_\_ April 22, 2024