

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-4582-F

Appeal PA21-00547

Sheridan College Institute of Technology and Advanced Learning

December 20, 2024

**Summary:** This final order determines whether the college conducted a reasonable search for responsive records in response to Interim Order PO-4512-I. In compliance with the Interim Order, the college conducted further searches and provided four affidavits in support of its searches. The adjudicator finds that the college provided sufficient evidence to establish that it has conducted a reasonable search for responsive records. The appeal is dismissed.

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

**Cases Considered:** *Youbi-Misaac v. Information and Privacy Commissioner of Ontario*, 2024 ONSC 5049.

### OVERVIEW:

[1] This final order addresses the reasonableness of the search for the notes and correspondence of two Associate Deans conducted by Sheridan College Institute of Technology and Advanced Learning (the college) after having been ordered to conduct a further search in Interim Order PO-4512-I.

[2] By way of background, the appellant made an access request to 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".

[3] In response, the college issued a decision describing the 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. It also stated that there were no responsive records with respect to Associate Dean 1 or from the specified meeting.

[4] The appellant was not satisfied with the college's decision and appealed it to the Information and Privacy Commissioner of Ontario (the IPC). During mediation, the appellant asserted that additional records should exist.

[5] A mediated resolution was not possible, and the appeal proceeded to the adjudication stage of the appeals process, where an IPC adjudicator conducted an inquiry. In Interim Order PO-4512-I, I found that aside from the search for the notes of Associate Dean 1 from the specified meeting, the college did not conduct a reasonable search. I ordered the college to conduct a further search for responsive records, to issue a decision to the appellant with respect to any additional records located during that search, and to provide an affidavit outlining its further search. The college submitted a reconsideration request of the Interim Order. In Order PO-4538-R, I dismissed the college's reconsideration request.

[6] The college then conducted a further search, which located additional records. The college disclosed to the appellant the additional records, withholding some information pursuant to section 21(1) of the *Act*. The college's decision to withhold some information in the additional records is not at issue in this appeal.

[7] The college provided four affidavits outlining its search efforts. I shared the college's affidavits with the appellant and received his representations.

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

## **DISCUSSION:**

[9] In Interim Order PO-4512-I, I found that the college did not conduct a reasonable search for responsive records. The college's further search located additional records that were provided to the appellant. The appellant claims that further records exist.

[10] Where a requester claims that additional records exist, the issue to decide is whether an institution conducted a reasonable search for responsive records as required

by section 24 of the *Act*.<sup>1</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>2</sup>

[11] 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;<sup>3</sup> that is, records that are “reasonably related” to the request.<sup>4</sup>

[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.<sup>5</sup>

### **College’s further search**

[13] The college provided four affidavits outlining its further search.

[14] The Associate Dean of Student Affairs provided an affidavit describing her search for certain physical and electronic records. She attested to having searched for physical records of notes and correspondence regarding the appellant. She also searched for correspondence, including emails, in the Student Affairs Database. In addition, the Associate Dean of Student Affairs searched for correspondence related to the specified meeting. During that search, she identified an employee who was involved in discussions that led to the specified meeting and requested the employee to conduct a search for any emails referencing the appellant. The employee conducted the search using the appellant’s name, student number and emails (one personal and one student email) as keywords. While no physical records were found, the search located correspondence from both Associate Deans about the appellant.

[15] The Associate Vice-President of Student Affairs provided an affidavit outlining his search for physical records of notes and correspondence from Associate Dean 1 regarding the appellant. The Associate Vice-President of Student Affairs searched in filing cabinets within the administrative offices of Student Affairs, the Centre for Student Success, and the Office of former Dean of Students. No records were located during the search. In addition, the Associate Vice-President of Student Affairs states that a records manager was asked to search general records for anything related to the appellant and Associate Dean 1. The records manager’s search produced no results.

[16] The Dean of the specified faculty also provided an affidavit. The Dean’s affidavit outlines the search for physical records of correspondence between the appellant and

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<sup>1</sup> Orders P-85, P-221 and PO-1954-I.

<sup>2</sup> Orders M-909, PO-2469 and PO-2592.

<sup>3</sup> Orders P-624 and PO-2559.

<sup>4</sup> Order PO-2554.

<sup>5</sup> Order MO-2246.

Associate Dean 2. The Dean says that four individuals who occupy administrative positions were asked to search for the records in any known places where archived files are stored. These individuals searched various file folders in the current Associate Dean's office, in the main office area storage cabinets, and in the archival storage location in an upper level in the faculty's office. Two of the four individuals went through their respective areas looking through files for any records. The search did not produce any results. The Dean further states that there are no other areas within the faculty where physical records of correspondence between the appellant and Associate Dean 2 could be located.

[17] The final affidavit was provided by the Director of Information Security. The Director of Information Security searched for records of communications between the appellant and two Associate Deans. She searched for emails, files and chats in Outlook, SharePoint, OneDrive, and Teams. The search was with respect to the appellant and both Associate Deans, and covered specific periods of time. The Director of Information Security says that she provided the records that she located to the college's General Counsel. The Director of Information Security states that she might not have been able to locate some records due to Microsoft or college retention policies, meaning that some records would have been deleted in accordance with these retention policies.

### **Appellant's representations**

[18] The appellant argues that the college did not conduct a reasonable search. The appellant says that the college either withheld or destroyed responsive records due to certain alleged improper motivations. In support of his assertion, the appellant says that the additional records that he received after the further search ought to have been located during the original search given the parameters of the original search described by the college. He also says that some of the additional records are responsive to his other access request but were not disclosed to him in that request. To support his assertion that the college has certain improper motivations to not disclose all the records to him, the appellant identifies a number of issues related to the additional records that were disclosed to him. In essence, the appellant questions whether the college conducted the search in good faith.

[19] With respect to the evidence that the college provided describing its further search, the appellant does not dispute that the Associate Dean of Student Affairs and the employee who assisted the Associate Dean of Student Affairs with the search conducted a reasonable search. However, he points to two issues with the college's affidavits. First, he says that none of the affidavits explain, as directed by the Interim Order, why further records do not exist and, if additional records existed but no longer exist, why those records no longer exist. He adds that while the affidavit of the Director of Information Security refers to limitations in search due to retention policies, it does not provide further detail. Second, the appellant says that the affidavits do not confirm if the college used in its search the keywords identified in the Interim Order.

[20] In addition, the appellant asserts that further records exist. The appellant says

that records from or summarizing the specified meeting ought to exist because due to the nature of the topic discussed at the meeting, it is improbable that none of the attendees took notes or kept information about the meeting. The appellant confirms that he saw one Associate Dean take notes. The appellant also says that additional correspondence from Associate Dean 2 exists.

[21] In addition, the appellant makes arguments and submissions asking that the IPC review records in all appeals involving him to determine the applicable exemption before the college provides records to the appellant. The IPC's role is limited to dealing with appeals of decisions made by institutions, not making access decisions. In any event, these points are not relevant to the issue of reasonable search, and I therefore do not address them.

### **Analysis and finding**

[22] The college only needs to establish that it has made a *reasonable* effort to identify and locate records that are responsive to the request.<sup>6</sup> It does not need to prove with certainty that further records do not exist.<sup>7</sup> This means that further records could exist, but the college's search will be upheld as long as it is reasonable.

[23] I am satisfied by the college's evidence that it conducted a reasonable search. First, I find that all four individuals who swore affidavits are experienced employees knowledgeable in the subject matter of the request. All four individuals occupy senior management positions within the college. Three individuals oversee the departments relevant to the work of the two Associate Deans, and one individual oversees college's information security.

[24] Second, I accept the college's evidence that both physical and electronic records were searched in various locations where responsive records could be stored. The college conducted the search in the two departments relevant to the work of the two Associate Deans. Physical records of notes and correspondence were searched in filing cabinets in various offices and in archival storage cabinets. Electronic records of notes and correspondence were searched in Student Affairs Database and Microsoft platforms.

[25] Third, the number of individuals who assisted in the search further supports my conclusion that the search was reasonable. In addition to the four individuals who provided the affidavits, six more individuals were involved in the search. The Associate Dean of Student Affairs contacted an employee who was involved in discussions that led to the specified meeting. The search of the employee uncovered additional records. The Associate Vice-President of Student Affairs confirms that a records manager conducted a search for general records related to the appellant and Associate Dean 1. The Dean of the specified faculty involved a number of administrative staff in conducting the search

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<sup>6</sup> *Youbi-Misaac v. Information and Privacy Commissioner of Ontario*, 2024 ONSC 5049, at para 9.

<sup>7</sup> *Ibid.*

for physical records of correspondence between the appellant and Associate Dean 2.

[26] The appellant disputes that the college's search was reasonable on the basis that the college's search was inconsistent with the directions set out in the Interim Order. The appellant says that neither affidavit confirms whether the keywords identified in the Interim Order were used in the searches. The Interim Order does not direct the college to use specific keywords in its search. The Interim Order explains my finding that the college's original search was not reasonable, but it remains the college's responsibility to identify responsive records.

[27] The appellant also says that the affidavits do not explain why further records do not exist and, if records existed but no longer exist, why the records no longer exist. I am satisfied that the college has made reasonable efforts to identify and locate responsive records. The college does not need to prove with certainty that further records do not exist.

[28] I have also considered the appellant's argument that the college did not conduct the search in good faith. Even if the additional records contain keywords that the college used during its original search, the issues with the college's search that I identified in the Interim Order would explain why these records were not located during the original search. It is outside the scope of this appeal to determine whether the additional records are responsive to the appellant's other access request or to deal with other issues raised by the appellant that relate to the additional records that were released to him. Finally, the fact that the college disclosed to the appellant additional records supports a conclusion that responsive records were not destroyed, as alleged by the appellant.

[29] In my view, further searches will not yield additional records. The appellant says that there are more notes and emails than what has been provided to him. The appellant's representations explain what additional notes and emails ought to exist. However, the appellant's claims are speculative and do not provide a reasonable basis for concluding that additional records exist, particularly when I consider the searches already undertaken.

[30] For the reasons set out above, I uphold the college's search as reasonable.

**ORDER:**

I dismiss the appeal.

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

December 20, 2024 \_\_\_\_\_