



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER PO-2552**

## **Appeal PA-050020-1**

### **Seneca College of Applied Arts and Technology**



Tribunal Services Department  
2 Bloor Street East  
Suite 1400  
Toronto, Ontario  
Canada M4W 1A8

Services de tribunal administratif  
2, rue Bloor Est  
Bureau 1400  
Toronto (Ontario)  
Canada M4W 1A8

Tel: 416-326-3333  
1-800-387-0073  
Fax/Téloc: 416-325-9188  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

Seneca College of Applied Arts and Technology (the College) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information pertaining to the requester (a former student) and his dealings with the College. The requester sought records relating to his attendance at the College in a specified Certificate Program (the Program), along with more general records related to the Program and the College. The request consisted of eight general sections with 42 specific parts detailing information and/or documentation which he sought. The request also named 15 individuals associated with the College who may be in possession of responsive records.

The College identified records it viewed as responsive to the request and granted partial access to them, relying on the mandatory exemption in section 21(1) of the *Act* (invasion of privacy) to deny access to the severed portions.

The requester (now the appellant) appealed the decision.

At the mediation stage of the appeal, the appellant advised the mediator that he did not take issue with the severances made to the records under section 21(1). As a result, the application of that exemption is no longer at issue. The appellant did, however, take issue with the reasonableness of the College's search for responsive records pursuant to section 24 of the *Act*. The appellant was of the view that additional records should exist. The reasonableness of the College's search is, therefore, the sole issue in this appeal.

As the appeal could not be resolved at mediation the matter was referred to the adjudication stage for inquiry. Due to the complexity of the request and the number of individuals who may be in possession of responsive records, this inquiry was conducted in writing.

This office sent a Notice of Inquiry setting out the facts and issues in this appeal to the College, seeking its representations. The College provided its representations, a complete copy of which were shared with the appellant, along with a Notice of Inquiry seeking his representations. The appellant provided representations in response. The College was then asked to provide reply submissions. The appellant also provided sur-reply representations to those of the College.

## **DISCUSSION:**

### **SEARCH FOR RESPONSIVE RECORDS**

#### **General Principles**

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 [Orders P-85, P-221, PO-1954-I].

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 [Order P-624].

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.

The College was asked to provide a written summary of all steps taken in response to the request. In particular, it was asked to respond to the following, preferably in affidavit form from the person or persons who conducted the actual search:

1. Did the institution contact the requester for additional clarification of the request? If so, please provide details including a summary of any further information the requester provided.
2. If the institution did not contact the requester to clarify the request, did it:
  - (a) choose to respond literally to the request?
  - (b) choose to define the scope of the request unilaterally? If so, did the institution outline the limits of the scope of the request to the requester? If yes, for what reasons was the scope of the request defined this way? When and how did the institution inform the requester of this decision? Did the institution explain to the requester why it was narrowing the scope of the request?
3. Please provide details of any searches carried out including: by whom were they conducted, what places were searched, who was contacted in the course of the search, what types of files were searched and finally, what were the results of the searches? Please include details of any searches carried out to respond to the request.
4. Is it possible that such records existed but no longer exist? If so please provide details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.

### **Representations of the Parties and Findings**

As part of its representations, the College provided an affidavit from its Freedom of Information and Privacy Protection Officer (the FOIO). This individual submits that she is responsible for responding to access to information requests. She states in her affidavit that she reviewed the appellant's request and elicited the assistance of a number of individuals to ensure that all appropriate locations and sources were searched. Attached to the affidavit were 15 tabbed

sections of exhibits. These exhibits included copies of the emails the FOIO sent to various College officials seeking responsive records, along with these officials' responses to the FOIO. The FOIO also states in her affidavit that all of the responsive records that were sent to her were subsequently provided to the appellant. In response to the College's representations, the appellant provided both initial and sur-reply submissions.

I will address the arguments made by both the College and the appellant with respect to those parts of the request which the appellant submits have not been adequately responded to.

#### Parts 1 and 15

In part 1 of his request, the appellant sought the following:

To investigate and address the concerns raised and complaints made by [the appellant], did [the Director, Student Services] ever meet with or contact any student, official, employee or faculty member of Seneca College other than [the Chair, Faculty of Continuing Education] or [the Programme Co-ordinator]? If so, who was contacted and on what dates? What was discussed?

In response to part 1 of the appellant's request, the FOIO referred to document 8, which is an email from the Director Student Services, to the FOIO of December 17, 2004, in response to the specific wording of part 1 of the request.

In part 15 of his request, the appellant sought the following:

Copies of all correspondence/communications, including but not limited to content of telephone conversations, documents, notes, computer records, faxes, letters, emails, memos, sent by any department/official/employee/faculty member of Seneca College to another department/official/employee/faculty member of Seneca College in which complaints/concerns of any student registered in the [named] Program (2004) or the [named] Program (2004) or complaints made against any student registered in the [named] Program (2004) were discussed between March 31, 2004 and December 13, 2004;

In response to part 15, the FOIO referred in her reply representations to a number of responsive records. In particular, the FOIO referred to an email dated May 24, 2004, from an instructor to the Program Coordinator, with a copy to the Chair, Faculty of Continuing Education; an email dated May 25, 2004, from an instructor to the Chair, Faculty of Continuing Education, with a copy to the Program Coordinator; an email dated May 10, 2004, from a named student to the appellant, the Chair, Faculty of Continuing Education and the Program Coordinator; and, in the documentation submitted to the mediator in May 2005, to documents 1, 6, 7, 9, 10, and 11.

I have reviewed the documents referred to by the FOIO in her reply representations concerning parts 1 and 15. I find that the FOIO has provided the appellant with records responsive to these two parts of his request. It appears from a careful reading of the appellant's initial and sur-reply representations that the lack of records from the Manager, Students Rights and

Responsibilities, in response to parts 1 and 15, forms the basis for his conclusion that additional responsive records ought to exist in response to these parts of his request.

In particular, in the appellant's initial representations, he did not find it plausible that in response to both parts 1 and 15 of his request, that the Manager, Students Rights and Responsibilities could not produce any records responsive to these parts of his request. In reply, the FOIO referred to Tab 11 of her affidavit which contains the response of the Acting Director of the Resolution, Equity and Diversity Centre (REDC) on behalf of the Manager, Student Rights and Responsibilities. At the time of the preparation of the College's representations, the Manager was away on vacation.

At Tab 11, the Acting Director states in an email to the FOIO that:

... it is our practice that upon receipt of any FOI request, we go through all of our emails and sort by sender and/or receiver and forward any applicable emails to [the FOIO]. It is also our practice to put all correspondence, whether it is an email received or sent, notes, letters, etc., in the official department file. ... all of this information [was provided to the FOIO].

In the College's reply representations, which were prepared after the FOIO was able to directly contact the Manager, Students Rights and Responsibilities, the FOIO states:

[The Manager, Students Rights and Responsibilities] confirmed that he had no information/documentation other than what he had already provided to me.

The FOIO also disputes the appellant's claim concerning the lack of responsive records from the Manager, Students Rights and Responsibilities. In the reply representations, the FOIO refers to a number of documents in Tab 1 of her affidavit, namely: an email dated May 17, 2004; a report dated May 21, 2004 (4 pages) regarding the Manager, Students Rights and Responsibilities meeting with the appellant on May 18, 2004, and, other emails dated May 19, 20, 27, 31, 2004 to and from the Manager, Students Rights and Responsibilities.

In sur-reply representations, the appellant takes particular issue with the fact that he has not received any responsive records dated after May 31, 2004 from the Manager, Students Rights and Responsibilities. Part 15 of his request addresses "complaints/concerns of any student registered in the [named] Program (2004)". The appellant maintains that records for this time period ought to exist. In support of his argument, the appellant makes reference to a complaint received from another named student which was investigated by the Manager, Students Rights and Responsibilities during the last six months of 2004.

Upon review of the College's submissions and the records already provided to the appellant, I note that records that post-date June 1, 2004, which are responsive to part 15, have been disclosed concerning the named student's complaint, contrary to the appellant's submissions.

For example, the records which were disclosed to the appellant include:

- an October 2004 letter from the named student to the Manager, Students Rights and Responsibilities, along with a memorandum prepared in response to this letter;
- a November 2004 letter from the named student, which was copied to the Manager, Students Rights and Responsibilities;
- a November 2004 letter from the Acting Director, REDC, on behalf of this Manager to the named student; and,
- a November 2004 letter from the Dean, Faculty of Continuing Education and Training, to the named student which was copied to the Manager, Students Rights and Responsibilities.

In sur-reply representations, the appellant also takes particular issue with the non-disclosure of a letter which was read to him during his December 2004 meeting with a named College Instructor at her personal office. He claims that at this meeting the Instructor read to him parts of a lengthy letter from the Dean, Faculty of Continuing Education, about the issues the named student had raised with the College about the Program.

I have reviewed the records that were disclosed to the appellant, including a letter of November 2004, from the Dean, Faculty of Continuing Education, to the named student. This letter was copied to a number of College staff, including the instructor referred to in the appellant's sur-reply representations. I find that I do not have a reasonable basis for concluding that another letter on this subject exists, addressed directly to the named instructor, as opposed to being copied to her and a number of other College officials.

In conclusion, I find that the appellant has not provided me with a reasonable basis for concluding that additional records exist that are responsive to parts 1 and 15 of his request.

### Part 3

In part 3 of his request, the appellant sought the following:

Copies of all correspondence/communications, including but not limited to all documents, notes, computer records, faxes, letters, emails, memos, between any department/ official/employee/faculty of Seneca College in which the final exam of student [the appellant] or the meddling/interference of [Programme Co-ordinator] with the final exams and/or academic content of the program were raised or discussed.

The appellant maintains that his module 5 re-marked exam ought to have been identified as a record responsive to part 3 of his request. This exam was to be re-marked by the instructor who taught that particular module. He refers to information in the College's representations

which indicates that the Co-ordinator for this module confirmed that she had been directed to arrange for his exam to be re-marked. The re-marked exam was to be sent directly to the Programme Coordinator. The FOIO maintains that everything she has received from the identified staff at the College has been disclosed to the appellant. The College has not indicated in its representations whether a copy of this re-marked exam exists. As a result, I will order that the College conduct an additional search for the appellant's re-marked module 5 exam and for any written comments made concerning the re-marking of this exam by the module 5 instructor.

Parts 24 and 26

In parts 24 and 26 of his request, the appellant sought the following:

24. Which officials of Seneca College and by whom were they contacted and considered to chair the appeal panel for the appeal of student [the appellant] in light of the unforeseen absence of [the Vice-President]?
26. Copies of all correspondence/communications, including but not limited to content of telephone conversations, documents, notes, computer records, faxes, letters, emails, memos, sent by any department/official/employee/faculty member of Seneca College to another department/official/employee/faculty member of Seneca College in which the appeal request by student [the appellant], the departure of [the Vice-President], and the reinstatement of the appeal of student [the appellant] were considered and discussed.

The appellant submits that:

On November 1, 2004 via an email [the Assistant to the Vice-President, Human Resources] writes the following to 11 officials of Seneca College:

"... Vice President [name] has graciously agreed to act as Chair of the Student Rights and Responsibilities Appeal Panel and will hear this appeal.."

"Thank you for your patience and we apologize for any inconvenience this may have caused."

To date there has never been any records produced by either [the Assistant to the Vice-President, Human Resources] and/or [the Vice-President] by means of which the records shows under what circumstances [Vice-President] 'graciously agreed' to act as the Chair for the appeal panel of student [the appellant's] appeal.

In response to the College's representations on parts 24 and 26, the appellant submits that records must exist containing information as to "under what circumstances [the Vice-President] 'graciously agreed' to act as the Chair for the appeal panel".

I note that the records produced to the appellant include the above-referenced email memorandum from the Assistant to the Vice-President, Human Resources confirming that a different College official would be chairing the hearing of the appellant's appeal. The College also produced an email dated November 2, 2004, whereby the Assistant to the Vice-President, Human Resources wrote to the appellant advising him of the change in the presiding Chair to his appeal.

The appellant takes issue with the fact that the email referred to above of November 1, 2004, was sent to 10 College officials that he submits were not a party to his appeal. In particular, he asks:

What business of the other 10 officials is to be receiving information about a supposedly confidential appeal of a student?

Accordingly, [Vice President of International and Business Development] must NOW PRODUCE to the information officer a written statement to unambiguously disclose under whose orders and for what purpose did she send the above-mentioned correspondence regarding the Appeal of student [the appellant] to 11 officials of Seneca College.

It appears from this question of the appellant that he is asking for records to be created in response to his concerns about the circulation of this email. This is not the issue before me. The issue before me is whether the College has conducted a reasonable search for records as required by section 24 of the *Act*. As stated by Adjudicator Laurel Cropley in Order MO-2096:

Although the documents that the appellant received may raise questions in her mind to which she thinks there should be answers, this does not necessarily mean that answers exist in the documents that she received or in other documents. As I indicated above, there is no requirement under the *Act* that an institution answer the questions that the contents of records might raise. The issue is whether there are records in existence that might provide an answer to these questions. As I noted in Order PO-1655:

Previous orders of this office have considered the circumstances in which requests for information are set out in the form of questions (Orders M-493, M-530 and P-995). In two of these cases, it was determined that the questions could be interpreted as requests for records. In my view, this is not the case here. Based on my reading of part 7 and the Ministry's explanation, I agree that the appellant has asked a question of the Ministry and is seeking an answer rather than seeking information or records which would respond to it.



In PO-1655, I concluded that the institution had no obligation to simply answer questions or provide explanations of information contained in the records.

Based on my review of the representations and the records, I find that the appellant has not provided me with a reasonable basis for concluding that additional responsive records exist containing information as to “under what circumstances [the Vice-President] ‘graciously agreed’ to act as the Chair of the appellant’s appeal”. As a result, I will dismiss the appellant’s appeal with respect to the adequacy of the College’s search for records responsive to parts 24 and 26 of his request.

#### Parts 10 and 11

In parts 10 and 11 of his request, the appellant sought the following:

10. Pursuant to and in accordance with which provisions of the *Ministry of Training, Colleges and Universities Act*, R.S.O. 1990, c. M.19 or the guidelines of the Ministry of Training, Colleges and Universities or the guidelines of the Seneca College of Applied Arts & Technology was [the Programme Co-ordinator] given the authority to make decisions about or changes to the academic content, assignments and exams of the program;
11. Pursuant to and in accordance with which provisions of the *Ministry of Training, Colleges and Universities Act*, R.S.O. 1990, c. M.19 or the guidelines of the Ministry of Training, Colleges and Universities or the guidelines of the Seneca College of Applied Arts & Technology was [the Programme Co-ordinator] given the authority to invite former graduates of a program to attend a class for free along with the current students of a program who are taking the course for credit.

The College did not produce any records in response to these two parts of the request. Instead the College refers to document 17 in its February 2005 submission, which is an email to the FOIO from the Dean, Faculty of Continuing Education, which states:

As a blanket to all of the questions regarding the [*Ministry of Training, Colleges and Universities Act*], I am passing along references to the appropriate sections of the *Ontario Colleges of Applied Arts and Technology Act*, and corresponding Regulations: S.O. 2002, Chap.8, Sch. F.

Objects - s. 2(2). The objects of the colleges are to offer a comprehensive program of career-oriented, post-secondary education and training to assist individuals in finding and keeping employment, to meet the needs of employers and the changing work environment and to support the economic and social development of their local and diverse communities.

Carrying out its objects - s. 2(3). In carrying out its objects, a college may undertake a range of education-related and training-related activities, including but not limited to, entering into partnerships with business industry and other education institutions; adult vocational education and training;

The Regulations, in O: Reg, 34/03-General, are:

Admissions - s. 11(1). A person who applies for admission to a program of instruction shall be considered for admission to an appropriate program of instruction if the person

- a) is a holder of an Ontario Secondary School Diploma or its equivalent;
- b) is 19 years of age or older on or before the commencement of the program in which the student intends to enroll; or
- c) does not meet the criteria set out in subsection (1) but is the holder of an admission requirement established by the board of governors for a specific program of instruction.

Categories of diplomas, etc. - s. 12. The categories of diplomas, certificates or other documents awarded by a board of governors attesting to the attendance or completion of a course or program of instruction are subject to the approval of the Minister.

The appellant's request in parts 10 and 11 does not ask for records, but rather seeks a response concerning which provisions of a named *Act* or guidelines authorize the Programme Co-ordinator to make certain decisions. I find that the response to the FOIO of the Dean of the Faculty of Continuing Education, is responsive to parts 10 and 11 of the appellant's request. I find that the appellant has not provided me with a reasonable basis for concluding that additional responsive records exist in response to parts 10 and 11 of his request.

#### Parts 16, 17, 18, 19 and 21

In parts 16, 17, 18, 19 and 21 of his request, the appellant sought access to the following:

16. Pursuant to and in accordance with which laws of Canada and/or of the Province of Ontario Seneca Colleges' Students Rights and Responsibilities document has been created?
17. The identity of the person or persons who drafted Seneca Colleges' Students Rights and Responsibilities document;
18. Pursuant to and in accordance with which laws of Canada and/or of the Province of Ontario the Resolution, Equity and Diversity Centre (REDC)

(also known as the Centre for Equity and Human Rights (CEHR)) has been created?

19. Copy of the official guideline/policy/protocol/criteria/etc. set by the Government of Ontario or by the Board of Governors of Seneca College or by any other competent authority specifying the minimum legal qualification/educational background for the position of Director, REDC/CEHR?
21. Based on what legal qualification/training has [Director, REDC/CEHR] been assigned to the extremely sensitive adjudicatory position in the public sector that she is currently holding?

The College submits that an email from the Director Student Services to the FOIO of December 17, 2004, is responsive to parts 16 and 17. This email provides, inter alia, that the document referred to in parts 16 and 17, is an internal policy of the College and is not founded in the law and was written, after much consultation with all stakeholders - students, faculty, and staff. The Dean of Student affairs at the time this document was created was responsible for its creation. The appellant maintains that the President of the College should have produced documents responsive to these two parts of the request. Based on my review of this email, and the wording of these parts of the appellant's request, I find that the College has responded to parts 16 and 17 of the appellant's request. The appellant has not provided me with a reasonable basis for concluding that additional responsive records exist that are responsive to parts 16 and 17 of his request.

However, I have not been directed by the College to a response to parts 18 and 19 of the appellant's request. Although the email of February 2005 to the FOIO from the Dean, Faculty of Continuing Education, represents a blanket response to all questions regarding the *Ministry of Training, Colleges and Universities Act*, I find that the College has not specifically responded to the appellant's request in parts 18 and 19. As a result, I will order that the College conduct an additional search for any records responsive to parts 18 and 19 of his request.

Regarding part 21 of the appellant's request, the College acknowledged in its reply representations that it had not replied to that part of the appellant's request. The College claims that information responsive to part 21 of the appellant's request would qualify as "personal information" pursuant to sections 2(1) of the *Act*. As a result, the College is claiming that this information is exempt from disclosure under the invasion of privacy exemption at section 21(1) of the *Act*.

I find that the College has not provided the appellant with a decision as to whether responsive records exist respecting part 21 of his request. Therefore, I will order the College to conduct a new search for records responsive to part 21 and to issue a new access decision on this part of the appellant's request.

Documents responsive to the entire request in the possession of the Chair of the Board of Governors for Seneca College

The appellant stated in his request letter of December 13, 2004, that the Chair of the Board of Governors for Seneca College may be in possession of responsive records for each part of his request. The College has produced an email from the Chair stating that he has not kept any records and that he believes that all the responsive information he has received was from the FOIO or from the College's Corporate Secretary.

In support of his position that the Chair is withholding responsive records, the appellant has provided in his initial representations a copy of an email of February 26, 2005, that he sent to the FOIO which he copied to the Chair. However, this email post-dates the date of the appellant's request. I have reviewed the responsive records identified and find that they include emails and letters which the Chair was copied on.

The appellant would like the FOIO or the College's Corporate Secretary to produce from their own records the information responsive to the appellant's request that was forwarded to the Chair. In my view, these records have, in fact, been provided to the appellant. I find that the appellant has not provided me with a reasonable basis for making a finding that the FOIO has withheld responsive records in this appeal. The appellant in his initial representations has stated that the FOIO:

...has done all that she could have possibly done to fulfill her duty as the information officer for this institution... [She] is perhaps the most articulate, dedicated, educated, efficient, honest, honorable, knowledgeable, meticulous, and trustworthy Information Officer the Province of Ontario, and possibly the whole country of Canada, will ever see.

Regarding the College's Corporate Secretary, it is clear from the records that she has been involved in the College's handling of the subject matter of the records. I note that she was also copied on a number of emails from the FOIO concerning the appellant's request. However, I find that she was not requested directly by the FOIO to search for responsive records. As the Chair indicates that he has not kept any records and that he received records from the College's Corporate Secretary, I will order the College's Corporate Secretary to conduct a search for any responsive records in her possession.

**ORDER:**

1. I order the College's to conduct a new search for records relating to:
  - (a) the appellant's re-marked module 5 exam and any written comments made concerning the re-marking of this exam by the module 5 instructor;
  - (b) parts 18, 19 and 21 of the appellant's request;

- (c) any records in the possession of the College's Corporate Secretary responsive to the appellant's entire request;

and to provide the appellant with a decision in accordance with the provisions of section 26 of the *Act*, treating the date of this Order as the date of the request, without charging a fee and without recourse to a time extension under section 27 of the *Act*. I further order the College to provide me with a copy of its decision letter to the appellant.

2. I uphold the College's search for records with respect to the remaining parts of the appellant's request.

Original signed by: \_\_\_\_\_  
Diane Smith  
Adjudicator

\_\_\_\_\_  
February 28, 2007