



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2735-F**

## **Appeal PA08-36**

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



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## **NATURE OF THE APPEAL:**

Sault College of Applied Arts and Technology (the College) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for the following records:

1. The requester's personal file;
2. All documentation, notes, complaint forms relating to allegations of harassment/bullying or abusive communications made against a member of [a named faculty] for 2005, 2006 and 2007, including closed and current files;
3. all notes, records, minutes relating to meetings where the requester has been present, or in her absence where she was discussed, in [a named faculty] for 2005, 2006 and 2007; and
4. all information relating to student code of conduct and the teacher code of conduct for 2005, 2006 and 2007 in [a named faculty].

The College located responsive records and granted the requester with complete access to the records responsive to parts 1 and 3 of her request and partial access to the records responsive to part 2 of her request. The College denied the requester access to the remainder of the records responsive to part 2 of her request citing the personal privacy exemption in section 21 of the *Act*. The College advised the requester that records responsive to part 4 of her request did not exist.

The requester, now the appellant, appealed this decision. During mediation, the College issued a new decision letter to the appellant, and, as the records contained the personal information of the appellant and other identifiable individuals, it claimed the discretionary exemption in section 49(b).

Also during mediation, the appellant agreed to narrow the scope of part 4 of her request to only the teacher code of conduct.

The College then issued another decision letter, in which it stated that the College does not have a teacher code of conduct, and that there are no records responsive to part 3 of the appellant's request besides the records she has already received.

On receipt of this letter, the appellant accepted the College's position on the teacher code of conduct, but asked that the file be moved to adjudication based on the exemptions claimed for part 2 of her request and on the issue as to whether the College has conducted a reasonable search for responsive records. The file was transferred to me to conduct an inquiry. I sent a Notice of Inquiry to the College, setting out the facts and issues in this appeal, seeking its representations. I received representations from the College. I sent the College's representations to the appellant along with a Notice of Inquiry. I received representations from the appellant. I then issued a decision, Order PO-2701-I, in which I upheld the College's decision to deny access

to the records located thus far. In addition, I ordered the College to conduct another search for responsive records.

The College conducted another search for responsive records and located handwritten notes from three meetings, which it claims are responsive to parts 2 and 3 of the appellant's request. The College provided the appellant with a supplementary decision letter, disclosing these notes in their entirety. I sent a Notice of Inquiry to the appellant seeking her representations as to the reasonableness of the College's subsequent search for records. I received representations from the appellant. I sent a copy of the appellant's representations to the College and sought and obtained its reply representations.

## **DISCUSSION:**

### **SEARCH FOR RESPONSIVE RECORDS**

I will now determine whether the College conducted a reasonable search for records pursuant to Order PO-2701-I.

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]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

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.

In Order PO-2701-I, I ordered the College to conduct a new search for responsive records related to parts 2 and 3 of the appellant's request. I also ordered the College to provide me with an affidavit sworn by the individual(s) who conducted the search, confirming the nature and extent of the search conducted for the responsive records. At a minimum the affidavit should include information relating to the following:

- (a) information about the employee(s) swearing the affidavit describing his or her qualifications and responsibilities;
- (b) the date(s) the person conducted the search and the names and positions of any individuals who were consulted;

- (c) information about the type of files searched, the search terms used, the nature and location of the search and the steps taken in conducting the search; and,
- (d) the results of the search.

## **Representations**

The College provided an affidavit from its Freedom of Information and Privacy Coordinator (FOIC) with respect to the search it conducted following the issuance of Order PO-2701-I. In this affidavit, the FOIC states that he contacted the College's Dean and the Chair of a department related to the faculty that is of concern to the appellant. He asked these individuals to review their files and email accounts for documents related to parts 2 and 3 of the appellant's request. These three individuals then met and reviewed the documents related to parts 2 and 3 of the request. In addition, in his position as the College's Harassment Adviser, the FOIC reviewed the College's files for any formal complaints of harassment in the named faculty for the years 2005, 2006 and 2007 and could not find any formal complaints of harassment in the mentioned years in that faculty.

The College located notes with respect to informal concerns that the appellant had with the named faculty. These notes were not part of any formal proceeding but recorded the general discussions with the appellant concerning this informal proceeding. The College provided the appellant with a copy of these notes with its decision letter following Order PO-2701-I.

The College did not locate any new documents relating to formal complaints of harassment or bullying.

In response, the appellant submits that during the years 2005, 2006 and 2007, certain named students other than the appellant had received letters alleging breaches of the College's student code of conduct. These students were requested to make appointments with a named person employed by the College to be interviewed concerning the allegations against them. Following their interviews, these named students all received letters stating the investigation was complete and inconclusive.

As complaints were made against several students and investigations were conducted, the appellant submits that it is reasonable to expect that responsive records should exist including the letters sent to the students along with any notes concerning the investigations and interviews that were conducted.

In reply, the College submits that the appellant does not appear to take issue with its search for the records requested in part 3 of her request, but rather, only takes issue with its search for the records requested in part 2. The original wording of part 2 of the appellant's request, seeks records relating to "allegations of harassment/bullying or abusive communication made by any person about any person in [a named faculty at the College]...". The College submits that this request is "clearly and unambiguously not a request for complaints made by students against

other students.” It states that students are not “in the [named faculty]” nor can they reasonably be understood to be in this faculty. It submits that:

Moreover, the College has proceeded through the mediation process and significantly into this appeal with the understanding that the request was confined to complaints against faculty members. Information and Privacy Commissioner/Ontario (IPC) communications affirmed the narrow scope of the request by re-framing the request in narrow terms. These communications were presumably sent to [the appellant], but she did not correct the IPC’s re-framing of the request nor did she take any other steps to indicate that she believed her request to encompass complaints made by students against other students. The College relied on these communications in participating in the mediation and this inquiry. It submits that [the appellant’s] failure to respond to them is a strong indication that she is only now expanding her request. The College will be prejudiced if she is allowed to do so because it will have been deprived of its entitlement to a full and fair mediation and deprived of a full and fair hearing in this inquiry.

For the noted years in question, the College maintains that there have been no formal complaints of harassment or bullying against the [named faculty].

### **Analysis/Findings**

Based on my review of the parties’ representations, I agree with the College that only part 2 of the appellant’s request remains at issue. The handwritten notes located by the College in response to Order PO-2701-I are responsive to part 3 of the appellant’s request.

However, I disagree with the College that part 2 of the appellant’s request is restricted to staff of the faculty. Part 2 of the appellant’s request, as worded in the mediation report and the interim order, Order PO-2701-I, seeks:

All documentation, notes, complaint forms relating to allegations of harassment/bullying or abusive communications made against a member of the [a named faculty] for 2005, 2006 and 2007, including closed and current files.

The appellant maintains that in response to part 2 of her request, responsive records exist concerning complaints made by students against other students and a staff member in the named faculty. This position of the appellant was reflected in her letter of appeal, the terms of which were reproduced in the mediator’s report.

Furthermore, in response to the initial Notice of Inquiry, the College did not restrict its interpretation of part 2 of the appellant’s request to only formal complaints made against staff members of the named faculty. In its initial representations, it provided information concerning a complaint against a student (the appellant) responsive to part 2 of the appellant’s request. The College stated that:

With respect to [part 2] the only complaints lodged in the [named faculty] in the named years were complaints lodged by students against the appellant [the records at issue in this appeal]. To our knowledge no formal written complaints have been lodged in that time period...

In response to the College's initial representations, the appellant disputed that the only complaint lodged by students were the complaints lodged against her. She claimed that six other students also received letters that they were being investigated at the same time that she received a letter that she would be investigated. In addition, she claimed that she personally made a complaint against a named professor at the College. The appellant alleged that during the investigations, meetings were held where notes were taken. In her initial representations, which were reproduced in Order PO-2701-I, she stated that:

All [of these] students [complained against] ...received follow up letters indicating that their alleged misconduct has been found to be "inconclusive" ... at the conclusion of all investigations.

The complainants made complaints alleging misconduct. The complainants made complaints about at least 7 students in a number of interviews...

The appellant alleges the complainants were told at the beginning of the investigation that they would need to provide signed statements as to the allegations. The FOI [Freedom of Information] notations are located at the bottom of the standard form. I have not yet seen these signed statements and request disclosure of all documents relating to this investigation. Disclosure relating to all students who were investigated, the complainants and the victims...

In response to the Notice of Inquiry that followed Order PO-2701-I, the appellant continued to maintain that records responsive to part 2 of her request included records concerning complaints made against students in the faculty named in the request. The College in its reply representations following the interim order seeks to confine the scope of this part of the request to formal complaints made against staff members of the named faculty. However, I agree with the appellant that her request in part 2 seeks records concerning any complaints made against both students and staff in the named faculty for the years 2005 to 2007.

I note that the College did not indicate that it had restricted its search parameters to formal complaints against staff members only until it provided representations at the reply representations stage following the issuance of Order PO-2701-I. In its affidavit in support of its search following this order, the College's FOIC refers only to searching for formal complaints. He states that:

In addition, as the College's Harassment Adviser I reviewed our files for any formal complaints of harassment in the [named faculty] for the years 2005, 2006 and 2007 and could not find any formal complaints of harassment in the mentioned years in that school of faculty.

Based on my review of the parties' representations, I find that part 2 of the appellant's request was not restricted to only formal complaints made against staff members of the named faculty at the College. I find that additional responsive records should exist in response to part 2 of the appellant's request concerning complaints made against both students and staff in the named faculty and I will order the College to conduct another search for records responsive to part 2 of the appellant's request.

**ORDER:**

1. I order the College to conduct a search for all documentation, notes and complaint forms relating to allegations of harassment, bullying or abusive communications made against a student or staff member of the named faculty for the years 2005, 2006 and 2007 and to provide the appellant with a decision letter in accordance with the provisions of the *Act*, treating the date of this order as the date of the request.
2. I further order the College to provide me with a copy of this decision letter to the appellant.

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

\_\_\_\_\_  
November 26, 2008