

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3124-F

Appeal PA11-295

University of Toronto

October 19, 2012

Summary: The appellant made a request to the university for records relating to the reason why her offer of admission to a program was rescinded. In Interim Order PO-3102-I, the university was ordered to conduct additional searches for responsive records and provide affidavits of the searches to the adjudicator. The university complied. This order finds that the university's search for additional records was reasonable.

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

OVERVIEW:

[1] This final order disposes of the remaining issues in PA11-295 and follows from Order PO-3102-I.

[2] The appellant made a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the University of Toronto (the university) for access to:

...the records of my application at the Postgraduate Education in the department of [specified field] at the University of Toronto. I want to know the main reason behind rescinding the letter of offer after I got initial acceptance. Additionally, I need also to know the reason that

undermine their first decision and consider me as [in]capable to succeed over five years of demanding training.

[3] The university located a number of records and issued a decision granting partial access to the information. The appellant raised the issue of additional responsive records and the issue of the reasonableness of the university's search was the subject of my inquiry into the appeal. After reviewing the parties' representations, I found that the university's search was not reasonable and issued order PO-3102-I where I ordered the university to conduct additional searches. The relevant provisions of that order read as follows:

1. I order the university to conduct a further search for responsive records, whether in printed form, by electronic means or otherwise, treating the appellant's request as a request for all records that contain information as to why her offer of admittance into the psychiatry residency program at the university was rescinded and any ambiguity in this request should be resolved in favour of the appellant.

With regard to this provision, I order the university to provide me with sworn affidavits from the members of the Psychiatry Residency Program Committee within 30 days of this interim order. At a minimum, each affidavit should include information relating to the following:

- (a) Information about the committee member swearing the affidavit describing his or her qualifications, position and responsibilities;
 - (b) A statement describing the committee member's knowledge and understanding of the subject matter of the request;
 - (c) The date(s) the person conducted the search and the names and positions of any individuals who were consulted;
 - (d) Information about the types of files searched, the nature and location of the search, and the steps taken in conducting the search;
 - (e) The results of the search.
2. If as a result of the further search it appears that responsive records existed but no longer exist, details of when such record were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.
 3. If responsive records are located as a result of the searches referred to in Provision 1, I order the university to provide a decision letter to the appellant

regarding access to those records in accordance with the provisions of the *Act*, considering the date of this order as the date of the request.

[4] The university conducted the additional search for records in compliance with the interim order and provided this office with affidavits from the members of the Psychiatry Residency Program Committee (PRPC), representations regarding its search, a supplementary access decision and a copy of four additional responsive records¹. The appellant was given an opportunity to respond to the university's representations and evidence regarding the additional searches. The appellant confirmed that she would not be making representations.

[5] In this decision, I find the university's search for records to be reasonable and I dismiss the appeal.

DISCUSSION:

[6] The university submits that it undertook to conduct detailed and extensive new searches by individual familiar with the request and by others. The university sets out the extent of its search as follows:

- The Director of the Postgraduate Medical Program was given detailed search instruction and instructed to carry out an additional search.
- Members of the PRPC were provided with a copy of the interim order and asked to provide affidavits of search reflecting their knowledge of the matter. They were also asked to address whether, as a result of their search, they located new records or if they were aware of responsive records that no longer exist.
- The university's Vice Dean, Postgraduate Medical Education of the Faculty of Medicine, was instructed to carry out additional searches.
- The Director of the Postgraduate Medical Program also consulted with Information Technology (IT) staff at both the university and [another named organization] to determine whether there was any possibility of recovering the email referenced in his affidavit of January 20, 2012.

[7] The university submits that four additional responsive records were located, including two audio recordings and the written minutes of two PRPC meetings where the rescission of the appellant's offer of admission to the psychiatry residency program at the university was discussed. These records were located in the Psychiatry

¹ The appellant has not appealed the university's supplementary access decision for the newly found records and thus this decision does not deal with this decision.

Postgraduate Education Office at the named organization by the Director of the Postgraduate Medical Program and his assistant.

[8] While other PRPC members searched for any record relating to the rescission of the appellant's offer of admission, none were able to locate further responsive records. The university notes that the discussions about the rescission of the appellant's offer were held in the absence of residents, who were asked to leave before the topic was considered.

[9] I have reviewed the 11 affidavits of the PRPC members provided by the university in compliance to Order provision 1. Without setting out the contents of each of those affidavits here, I find that the members understood the nature of the appellant's request and the search to be undertaken to locate responsive records. I find the searches by the PRPC members to be reasonable in the circumstances.

[10] I also carefully reviewed the affidavit of the Chair of the PRPC committee, the aforementioned, Director of the Postgraduate Medical Education. His search did result in the four previously described responsive records. In his affidavit, the Director addressed the "deleted email" that related to the "unsolicited pertinent information" which was the subject of the appellant's request. He states:

To address the question of the deleted email described in my affidavit of January 20, 2012, I consulted with IT staff both at the University and at [named organization] where the only two email accounts associated with Postgraduate education and the PRPC are. University of Toronto IT staff advise that my email account was forward to my [named organization] account as of March 5, 2009 and that no copies of forwarded emails remain on University mail servers. [Named organization] IT staff advise that the email would not have been retained on their system beyond thirty days after its deletion. I am unable to locate any copy of the deleted email and, based on the information provided by IT staff, believe that it no longer exists.

[11] I find the Director's search for the deleted email to be reasonable in the circumstances and I accept his explanation as to why it cannot be retrieved.

[12] The Director also addressed the finding of the new responsive records as follows:

Based on this understanding of the request and the Interim Order, I have now conducted further, detailed searches and consultations intended to locate any and all records that deal with the rescission of the appellant's offer.

In those searches, I have consulted with my staff, and have also consulted with [named individuals], who are, respectively, the Vice Dean of Postgraduate Medical Education at the University, and the other two individuals with whom I had discussion about the decision to rescind before it was discussed in the PRPC meeting referred to below.

I located responsive records, not previously identified in my earlier searches, in those searches and consultations. They are audio recordings of in camera portions of two Psychiatry Residence Program Committee meetings in which the rescission of the appellant's offer was discussed. These meetings were held on December 6, 2010 and January 20, 2011. Brief written summaries of the in camera portion of each of the meetings were prepared, in the weeks following the meetings, in the normal course of business. The December 6, 2010 recording is incomplete as the recording device appears to have run out of memory a few minutes before the end of the meeting.

[13] 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 and 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.

[14] 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 [Orders P-624 and PO-2559]. To be responsive, a record must be "reasonably related" to the request [Order PO-2554].

[15] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request [Orders M-909, PO-2469, PO-2592].

[16] Based on my review of the university's representations and the affidavits submitted in evidence, I am satisfied the searches carried out by the PRPC members was reasonable in the circumstances. Further, I am satisfied that the university has conducted a reasonable search for the responsive records and I dismiss the appeal.

ORDER:

I uphold the university's search for additional records and dismiss the appeal.

Original signed by: _____
Stephanie Haly
Adjudicator

_____ October 25, 2012