Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3155

Appeal PA11-152

George Brown College of Applied Arts and Technology

January 22, 2013

Summary: George Brown College received a request for certain records that refer to an identified organization. The college located one responsive record (a letter) and disclosed one paragraph to the appellant, stating that the remaining portion of the letter was not responsive to the request. The college subsequently issued a revised decision, stating that the whole letter was responsive to the request, and denying access to the remaining portions on the basis of the exclusionary provision in section 65(6) (employment-related matters). It also stated that, in the alternative, access was denied based on the exemptions in sections 18(1)(c) (economic and other interests) and 17(1) (third party information). This order determines that a portion of the letter which relates to the identified organization is responsive to the request, but that a separate portion of the letter is not responsive. This order also determines that the claimed exemptions do not apply to the responsive portion of the record, and orders that it be disclosed. In addition, the college's search for records is found to be reasonable.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 17(1), 18(1)(c) and 24.

Orders and Investigation Reports Considered: Order P-880.

OVERVIEW:

[1] The George Brown College of Applied Arts and Technology (the college) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for

records that refer or relate to an identified organization, and that passed between the college and certain named individuals.

[2] The college issued a decision providing partial access to one record, which is a letter from the college to one of the named individuals. The decision stated:

> The letter was written about a number of issues that are not pertinent to your request, but a paragraph on page two of the letter does reference [the identified organization] …. This paragraph [has been] left for you to review, the rest of the letter [has been] severed.

[3] The college advised that this was the only record responsive to the request.

[4] The appellant appealed the college's decision on the basis that the full record should have been disclosed, and that the search conducted for responsive records was inadequate.

[5] During mediation, the college conducted a further search, but did not locate any additional records. The college subsequently issued a second decision in which it stated that access to the remaining withheld portions of the record was denied on the basis that the record is excluded from the scope of the *Act* as a result of the application of section 65(6) of the *Act*. The college also stated that, in the alternative, access to the withheld portions of the record was denied on the basis of the exemptions in sections 17(1)(b) (third party information) and 18(1)(c) (economic interest) of the *Act*.

[6] Mediation did not resolve the appeal, and this file was transferred to the inquiry stage of the process. I sent a Notice of Inquiry to the college, initially, inviting it to provide representations on the issues in this appeal. These issues included the scope of the request, the possible application of section 65(6), the exemptions in section 17(1) and 18(1)(c), and whether the search conducted for responsive records was reasonable.

[7] The college provided representations on a number of the issues in this appeal. In its representations, it indicated that it was no longer taking the position that the withheld portions of the record were not responsive to the request. It also withdrew its reliance on the exemption in section 17(1), and the college did not provide representations on that issue.

[8] On my review of the record at issue in this appeal, I noted that a third party (the affected party, who was the recipient of the letter) may have an interest in this appeal. As a result, I sent a Supplementary Notice of Inquiry to the affected party, and invited the affected party to address the possible application of the exemption in section 17(1) to the record at issue. The affected party provided representations in response.

[9] I then sent a modified Notice of Inquiry, along with a copy of the non-confidential portions of the college's representations (including portions of two attached affidavits), to the appellant. The appellant did not provide representations in response.

Preliminary matter - Nature of the record/Scope of the request

[10] As set out above, the initial request for records resulting in this appeal was for records "that refer or relate to [an identified organization], and that were between the college and [certain named individuals]." The three-page letter at issue was written by an official with the college to one of the named individuals (who represents the affected party), and the disclosed paragraph from page 2 of the letter clearly refers to the identified organization.

[11] The college's initial decision indicated that only the disclosed portion of the letter was responsive to the request. The decision stated:

> As per your Freedom of Information and Access Request I am enclosing a letter that was written by [a named individual at the college] to [a named individual] on January 14, 2011. The letter was written about a number of issues that are not pertinent to your request, but a paragraph on page two of the letter does reference [the named organization] and the accreditation processes set out by [a named body]. This paragraph I have left for you to review, the rest of the letter I have severed.

[12] I note that, in addition to the paragraph on page 2 that was disclosed, the college also disclosed to the appellant the general portions of the letter including the date, letterhead, the addressee and the author's name.

[13] As identified above, the appellant appealed the college's decision, and one of the grounds of the appeal was that the request was not limited to a "paragraph in any correspondence that refers to [the organization]."

[14] The college later issued a supplementary decision which addressed access issues regarding the withheld portions of the three-page letter. It stated that the exemptions in sections 17(1)(b) (third party information) and 18(1)(c) (economic interest) apply to the withheld portions of the letter. In addition, it stated that the letter is excluded from the scope of the *Act* on the basis of section 65(6).

[15] Notwithstanding the college's revised decision, in the Notice of Inquiry I sent to the college I invited it to address the issue of what the scope of the request is, and what records are responsive to the request. The college indicated in its representations that it "no longer takes the position that the withheld portions of the record at issue are not responsive to the request."

[16] Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

> (1) A person seeking access to a record shall,
>
> (a) make a request in writing to the institution that the person believes has custody or control of the record;
>
> (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;
>
> . . .
>
> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[17] Previous orders have established that institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.[1] Furthermore, to be considered responsive to the request, records must "reasonably relate" to the request.[2]

[18] In Order P-880, adjudicator Fineberg specifically addressed the issue of relevancy, and I will review that order in some detail.

Order P-880:

[19] Adjudicator Fineberg began her review of the issue of relevancy by confirming that, although the institution's decision on the question of relevancy is a factor to consider in deciding whether a record is responsive, it is not determinative. She stated:

> … The [institution's] determination of which records were relevant to the request is a decision like any other which the head of an institution is entitled to make. Such a decision is reviewable on an appeal pursuant to section 50 of the *Act*.

[1] Orders P-134 and P-880.
[2] Orders P-880 and PO-2661.

[20] She then went on to consider the issue of relevancy under three separate headings, which are summarized as follows:

1) The test of relevancy

[21] After reviewing the positions of the parties on this part of the test, she stated:

> In my view, the need for an institution to determine which documents are relevant to a request is a fundamental first step in responding to the request. It is an integral part of any decision by a head. The request itself sets out the boundaries of relevancy and circumscribes the records which will ultimately be identified as being responsive to the request. I am of the view that, in the context of freedom of information legislation, "relevancy" must mean "responsiveness". That is, by asking whether information is "relevant" to a request, one is really asking whether it is "responsive" to a request. While it is admittedly difficult to provide a precise definition of "relevancy" or "responsiveness", I believe that the term describes anything that is reasonably related to the request.
>
> In my view, an approach of this nature will in no way limit the scope of requests as counsel fears. In fact, I agree with his position that the purpose and spirit of freedom of information legislation is best served when government institutions adopt a liberal interpretation of a request. If an institution has any doubts about the interpretation to be given to a request, it has an obligation pursuant to section 24(2) of the Act to assist the requester in reformulating it. As stated in Order 38, an institution may in no way unilaterally limit the scope of its search for records. It must outline the limits of the search to the appellant.

2) Responsive Information vs Records

[22] Under this part of the test, adjudicator Fineberg reviewed the appellant's suggestion that, because the records identified by the ministry as responsive to the request contained information requested by the appellant, the documents in their entirety must be considered to be responsive to the request. She then stated:

> In my view, the request [in this appeal] was clearly one for information as opposed to one for specified records or documents. The request does not describe a document by date, title, author or the like; nor does it ask for an entire file or "all the information related to" a particular matter. Rather, it describes the nature of the information sought and the types of documents in which such information may be contained.

[23] Adjudicator Fineberg then contrasted section 48(1) of the *Act*, which deals with requests for personal information, with section 24(1) of the *Act* which addresses the issue of requests for general records, and stated:

> In the former case, it is possible that the personal information of a requester may be located in many different documents. For example, if an individual has made a request to a Police Services Board for "all the information you have on me", it is possible that some responsive records may be contained in a police officer's notebook. However, that does not mean that the entire notebook, page or even a paragraph is responsive to the request. By their very nature, such notebooks record the daily activities of an officer who may be involved in many different investigations at any one time. Accordingly, the portions of the notebook which are responsive to such a request may consist of scattered pages, paragraphs, lines or even words.
>
> Requests for general information, as in the present case, are governed by section 24(1) of the Act. It is interesting to note that this section refers to requests for records as opposed to information as is the case in section 48(1). Section 10(1) of the Act refers to rights of access to records or a part of a record. In effect, the legislation recognizes that only portions of a document may be responsive to requests for general information. Thus, institutions must entertain requests for information which may be contained in a part of a record, as opposed to the record itself. In some cases, the requests may be in the form of questions. In others, they may be framed, as here, as requests for information.
>
> In the latter case, it is possible, just as in the personal information example, that the information being sought is contained in various documents and that the balance of one or more of these records neither has a bearing on, nor is related to, the information at issue. The Ministry expresses this concept thusly: The fact that some irrelevant information is located next to some relevant information does not make the irrelevant information relevant. I agree.
>
> I do not believe it follows that merely because responsive information is contained in a larger document, one must "reinterpret" the request to find that the balance of the document is also responsive to the request. …

[24] Adjudicator Fineberg also considered the effect of section 10(2) of the *Act*, and stated:

> The concept of severance in section 10(2) deals with disclosure of as much of a record as possible when such a document contains information

> that falls within an exemption. The information which is thus disclosed must be meaningful. In my view, the same approach should be adopted in deciding which portions of the records are responsive. That is, one should consider whether the information which is responsive is meaningful when it is only portions of a larger document.

[25] Lastly, under this part of the test, Adjudicator Fineberg considered the impact this finding might have on requesters, and stated that if a requester has concerns about the responsiveness of portions of a record, that issue can be addressed in their representations. Alternatively, the requester could "submit another, more broadly worded request to capture the information or records which [the institution] has decided are not responsive to the request as currently framed." Adjudicator Fineberg concluded by stating:

> Thus, I do not accept counsel's position that an entire document must be considered to be relevant when it contains some information which is responsive to the request.

3) Interpretation of the Request

[26] Adjudicator Fineberg then considered the specifics of the appeal before her, and interpreted the request resulting in that appeal which was for information on the funding of a project. After reviewing the representations of the parties, adjudicator Fineberg stated:

> I have concluded that the appellant's request should be interpreted as one for information about funding and any information which can be said to be reasonably related to funding should be found to be responsive.

[27] She then went on to review each of the records at issue, and found that certain records, and portions of other records, were not responsive to the specific request.

[28] I adopt the approach taken to the issue of relevancy in Order P-880, and apply it in this appeal.

The nature of the record identified as responsive to the request

[29] I have carefully reviewed the record (the three-page letter) identified as responsive to the request, and find that this record deals with two very distinct matters. The first matter, which addresses an issue relating to a specific complaint about an individual, is located on page one of the letter (specifically, the last line in the first paragraph, and the four other paragraphs on that page). The second matter, introduced in a subheading on the top of page 2 of the letter, addresses completely different issues, and is contained in the remaining portion of the letter (the six

paragraphs on page 2, and the two last paragraphs on page 3). I note that the disclosed paragraph of the letter which was initially identified as the sole responsive part of the letter, and which concerns the organization named in the request, is the fourth paragraph contained on page 2 of the letter and relates only to the second matter.

[30] I note that both the college and the affected party indirectly acknowledge the distinct nature of these two matters. In its representations in support of its position that the record is excluded from the scope of the appeal because of the wording in section 65(6) of the *Act*, the college refers specifically (and only) to the information in the first matter addressed in the record. There is no suggestion that the second matter addressed in the letter contains information that would be excluded from the scope of the *Act*. Similarly, much of the affected party's representations on section 17(1) relate exclusively to the information addressed in the first matter on page one. This supports my finding that the two matters addressed in the letter are about distinct and separate subjects.

The scope of the request and the responsive record

[31] In this appeal, the request was specifically for records "that refer or relate to [an identified organization]." The college initially interpreted the request to be for the one paragraph in the responsive letter that contained a specific reference to the named organization. The appellant appealed this decision, and stated that the request was not limited to a "paragraph in any correspondence that refers to [the organization]" but, rather, that the request was for the entire document.

[32] The college then issued a supplementary decision in which it identified the responsive record as the entire three-page letter. It also stated that this record was excluded from the scope of the *Act* under the exclusionary provision in section 65(6) of the *Act*.

[33] In this appeal, the college initially read the request very narrowly by deciding that only the general portions of the letter (date, letterhead, addressee and author) and the one paragraph that refers to the identified organization were responsive. However, by subsequently deciding that the whole record was responsive to the request, and by failing to advise the appellant that the letter addressed two distinct matters, I find that the college interpreted the request too broadly. I make this finding based on the particular wording of the request (for records "that refer or relate to" an identified organization), the distinct nature of the two matters addressed in the letter, and the approach taken to interpreting requests as set out in Order P-880.

[34] I also make this finding notwithstanding the appellant's later statement that his request was not limited to a "paragraph in any correspondence that refers to [the organization]" but for the "entire document." The appellant clearly wanted information

relating to the identified organization. The information in the one paragraph disclosed to him, which mentions the organization, suggests this paragraph relates to a larger matter discussed in the letter. The appellant understandably took the position that he wanted more than the one, isolated paragraph. However, without being advised that the letter addressed two distinct, separate matters, or advised that it contained subheadings, he was unable to articulate the scope of his request in any further detail.

[35] As a result, based on my review of the request, the record, and the issues, I find that the second matter addressed in the letter, which includes the paragraph referring to the organization named in the request, is responsive to the request. I am satisfied that although the organization is only mentioned in one paragraph, it is mentioned in the larger context of the second matter addressed in the letter, and I find that all of the discussion that relates to the second matter is "reasonably related to the request." In addition, I find that the first line on page one of the letter, which is general in nature, is also responsive to the request.

[36] I also find, however, that the distinct separate matter addressed on page one (the first matter) is not "reasonably related to the request." As indicated above, this distinct, separate matter has no relation to the organization named in the request, nor to the second matter. Accordingly, I find that the first matter addressed in the letter, contained on page one (specifically, the last line in the first paragraph, and the four other paragraphs on that page) is not responsive to the request. To paraphrase Order P-880, the fact that some non-responsive information is located in one distinct, separate part of a record does not make the non-responsive information responsive.

[37] Lastly, I am satisfied that this finding adopts an interpretation of the request that "best serves the purpose and spirit of the *Act*." As indicated above, the college now takes the position that the whole record is responsive to the request and that, because the first portion of the record is excluded from the scope of the *Act* under section 65(6), the whole record is necessarily excluded from the scope of the *Act*. If the position of the college were to be accepted, a "broad, liberal" interpretation of the request in the unique circumstances of this appeal might result in the record being excluded from the scope of the *Act* in its totality. Such a result would not best serve the purpose and spirit of freedom of information legislation.[3]

[38] Accordingly, I find that the first matter addressed in the letter (contained on page one) is not reasonably related to the request and does not fall within the scope of the request in this appeal.

[3] See Order P-880.

[39] Having found that the first matter addressed in the letter is not responsive to the request, and because the college's representations on the possible application of the exclusionary provision in section 65(6) apply only to the first matter, it is not necessary for me to address the possible application of section 65(6) to the responsive portions of the letter in this appeal.

RECORD:

[40] The record at issue is the withheld, responsive portion of a three-page letter from the college to the affected party. This includes an introductory sentence on page one, the subheading and the five withheld paragraphs on page 2, and the two last paragraphs on page 3.

ISSUES:

A. Does the record qualify for exemption under the discretionary exemption in section 18(1)(c) of the *Act*?

B. Does the record qualify for exemption under the mandatory exemption in section 17(1) of the *Act*?

C. Did the college conduct a reasonable search for records?

DISCUSSION:

Issue A. Does the record qualify for exemption under the discretionary exemption in section 18(1)(c) of the *Act*?

[41] The college takes the position that the record qualifies for exemption under section 18(1)(c) of the *Act*. That section reads:

> A head may refuse to disclose a record that contains,
>
> > information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;

[42] The purpose of section 18(1)(c) is to protect the ability of institutions to earn money in the marketplace. This exemption recognizes that institutions sometimes have economic interests and compete for business with other public or private sector entities, and it provides discretion to refuse disclosure of information on the basis of a

reasonable expectation of prejudice to these economic interests or competitive positions.[4]

[43] Section 18(1)(c) provides institutions with a discretionary exemption which can be claimed where disclosure of information could reasonably be expected to prejudice an institution in the competitive marketplace, interfere with its ability to discharge its responsibilities in managing the provincial economy, or adversely affect the government's ability to protect its legitimate economic interests.[5]

[44] For section 18(c) to apply, the institution must demonstrate that disclosure of the record "could reasonably be expected to" lead to the specified result. To meet this test, the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm." Evidence amounting to speculation of possible harm is not sufficient.[6]

Representations

[45] The college provides representations in support of its position that disclosure of the record would be injurious to its economic interests, stating:

> The evidence required to prove harm depends on the context. In this case, the harm must be considered in the context of [the college's] relationship with [the affected party].
>
> As is indicated in [an attached affidavit sworn by the Director], the quality of [the college's identified program], its ability to be accountable to its students and its financial viability are heavily dependent upon its relationship with [the affected party].
>
> In particular, [the college] relies on discussion and collaborative planning with [the affected party] to ensure the educational program appropriately aligns with the licensing exam.
>
> Also, should [the affected party] assume responsibility for the accreditation of educational programs the quality of that relationship and communications will be even more important to the continuation and financial stability of the program…

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[4] Orders P-1190 and MO-2233.
[5] Order P-441.
[6] *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).

[46] The college then states that students' confidence in the relationship between the affected party and the college impacts upon their choice of post-secondary institutions and, therefore, maintaining students' confidence in the relationship "is imperative to maintaining competitiveness, future enrolments and financial success." Although the college acknowledges that it runs the only publicly funded program of this type in Ontario, it refers to possible other programs of this nature which are being established in Ontario. The college then states:

> Thus, maintaining a good relationship with [the affected party] is important to the economic well-being of the program and if this relationship were to deteriorate the likely result would be economic harm.

[47] The college also provides an affidavit, sworn by a director of one of its programs, which supports the position taken on the possible harms in section 18(1)(c). It reiterates the statements made above, and also provides additional, confidential evidence on the possible harms that may flow from disclosure. This additional evidence relates to the purpose for writing the letter, the nature of the issues, and the impact public disclosure may have on the issues. It also provides additional evidence in support of the possible impact disclosure may have on students' confidence in the relationship between the college and the affected party.

Analysis and findings

[48] After reviewing the record at issue and the representations of the college, I am not satisfied that I have been provided with sufficiently detailed and convincing evidence that disclosure of the record could reasonably be expected to prejudice the economic interests of the college or its competitive position.

[49] The record at issue relates to the actions of the affected party, who is the recipient of the letter. The college's representations indicate that it has concerns that the disclosure of the letter will have an adverse effect on its relationship with the affected party, and that this relationship is important to the college.

[50] To begin, the letter was written to and received by the affected party. Clearly, the possible harm does not relate to the disclosure of the information to the affected party, as the letter has been sent. To the extent that this relationship may be affected, it is the impact of the disclosure of the letter to others that may result in the identified harms.

[51] The college focuses on two consequences which may result from disclosure of the record, which it argues will result in harms under section 18(1)(c).

[52] The first concern is that public disclosure of the letter will negatively impact the relationship between the college and the affected party. After reviewing the letter and the representations of the college, I am not satisfied that the harms identified by the college could reasonably be expected to result from disclosure of the record. The college refers to the importance of "maintaining a good relationship with" the affected party; however, the letter has been sent to the affected party. Based on my review of the college's representations, I am not satisfied that the college has provided sufficient evidence to establish that the public disclosure of the portion of the record at issue would impact that relationship significantly and in such a way as to prejudice the economic interests of the college or its competitive position.

[53] The second concern identified by the college is that disclosure of the record may negatively impact on students' choices in making post-secondary decisions, and thereby impact the college's economic interests or competitive position. The college's main argument is that students' confidence in the relationship between the college and the affected party impacts upon their choice of post-secondary institutions, and that maintaining students' confidence in the relationship is "imperative to maintaining competitiveness, future enrolments and financial success."

[54] In the circumstances, I find that I have not been provided with sufficiently detailed and convincing evidence to satisfy me that disclosure of the record would have the identified effect on the students. Although the college provides confidential information regarding these concerns, this information is general in nature. In addition, the information in the record relating to the relationship is now somewhat dated.

[55] I find that the college's concerns regarding the importance of maintaining students' confidence in the relationship is overstated. Although I accept that it is possible that the level of confidence the students have in the relationship between the college and the affected party may in some way impact choices they might make, and may be one factor in those choices, I find that it would be a minor factor. Furthermore, on my review of the information in the record, in my view it is equally possible that disclosure may have a positive impact on students' choices of post-secondary options in this field.

[56] I also note that the college has disclosed one paragraph from the letter, which also identifies certain issues.

[57] As a result, I find that I have not been provided with sufficiently detailed and convincing evidence to establish a reasonable expectation that the harms in section 18(1)(c) would result from disclosure of the responsive portion of the record.

Issue B. Does the record qualify for exemption under the mandatory exemption in section 17(1) of the *Act*?

[58] The affected party takes the position that the mandatory exemptions in sections 17(1)(a), (b) and (c) apply to the record. These sections state:

> A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,
>
> (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
>
> (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
>
> (c) result in undue loss or gain to any person, group, committee or financial institution or agency;

[59] Section 17(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions.[7] Although one of the central purposes of the *Act* is to shed light on the operations of government, section 17(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace.[8]

[60] For a record to qualify for exemption under sections 17(1)(a), (b) or (c), the college and/or the affected party must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and

2. the information must have been supplied to the Ministry in confidence, either implicitly or explicitly; and

3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in (a), (b) or (c) of subsection 17(1) will occur.[9]

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[7] *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.).
[8] Orders PO-1805, PO-2018, PO-2184, MO-1706.
[9] See Orders 36, P-373, M-29 and M-37.

[61] In the circumstances, I will begin by reviewing the application of the second part of the three-part test.

Part Two of the Section 17(1) Test - Supplied in Confidence

[62] In order to satisfy part 2 of the test, the affected party must establish that the information was "supplied" to the college by the affected party "in confidence", either implicitly or explicitly.

Supplied

[63] The requirement that information be "supplied" to an institution reflects the purpose in section 17(1) of protecting the informational assets of third parties.[10]

[64] Information may qualify as "supplied" if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party.[11]

In Confidence

[65] In regards to whether the information was supplied in confidence, part two of the test for exemption under section 17(1) requires the demonstration of a reasonable expectation of confidentiality on the part of the supplier at the time the information was provided. It is not sufficient that the business organization had an expectation of confidentiality with respect to the information supplied to the institution. Such an expectation must be reasonable, and must have an objective basis. The expectation of confidentiality may have arisen implicitly or explicitly.[12]

Representations and findings

[66] The affected party's representations in support of its position that the information in the letter was supplied by it to the college relate exclusively to the withheld information contained on page one of the record. The affected party does not provide any representations on whether the information in the remaining portions of the record were "supplied" by it to the college.

[67] On my review on the information contained in the portion of the record at issue in this appeal, (that is – the portion relating to the second matter), I am satisfied that this information was not supplied by the affected party to the college. I am also satisfied that its disclosure would not reveal any information so supplied. Accordingly, I

[10] Order MO-1706
[11] Orders PO-2020, PO-2043
[12] Order M-169.

find that the information at issue in this appeal was not supplied by the affected party to the college, and that part 2 of the test set out above has not been met.

[68] Because all three parts of the test set out above must be met in order to find that the mandatory exemption in section 17(1) applies, and because I find that part 2 has not been met, I find that the responsive withheld portion of the record does not qualify for exemption under section 17(1) of the *Act*.

Issue C. Did the college conduct a reasonable search for records?

Introduction

[69] In appeals involving a claim that additional responsive records exist, as is the case in this appeal, the issue to be decided is whether the college has conducted a reasonable search for the records as required by section 24 of the *Act*. If I am satisfied that the search carried out was reasonable in the circumstances, the college's decision will be upheld. If I am not satisfied, further searches may be ordered.

[70] A number of previous orders have identified the requirements in reasonable search appeals (see Orders M-282, P-458, P-535, M-909, PO-1744 and PO-1920). In Order PO-1744, Acting-Adjudicator Mumtaz Jiwan made the following statement with respect to the requirements of reasonable search appeals:

> … the *Act* does not require the Ministry to prove with absolute certainty that records do not exist. The Ministry must, however, provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records. A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request (Order M-909).

[71] I agree with Acting-Adjudicator Jiwan's statement.

[72] Where a requester provides sufficient detail about the records that he/she is seeking and the institution indicates that records or further records do not exist, it is my responsibility to ensure that the institution has made a reasonable search to identify any records that are responsive to the request. The *Act* does not require the institution to prove with absolute certainty that records or further records do not exist. However, in my view, in order to properly discharge its obligations under the *Act*, the institution must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request.

[73] Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response, the appellant must, nevertheless, provide a reasonable basis for concluding that such records exist.

Representations

[74] The college provides detailed representations, as well as two affidavits, in support of its position that it conducted a reasonable search for responsive records.

[75] The college begins by stating that the Information and Privacy Coordinator (the coordinator) at the college coordinated two searches for the records requested. It states that the initial search was conducted upon receipt of the request, and the responsive record was located as a result of that search. The college also states that it conducted a subsequent search, but that no additional responsive records were located. The college provides a detailed affidavit, sworn by the coordinator, which describes her search efforts. This affidavit details the steps taken by the coordinator in conducting the searches, including identifying the steps taken to clarify the request, identifying the individuals who were asked to conduct searches for specific records, and setting out the results of those searches.

[76] The college also provides a second affidavit, sworn by the director of the relevant program, which describes in detail this individual's involvement in the searches for responsive records including the contact she had with the coordinator, the search efforts that were made by her, and the results of those searches. This evidence from the college includes information relating to:

- the names of the individuals whose files were searched, including their titles and their involvement with the subject matter of the request;
- the email files that were searched;
- the hardcopy files that were searched; and
- that the searches were conducted by knowledgeable staff members, who searched in locations where the responsive records would logically be located.

[77] The college also takes the position that the requester has not put forward a valid basis for questioning the reasonableness of the college's search process, and takes the position that its search was reasonable.

[78] The appellant did not provide representations on this issue.

Findings

[79] As set out above, in appeals involving a claim that responsive records exist, the issue to be decided is whether the college has conducted a reasonable search for the records as required by section 24 of the *Act*. In this appeal, if I am satisfied that the college's search for responsive records was reasonable in the circumstances, the college's decision will be upheld. If I am not satisfied, I may order that further searches be conducted.

[80] A reasonable search is one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request.[13] In addition, in Order M-909, Adjudicator Laurel Cropley made the following finding with respect to the obligation of an institution to conduct a reasonable search for records. She found that:

> In my view, an institution has met its obligations under the *Act* by providing experienced employees who expend a reasonable effort to conduct the search, in areas where the responsive records are likely to be located. In the final analysis, the identification of responsive records must rely on the experience and judgment of the individual conducting the search.

[81] I adopt the approach taken in the above orders for the purposes of the present appeal.

[82] In this appeal, the college located a record responsive to the request. It also provided two detailed affidavits by individuals directly involved in the searches for responsive records, which describe in considerable detail the nature and extent of the searches conducted, as well as the results of the searches.

[83] Based on the evidence provided by the college regarding the breadth of the searches conducted for responsive records, and in the absence of evidence from the appellant on this issue, I am satisfied that the searches conducted by the college for responsive records were reasonable and I dismiss this portion of the appeal.

ORDER:

1. I find that portions of the three-page letter are not responsive to the request, and they are removed from the scope of this appeal. These portions consist of certain information contained on page 1 of the record, specifically, the last line in the first paragraph, and the four other paragraphs on page one. For greater certainty, I have highlighted in green those portions of the record that are not responsive to the request on the copy of the record sent to the college along with this order.

2. I order the college to disclose to the appellant the portions of the record identified as responsive to the request by providing a copy by **February 27, 2013** but not before **February 22, 2013**.

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[13] Order M-909.

3. I find that the college has conducted a reasonable search for records responsive to the request, and I dismiss this portion of the appeal.

Original signed by: January 22, 2013
Frank DeVries
Adjudicator