



Information and Privacy
Commissioner/Ontario

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

ORDER 146

Appeal 890049

Sheridan College of Applied Arts and Technology



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February 15, 1990

VIA PRIORITY POST

Appellant

Dear Appellant:

Re: Order 146
Appeal No. 890049
Sheridan College of Applied Arts and Technology

This letter constitutes my Order in your appeal from the decision of Sheridan College of Applied Arts and Technology (the "institution") regarding your request for information under the Freedom of Information and Protection of Privacy Act, 1987, (the "Act").

The records you requested from the institution were "Health Records for [name of Appellant], Aug.'81_May '85. Dr. Duguid_Medical Examiner".

Upon receipt of your request the institution's Freedom of Information and Privacy Co_ordinator (the "Co_ordinator") asked the following people to search for the relevant records:

1. Sheridan's Health Services Department.
2. Dr. Duguid's office.

On February 17, 1989, the Co_ordinator wrote to you advising that "Access cannot be provided since the record does not exist".

[IPC Order 146/February 15, 1990]

On February 19, 1989, you sent a letter to me appealing the institution's decision, and I gave notice of the appeal to the institution on March 8, 1989.

As you are aware, as soon as your appeal was received, a Compliance Auditor from my staff met with you to discuss the possible places to search for the requested records.

On July 12, 1989 and August 24, 1989, the Compliance Auditor conducted an investigation at the institution regarding the matters raised in your letter of appeal. The object of her investigation was to determine the steps that the institution had taken in its efforts to locate the requested records.

By letter dated October 16, 1989, the Compliance Auditor wrote to you outlining the results of her investigation. She advised you that if you were satisfied with her investigation, no further action would be taken and the appeal file would be closed. If, however, you wished to make any comments or suggestions, the Compliance Auditor asked you to forward your representations to this office by November 6, 1989. You submitted representations by letter dated October 23, 1989 and I have taken them into account in reaching my decision in this appeal.

Since the appeal could not be resolved to your satisfaction, on November 17, 1989, an Appeals Officer's Report was sent to you and the institution, together with a Notice of Inquiry. You and the institution were invited to make representations to me concerning the subject matter of the appeal. You did not send any further representations based on the Appeals Officer's Report. The institution responded by sending a sworn affidavit which included details of the steps taken to locate the requested record.

The institution's affidavit was signed by the President of the institution. In her affidavit, the President stated:

...with respect to the steps taken to locate the said health records of [name of Appellant], the following took place:

- (i) Trudie Tumber, the College's Director of Health Services, searched the College file drawers in which, both active and inactive, student and staff records are contained at the Oakville, Brampton and Credit Valley Campuses;
- (ii) the College physician, Dr. Murray Duguid, who also has an outside practice, was asked to search his off-campus files. The physician indicated that the file is not in his possession;
- (iii) a search of the Nurse's Daily Record indicates that one appointment was scheduled for the appellant and that the meeting with the physician did occur;
- (iv) in addition to the search by the Director, Patricia Baker, a nurse in the Health Services department searched the file drawers in which, both active and inactive, student and staff records are contained at the Oakville, Brampton and Credit Valley Campuses;

- (v) the result of the thorough search is that the record does not exist.

The President of the institution also stated in her affidavit that "prior to the Spring of 1988 all medical records were retained for a period of seven years. Since that time the college has adopted the procedures contained in the Canadian Law of Medical Records by Rozovsky, Butterworth & Co., Canada Ltd., 1986, and the summary of the Human Resources guidelines of the Freedom of Information and Protection of Individual Privacy Act, 1987. Medical records are now retained for a period of twenty years from the date of termination/departure from the College".

During her investigation, the Compliance Auditor reviewed three files maintained by the institution under your name but was unable to locate the requested records. Both you and your doctor confirm that the records did exist in the custody or under the control of the institution, at one point in time. Further, the President of the institution acknowledged in her affidavit that the Nurse's Daily Record indicates one appointment was scheduled for you, and the meeting with the physician did occur. There does not appear to be a question as to whether the medical records existed at one time. Based on past and current record retention policies, your medical records should still exist. Nevertheless, the institution stated that it does not have an explanation as to why your health records do not exist now.

During the course of her investigation, the Compliance Auditor asked to look at the record retention schedules relating to health records. The Director of Counselling and Health Services advised her that the revised record retention periods were recorded in the minutes of the Departmental meeting dated Friday, May 20, 1988. These minutes were shown to the Compliance Auditor. According to the Director of Health and Counselling Services, these minutes were distributed to Health Services Departments, Directors and Physicians.

The Compliance Auditor also advised you in her letter of October 16, 1989, that in cases where the institution's physician is also the personal physician of the employee, the physician would be permitted to remove a record. Unfortunately if the physician does borrow the record, the institution does not document this fact.

Having carefully reviewed the scope of the investigation performed by the Compliance Auditor and all representations submitted during the course of this appeal, I am satisfied that the search undertaken by the institution was reasonable. However, the fact that the records cannot be located causes me great concern given the nature of the records.

The purpose of the Freedom of Information and Protection of Privacy Act, 1987, is not only to provide a right of access to information under the custody and control of institutions, but also to protect the privacy of individuals with respect to personal information about themselves held by institutions. In this regard, it is unfortunate that the institution can neither locate such sensitive records nor offer any explanation as to their whereabouts.

Discussions with the institution during this appeal have revealed that there are irregularities with the institution's records management procedures. Further, I think that the institution requires clearly stated guidelines regarding its records retention schedules.

To address my concerns with the institution's record_keeping procedures, I am asking the institution to produce written guidelines for the maintenance of personal information held by the institution. I am asking that the institution produce such written guidelines and to provide my office with a copy of them as soon as they are produced.

Yours truly,

Sidney B. Linden
Commissioner

cc: Ms H.D. Sutter, Chairperson of the Board of Governors,
Sheridan College of Applied Arts and Technology
Ms Jeanne Fryer, FOI Co_ordinator