

Information and Privacy Commissioner,  
Ontario, Canada



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

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## FINAL ORDER PO-4380-F

Appeal PA20-00566

Sheridan College Institute of Technology and Advanced Learning

April 24, 2023

**Summary:** In Interim Order PO-4352-I, Sheridan College Institution of Technology and Advanced Learning (the college) was ordered to conduct a further search for records responsive to a request made under the *Freedom of Information and Protection of Privacy Act* (the *Act*). In this order, the adjudicator finds that the college has now provided sufficient evidence that its search efforts were reasonable in the circumstances, and dismisses the appeal.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 24; *Commissioners for Taking Affidavits Act*, RSO 1990, c C.17, as amended, sections 1, 2, and 5; *Commissioners and Other Persons Who May Take Affidavits*, O Reg 386/12, as amended, sections 4 and 4.1; *Administering Oath or Declaration Remotely*, O Reg 431/20, as amended, section 4.

**Order Considered:** Order PO-4352-I.

### OVERVIEW:

[1] This final order closes a multi-issue appeal that was mostly resolved through Interim Order PO-4352-I. In this order, I uphold the reasonableness of a search conducted by Sheridan College Institution of Technology and Advanced Learning (the college) in response to a request made under the *Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] The request was as follows:

Please provide all records relating to Sheridan email account for [requester's name] and its activities, including but not limited to, incoming emails, automatic replies sent, responses sent, IT maintenance of email accounts, all messages with full headers, all contacts and correspondences to the administrative assistant, responses sent by the administrative assistant to same, and any other activity of this account for the period from [a specified date] to present.

[3] In Interim Order PO-4352-I, I ordered the college to conduct a further search, and to provide the IPC and the appellant with an affidavit containing details related to the search.

[4] Having reviewed the college's affidavit evidence and the appellant's representations in reply, I uphold the reasonableness of the college's search, and dismiss the appeal.

## **DISCUSSION:**

[5] The only issue left to decide in this appeal is whether the college has now conducted a reasonable search.<sup>1</sup>

[6] In Interim Order PO-4352-I, I found that the college engaged experienced employees knowledgeable in certain aspects of the request to conduct a search.

[7] However, I also found that the college did not provide sufficient evidence of other aspects of its search efforts.

[8] More specifically, I found that the college's internal emails showed that the college was not clear about the scope of the appellant's request (including the identity of the administrative assistant referenced in the request), and that such questions were not answered in the subsequent emails, and not directly addressed by the college in its representations. As a result, I found that there was insufficient evidence before me that the college clarified these basic matters and/or made attempts to clarify them with the appellant. I stated that it would have been reasonable in the circumstances for the college to clarify the identity of the administrative assistant and any other unclear terms with the appellant. Therefore, I ordered the college to conduct a further search for records responsive to the request (as the request was worded in the Overview of the order).<sup>2</sup>

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<sup>1</sup> The appellant states that issues he presented earlier in the inquiry remain outstanding, but only the issue of reasonable search was unresolved by Interim Order PO-4352-I. He also asks that I comment on the college's having an email account in his name without giving him access to it, but that is outside the scope of what I must decide in this order.

<sup>2</sup> See paragraph 96 of Order PO-4352-I.

[9] After Interim Order PO-4352-I was issued, the college conducted a further search.

[10] The college provided the IPC and the appellant with affidavit evidence detailing its 2020, 2021, and (ordered) 2023 searches. Since this evidence was shared with the appellant, it is not necessary to set it out in detail here.

[11] To summarize, the college provided detailed evidence about the name, position, understanding or experience of the employees who undertook the 2020, 2021, and 2023 searches, as well as the dates, scopes, and other important details about each search.

[12] I have reviewed these details, and am now satisfied that the college has provided sufficient evidence that it conducted a reasonable search in response to the appellant's request. In particular, I find that the college sufficiently addressed the specific points that I raised in Interim Order PO-4352-I, as described above (the scope and the identity of the administrative assistant referenced in the request). The appellant's representations do not indicate that the administrative assistant was incorrectly identified.

[13] Having reviewed the appellant's representations in response to the college's affidavit evidence, I find that he asserts that additional responsive records exist, but has not established a reasonable basis for believing so.

[14] The appellant makes a number of unsubstantiated claims about the reliability of the college's affidavit evidence, which I will not repeat in this public order, and which I find no reason to accept.

[15] He also challenges the validity of the affidavit itself, as it was not stamped; however, since it was commissioned remotely by a lawyer, it did not need to be.<sup>3</sup> Furthermore, I do not accept that because the commissioner of the affidavit, and the affiant himself, are both college employees that there was a conflict of interest in the matter. The appellant has not substantiated his allegation of any potential conflict and I decline to address this issue further.

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<sup>3</sup> Section 4 of *Administering Oath or Declaration Remotely*, O Reg 431/20 says: "In the case of a commissioner to whom section 5 of the Act applies, the information on the stamp required to be used under that section appears on or in the document being signed." Here, reference to "the Act" is reference to the *Commissioners for Taking Affidavits Act (CTAA)*, RSO 1990, c C.17. Section 5 of the *CTAA* relates to commissioners whose appointment as commissioners is limited by time or territory, but lawyers are not such commissioners. Rather, they are commissioners by virtue of office, under sections 1 and 2 of the *CTAA*, and under sections 4 and 4.1 of *Commissioners and Other Persons Who May Take Affidavits*, O Reg 386/12, which is a regulation made under the *CTAA*. Section 1 of the *CTAA* says: "Persons who hold an office or an office of a class that is prescribed by the regulations made under this Act are, by virtue of office, commissioners for taking affidavits in Ontario." Section 2 of the *CTAA* says: "Persons who hold an office or an office of a class that is prescribed by the regulations made under this Act may take affidavits that are required to be taken."

[16] In addition, the appellant asserts that the email of a former student who tried to contact him (after he left the college), which he says “appears to include” the appellant’s college-issued email address, is an example of a responsive record that the college did not disclose, and/or which means that the college did not conduct a reasonable search. I find this to be an assertion that is insufficiently supported, and which does not lead me to question the reasonableness of the college’s latest search efforts, as described in its affidavit evidence.

[17] The appellant also asserts that as a popular professor, he would have received many other such emails after his departure from the college, and that these records have not be identified and disclosed to him. However, I find this submission to be a speculative basis upon which to believe that additional responsive records exist. I find that this submission also does not undermine the college’s detailed evidence about the search efforts it actually undertook to respond to the request.

[18] The *Act* does not require the college to prove with certainty that further records do not exist. However, the college was required to provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;<sup>4</sup> that is, records that are “reasonably related” to the request.<sup>5</sup> I find that it has done so, for the reasons set out above. Therefore, I uphold the reasonableness of its search, and dismiss the appeal.

**ORDER:**

I uphold the reasonableness of the college’s search, and dismiss the appeal.

Original signed by: \_\_\_\_\_  
Marian Sami  
Adjudicator

\_\_\_\_\_ April 24, 2023

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<sup>4</sup> Orders P-624 and PO-2559.

<sup>5</sup> Order PO-2554.