Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER PO-2089

Appeal PA-010276-1

Ministry of the Solicitor General

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NATURE OF THE APPEAL:

This appeal concerns a decision of the Ministry of the Solicitor General (now the Ministry of Public Safety and Security) (the Ministry) made pursuant to the provisions of the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requester (now the appellant) sought access to:

> 1. The final report from [a named inspector] in respect to my letter of July 16, 1999 request to investigate the loss of transcripts at the Divisional Court Hamilton. To this date I have received no acknowledgement whatsoever that he even received my letters of July 21 and July 16, 1999.
>
> 2. In respect to a letter received from [a named chief superintendent commander] Apr 2/2001 in response to a request for investigation by [a named previous regional councilor] dated Nov 14/2000, which was directed to [a named commissioner], I request copies of [a named inspector's] final report to the matter that received his full consideration in respect to the investigations requested.
>
> 3. In respect to my letter of Aug. 2/2000 directed to [a named OPP detective], and in particular my request in the last paragraph of the letter, please provide a copy of any and all police reports regarding this request, as well as a copy of any search warrants issued and enforced in order to confirm our police protection, and the level of safety provided to this family.

The Ministry issued a decision letter in which it denied access to the responsive records, stating that the records concern a matter that is currently before the courts. In its decision, the Ministry stated that it was denying access in accordance with section 49(a) read in conjunction with sections 14(1)(a), 14(1)(b), 14(1)(f), 14(1)(l), 14(2)(a) and 19, and section 49(b) read in conjunction with sections 21(2)(f) and 21(3)(b) of the *Act*.

The appellant appealed the Ministry's decision to this office.

During the course of the mediation stage of this appeal, the Ministry issued a revised decision letter in which it granted partial access to the responsive records. The Ministry stated that access to a named individual's personal information is denied pursuant to section 49(a) read in conjunction with sections 14(1)(l) and 14(2)(a) and section 49(b) read in conjunction with sections 21(2)(f) and 21(3)(b) of the *Act*. The Ministry also indicated that some third party information was removed from the records as it was deemed to be not responsive to the request.

The appellant appealed the Ministry's revised decision on the basis that the records disclosed by the Ministry were not responsive to parts 2 and 3 of the appellant's request. The appellant clarified that as a result of the Ministry's revised decision and the disclosure of records, he was satisfied with the response to part 1 of his request. The appellant also informed the mediator that he was not pursuing access to the severed portions of the partially disclosed records. The mediator conveyed this information to the Ministry.

The Ministry then contacted the appellant to clarify issues relating to parts 2 and 3 of his request. As a result of these discussions, the Ministry agreed to provide some additional information to

the appellant and issued another revised decision letter granting additional access to the responsive records. In its decision, the Ministry advised that it continued to rely on section 49(a) read in conjunction with sections 14(1)(l) and 14(2)(a) and section 49(b) read in conjunction with section 21(2)(f) and 21(3)(b) of the *Act* in withholding part of the responsive information. The Ministry also advised that some information was removed from the records as it was deemed to be not responsive to the request.

Following receipt of this revised decision letter, the appellant advised the mediator that the additional disclosure of information satisfied part 2 of his request. However, the appellant maintains the view that the Ministry has not responded to part 3 of his request and that additional records should exist in respect of part 3 of his request.

I issued a Notice of Inquiry putting both the appellant and Ministry on notice of my intention to conduct an oral inquiry where the sole issue to be decided is whether the Ministry has conducted a reasonable search for records responsive to the appellant's request as required by section 24 of the *Act*.

At the request of the Ministry, the inquiry was adjourned to enable the parties to engage in further settlement discussions, with the assistance of an Adjudication Review Officer, regarding the reasonable search issue. These efforts proved unsuccessful and a date was fixed for an oral inquiry.

On Wednesday, December 4, 2002 I conducted an oral inquiry, via teleconference.

The appellant was self-represented at the inquiry and made representations in support of his position. The Ministry was represented by legal counsel and was accompanied by two information analysts from the Ministry's Freedom of Information Office, one detective of the Ontario Provincial Police (OPP) and one civilian employee of the OPP. One of the information analysts and the OPP detective made representations regarding the scope of the appellant's request and the civilian OPP employee provided representations regarding the actual searches undertaken for records responsive to the appellant's request.

DISCUSSION:

INTRODUCTION

As set out above, in appeals involving a denial of access on the basis that no or no additional records exist, the sole issue to be determined is whether the institution has conducted a reasonable search for responsive records, as required by section 24 of the *Act*.

A number of previous orders have identified the requirements in reasonable search appeals (see, for example, 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 statements 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).

I agree with acting-Adjudicator Jiwan's statements.

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.

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.

If, after hearing all of the evidence and arguments of the parties, I am satisfied that the searches carried out were reasonable in the circumstances, the institution's decision will be upheld. If I am not satisfied, further searches may be ordered or other appropriate steps taken.

REPRESENTATIONS

The Appellant

The Appellant states that part 3 of his request for information arises out of a complaint he filed with the OPP to investigate a public safety concern for him and his family due to a confrontation with a named individual employed by the Haldimand Norfolk Administration Building. The appellant states that the only record that addresses part 3 of his request is an August 14, 2000 report prepared by a named OPP detective (identified by the Ministry as page 6 of the responsive records). The appellant indicates that his concern regarding the existence of further responsive records relates to the last paragraph of that report which states: "Threat Assessment Unit – the [appellant's] letter dated 02 Aug 00 has been forwarded to [a named detective sergeant] for assessment." The appellant believes that there should be further responsive records, as the named detective sergeant would have conducted further investigations and prepared reports in respect of the threat assessment. The appellant states that if it is the Ministry's position that no further responsive records exist regarding part 3 of his request he would like to receive written confirmation of this position from the Ministry.

The appellant also indicates that he takes exception with the exemptions claimed by the Ministry in denying him full access to the records identified as responsive.

The Ministry

As stated above, an information analyst and an OPP detective made representations regarding the scope of the appellant's request.

The information analyst states that, in relation to the appellant's belief that further responsive records exist with respect to part 3 of his request, it is the OPP's position that the appellant's August 2, 2000 letter was sent down to the Threat Assessment Unit as a follow-up to a public safety warrant that had been executed against the appellant's residence in May 2000. The information analyst indicates that any records that exist with respect to the referral to the Threat Assessment Unit are not responsive because they concern an investigation of the appellant and do not address the actions taken by the OPP in response to the appellant's allegations against the named individual. The information analyst further states that if the appellant wants to obtain a copy of the threat assessment that was done on him he would have to make another request for this information.

The OPP detective indicates in his representations that as result of the appellant's letter of August 2, 2000, he completed and filed an incident report dated August 14, 2000 and, subsequently, issued a supplementary report dated September 12, 2000. He states this represents the full extent of his actions in response to the appellant's public safety allegations against a named individual.

The civilian OPP employee gave evidence regarding the search conducted by the Ministry in response to the appellant's request. She states that when she was notified of the appellant's request she initially went directly to the named detective to discuss the request and she pulled up two incident reports, dated August 14, 2000 and September 12, 2000 respectively, which were then provided to the Ministry's Freedom of Information Office. She also indicates that she checked two computer systems that the OPP uses when searching for information: the Ontario Municipal and Provincial Police Automation Cooperative (OMPPAC) and Niche RMS (which she says replaced OMPPAC in the fall of 2000). She indicates that she could not locate anything further that was responsive to the appellant's request.

CONCLUSIONS

The Ministry has provided a clear and detailed description of the efforts it undertook to locate records responsive to the appellant's request. In addition, the Ministry has provided persuasive evidence and argument that any information related to the referral of the appellant's August 2, 2000 letter to the Threat Assessment Unit, as set out in the last paragraph of the named detective's August 14, 2000 report, is not responsive to his request.

I am satisfied that the Ministry has made a reasonable effort to identify and locate records responsive to part 3 of the appellant's request. I also accept the Ministry's position that any records that may exist in response to the referral of the appellant's August 2, 2000 letter to the Threat Assessment Unit is not responsive to the appellant's request. As suggested by the

Ministry, the appellant is entitled to make a new request for any records that may be responsive to this threat assessment.

In addition, while the appellant has indicated that he takes issue with the exemptions claimed by the Ministry in respect of the responsive records, I do not have the jurisdiction to address this issue in this appeal. However, the appellant does have a right of appeal with respect to exemptions claimed by the Ministry.

Finally, I see no basis to require the Ministry to send a letter to the appellant confirming that no further records exist. The Ministry has made oral representations on this point in the inquiry, and the appellant has been given an opportunity to respond to those representations. To require the Ministry to produce such a letter would only serve to confirm for the appellant what the Ministry has already established to my satisfaction in the inquiry.

I find that the Ministry has adequately discharged its responsibilities under section 24 of the *Act* to conduct a reasonable search for all responsive records.

ORDER:

I uphold the Ministry's search for responsive records and dismiss the appeal.

Original signed by: December 18, 2002
Bernard Morrow
Adjudicator