



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2259

Appeal PA-030004-2

Ministry of Public Safety and Security



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal from a decision of the Ministry of Public Safety and Security (the Ministry) (now the Ministry of Community Safety and Correctional Services), made under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requester (now the appellant) sought access to:

Any and All dialogue (memos, letters, etc.) from the Solicitor Generals Office, either in house or to any person or body (government or civilian, i.e.: probation, police service, Attorney General, jails, etc.) from and inclusive of 1995 till the present including but not limited to personal dialogues, memos, etc. of whatsoever minister at the time (Runciman, Flaherty), or anyone else employed or stationed there. In short, everything pertaining to me.

The Ministry located responsive records and granted full access to them, stating that it was disclosing “a photocopy of all correspondence to and from yourself and the Ministry of Public Safety and Security”. The appellant has appealed from the Ministry’s decision on the basis that he believes additional records exist. Among other things, the appellant took the position that the Ministry’s response did not address his whole request, but was only a partial response.

The issue before me is whether the Ministry has conducted a reasonable search for records in response to the request.

I sent a Notice of Inquiry to the Ministry, initially, inviting it to provide representations on the facts and issues raised by the appeal. The Ministry’s representations (with the exception of confidential portions) were sent to the appellant, who has declined to make representations in response.

DISCUSSION:

REASONABLE SEARCH

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, 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.

The *Act* does not require an 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 [P-624].

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

During mediation through this office, the appellant provided the basis for his belief that additional records exist. He provided information in four points:

- 1) The appellant stated that in records he received from the Ministry, there was a letter referring to a "review" being done. This letter also states that a copy of the appellant's correspondence had been forwarded to Police Complaints Commission. The appellant submits that there should be records of the review and also records relating to the forwarding of his correspondence by the Ministry.
- 2) The appellant describes certain events relating to a charge he laid against a Ministry employee, and charges and allegations against him by the Ministry. He believes that records pertaining to this should exist but none were included in the records disclosed to him.
- 3) The appellant stated that he had made a number of complaints to the Ministry concerning probation officers and two of these officers were replaced. The appellant states that records relating to this issue should exist but none were included in the records that he received.
- 4) The appellant stated that an employee of a named detention center told him that there was an investigation into his complaint against another detention center. The appellant also believes that records relating to this complaint and the investigation should exist at the Ministry but no such records were included in the records that he received.

The above information was conveyed to the Ministry, which agreed to conduct an additional search for records based on the appellant's points.

In the Ministry's representations, it states that it contacted employees in two correspondence units within the Ministry regarding the appellant's request. The unit responsible for handling correspondence pertaining to correctional services, as well as the unit responsible for handling correspondence relating to public safety were asked to search for responsive records. Each of these units is responsible for handling all correspondence to and from the Minister and Deputy Minister pertaining to their respective issues.

In response to the additional information provided by the appellant, the Ministry also contacted an employee with the Information Management Unit, which occasionally drafts correspondence with respect to correctional issues. This employee conducted a search on its database, and found no additional records. In response to the appellant's contention that there should be records of a "review", the employee stated that a "review" refers to a process of checking or monitoring a file to ensure that an individual was properly managed; such a process does not generate any paper records.

A further search for responsive records was conducted by the Information Management Unit when the Ministry was given the log number of the letter referred to by the appellant in point #1 above. No additional records were located.

In response to the appellant's submission concerning the Police Complaints Commission (PCC), the Ministry states that it provided the PCC with a copy of its correspondence to the appellant, as indicated by a "cc" at the bottom of the letter. It states that its common practice is to forward such copies without any further correspondence being generated.

With respect to point #2, the Ministry states that responsive records on this point form part of the records at issue in another appeal involving the appellant and the Ministry, Appeal No. PA-020399-2. These records were withheld from the appellant and the issues with respect to this appeal have not been settled yet. In the present appeal, the Ministry's Communications Branch conducted a second search for responsive records beyond those at issue in Appeal No. PA-020399-2, and no additional records were located.

With respect to point #3, the Ministry requested that the Probation and Parole Office conduct a search for responsive records. The records that were located also form part of the records at issue in Appeal No. PA-020399-2. No additional records responsive to the appellant's request were located. In addition, the Offender Tracking Information System was checked for information regarding the appellant. No probation notes relating to the appellant were found as his probation file has been closed and archived.

With respect to point #4, the Ministry states that it asked staff at the Correctional Services Office in Guelph to conduct a search for responsive records. As the two correctional facilities named are closed, all the records are now kept in Guelph. Staff at the Guelph Correctional Centre indicated that no responsive records could be located. Subsequently, the Ministry contacted the Regional Director, Adult Institutional Services, a further search was conducted, and no responsive records were located.

The Ministry stated that the areas within the Ministry that could potentially have any records responsive to the appellant's requested have conducted thorough searches. It submits that no records exist in relation to point #1. Responsive records exist in relation to points #2 and 3, but these are all covered by another request and form part of the records at issue in Appeal No. PA-020399-2. No records exist in relation to point #4.

Based on the Ministry's decision letter, it is understandable that the appellant would question whether the Ministry conducted a thorough search. It is not apparent from that letter that the Ministry searched for records beyond those consisting of correspondence between the Ministry and the appellant. However, after receiving more information from the Ministry about the nature and extent of the searches it has conducted, I am satisfied that the Ministry has not confined its searches to this aspect of the appellant's request. Its description of its searches establishes that it was not just searching for correspondence between it and the appellant. It is also important to note that the Ministry has identified that responsive records exist in relation to points #2 and #3, and that these records are not limited to correspondence between the appellant and the Ministry. As these are already the subject of a decision by the Ministry and an appeal from that decision,

the Ministry is not required to make a separate access decision on them for the purposes of this request.

I find that the Ministry has provided a reasonable explanation for why no records exist in relation to point #1 raised by the appellant. As to point #4, I am satisfied that the Ministry has made reasonable efforts to find records relating to any investigation, and that none exist.

In view of my findings, I uphold the Ministry's decision that no additional responsive records exist beyond those at issue in Appeal No. PA-020399-2.

ORDER:

I dismiss the appeal.

Original signed by: _____
Sherry Liang
Adjudicator

_____ April 2, 2004