



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2469

Appeal PA-050292-1

Ministry of Community Safety and Correctional Services



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NATURE OF THE APPEAL:

The Ministry of Community Safety and Correctional Services (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for the following:

All information including but not limited to all notes, correspondence, telephone calls, memos, photos, applications, reports, statements, etc. with respect to myself and [an identified investigation company] in the hands of the Chief Firearms Officer for Ontario from January 1, 2005 to date. I am the director and president of [the identified company].

The Ministry granted full access to all of the records responsive to the request.

The requester, now the appellant, appealed the Ministry's decision on the basis that more responsive records should exist. In support of the position that additional records exist, the appellant stated in his appeal letter:

There is no information whatsoever as to any police notes or notes of any person in the Chief Firearms Office with respect to their consideration of the license of [the identified company], their field notes, office notes, memos, correspondence that mentions or considers or is in relation to [the identified company].

What has been given is only what [the identified company] produced and forwarded to the Chief Firearms Officer for Ontario and what is sought is what has not been given as stated hereon. It does exist.

No issues were resolved in mediation, and this file was transferred to the adjudication stage of the process. I sent a Notice of Inquiry to the Ministry, initially, and received representations in response. In its representations, the Ministry indicated that it had identified six additional responsive records, and had granted the appellant complete access to them. The Ministry also provided information and an affidavit in support of its position that the search for responsive records was reasonable.

I then sent the Notice of Inquiry, along with a complete copy of the Ministry's representations, including the affidavit, to the appellant. The appellant did not respond to the Notice sent to him.

DISCUSSION:

REASONABLE SEARCH

Introduction

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 Ministry 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 decision of the Ministry will be upheld. If I am not satisfied, further searches may be ordered.

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 Muntaz 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).

I agree with acting-Adjudicator Jiwan's statement.

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.

Representations

In the course of this appeal, the appellant has maintained that additional records responsive to the request exist. As identified above, the appellant believes that records such as police notes, field notes, memos, correspondence and other records of individuals in the Chief Firearms Office with respect to their consideration of the license of the identified company ought to exist.

In the Notice of Inquiry, I invited the Ministry to provide representations on whether additional responsive records exist, and to provide documents and/or other relevant evidence which support its position.

The Ministry provided substantial representations in support of its position that the searches conducted for responsive records were reasonable.

The Ministry begins by describing the role and responsibilities of the Chief Firearms Office under the *Firearms Act*, and then identifies the records which were located as a result of the initial search for records responsive to the request. The Ministry sets out the nature of the records requested, and states that they relate primarily to the denial of a particular application

made by the identified company. The Ministry notes that records relating to the application were included in the responsive records, and also refers to the basis of the decision to deny the application.

The Ministry then reviews the searches it conducted following the issuance of the Notice of Inquiry by this office. The Ministry states that, in response to the Notice of Inquiry and following a further review of the responsive records, six additional records were disclosed to the appellant. The Ministry takes the position that the searches conducted for the responsive records were reasonable, and provides an affidavit in support of its position which sets out the nature and extent of the searches undertaken.

In the affidavit, sworn by the Policy and Communications Officer in the Chief Firearms Office who conducted the searches, the affiant identifies that her responsibilities include conducting records searches in relation to requests under the *Act*. She notes that the request clearly limited the time period covered by it, and identifies that, in response to the request, the following searches were conducted:

- the file pertaining to the named company maintained by the Chief Firearms Office was searched and reviewed for potentially responsive records, and 55 pages of records were located (and subsequently released);
- five named individuals working for the Office were contacted and asked about whether they had any responsive records in their possession. These individuals included Counsel for the Chief Firearms Officer, the Manager of Field Services, the Deputy Chief Firearms Officer, and two identified Firearms Officers for a municipal police service. Each of these individuals confirmed that they had no responsive records.

The affidavit proceeds to describe the additional searches conducted after the appeal was filed, and after the Ministry became aware that the appellant was of the view that further responsive records existed. The subsequent actions are described in the affidavit as follows:

- the file pertaining to the named company was re-examined for any responsive records, and six additional records were identified as being included in the scope of the request. These records are specifically identified in the affidavit;
- all five of the individuals contacted during the initial searches were contacted again and advised of the issues raised in this appeal. All of these individuals re-confirmed that no additional responsive records were in their possession.

The affidavit then summarizes the reasons why the affiant believes the searches were reasonable and identifies that:

- multiple searches were conducted;
- all Firearms Office personnel that had dealings with the matter were contacted and involved in the searches for responsive records; and

- the searches were extended to address any and all issues raised by the appellant during the course of the appeal.

As identified above, the appellant was provided with a Notice of Inquiry, along with a copy of the Ministry's representations, including the attached affidavit. The appellant did not provide representations in response to the invitation to do so.

Analysis

As set out above, in appeals involving a claim that additional responsive records exist, the issue to be decided is whether the Ministry 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 Ministry's search for responsive records was reasonable in the circumstances, the Ministry's decision will be upheld. If I am not satisfied, I may order that further searches be conducted.

Although the representative for the appellant was invited to provide representations on whether additional responsive records exist, and to provide any documents and/or other relevant evidence which support the position taken, the appellant provided no additional information in support of the position that additional responsive records exist other than the initial statements identifying the belief that further responsive records exist.

The Ministry has provided a clear and detailed description of the efforts it undertook to locate records responsive to the appellant's request, as well as a detailed affidavit sworn by the individual who conducted the searches for records which supports its position. Based on the information provided by the Ministry, I am satisfied that the Ministry's search for records responsive to the request was reasonable in the circumstances.

ORDER:

In all the circumstances, I find that the Ministry has conducted a reasonable search for records responsive to the request, and I dismiss the appeal.

Original signed by: _____
Frank DeVries
Adjudicator

_____ May 8, 2006