



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2555**

**Appeal PA-050263-1**

**Ministry of Community Safety and Correctional Services**



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## **BACKGROUND:**

The requester was incarcerated in [a named facility] operated by the Ministry of Community Safety and Correctional Services (the Ministry) in 2003. The requester had previously been incarcerated in the same facility. While incarcerated in 2003, he required medical treatment. The Correctional Centre opened a medical file. Upon his release, the requester became involved in a legal action with the Correctional Centre as a result of treatment he received while incarcerated. The requester made a request for his medical file under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The Ministry located and granted full access to the medical file. The requester was not satisfied that he received full access and submitted another request for his medical file to the Ministry.

## **NATURE OF THE APPEAL:**

The requester's second request to the Ministry under the *Act* was for any records in his medical file relating to a specific medication which he indicated was administered to him during the period of time in 2003 when he was incarcerated.

In response to the second request, the Ministry replied that no responsive records exist beyond those disclosed in response to the earlier request. The requester (now the appellant) appealed that decision to this office.

During mediation, the Ministry undertook another search for the records in question; however, no additional records were found. As further mediation was not possible, the file was moved to the adjudication stage of the appeal process.

I began the adjudication by sending a Notice of Inquiry to the Ministry, outlining the facts and issues in the appeal, and inviting it to provide representations. Upon receiving the Notice of Inquiry, the Ministry contacted the Adjudication Review Officer assigned to this appeal and advised that additional records responsive to the request had been located and subsequently disclosed, in full, to the appellant. I requested and received a copy of its decision letter and the records disclosed from the Ministry. In the decision letter, the Ministry provided the following explanation of its further search:

The Ministry recently contacted the Health Care Coordinator at the [named facility] to review the circumstances of your appeal. The Health Care Coordinator undertook a further search for responsive records. On January 25, 2006, the Ministry learned that two documents had been located that are responsive to your specific request.

...

These documents had inadvertently been filed with your 2001/2002 medical file [pertaining to his previous incarceration] at the [named facility]. Please accept my sincere apology for this oversight.

The Ministry did not provide further representations. Because the letter from the Ministry provided what appeared to be satisfactory information regarding its search for responsive records, this office contacted the appellant to inquire whether the records disclosed satisfied his appeal. The appellant advised that he continued to believe that additional records exist, and that he wanted to pursue his appeal.

Accordingly, I sent the appellant a Notice of Inquiry identifying the facts and issue in the appeal, seeking representations, which he provided.

## **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 the 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 [Order 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.

The appellant did not provide reasons for his belief that additional records existed during the mediation stage of the appeal. Nor did he did not make any representations on this issue in response to the Notice of Inquiry. The appellant's representations simply consist of a statement that the records he seeks are "evidence" that he wishes to tender in an ongoing legal proceeding and "should be treated as such". The appellant does not provide any explanation as to how this is relevant to the reasonable search issue in the present appeal.

The balance of the appellant's representations consist of statements that there "has to be" more records. The appellant provides no additional reasons for his continued belief that additional records should exist.

After considering the Ministry's explanation of the additional steps it took to locate them, which was included in its decision letter (quoted above), I am satisfied that the Ministry made a reasonable effort to identify responsive records. As a result of the Notice of Inquiry that I sent to the Ministry, it conducted another search and located two more responsive records. Because the records were found in the medical file opened during the previous period of incarceration, it is clear that they had simply been misfiled in the wrong medical file relating to the appellant. In

conducting a more thorough search, the Ministry expanded its search beyond the year in which the record was created to include other years and, in doing so, located and disclosed 2 additional pages which had been incorrectly filed.

In the absence of helpful representations that might shed light on the reasons for his belief that additional records exist from the appellant, I am not persuaded that further searches could reasonably be expected to produce additional records in the manner requested, and find that the Ministry has conducted a reasonable search.

Therefore, I dismiss the appeal.

**ORDER:**

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

Original signed by: \_\_\_\_\_  
Beverley Caddigan  
Adjudicator

\_\_\_\_\_ March 14, 2007