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

ORDER PO-2752

Appeal PA06-230

Ministry of Community Safety and Correctional Services

Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9188
TTY: 416-325-7539
http://www.ipc.on.ca

NATURE OF THE APPEAL:

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

> Part I is for access to a **record layout for the Offender Tracking and Information System**, or OTIS. A record layout is a list of data fields, with descriptions of what is entered into those fields. I ask for this with the intention of assessing which fields contain personal information.
>
> Part II is a request for the **data contained in the OTIS database**, absent personal information or other information that would allow one to possibly identify individuals. Having the record layout in advance will allow me to exclude certain contentious fields from Part II and help speed the process along. I seek this data in an electronic format. I must make it clear that I am not seeking software of any sort.

The Ministry issued a decision letter granting full access to a 24-page document entitled "OTIS Offender Record Screens/Fields", which was responsive to Part I of the request. With respect to Part II of the request, the Ministry advised that section 2 of Regulation 460 is applicable in the circumstances.

The Ministry's decision letter went on to state:

> It is the position of the Ministry that producing the data contained in OTIS (absent any personal information or other information that would allow one to possibly identify individuals and the software itself) would unreasonably interfere with the operations of the Ministry.
>
> As noted earlier, OTIS is a computerized corrections case management system used by the Ministry for storing and updating correctional records. There are approximately 1.3 million records associated with OTIS. OTIS is currently operating at full capacity.
>
> The Ministry would be required to shut down OTIS in order to comply with Part II of your request. The live system would be unavailable to users. This type of disruption would compromise the ability of staff to carry out their offender supervision responsibilities. Such a major service interruption would also have significant impacts for other associated business areas.
>
> In view of the foregoing circumstances, the Ministry will not proceed with Part II of your request.

The requester (now the appellant) appealed the Ministry's decision.

During mediation, the appellant confirmed that he is not appealing the Ministry's decision with respect to Part I of the request and is therefore only appealing the decision concerning Part II. Also during mediation, the appellant narrowed the scope of his request to a number of specified fields in the database. On the basis of discussions between the parties and the mediator, the mediator prepared the revised request which was submitted to the Ministry for a response.

Following the delivery of the revised request, the appellant agreed to remove three additional data fields from the scope of the request. Therefore, at the conclusion of mediation, the following fields of information in the OTIS database were identified by the appellant as being within the scope of the request:

Admission

- Date
- From Location
- To Location
- Book #
- Reason
- Arresting Agency
- Escorts
- Location
- Available Beds

Aliases and Other Identifiers

- Birth Date (year only)

Physical Identifiers

- Height
- Weight
- Build
- Skin Colour

Personal Information

- City/Town of Birth
- Country
- Gender
- Race
- Citizenship
- Religion
- Native Status
- Arrival Date (year only)
- Number of Adult Dependents
- Number of Child Dependents
- Marital Status

Alerts
- Alert Type
- Alert
- Status

Addresses
- City/Town
- Province
- Country

Personal and Professional Contacts
- Primary Language

Languages
- English Comprehension (Read)
- English Comprehension (Write)
- English Comprehension (Speak)

Education
- Level Attained

Employment Details
- Employment Status
- Usual/Trade/Occupation
- Wage

Gangs Affiliation Verification
- Gang/Faction
- Membership Status

Legal Cases
- Prefix
- Type of Case
- Status
- Type
- Sub Type
- Order Loc (Location)
- Statute
- Offence Code/Description
- Cts (Counts)
- Type
- Offence Date (month and year)
- Disposition

Bails

- Order Type
- Conditions
- Date (month and year)
- Bail Type
- Amount
- Bail Action

Committal Order

- Exec'n (Execution) Date (month and year)
- Conv'n (Conviction) Date (month and year)
- Start Date (month and year)
- Sent (Sentence) Type
- Description
- Cts (Counts)
- Cts CS (Consecutive) Check Box
- To Sent (Sentence) Type
- Fine
- Dispos'n (Disposition)
- Type
- Description
- Years
- Months
- Weeks
- Days
- Start Date (month and year)
- End Date (month and year)

Intermittent

- Sent (Sentence) Type
- Description
- Term Type
- Int Term
- Start Date (month and year)
- End Date (month and year)
- Days Sch (Scheduled)
- Status

Sentence Details

- Int (Intermittent) Dis (Discharge Possible) Date (month and year)
- Adjust (Adjustment Type)
- Description
- +/- days
- Calculation Date (month and year)

- Adult Aggregate Days
- First Sentence Execution Date (month and year)
- Final Warrant Expiry Date (month and year)
- Parole Eligibility Date (month and year)
- Discharge Possible Date (month and year)
- Youth Aggregate Days
- Youth Open Discharge Date (month and year)
- Youth Secure Discharge Date (month and year)

Parole Decisions
- Open Date (month and year)
- Close Date (month and year)
- Board Location
- Decision Type
- Result Date (month and year)

Parole
- Sentence Period
- Description
- Period Start Date (month and year)
- Period End Date (month and year)

Conditional Sentences
- Conditional Sentence Period
- Description
- Period Start Date (month and year)
- Period End Date (month and year)

Conditional Supervision
- Conditional Sentence Period
- Description
- Period Start Date (month and year)
- Period End Date (month and year)

Release Notification
- Date (month and year)
- Type
- Agency
- Type/Reason

Schedule Transfer Within Jurisdiction
- To
- Reason
- Request Received On (month and year)

- Status

Schedule Temporary Absence
- Application Date (month and year)
- Temporary Absence Status
- Reason

Care in Placement
- Type
- Reason
- Location
- Duration

Assessment
- Type
- Assessment Date (month and year)
- Authority
- Re-Assessment Date (month and year)
- Assessment Score
- Calculated (Supervision) Level
- Recommended Placement

OIC Record
- Report Date (month and year)
- Incident Date (month and year)
- Incident Time
- Institution
- Locked in Cell Checkbox
- Periodic Offender Checkbox
- Charge Description
- Cat (Category)

OIC Notice of Hearing
- OIC #

OIC Hearing
- Hearing Type
- Hearing Date (month and year)
- Charge and Description Code
- OIC #
- Ln (Line)
- Type
- Description
- Mths (Months)

- Dys (Days)
- Restitution
- Eff. (Effective) Date (month and year)
- Status

OIC Appeals
- Appeal Date (month and year)
- Reason
- Hearing Date (month and year)
- Results
- Ln (Line)
- Type
- Description
- Mths (Months)
- Dys (Days)
- Comp (Compensation)

Care in Placement
- Type
- Reason
- Location
- Effective Date (month and year)
- Duration
- Review Date (month and year)

Control Dates – Parole
- Sentence Period
- Description
- Period Start Date (month and year)
- Period End Date (month and year)
- Days Satisfied
- Remission Recredited

Control Dates – Conditional Sentences
- Conditional Sentence Period
- Description
- Period Start Date (month and year)
- Period End Date (month and year)
- Days Served
- Earned Remission
- Days Satisfied
- Days Remaining

Control Dates – Conditional Supervision (YO)

- Conditional Sentence Period
- Description
- Period Start Date (month and year)
- Period End Date (month and year)
- Days Satisfied
- Days Remaining

Substance Abuse

- Substance
- Age First Used
- Line #
- Level of Use
- Source of Information
- Treatment Received

Subsequently, the Ministry issued a revised decision letter denying access to the information requested by the appellant. In this letter, the Ministry stated:

> Please be advised that extensive consultations were undertaken with experienced and knowledgeable staff from the Justice Technology Services (JTS) division of the Ministry in regard to your revised request. JTS staff have confirmed that from a technical standpoint, it is possible to extract the raw data you have requested from OTIS. JTS staff have also confirmed that contrary to our earlier understanding, it would not be necessary to shut down OTIS in order to perform the data extraction.
>
> JTS staff have carefully assessed your revised request and identified the tasks necessary in order to extract the requested raw data from OTIS. It has been confirmed that the necessary data extract would involve the creation of 34 flat files – one for each of the 34 information categories described in the OTIS Offender Records Screens/Fields document. The resulting files would be exceptionally and unusually large. For example, JTS staff estimate that the data in the Admissions category alone would consist of greater than 1.8 million records and would be approximately 522 MB in size.
>
> The system tasks that would need to be undertaken by JTS programming, data base, business, project and special resources staff include: data mapping, creating record layouts, creating a requirements document, creating a program specifications document, program coding, program testing, and finally, production of the raw data. It is estimated that approximately 150 days of JTS staff time would be required in order to complete the necessary tasks.
>
> In order to proceed with your revised request, JTS staff with the necessary specialized technical skills would need to be re-assigned from their current business system, priority-based assignments. The re-assignment of JTS staff

would limit the ability of JTS staff to continue working on critical, public safety business systems. Due to both system and operational security issues, the Ministry will not permit external consultants with access to a copy of the OTIS database for the purposes of your revised request.

In view of the foregoing, please be advised that it remains the position of the Ministry that section 2 of regulation 460 under the Act is applicable in the circumstances of your revised request. This regulation states:

> A record capable of being produced from machine readable records is not included in the definition of "record" for the purposes of the Act if the process of producing it would unreasonably interfere with the operations of an institution.

As no further mediation was possible, this matter was moved to the adjudication stage of the appeal process. I began my adjudication of this matter by issuing a Notice of Inquiry to the Ministry inviting them to make representations on the facts and issues set out in the notice. I received representations from the Ministry.

I then issued a Notice of Inquiry to the appellant, with a copy of the Ministry's representations. The appellant provided representations, which raised a new issue to which I sought, and received, reply representations from the Ministry.

DISCUSSION:

Is the requested information a "record" as defined in section 2 of the *Act* and section 2 of Regulation 460?

"Record" is defined in section 2(1) of the *Act* as follows:

> "record" means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,
>
> (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and
>
> (b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution; ("document")

The Ministry provided the following background information regarding OTIS:

> OTIS is a computerized corrections case management system that is used by the Ministry for storing and updating offender records. OTIS is also used for certain correctional administrative and operational purposes. OTIS contains electronic records on individuals currently under the supervision to the Ministry and individuals previously under the supervision to the Ministry. The Ministry implemented OTIS as a corrections case management system in 2001. OTIS incorporated offender information from the Ministry's earlier database, the Offender Management System (OMS). The older offender case management records in OTIS date back to 1990. There are OTIS profiles for approximately 653,640 individuals contained in OTIS.

The Ministry submits that the OTIS data requested by the appellant is not a record, as defined under section 2(1) of the *Act*. In support of its position, the Ministry cites the Divisional Court's decision in *Toronto (City) Police Services Board v. Ontario (Information and Privacy Commissioner)*, [2007] O.J. No. 2442 (*Toronto Police Services Board*), leave to appeal granted M35279 and M35285 (C.A.). In that case, the Divisional Court concluded that in order for a record to be considered a record under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA*), it is necessary that a record be produced by "means…normally used by the institution." As noted in the citation, leave to appeal this decision has been granted by the Ontario Court of Appeal. The appeal was heard September 22 and 23, 2008, and judgment remains under reserve.

If the meaning of the phrase "normally used by the institution" were determinative in this case, it might be necessary for me to await the outcome of the *Toronto Police Services Board* case before proceeding further with this appeal. However, as outlined below, I am deciding the appeal based on whether producing the record would "unreasonably interfere with the operations" of the Ministry under section 2 of Regulation 460, and it is therefore not necessary to await the outcome of *Toronto Police Services Board*.

The Ministry submits:

> The Ministry is of the view that the Court's decision is relevant with respect to the appellant's request to the Ministry for access to OTIS offender data in a linkable format.
>
> It is the Ministry's position that a preliminary issue to be decided in the current appeal is whether requested OTIS data is a record that can be produced "by means of computer hardware or software or any other information storage equipment and technical expertise normally used by the institution."

The Ministry goes on to submit that it does not presently have an algorithm capable of replacing OTIS personal identifiers with randomly-generated numbers, and that one would need to be developed for the express and sole purpose of responding to the appellant's *FIPPA* request.

The appellant responds that if the Divisional Court's interpretation of paragraph (b) of the definition of "record" is correct, "an institution will never be required to develop a computer program to produce a record from a machine readable record, since a requester will not be entitled to an electronic record that requires the development of such a program."

It is not necessary for me to determine this issue because of the conclusion I have reached about "unreasonable interference" with the operations of the Ministry as discussed in section 2 of Regulation 460, to which I now turn.

Application of Regulation 460, section 2

The Ministry submits, in the alternative to its argument based on *Toronto Police Services Board*, that producing the requested record would unreasonably interfere with its operations and accordingly, based on section 2 of Regulation 460, it does not qualify as a "record" for the purposes of the *Act*. This section states:

> A record capable of being produced from machine readable records is not included in the definition of "record" for the purposes of the Act if the process of producing it would unreasonably interfere with the operations of an institution.

The Ministry's representations

The Ministry advised that subsequent to submitting the request that is the subject matter of this appeal, the appellant submitted a second request under the *Act* for access to postal codes and aggregate sentences of all provincial offenders sentenced to a period of incarceration as reflected in OTIS. Partial access was granted to that request on the basis that responding did not unreasonably interfere with the operations of the Ministry. Under Order PO-2726, this office ordered disclosure of the complete postal codes, which had been partly withheld by the Ministry.

With respect to the appeal under consideration in this order, the Ministry submits that:

> [E]xtensive consultations have been undertaken with experienced and knowledgeable staff from [the Ministry's Justice Technology Services division] JTS in regard to the appellant's request. JTS staff have assessed the appellant's revised request and identified the tasks necessary in order to extract the requested offender data from 200 OTIS fields in a linkable format. JTS staff have confirmed that the data extract would involve the creation of 34 flat files – one for each of the 34 information categories outlined in the OTIS Offender Records Screens/Fields document in accordance with the appellant's revised request.
>
> JTS staff initially estimated that approximately 150 days of JTS staff time would be required in order to complete the system tasks necessitated by the request. The initial estimate has recently been reviewed and it is now estimated that 190 days of JTS staff time would be required to complete the system tasks necessitated by the request. As JTS staff normally work 7.25 hours a day, 190 staff days are equivalent to 1377.50 hours.

…

> …JTS staff with the necessary specialized technical skills would need to be re-assigned from their current business system, priority based assignments in order to work on the appellant's request. OTIS is a large, highly complex, relational database that contains multiple tables that are linked by fields. In total, OTIS contains over 1,000 tables and almost 14,000 data elements in these tables; and navigation through the database is extremely complicated to discern and learn. To assign a technical resource who is unfamiliar with OTIS to this work would increase the time estimates by approximately 50%; and experienced JTS staff would still be required for certain tasks including writing the design and architecture documents, and doing the validation tests.

The Ministry further submits that the re-assignment of JTS staff, which would inevitably result if this request were to be processed, would "seriously compromise" the ability of JTS to continue working on "critical public safety business systems such as ...the police, courts and correctional services." The Ministry submits that staff are working at full capacity and, therefore, must set its "public safety business systems" work as a priority.

In addition, the Ministry submits that due to system and operational security issues, external consultants would not be permitted to access a copy of the OTIS database for the purpose of processing the appellant's request.

Lastly, the Ministry states:

> When a critical public safety business system or task is unavailable due to a technical problem, the Ministry dedicates all available resources to resolving the matter as quickly and efficiently as possible in order to avoid adverse impacts that may touch upon public safety such as the improper release of offenders.

As a result of all of these factors, the Ministry submits that processing the appellant's request would unreasonably interfere with its operations.

The appellant's representations

The appellant submits that the Ministry has not proven that producing the record would unreasonably interfere with its operations. In addition, the appellant states that, in his experience, programming estimates are "extremely unreliable" and, in every case he is aware of, end up being "greatly less or are waived completely." The appellant's position is that the Ministry's estimate should not be considered to be reliable evidence.

The appellant is also of the view that the information housed within the OTIS database is of public interest, as the cost of maintaining an inmate in the correctional system in Ontario is a "huge cost to taxpayers." The appellant states:

> The requested data provides a wealth of demographic information about who we place in jail. With recent talk of toughening sentences, costs may rise, making it of even more public interest.

The appellant confirmed that he made a subsequent request for OTIS raw data after the Divisional Court decision was issued. The appellant submits that the Ministry would have had to create an algorithm to extract the data, and did so in order to fulfill the request. The Ministry was invited to provide reply representations with respect to this request.

The Ministry's reply representations

The Ministry advised that the appellant's subsequent request was for access to the full postal code and aggregate sentence (total sentence length) for all provincial offenders sentenced to a custodial disposition of two years less a day as reflected in a one-time data capture, which was identifiable only by the year in which the snapshot was taken. This request involved the extraction of data for 3,843 individuals whose personal information is contained in OTIS.

The Ministry states:

> The second request was relatively uncomplicated…the request necessitated a Senior Systems Analyst/Programmer spending a total of 10.8 hours in order to develop the required program to extract the requested sentence and postal code data from OTIS.

The Ministry then reiterates its position that the request at issue in this appeal is "very large and complex" involving the extraction of data on approximately 653,649 individuals whose personal information is contained in OTIS. The Ministry distinguishes this request in that it is an "infinitely more complicated request that would require the use of sophisticated technology and extraordinary resources in order to extract the requested data.

Analysis and findings

The Ministry takes the position that the process of extracting the information requested would unreasonably interfere with its operations. The appellant takes the position that the Ministry has not produced sufficient evidence to support this position.

After reviewing the representations of the parties, I agree with the Ministry, and am of the view that the Ministry has provided sufficient evidence to support a finding that the process of extracting the information would unreasonably interfere with its operations.

In order P-50, former Commissioner Sidney B. Linden made comments that are instructive in approaching this issue. He stated:

> Section 10 of Ontario Regulation 532/87, as amended, provides that:
>
> > A record capable of being produced from machine readable records is not included in the definition of "record" for the purposes of the Act if the process of producing it would unreasonably interfere with the operations of an institution.
>
> Further, paragraph 3, of subsection 5(2) of the same Regulation clearly provides for a fee to be charged by an institution "for developing a computer program or other method of producing a record from a machine readable record...".
>
> What constitutes an "unreasonable interference" is a matter which must be considered on a case-by-case basis, but it is clear that the Regulation is intended to impose limits on the institution's responsibility to create a new record.
>
> Thus it appears that, subject to the Regulation, the *Act* does place an obligation on an institution to locate information and to produce it in the requested format whenever that information can be produced from an existing machine readable record, and providing that to do so will not unreasonably interfere with the operation of the institution.

In Order P-1572, former Assistant Commissioner Tom Mitchinson considered whether the data elements in a database constituted a "record" as defined by the *Act* and concluded that they did not, based on the description provided by the institution in that case, the Ministry of Consumer and Commercial Relations (as it was then called), of what would be required to obtain them.

He concluded that even if the record could be produced, to do so would unreasonably interfere with that Ministry's operations. In that appeal, the Ministry of Consumer and Commercial Relations submitted evidence that it would take senior technical and business personnel approximately 275 days to produce and sever the record, and that the production and severance of the record would require a significant service interruption to all users of the database.

In Order PO-2151, Adjudicator Laurel Cropley identified the nature of the information required to establish an "unreasonable interference with the operations of an institution" as follows:

> Previous orders of this office have considered the meaning of the term "unreasonable interference with the operations of an institution" in the context of claims that a request is frivolous or vexatious. Although made in a different context, they provide some guidance in assessing this issue.
>
> Applying the findings in these previous orders, it appears that in order to establish "interference", an institution must, at a minimum, provide evidence that

> responding to a request would "obstruct or hinder the range of effectiveness of the institution's activities" (Order M-850).
>
> …
>
> …[W]here an institution has allocated insufficient resources to the freedom of information access process, it may not be able to rely on limited resources as a basis for claiming interference (Order MO-1488).
>
> In Order M-583, former Commissioner Tom Wright noted that, "government organizations are not obliged to maintain records in such a manner as to accommodate the various ways in which a request for information might be framed."
>
> Similarly, government organizations are not obligated to retain more staff than is required to meet its operational requirements. I qualify this point, however, by adding, as I noted above, that an institution must allocate sufficient resources to meet its freedom of information obligations (Order MO-1488).
>
> In my view, a determination that producing a record would unreasonably interfere with the operations of an institution is dependent on the facts of each case.

In Order MO-1989, the subject of the judicial review and subsequent appeal in *Toronto Police Services Board*, cited above, Adjudicator DeVries determined that an institution must provide sufficient evidence beyond stating that extracting information would take "time and effort" in order to support a finding that the process of extracting the information would unreasonably interfere with its operations. This finding was not challenged on judicial review.

I agree with and adopt Adjudicators Cropley's and DeVries' approaches for purposes of the case at hand.

I have considered the Ministry's representations with respect to the necessary steps for retrieving the requested information and have considered all of the circumstances cited by the Ministry, including the nature of the OTIS database, the Ministry's operational needs and functions, and the role of Ministry staff in performing those functions. Based on the Ministry's explanation of the time and effort required to produce a record responsive to the appellant's request, I am satisfied that it has established that doing so would unreasonably interfere with its operations. Given the nature of the interference described, I also conclude that it would not be possible for the Ministry to avoid this interference by charging fees for staff time, nor, in the circumstances of this appeal, by retaining external consultants to do the work and charging fees on that basis.

In particular, I accept the 1,377.50 hour time estimate provided by the Ministry. I also accept that the steps involved in responding to the request require the use of specialized staff and that the Ministry has a limited number of such staff and their time and services are in high demand. I am satisfied that the specialized staff members are retained by the Ministry to meet its operational needs, as opposed to meeting its obligations under the *Act*. I am also satisfied that the Ministry is not in a position to permit external consultants to access the OTIS database for

the purpose of responding to the appellant's request, due to system and operational security issues. I am also satisfied that the size of the task and the extent of the effort required to do it would unreasonably drain the Ministry's limited resources that it has allocated to maintaining OTIS. Finally, I note that the Ministry responded to the appellant's subsequent request by providing the information requested, but that this response required limited resource allocation. In my view, the Ministry has been reasonable in its assessment of the time commitments and relative degree of interference that would result from the two requests, and I accept its position that the request at issue in this appeal cannot be responded to without an overwhelming commitment of staff time and resources.

Therefore, I find that even if a record is capable of being produced in response to the appellant's request, it does not fall within the definition of "record" because the process of producing it would unreasonably interfere with the Ministry's operations.

ORDER:

I uphold the Ministry's decision.

Original signed by: January 12, 2009
Brian Beamish
Assistant Commissioner