

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

FINAL ORDER PO-3416-F

Appeal PA11-297

Ministry of Children and Youth Services

October 29, 2014

Summary: The appellant submitted an access request under the *Freedom of Information and Protection of Privacy Act* to the Ministry of Children and Youth Services for records relating to its Autism Intervention Program. In Interim Order PO-3337-I, the adjudicator concluded that the ministry had not conducted a reasonable search for responsive records and ordered it to conduct a new search. In response, the ministry conducted further searches for responsive records and located four additional records that it disclosed in full to the appellant. In this final order, the adjudicator finds that the ministry has now conducted a reasonable search for responsive records, as required by section 24 of the *Act*, and he dismisses the appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, s. 24.

Orders and Investigation Reports Considered: Interim Order PO-3337-I.

OVERVIEW:

[1] This final order disposes of the remaining issue from Interim Order PO-3337-I, specifically whether the Ministry of Children and Youth Services (the ministry) has conducted a reasonable search for records, as required by section 24 of the *Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] The appellant had submitted a broad access request to the ministry under the *Act* for records relating to the ministry's Autism Intervention Program (AIP). Both parties agreed that his request would be narrowed to the following records:

General government records for the nine regional program providers as it applies to the document "Autism Intervention Program Guidelines Revision effective as of January 1, 2007: (Revision date February 12, 2007) under the heading/sub-heading "Program Delivery – Accountability":

1. the most recent Executive Summary or overall evaluation of all of the Ministry of Children and Youth Services' regional offices; and
2. the most recent detailed evaluations or findings for each of the ministry's nine regional offices.

[3] In response to this narrowed request, the ministry issued a decision letter to the appellant that provided him with access to two responsive records. The appellant appealed the ministry's decision because he believed that additional records should exist. Consequently, the issue to be resolved was whether the ministry had conducted a reasonable search for records that are responsive to the appellant's narrowed request.

[4] In Interim Order PO-3337-I, I found that the ministry did not properly interpret the scope of the appellant's narrowed request, particularly item 2, and this led it to conduct searches for records that were flawed. Consequently, I concluded that the ministry had not conducted a reasonable search for responsive records, as required by section 24 of the *Act*. I ordered it to conduct a further search for records that reasonably relate to the appellant's narrowed request. In particular, Interim Order PO-3337-I contained the following order provisions:

1. I order the ministry to conduct a new search for any records in its custody or control that are responsive to item 2 of the appellant's narrowed request. The ministry's search should cover any such records created between January 1, 2007 and March 7, 2011. As stipulated in this order, the evaluation records that the appellant is seeking under item 2 of his narrowed request, which must be read in conjunction with the preamble, include records that evaluate the delivery of AIP services by the regional program providers that fall under the ministry's nine regional offices. To be clear, such records would include any evaluation or program review of a regional program provider that is similar to the "Kinark Child and Family Services Central East Preschool Autism Services – Program Review (February 2006)" if it was created between January 1, 2007 and

March 7, 2011. If there is more than one evaluation or program review for a specific regional program provider within this time frame, the most recent one would be the responsive record.

2. With regard to order provision 1, I order the ministry to provide me, by **June 2, 2014**, with representations on the new search that it carries out to locate responsive records, including:
 - (a) the names and positions of the individuals who conducted the searches;
 - (b) information about the types of files searched, the nature and location of the search, and the steps taken in conducting the search; and
 - (c) the results of the search.
3. The ministry's representations may be shared with the appellant, unless there is an overriding confidentiality concern. The procedure for submitting and sharing representations is set out in *IPC Practice Direction Number 7*, which is available on the IPC's website. The ministry should indicate whether it consents to the sharing of its representations with the appellant.
4. If the ministry locates responsive records as a result of the search referred to in order provision 1, I order it to issue an access decision to the appellant in accordance with the provisions of the *Act*, treating the date of this order as the date of the request.

[5] In response, the ministry conducted new searches for records that are responsive to item 2 of the appellant's narrowed request and located four additional records which it disclosed in full to him. It then provided me with representations on the new searches that it carried out to locate responsive records and a copy of the decision letter that it issued to the appellant.

[6] I provided the appellant with a copy of the ministry's representations and asked for his views on whether the ministry has now conducted a reasonable search for records that are responsive to item 2 of his narrowed request. In response, the appellant submitted brief representations on this issue.

DISCUSSION:

SEARCH FOR RESPONSIVE RECORDS

Has the ministry conducted a reasonable search for records that are responsive to item 2 of the appellant's narrowed request?

[7] 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 of the *Act*.¹ 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.

[8] 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.² To be responsive, a record must be "reasonably related" to the request.³

[9] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.⁴

[10] The ministry states that it directed specific staff in the following offices to conduct additional searches for responsive records in accordance with the requirements of Interim Order PO-3337-I: Autism Unit, Specialized Services and Supports Branch; Client Services Branch; Central Region; East Region; West Region; North Region; and Toronto Region. It provided these staff members with the wording for item 2 of the appellant's narrowed request and also provided the following parameters for conducting searches for additional records:

Please include records that evaluate the delivery of AIP services by the regional program providers that fall under the ministry's nine regional offices. To be clear, such records would include any evaluation or program review of a regional program provider if it was created between January 1, 2007 and March 7, 2011. Only final, approved documents are responsive to this request. If there is more than one evaluation or program review for a specific regional program provider

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Order PO-2554.

⁴ Orders M-909, PO-2469 and PO-2592.

within this time frame, the most recent one would be the responsive record.

[emphasis in original]

[11] The specific staff who then conducted searches for records in these offices included a senior policy analyst, a program analyst, a program specialist, seven program supervisors, and a secretary. The ministry's representations include a report from each office that sets out the details of the searches that were undertaken (including which records holdings were searched) and the results of these searches.

[12] The ministry states that these searches yielded the following four records that are responsive to item 2 of the appellant's narrowed request:

- Final Report – Regional Autism Providers of Ontario and the Ministry of Children and Youth Services Program and Service Delivery Working Group, December 4, 2008;
- Final Report – Autism Intervention Program (AIP) Waiting List Management, October 22, 2010;
- Final Report – Costing Analysis of Autism Intervention Program, October 2008; and
- Child Care Resources, Financial and Program Review of the Autism Intervention Program, prepared for the Ministry of Child and Youth Services by KPMG, August 19, 2008.

[13] The ministry then issued a decision letter to the appellant which stated that it was disclosing these records to him in full.

[14] As a result, the ministry submits that it has conducted a thorough search in accordance with the requirements of Interim Order PO-3337-I.

[15] In his representations, the appellant cites the Auditor General of Ontario's 2013 annual report, which contains a value-for-money audit of "Autism Services and Support for Children."⁵ He asks that I review the section entitled "Effectiveness of Autism Services and Supports" and also provides the following excerpt from another section of the audit:

⁵ Chapter 3, section 3.01.

Although the IBI program has been implemented in Ontario since the year 2000, no study has followed the cohort of children who received or were denied IBI services in that time to help assess the program's long-term impact. In addition, no study has been done to determine whether children's outcomes differ by service delivery option. Without such studies, the Ministry has not been able to assess whether the program is effective as designed.

The lack of a long-term effectiveness study (that is, a study looking at the long-term outcomes of children with autism who acquired intervention services at a younger age) is not unique to Ontario. Having said that, we noted that a national study, funded by the Canadian Institutes of Health Research and others, is following groups of children with autism from diagnosis until age 11. **The study was announced in 2004 and will continue until 2014, and includes children from one part of Ontario.** The initial findings of this study speak to the importance of developing ASD intervention services that are delivered as early as possible and are diverse, flexible, and sensitive enough to meet the needs of children with ASD who have very different clinical profiles and follow different developmental pathways.⁶

[emphasis in appellant's representations]

[16] The appellant submits that the identification of such a report would satisfy his access request, even though the ministry "has been negligent in its fiduciary obligations, accountability and transparency."

[17] I have considered the parties' representations and find that the ministry has now conducted a reasonable search for responsive records. In my view, the evidence submitted by the ministry shows that it assigned experienced employees who are knowledgeable in the subject matter of the appellant's request to search for additional responsive records. Unlike the ministry's initial searches for records, which were based on an overly restrictive interpretation of item 2 of the appellant's request, the instructions that the ministry provided to these employees has clearly produced better search results. In particular, the fact that the ministry located four additional responsive records demonstrates that its searches were thorough and in accordance with the requirements of Interim Order PO-3337-I.

[18] I am not persuaded by the appellant's suggestion that the national study of children with autism that was cited by the Auditor General in his 2013 annual report should be a subject of the ministry's search efforts. In order provision 1 of Interim

⁶ Ibid. at 80-81.

Order PO-3337-I, I stated the following with respect to the parameters of item 2 of the appellant's narrowed request:

. . . [T]he evaluation records that the appellant is seeking under item 2 of his narrowed request, which must be read in conjunction with the preamble, include records that evaluate the delivery of AIP services by the regional program providers that fall under the ministry's nine regional offices. To be clear, such records would include any evaluation or program review of a regional program provider . . . if it was created between January 1, 2007 and March 7, 2011. If there is more than one evaluation or program review for a specific regional program provider within this time frame, the most recent one would be the responsive record.

[19] In my view, even if a copy of this national study is in the ministry's custody or under its control for the purposes of section 10(1) of the *Act*, I am not convinced that it would fall within the parameters of item 2 of the appellant's narrowed request or the search requirements set out in Interim Order PO-3337-I. Consequently, I find that the ministry is not required to search for this record in the context of this appeal.

[20] In short, I find that the ministry has now conducted a reasonable search for records, as required by section 24 of the *Act*.

ORDER:

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

Original Signed by: _____
Colin Bhattacharjee
Adjudicator

_____ October 29, 2014