

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3423

Appeal PA13-385

Ministry of Natural Resources and Forestry

November 10, 2014

Summary: The appellant sought access to information pertaining to him in relation to his Bait Fish Harvest licenses. The Ministry of Natural Resources and Forestry (the ministry) disclosed some information to the appellant, with certain information being withheld as exempt under the *Act*. The appellant claimed that other records ought to exist. After mediation, the reasonableness of the ministry's search for records became the sole issue in the appeal. This order finds that the ministry's search for responsive records was reasonable and dismisses the appeal.

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

BACKGROUND:

[1] The Ministry of Natural Resources (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act* or *FIPPA*) for access to information pertaining to the requester "in the Midhurst and Aurora Districts". The requester specified that:

... there is a file attached to my name and Bait Fish Harvest licenses that I have. I would like a copy of all material in these files whether written, typed or drawn.

[2] In response, the ministry issued an interim access decision with a fee estimate for processing the request. After the appellant paid the estimated fee for processing the request, the ministry issued its access decision. The ministry granted partial access to the responsive records relying on the exemptions at sections 14(1) (law enforcement) and 21(1) (invasion of privacy) of the *Act* to deny access to the portions it withheld. The ministry's decision was accompanied by an index of records indicating which exemption was being applied to all or part of a specific record as well as identifying the information that the ministry viewed as not being responsive to the request.

[3] The requester (now the appellant) appealed the decision and also took issue with the reasonableness of the ministry's search for responsive records, alleging that other responsive records ought to exist.

[4] At mediation, the appellant advised the mediator that he was no longer seeking access to the information that the ministry claimed to be subject to the exemptions at sections 14(1) and 21(1) of the *Act*. Accordingly, that information and the application of those exemptions are no longer at issue in the appeal. In addition, the appellant agreed that the information withheld as being not responsive to the request is also not at issue in the appeal. The appellant maintained his position that other responsive records ought to exist and that the ministry failed to conduct a reasonable search for responsive records.

[5] Mediation did not resolve the appeal and it was moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*.

[6] During my inquiry into the appeal, I sought and received representations from the ministry and the appellant. Representations were shared in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

DISCUSSION:

[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 24.¹ 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

¹ Orders P-85, P-221 and PO-1954-I.

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] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.⁵

[11] 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.⁶

The representations

[12] The ministry submitted that it made a reasonable effort to identify and locate responsive records. In support of its position, it relied on the affidavits of its then District Forester for the Aurora District and its then Fish and Wildlife Technical Specialist for the Midhurst District. These affidavits describe in detail their respective search efforts and confirmed that all responsive records had been forwarded to the ministry's Information and Privacy Unit.

[13] The ministry submitted that:

... the two individuals with the most knowledge of the licence application conducted the searches. They conducted or had conducted searches of the electronic and hard copy files associated with the application and theirs and others' email accounts. There is nothing to contradict what they have set out in their affidavits. Therefore it is the position of the ministry that it has made reasonable efforts to locate responsive records and discharge its obligation under section 24 [of the *Act*].

[14] The appellant provided responding representations setting out the type of record that he believes should exist and ought to have been identified by the ministry as a responsive record, including records that he believes would have been generated as a result of certain interactions between himself and ministry representatives.

² Orders P-624 and PO-2559.

³ Order PO-2554.

⁴ Orders M-909, PO-2469 and PO-2592.

⁵ Order MO-2185.

⁶ Order MO-2246.

[15] In reply, the ministry submits:

The appellant claims that additional records responsive to his request must exist and has noted a number of instances of interaction with ministry staff. He has speculated that records must have been created as a result of the interactions. The interactions appear to have occurred over six years ago. Not all interactions with members of the public result in the creation of records. ...

[16] The ministry repeats that the searches were conducted by the two individuals with the most knowledge of the licence application and submits that it has satisfied the requirements of section 24 of the *Act*.

Analysis and finding

[17] The issue before me is whether the search carried out by the ministry for records responsive to the appellant's request was reasonable in the circumstances.

[18] As set out above, the *Act* does not require the ministry to prove with absolute certainty that the records do not exist, but only to provide sufficient evidence to establish that it made a reasonable effort to locate any responsive records. 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. In my view, the two employees who conducted the search for responsive records are such experienced employees, knowledgeable in the subject matter of the request. Based on the evidence before me, I am also satisfied that they conducted a reasonable search for any responsive record pertaining to the appellant's request.

[19] Accordingly, I find that the ministry has provided me with sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate responsive records within its custody and control. I find that the searches were conducted by experienced employees who were knowledgeable in the subject matter of the request and that they expended a reasonable effort to locate any additional responsive records. However, no additional responsive records were found.

[20] Accordingly, I am satisfied that the ministry's search for records that are responsive to the appellant's request is in compliance with its obligations under the *Act*.

ORDER:

I uphold the reasonableness of the ministry's search for responsive records.

Original Signed By: _____
Steven Faughnan
Adjudicator

_____ November 10, 2014