

Information and Privacy Commissioner,  
Ontario, Canada



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

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## **ORDER PO-3427**

Appeal PA14-208

Ministry of Community and Social Services

November 27, 2014

**Summary:** The appellant submitted a request to the ministry pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*) for copies of records relating to him compiled during the time period when he was a resident at the Rideau Regional Centre. The ministry located records responsive to the request and provided access to them, with portions of the records withheld pursuant to the personal privacy exemptions at sections 21(1) and 49(b) of the *Act*. The appellant appealed the ministry's decision, claiming that the ministry had not conducted a reasonable search. The adjudicator upholds the ministry's search for responsive records as reasonable.

### **OVERVIEW**

[1] The appellant is a former resident of Rideau Regional Centre (the centre), a residential facility for individuals with intellectual disabilities. When that centre closed in 2009, its records were sent to Government of Ontario's off-site storage facilities.

[2] The appellant's representative, his sister, submitted the following request to the ministry, pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*):

I am requesting

All records for [the appellant], born [date], commonly known as [the appellant], that appears for either or both of these appellations,

Including, but not limited to:

All medical records: All admission records; All hospitalization records; All surgery records; All physiotherapy records; All records regarding interaction with staff; Names of primary staff providing care for specific periods of time; all psychiatric records; all social work records; all records pertaining to family inquiries about [the appellant], and about [the appellant's] care; all historical documents attached to these records

All personal case files including all notes

All inter-agency files discussing these case files or discussing [the appellant];

Any records available that pertain to [the appellant], in regard to Rideau Regional Centre.

[3] Upon receipt of the request, the ministry located 116 records (236 pages) and granted partial access to them, withholding portions pursuant to the discretionary personal privacy exemption at section 49(b) of the *Act* and the mandatory personal privacy exemption at section 21(1) of the *Act*.

[4] The records released to the appellant include admission records, photographs of the appellant, a discharge summary, treatment records, psychological reports, medical, dental and nursing notes, and correspondence to and from the appellant's parents.

[5] The appellant appealed the ministry's decision to this office. While the appellant did not appeal the exemptions applied by the ministry, he stated through his representative that he believes that additional records exist, thereby raising the reasonableness of the ministry's search for records as an issue.

[6] During mediation, the appellant's representative explained that her brother lived at the centre from 1952 until 1973. In 2011, after the centre closed, a class action lawsuit was brought against the province for deficiencies in the care provided to patients at the centre. The class action lawsuit was settled in February 2014, and the settlement applies to individuals who resided at the centre between 1963 and 2009. Individuals may submit claims for payment from the settlement fund until November 30, 2014. The appellant's representative advised that she is seeking the records on

behalf of her brother in order to support the appellant's claim for payment from the settlement fund.

[7] The appellant's representative advised that although her brother was a resident at Rideau Regional Centre from 1952 to 1973, the records that she received seem to consist mainly of records from 1952 to 1962, with a few records for 1963 and no records after 1963. Further, the records seem incomplete in that they consist mainly of letters to and from her father and do not include any daily care sheets for her brother, any information about discipline administered to her brother or any injuries he may have sustained during his stay at the centre.

[8] The appellant's representative further stated that she contacted the centre in 1993 with respect to obtaining her brother's records and was advised that there were numerous boxes of records relating to her brother which could be delivered to her parents. The appellant's representative chose not to have the boxes delivered at the time, due to their volume and her parents' relatively small living quarters. The appellant's representative queries why those boxes of records located by the centre in 1993 were not part of the records disclosed to her by the ministry.

[9] The mediator informed the ministry of the appellant's concerns regarding the potential existence of additional records. The ministry agreed to conduct a second search, and also provided a copy of the applicable retention schedule (Schedule 270 -- Residential Client Files).

[10] On July 18, 2014, the ministry wrote to the appellant's representative regarding its subsequent search:

We would also like to assure you that we have now conducted two full and thorough searches and have disclosed all records within our custody. For your information, there are 16 transfer lists that inventory all of the files that were provided to the Ministry by Rideau Regional Centre. A search for records responsive to your request was made using the last name, first name and casebook number. Your brother's name and casebook number was located on transfer list 2004-00471. There was only one casebook number (800) listed for [the appellant]. This box was retrieved and the file was transferred to our office to process. The records found were sent to you on April 4, 2014.

The retention and disposal of government documents is governed by records schedules, which are developed by ministries and approved by the Archivist of Ontario in accordance with the Archives and Recordkeeping Act, 2006. A records schedule specifies how long specific records should be kept, where they should be retained and by whom, and whether a record should ultimately be destroyed or preserved in the Archives of

Ontario. Records schedules apply to all public records, as defined by the Act.

Records Schedule No. 270 (copy attached) stipulates that a Resident's /Client's Medical, Individual Assessment and Program fields are to remain in the ministry's custody for 20 years, at which point select records are transferred to the Archives of Ontario and the rest disposed. In this case, the files were transferred to the Ministry in 2004 under transfer list 2004-00471. If any documents are missing from the records, they were shredded prior to being transferred to the Ministry.

[11] The appellant's representative advised the mediator of some concerns about the ministry's letter, including what is meant by "date of last activity" in Records Schedule 270, which refers to maintaining records for 20 years after last activity. The ministry was asked about this and clarified that an activity would be something relating to the appellant's treatment. The appellant also raised other concerns, which are set out below.

[12] As mediation efforts did not resolve this appeal, the appeal was transferred to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry. I sought and received representations from the ministry and shared them with the appellant in accordance with section 7 of the Information and Privacy Commissioner's *Code of Procedure* and *Practice Direction 7*.

[13] The appellant was given the opportunity to make representations, but declined to do so.

[14] In this order, I uphold the ministry's search for records as reasonable.

## **ISSUE**

[15] The sole issue in this appeal is whether the ministry has conducted a reasonable search for records.

## **DISCUSSION**

[16] In the Notice of Inquiry, I asked the ministry to provide a written summary of all steps taken in response to the appellant's request for records. I also asked the ministry to explain the effect of "Records Schedule 270", the retention schedule that it provided to the appellant and this office, and to advise whether and how Schedule 270 (or any other applicable retention schedule) was applied to records relating to the appellant.

[17] Further, I asked the ministry to respond to the specific concerns raised by the appellant, as follows:

- 1) Although the appellant was a resident at Rideau Regional Centre from 1952 to 1973, the records that were received from the ministry seem to mainly consist of records from 1952 to 1962, with a few records for 1963 and no records after 1963.
- 2) The records seem incomplete in that they consist mainly of letters to and from the appellant's father and do not include any daily care sheets for the appellant, any information about discipline administered to him or injuries he may have sustained;
- 3) The appellant's representative also asked whether it is possible that staff created any other records of discipline that would have been kept by the centre, other than what is in the appellant's file.
- 4) The appellant's representative questions why the boxes of records prepared for her by the centre in 1993 were not included in the disclosure provided to her by the ministry.

### ***Ministry's representations***

[18] The ministry has provided detailed representations on the extent of its search for records. In this case, quoting the ministry's submissions verbatim best captures the nature and extent of its search. The ministry submits:

#### **An experienced employee knowledgeable in the subject matter**

The Rideau Regional Centre closed in March of 2009 at which point the last of its records were transferred to the Ministry of Government and Commercial Services, off-site storage facilities. In order to respond to FIPPA requests related to former residents of the Huronia, Rideau and Southwestern Regional Centres (the "facilities"), the [Ministry of Community and Social Services] established a dedicated team of FOI Analysts whose sole responsibility is to process FOI requests and review responsive records for possible redactions under the Act. This team worked collaboratively with Records Clerks at the Record Information and Security Management Unit ("RISM"), who are responsible for identifying responsive records and working with the Ministry of Consumer and Government Services' off-site storage facilities and the Archives of Ontario to retrieve those records.

Rather than 'an experienced employee knowledgeable in the subject matter' the Ministry employed a dedicated interdepartmental team of individuals with specific knowledge in both the processing of FIPPA

requests (the staff at the Special Cases Unit) and file storage and retrieval (RISM). RISM's particular mandate is to maintain transfer documentation for all records that are currently maintained in the Government of Ontario's off-site storage facility. The Ministry submits that this is a team of staff with the particular expertise necessary to respond to the FIPPA request under appeal, being a team entirely dedicated to the task of processing and responding to FIPPA requests related to former residents of the facilities.

### **Reasonable efforts to locate records reasonably related to the request**

In navigating the repositories of records related to the former Rideau Regional Centre, the Ministry has made use of the transfer lists and box content lists created when the files were moved out of Rideau to identify and recall records that may be responsive to the FIPPA requests received. It should be noted that the Ministry expended considerable effort in the context of this initiative to identify and confirm the accuracy of inventories of over 3400 boxes of records, containing both resident files and other records related to former residents of the facilities. The 3400 boxes were identified using records schedules to determine boxes that would contain resident files as well as files related to the care and treatment of former residents of the facilities.

This was a manual search undertaken by Ministry staff, and Ministry staff dedicated many hours to this exercise. The product of this undertaking was updated box content lists to allow the Ministry to locate responsive records with both greater facility and afford the Ministry greater confidence in the comprehensive nature of individual searches. These updated lists were cross-referenced against [the appellant's] name and casebook number. Using this extensive search methodology, the Ministry was able to locate [the appellant's] resident file and provide it to the requester.

The Ministry submits that its search was reasonable within the meaning of section 24 of the Act. Staff that was responsible for carrying out the search were entirely dedicated to the task of processing FIPPA requests and locating responsive records. Staff responsible for file retrieval worked within the RISM, a Ministry department whose specific mandate relates directly to records management and storage. Not only did staff work with the existing file transfer and retention documentation (the transfer lists and box content lists), they also spent considerable time and effort to update that documentation through a comprehensive file

inventory. The file inventory was a proactive initiative of the Ministry to give it the utmost confidence in its FOI search process.

### **The specific concerns raised by the appellant and the IPC**

The Ministry submits that "Schedule 920-270 (Revised)-150 (Revised)" is applicable to Rideau client files and its application to resident files is set out at paragraphs 12-14 of the Ministry's affidavit. The Ministry cannot say for certain whether any files in the record have been destroyed pursuant to the schedule. However, the Ministry notes that the file contains an Admission and Discharge Summary and contains records spanning the time period of [the appellant's] residency at Rideau Regional Centre. In any event, whether or not any records were destroyed in accordance with the schedule, the Ministry submits that this should not have bearing on whether the search was reasonable in the circumstances. The Ministry's search has not given it any reason to believe that further records may exist, and the Ministry has done a thorough review of file transfer lists and box content lists for records relating to [the appellant].

In respect of the specific concerns raised by the requester, they will be addressed in the order that they are raised in the Notice of Inquiry:

1. Contrary to the appellant's assertion, the resident file contains a number of files that post-date 1963, such as:
  - a. A Photograph of [the appellant] from 1970 (page 6);
  - b. A certificate from 1967 (page 11);
  - c. A Memorandum of Transfer from 1973 (page 12);
  - d. Physicians orders from 1971-1973 (pages 31-34);
  - e. Treatment records from 1963-1972 (1963-1972)<sup>1</sup>; and
  - f. Progress notes from 1971-1973 (pages 52-57) (paragraph 15 of the Ministry's affidavit).
2. A resident file is unique to the individual. Therefore the contents of the individual resident file will of course vary from resident to resident. Respectfully, the appellant appears to

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<sup>1</sup> The correct page numbers are set out in the affidavit itself: pages 35-40.

have certain expectations as to the content of the resident file. The fact that the records produced may not reflect the appellant's assumptions about [the appellant's] time at Rideau does not mean that the records are somehow incomplete.

3. The Ministry is unclear as to the content of any communications that may have taken place. The Ministry has, however, reviewed relevant transfer lists and box content lists, including those produced from the Ministry's file inventory, and has only located the resident file. The Ministry submits that there is no basis upon which to conclude that further records exist.
4. Other potentially responsive records relating to the care of former residents have been inventoried. This inventory and the related searches did not produce any records relating to [the appellant].

[19] The ministry also filed an affidavit in support of its representations. That affidavit, sworn by the ministry's Manager, Record Information and Security Management ("RISM") Unit, states in part:

### **Background of the Affiant**

I am the Manager of the Recorded Information and Security Management unit ("RISM") within the Information Management and Architecture Branch of the Ministry of Community and Social Services ("Ministry"). RISM is responsible for developing, in consultation with the applicable Ministry department, records schedules in accordance with the *Archives and Recordkeeping Act, 2006*, S.O. 2006, c. 34, Schedule A, and maintaining those schedules. It is also responsible for maintaining the authoritative copy of location metadata, that is data about the location of records, and transfer documentation for all records that are currently maintained in the Government of Ontario's off-site storage facilities.

As Manager of RISM, I oversee a team of staff that have been working in conjunction with other Ministry and government branches to respond to requests under the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 ("FIPPA" or the "Act") for records related to former residents of the Huronia, Rideau and Southwestern Regional Centres (the "facilities"). In particular, my staff is responsible for working with the staff of the Government of Ontario's off-site records storage facilities and the Archives of Ontario to provide



responsive records to FOI Analysts within the Ministry's Special Cases Unit...

### **The Ministry's Retrieval of the Resident File**

On February 27, 2014 the ministry received a request under the Act, for all records relating to [the appellant] from the time he spent as a resident of Rideau Regional Centre...

[T]his request was assigned to [a FOI Policy Analyst in the Special Cases Unit] of the Ministry. The Special Cases Unit and its staff are responsible for processing FIPPA requests relating to records of former residents of the Huronia, Southwestern and Rideau Regional Centres and are responsible for processing requests and reviewing responsive records to determine the application of possible exemptions in accordance with the Act. The Unit was created to respond to the large volume of FIPPA requests received for files relating to former residents of the above noted facilities...

[The FOI Policy Analyst] cross-referenced the request with the class list and used this list to determine [the appellant's] casebook number. The class list contains a list of former residents of the facilities that are "class members" as defined in the settlement agreements entered into between former residents of the Centres and the Crown. Each resident of one of the former facilities is assigned a casebook number, which was used for administrative purposes and constitutes a unique identifier for the resident.

Based on a review of the file, on February 28, 2014, [the FOI Policy Analyst] made a request to RISM using the individual's full name, date of birth, date of discharge and casebook number. These requests are made using an electronic tracking system.

[The FOI Policy Analyst's] request was received by [a Records Clerk] at the RISM on February 28, 2014 and was reviewed and processed by [him and another] Records Clerk at RISM.

When a request for records relating to a former resident is received by RISM from an analyst at the Special Cases Unit, staff checks relevant records transfer lists and box content lists to determine the location of responsive records. These lists can be described as follows: records transfer lists that detail what records were transferred from the relevant facility upon its closing, in this case the Rideau Regional Centre, to the Ministry of Government and Consumer Services' Information Storage

and Retrieval (IS&R) off-site storage facility used by the Government of Ontario; box content lists that outline what records are contained in each box stored in the facilities; a list of Ministry holdings that document all the boxes in storage at the off-site storage facility and their contents; and, where applicable, archived resident lists covering client files for former facility residents that were transferred from interim storage warehouses to the Archives of Ontario. I have been informed by [the Recorded Information Management Coordinator] at RISM, that based on her consultation with staff at the Archives of Ontario, no client records from the Rideau Regional Centre were ever sent to the Archives of Ontario. The transfer lists are arranged both by resident name and by casebook number, and can be used to identify the range of boxes in which responsive records are located. The detailed box content lists can then be used to determine the box in which a responsive record is located. Box content lists detail the contents of individual boxes.

I am informed by [the Recorded Information Management Coordinator] that [the Records Clerks] reviewed the records transfer lists and the detailed box content lists, using the individual to whom the information relates' name and his casebook number, to determine the location of responsive records within IS&R's off-site storage facility. The lists are reviewed electronically and then manually (i.e. by reviewing each page). Upon a review of [the Records Clerks'] notes regarding this search, the former resident's casebook number... was found on transfer list 2004-00471 and allowed for referral to the relevant box content list. A copy of the relevant portion of the records transfer lists is attached Exhibit "B" (note that casebook numbers, not dates, are listed under "Dates of Records"); A copy of the relevant detailed box content list is attached as Exhibit "C". The transfer list indicates that the resident file is located in warehouse 7, aisle 112, bay 84, shelf 0, carton 16. [The Records Clerks'] notes indicate that this was the only reference to [the appellant] on any of the Rideau Regional Centre transfer lists.

Upon a review of [the Records Clerks'] notes regarding this search, on February 28, 2014, they requested that staff at IS&R search the identified box and pull [the appellant's] resident file from the box. Where IS&R locates a file it is sent directly to staff at the Special Cases Unit to be reviewed in accordance with FIPPA...

[O]n March 4, 2014 the file ... was received by the Special Cases Unit; I am advised that it was reviewed for possible exemptions under FIPPA and a copy was sent to the requester on April 4, 2014.

...

## **Detailed File Inventories Undertaken by the Ministry**

In order to ensure the thoroughness of its searches, Ministry staff undertook an inventory of files from the former facilities of both resident files and other records related to treatment and care of residents that were generally kept independently of the resident file, to assist the Ministry in locating responsive records to FIPPA requests received by the Ministry. This involved an inventory of more than 3400 boxes of former facility files for the three facilities. Ministry staff manually reviewed the files to ensure that the box content lists were accurate (and that no files were misfiled) and to update them as necessary to allow them to be more easily cross-referenced with FIPPA requests.

For records generally kept independent of the resident file, Ministry staff reviewed the records schedules to identify those schedules that would likely contain information relating to former residents of the three former facilities. The records schedules represent classes of files that were generated by the facilities. Upon reviewing the records schedules relating to the three former facilities, the Ministry determined that the following records schedules could contain records about former residents and relied upon them to identify boxes of files that may contain responsive records:

- 003 - Investigation Records
- 278R - Training, Behaviour & Nursing Care Worksheets
- 334 - Confidential & Sensitive Issues
- 335 - Accident & Injury Report
- 336 - Movement of Population & Statistical Reports (Closed Facilities)
- 747 - Confidential/Sensitive Issues
- 270 - Resident's Medical, Individual Assessment and Program Files - Huronia Regional Centre
- 270 - Resident's Medical, Individual Assessment and Program Files – Rideau Regional Centre
- 270 - Resident's Medical, Individual Assessment and Program Files - Southwestern Regional Centre

- o 333 - Master Resident/client Index Cards- Southwestern Regional Centre
- o 2736A - Discontinued - Control Records, Registers, Log Books, and Lists - Rideau Regional Centre
- o 2736A - Discontinued - Control Records, Registers, Log Books, and Lists - Southwestern Regional Centre

The inventory took place in two stages. The inventory of resident files began on January 27, 2014 and was intensified with 10 additional staff hired to complete the inventory in a timely manner on May 20, 2014. The inventory was completed on July 8, 2014.

The inventory for records relating to former residents but stored separate from the resident file began on July 9, 2014 and concluded on August 29, 2014. The inventory did not produce any records relating to [the appellant].

### **Additional Searches Undertaken by the Ministry**

I have reviewed the notes of [a Records Clerk], which indicate that she was contacted by [the FOI Policy Analyst] and requested to conduct further searches for responsive records. The notes indicate that [the Records Clerk] reviewed all Rideau Regional Centre transfer lists and box content lists to search for responsive records; her search concluded on July 10, 2014 with no further records found.

### **The Ministry's Contact with the Requester in 1993**

I am not aware of the content of any discussion between the Ministry and the appellant in 1993, and therefore cannot provide any detail as to any communication between Ministry staff and the requester at that time.

[20] The ministry appended a retention schedule as an exhibit to its affidavit. This schedule, Schedule 920-270 (revised) – 150 (revised) applies to the centre's resident medical, individual assessment and program files that were generated by staff at the centre. Under "Record Series Description", the schedule states:

Data on clients'/residents' identification, present location, \*medical and social history, legal status, \*admission and discharge summaries by various disciplines, medical treatment and education and programming

information. May include some or all of the following data relevant to client/resident care and treatment:

[21] The schedule goes on to list several types and subtypes of records, under the headings Demographic, Medical, Nursing, Psychological, Educational, Social, Allied Health Services, Legal documents, and Correspondence. Some of the subtypes of records are marked with an asterisk, while others are not.

[22] Under "Retention Requirements", the schedule states 20 years after the date of last activity (or in the case of a person under the age of 18 years, 20 years after the date of last activity commencing on the 18<sup>th</sup> birthday). Under "Qualifying Factors/Archives Limitations", the schedule states:

1. Transfer all complete files from 1951-1974 to Archives for Archival selection.
2. After 1974 segregate asterisked documents from each file at end of retention period and transfer to Archives. Destroy remainder of files.

[23] The ministry's affidavit makes reference to this schedule as follows:

### **The Application of the Relevant Records Schedule to the Resident File**

Schedule 920-270 (Revised) – 150 (Revised) outlines the records retention schedules for Resident's/Client's medical, individual assessment and program files that were generated by staff at the Rideau Regional Centre. The Schedule is applicable to resident files kept at the facility. The section on the schedule titled "Existing authority to dispose" outlines various record series revisions that are obsolete versions of our current record series or obsolete versions of records series that closely relate to our current record series. A copy of this schedule is attached as Exhibit "D".

Staff at RISM consulted with staff at the Archives of Ontario, who interpret the schedule to mean that all records noted with an asterisk are required to be kept in the file that is ultimately sent to the Archives of Ontario. In contrast, records without an asterisk are to be destroyed 20 years after the date of last activity. My understanding of the accepted interpretation of "last date of activity" is that it refers to the last date the record was used for any operational purpose. Therefore, in the context of resident files, it would be 20 years after the file ceases to serve an operational purpose, such as the closure of the file where a resident is discharged from the facility or passes away. In this instance, the last date of activity would be 20 years from the discharge date of

the resident.

Staff at RISM consulted with staff at the Archives of Ontario who advised that the practice of including Notice of Destruction Reports in files for which records had been destroyed in accordance with the applicable records schedule, only became consistent practice in the last 16 years. Records destroyed prior to that point in time may not have been noted by such a report. Therefore, it is not possible for me to conclude whether records in the file have or have not been destroyed in accordance with records retention schedules.

[24] As noted previously, the appellant did not file representations.

### ***Analysis and findings***

[25] 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.<sup>2</sup> For the following reasons, I find that the ministry has conducted a reasonable search for records responsive to the appellant's request.

[26] 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.<sup>3</sup> From my review of the ministry's representations, including its affidavit, I find that the search was conducted by employees experienced in the subject matter of the request and that these individuals expended reasonable efforts to locate responsive records. I rely in particular on the following:

- a. The ministry employed a dedicated interdepartmental team of individuals with specific knowledge in both the processing of FIPPA requests (the staff at the Special Cases Unit) and file storage and retrieval (RISM). In my view, this demonstrates the ministry's commitment to using its best efforts to respond to freedom of information requests made by the appellant and other former residents of the centres.
- b. I note that the search for records was undertaken in a systematic manner, using the appellant's name, assigned "casebook number", transfer lists and box content lists to locate the box containing his

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<sup>2</sup> Orders P-624 and PO-2559.

<sup>3</sup> Orders M-909, PO-2469 and PO-2592.

resident file. This systematic approach would be likely to locate any records relating to a particular requester.

- c. The ministry also checked with the Archives of Ontario to ascertain whether it was in possession of any records relating to the appellant. In my view, this was a reasonable and necessary step in light of the possibility that records could have been sent to Archives pursuant to the applicable retention schedule.
- d. In addition to searching for and locating the appellant's resident file, the ministry also reviewed other files that might contain records relating to the appellant, as detailed in its affidavit.
- e. The ministry agreed during mediation to conduct another search, but no further records were located.

[27] In my view, these factors demonstrate that the ministry took a systematic, reasonable approach to searching for records relating to the appellant and expended reasonable efforts to locate responsive records.

[28] I now turn to the appellant's specific concerns with respect to the adequacy of the searches performed by the ministry. 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.<sup>4</sup> In this case, the appellant identified four specific concerns with the records unearthed during the ministry's search.

[29] First, the appellant's representative noted that although the appellant was a resident at the centre from 1952 to 1973, the records that she received from the ministry seem to mainly consist of records from 1952 to 1962, with a few records for 1963 and no records after 1963. The ministry, on the other hand, submits that the records that it located do, in fact, contain records from 1963 onward. Having reviewed the records, I agree that they contain records from 1963 onward, though not as many as for the earlier period.

[30] Second, the appellant's representative notes that the records do not include any daily care sheets for the appellant, any information about discipline administered to him or injuries he may have sustained. In response, the ministry submits that a resident's file varies from resident to resident, and that the appellant appears to have made assumptions about what the file should contain. I agree. The appellant's representative has not pointed to anything, beyond her own belief, which would support the view that the appellant's file should contain these types of records. The

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<sup>4</sup> Order MO-2246.

retention schedule provided by the ministry lists various types of records that a centre might be expected to generate. The schedule states that each file "may include some of all" of the types of records listed in the schedule.

[31] With respect to any discipline administered to the appellant or injuries he may have sustained, the appellant has not referred to specific incidents of discipline or injuries, and so I am unable to conclude that the file ought to contain such records.

[32] Third, with respect to the appellant's question regarding other areas that were searched for records, the ministry has identified several files that were searched for additional records pertaining to the appellant. The appellant has not provided any evidence to suggest that the ministry ought to have checked additional files. The *Act* does not require the ministry to prove with absolute certainty that further records do not exist; rather, the evidence must be sufficient to show that the ministry has made reasonable efforts to identify and locate responsive records. I am satisfied that the additional files checked by the ministry were, in the ministry's judgement, the ones most likely to contain additional records relating to the appellant. The ministry's approach represented a reasonable effort to locate additional records.

[33] Fourth, the appellant's representative questions what became of the boxes of records that the centre prepared for her in 1993, and why they were not included in the disclosure provided to her by the ministry. The ministry has not been able to shed light on this matter except to note that some records pertaining to the appellant may have been destroyed, and that there is no way of ascertaining whether that is the case.

[34] The appellant's representative, understandably, would like to know why these boxes were not located and provided to her in response to her freedom of information request. The ministry has provided representations about the applicable retention schedule, but is unable to state with any certainty whether any records pertaining to the appellant were destroyed in accordance with that schedule.

[35] Given that the appellant left the centre in 1973, it is possible that records were destroyed in accordance with the 20-year rule set out in the applicable retention schedule. Further, it is always possible that some records that ought to have been retained were in fact destroyed, but I hasten to add that the material before me does not give me any reason to conclude that this occurred.

[36] In any event, while it may or may not be the case that additional records *ought* to exist, the appropriateness of the record-keeping practices of the centre and the ministry is not an issue before me, and further, does not have a bearing on whether the ministry's search was reasonable. My jurisdiction in this appeal is limited to deciding whether the ministry has conducted a reasonable search for records.



[37] Finally, it is possible that the records still exist but were not located by the ministry. In my view, given the ministry's evidence about the steps undertaken to locate records, the last possibility is unlikely to be the case. For the reasons stated above, I find that the ministry's search was reasonable.

[38] I recognize that my finding may be disappointing to the appellant, who is dissatisfied with the number of records pertaining to him that were located by the ministry, and who feels that there are, or should be, more records. However, I am unable to find that the ministry's search was unreasonable in the circumstances.

## **ORDER**

I uphold the ministry's search as reasonable and dismiss the appeal.

Order Signed By: \_\_\_\_\_  
Gillian Shaw  
Adjudicator

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November 27, 2014