

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3428

Appeal PA14-273

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 her when she 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 was a resident at Rideau Regional Centre (the centre), a residential facility for individuals with intellectual disabilities, from 1959 to 1978. When the centre closed in 2009, its records were sent to the Government of Ontario's off-site storage facilities.

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

Request to receive a copy of the residential/clinical file for [the appellant]...

I would appreciate a copy of the complete file.

[3] The ministry located 127 records (466 pages) and issued a decision granting partial access to them, claiming that portions are exempt from disclosure pursuant to the personal privacy exemptions at sections 21(1) and 49(b) of the *Act*.

[4] The records released to the appellant include admission and discharge records, a photographic record of the appellant, psychological examination notes, clinical records, physician's orders and treatment records, laboratory results, immunization records, dental records, vocational rehabilitation records, and correspondence between the centre and the appellant's mother.

[5] The appellant appealed the ministry's decision to this office on the basis that she believes that additional records exist, thereby raising the issue of the reasonableness of the ministry's search for records. She also appealed the ministry's decision to withhold portions of the records pursuant to the personal privacy exemptions.

[6] During mediation, the mediator was advised that 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. 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 in order to support the appellant's claim for payment from the settlement fund.

[7] The appellant's representative advised the mediator that she is not pursuing her appeal of the exemptions claimed by the ministry in respect of the records located and disclosed to her. However, she believes that additional records exist in light of the fact that the appellant was a resident at the centre for more than fifteen years. She stated that additional records must exist, for example, daily logs and investigation information.

[8] The ministry advised the mediator that it has conducted a full and thorough search and disclosed all records within its custody. The ministry also advised that 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*. The ministry noted that 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.

[9] The ministry referred to Records Schedule No. 270 and stated that this schedule stipulates that a Resident's/Client's Medical, Individual Assessment and Program files 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 remainder are disposed of. The ministry

further stated that if any documents are missing from the records, they were shredded by the centre prior to the centre's files being transferred to the ministry.

[10] 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*. The appellant was given the opportunity to provide representations, but elected not to do so.

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

ISSUE

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

DISCUSSION

[13] 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 provide a copy of "Records Schedule 270", the retention schedule to which it had referred during mediation, and to explain whether and how Schedule 270 (or any other applicable retentions schedule) was applied to records relating to the appellant.

[14] I also asked the ministry to explain whether it has any knowledge of the Archives of Ontario having any client records from the centre, and in particular any records about the appellant. The ministry was asked to explain any arrangement that may be in place for records held at the Archives of Ontario to be included within the scope of requests for information made to the ministry regarding the centre's former residents, and whether the ministry asked the Archives of Ontario to search for records relating to the appellant's request.

[15] The ministry was also asked to address the appellant's concern that daily logs and investigation information are missing. The ministry was asked to clarify whether and how Records Schedule 270 or any other applicable retentions schedule would provide for the disposal of some records in a resident's file and not others.

Representations

[16] 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 appellant.

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 requester 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 definitively whether any files in the record have been destroyed pursuant to the schedule. 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]. The Ministry has worked constructively with the Archives of Ontario and can confirm that based on its consultations, no client records from Rideau Regional Centre were sent to the Archives.

[17] 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 May 13, 2014, the ministry received a request under the Act, for the residential/clinical file for [the appellant] from the time she spent as a resident of Rideau Regional Centre... A similar request, authorized by the appellant, was received on February 26, 2014.... I am informed by [the FOI manager] that the same records were provided to the respective requesters in response to both requests...

[T]he May 13, 2014 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. I am informed by [the FOI Policy Analyst] that she determined that there was no other casebook number for [the appellant] other than that which had been used to search for records responsive to the request received on February 26, 2014. I am advised that, upon her review of the previous search done in response to the FIPPA request received on February 26, 2014, she determined that the search done to respond to that request would have necessarily produced all records responsive to the request under appeal. I am advised by [the FOI Policy Analyst] that, in light of her determination, she requested that [another FOI Policy Analyst] review the records provided under the previous request to ensure compliance with FIPAA and provided them to the appellant. Therefore, all references hereafter to the request in this affidavit relate to the request of February 26, 2014...

[A FOI Policy Analyst in the Special Cases Unit] 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 RISM search notes, [a FOI Policy Analyst] made a request to RISM on February 28, 2014 using individual's full name 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.

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) offsite 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 records 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 further determine and verify the box in which a responsive record is located. Box content lists detail the contents of individual boxes.

Where a review of the transfer list and Archives' holdings lists indicates that a file has been sent to the Archives of Ontario, staff at RISM or the Special Cases Unit request a copy of the file from the Archives of Ontario...However ... I have been advised that no client records related to Rideau Regional Centre former residents have been sent to the Archives.

I have reviewed the search notes and can advise as follows: On February 28, 2014, [the Records Clerk] reviewed the records transfer lists and relevant detailed box content lists, using [the appellant's] 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). The former resident's name and date of birth were found on transfer list 2004-00471. A review of this list and the relevant box content list indicated that the resident file is located in warehouse 7, aisle 112, bay 84, shelf 0, carton 77, temporary box 77. The notes indicate that this was the only reference to [the appellant] on any of the Rideau Regional Centre transfer lists. A review of the lists did not indicate that any responsive records had been transferred to the Archives of Ontario, nor did a review of the Archives' holdings list..

Upon a review of the notes regarding this search, the file located at warehouse 7, aisle 12, bay 84, shelf 0, carton 77, temporary box 77 was set from IS&R to the Special Cases Unit; it was received by the Special Cases Unit on March 4, 201 to be reviewed in accordance with FIPPA.

...

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. This inventory also involved a review of records held at the Archives of Ontario related to the three facilities by staff at the Archives.

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

- o 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].

[18] The ministry appended a retention schedule as an exhibit to its affidavit. This schedule, Schedule 920-270 (revised) – 150 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:

[19] 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.

[20] 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 18th 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.

[21] 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 outlines the records retention schedules for Schedule 270's 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 after 1974 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.

[22] As noted previously, the appellant did not provide representations.

Analysis and findings

[23] 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.¹ For the following reasons, I find that the ministry has conducted a reasonable search for records responsive to the appellant's request.

[24] 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.² 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.
- 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 her resident file. This systematic approach would be likely to locate any records relating to a particular requester.
- c. The ministry also consulted with 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 retentions 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.

¹ Orders P-624 and PO-2559.

² Orders M-909, PO-2469 and PO-2592.

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

[26] 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.³ In this case, the appellant is concerned that daily logs and investigation information are missing from the records disclosed to her.

[27] However, the appellant's representative has not referred to anything, beyond her own belief, which would support the view that the centre generated these types of records with respect to the appellant. I have not been provided with any specific information as to why such records might exist, such as evidence of incidents in respect of which an investigation would have likely resulted, and so I am unable to conclude that the ministry's search ought to have located such records.

[28] I understand that the appellant feels that there ought to be more records than what she has received. Given that the appellant left the centre in 1978, it is possible that records were destroyed in accordance with the 20-year rule set out in the applicable retentions schedule. 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.

[29] Ultimately, however, 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 are not issues before me, and further, do 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.

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

[31] I recognize that my finding may be disappointing to the appellant, who is dissatisfied with the number of records pertaining to her 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.

³ Order MO-2246.

ORDER

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

Original signed by: _____
Gillian Shaw
Adjudicator

_____ November 27, 2014