

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3431

Appeal PA13-275-2

Ministry of Government and Consumer Services

November 28, 2014

Summary: The appellant sought access to a wide-range of records relating to the removal of certain Crown reservations from a cottage property which she owned. Initially, the ministry located some responsive records and disclosed them to her. Following an appeal based on the appellant's belief that additional records ought to exist, the ministry conducted a broad and comprehensive search of a variety of its record-holdings. As a result of this search, further records were located and disclosed to the appellant. In this appeal, the adjudicator upholds the ministry's search as 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 10(2).

OVERVIEW:

[1] The Ministry of Government Services (the ministry) received a multi-part request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all records regarding the appellant and/or a specific property. On May 5, 2013, the appellant revised her request to include the following three parts:

“Including but not limited to records received from any of the following 1 through 13... [13 items]”

...

A) Access to general & own personal records – From 2011 July 1 up to & including the date I first pay the Ministry of Government Services [MGS] fee for providing access to these records: All records, including but not limited to records involving 1 through 7...[7 items]

...

B) Access to Specific Records [3 parts]

...

[2] The appellant further clarified the scope of her request to include the following:

...Access to “All records” means: all memos, notes – including handwritten notes, briefing notes and information notes, all letters, faxes, fax cover sheets, telephone messages, records of verbal transactions, records of meetings, minutes of meetings and e-mails produced and/or received by MGS.

[3] The ministry granted access to the responsive records which it located. The appellant took the position that additional responsive records ought to exist and appealed the ministry’s decision.

[4] At the mediation stage of the appeal, the appellant provided the mediator with a detailed document in chart form setting out what she perceived to be the deficiencies in the search and listed the records that, in her view, should have been located by the ministry. The ministry responded to the appellant’s document, with its own chart indicating that it conducted additional searches and that no further records were located. The ministry also explained that, in some instances, certain records were not located because they had not been retained in accordance with applicable retention schedules by ministry staff. The ministry’s response to the appellant’s document was shared with her. The appellant reiterated that she is not satisfied with the ministry’s search for responsive records and would like to pursue the appeal at adjudication.

[5] As this appeal could not be resolved at mediation, it was transferred to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*. I sought and received very detailed representations from the ministry which include two sworn affidavits and an extensive recitation of the efforts it has made to address the search issues which the appellant identified. These representations were shared, with the exception of a very small severance, with the appellant.

[6] In its representations, the ministry advised that it also located an additional seven responsive records and issued the appellant a decision granting access to them. Among the seven located records were three documents that were outlined in the appellant’s chart during mediation. The ministry also advises that it was unable to

locate the records enumerated at items 5 and 6 of the appellant's chart, however. I then sought and received extensive representations from the appellant in response to the ministry's submissions.

[7] In this order, I uphold the ministry's search and conclude that it made reasonable efforts to identify and locate all responsive records.

DISCUSSION:

[8] The sole issue for determination in this appeal is whether the ministry conducted a reasonable search for records responsive to the appellant's requests, as amended and clarified.

[9] 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.

[10] 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

[11] 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

[12] 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

[13] 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

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.

⁵ Order MO-2185.

⁶ Order MO-2246.

Representations of the parties

[14] The ministry has provided me with extensive and very detailed representations describing the efforts it made to respond to the appellant's request. These representations were shared, with a minor severance of personal information, with the appellant during the inquiry stage of the appeal. Following its receipt of this appeal, the ministry then undertook a number of additional searches which uncovered a further seven records that were the subject of another access decision. These searches were conducted by two staff members at the ministry's local Land Registry Office (the LRO) of their own record-holdings. In addition, a Senior Advisor with the ministry's Freedom of Information and Protection of Privacy Office obtained access to the email accounts of two retired ministry employees and conducted searches of these databases, which resulted in the identification of five additional records. Affidavit evidence was provided to me from the two ministry staff members describing in a thorough and comprehensive manner the nature and extent of the searches which were undertaken for responsive records. Again, these affidavits were shared with the appellant at the inquiry stage.

[15] The ministry also described in detail the parameters of the additional searches which it undertook, using the appellant's name, property information, names of other individuals, entities and references to file numbers maintained by the Ministry of Natural Resources in relation to the appellant's property.

[16] Finally, a search was also conducted of the Ontario Correspondence Management System for correspondence received by the Minister, Deputy Minister or an Assistant Deputy Minister (ADM) in the ministry because the appellant raised the possible existence of responsive records in the offices of these individuals. This search was coordinated by the Executive Assistant to the ADM responsible for the Customer Care Division of the ministry who instructed an employee in the Deputy Minister's office, providing the search criteria and other information required to complete it adequately. This search did not yield any responsive records.

[17] Taken together, the ministry has made an impressive and comprehensive effort to locate any and all records that may be responsive to the appellant's request. It indicates that, with the exception of two documents, it has been able to locate all of the records that the appellant suggests ought to exist, as well as many others not identified by the appellant.

[18] In her representations, the appellant speculates that there may have been correspondence passing between the ministry and the head of a cottagers' association, primarily on the basis that the Ministry of Natural Resources (the MNR) also engaged in such correspondence with the association. Based on the representations of the ministry and the affidavits provided by its staff in this inquiry, I am satisfied that no such communications took place and that no records of them exist.

[19] In addition, the appellant also speculates that the ministry did not conduct searches of the record-holdings of “upper management” within the ministry, arguing that high-level correspondence between the ministry and the MNR ought to exist or that both ministries were copied on correspondence addressed to only one of them. The ministry’s representations describe in detail the nature of the searches which it undertook in order to address these concerns raised by the appellant at the inquiry stage of the appeal process. The ministry conducted searches of the Ontario Correspondence Management System for correspondence received by the Minister, Deputy Minister or an Assistant Deputy Minister. Based on the submissions of the ministry, I am satisfied that the searches of these record-holdings were thorough and comprehensive in their scope.

[20] In a table provided to the mediator at the mediation stage of the appeal process, the appellant identified a number of records which she feels ought to have been located and produced to her by the ministry. During the inquiry stage of this appeal, the ministry located several of these records and disclosed them to the appellant, in their entirety. It concedes, however, that it was unable to locate two documents, referred to by the appellant as records 5 and 6. I note that these records consist of a fax and a registered letter sent by the appellant to the Bracebridge Land Registry Office on May 15, 2012 in which she is inquiring about the “MNR release of Reservation on Ores/Mines Minerals – Voidance Certificate on my property PIN”. The appellant clearly has a copy of these documents as they originated with her.

[21] The appellant also refers to her belief that correspondence to or from the ministry with a lawyer employed by the Ministry of the Attorney General ought to exist. The ministry has been unable to locate any such correspondence because the identified lawyer has had no involvement in the appellant’s matter with the ministry whatsoever. I specifically find that the appellant’s claims about this lawyer’s involvement are completely unfounded and unsubstantiated by any of the evidence before me.

[22] By way of conclusion, I am satisfied that the ministry has conducted a thorough and complete search for all records responsive to the appellant’s request. As noted above, the ministry is not required to prove with absolute certainty that no records exist, its mandate is to satisfy me that it has conducted a reasonable search for responsive records. In this case, I am satisfied that it has done so and I dismiss the appeal.

ORDER:

I dismiss the appeal.

Original signed by: _____
Donald Hale
Adjudicator

_____ November 28, 2014