

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3634-F

Appeal PA13-441

Ministry of Community and Social Services

July 21, 2016

Summary: This order disposes of the remaining issues in this appeal. Initially, there were two issues in this appeal. The first was whether records responsive to the appellant's request were in the custody or control of the Ministry of Community and Social Services (the ministry). The second issue was whether the ministry's search for responsive records was reasonable. In Interim Order PO-3612-I, the adjudicator found that two personal emails of staff were not in the ministry's custody or control, but that other records known as card holder activity reports were. In addition, the adjudicator did not uphold the ministry's search for other records as being reasonable. In Interim Order PO-3612-I, the adjudicator ordered the ministry to conduct a further search for responsive records, and to issue a decision letter to the appellant regarding the card holder activity reports.

In response to Interim Order PO-3612-I, the ministry conducted another search for records and issued a new decision letter to the appellant regarding the card holder activity reports. In this final order, the adjudicator finds that the ministry's second search for records was reasonable. Given that the second search was reasonable, and that the ministry issued a new decision letter regarding the card holder activity reports as ordered in Interim Order PO-3612-I, the adjudicator finds that all of the outstanding order provisions were complied with, and that all of the outstanding issues have been disposed of. The appeal is dismissed.

OVERVIEW:

[1] This is the final order in this appeal, disposing of the remaining issues raised as a result of an appeal of an access decision made by the Ministry of Community and Social Services (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The remaining issues relate to the portions of the appellant's request for

specified emails between named staff members, as well as records known as Card Holder Activity Reports (the reports).

[2] The ministry had initially conducted a search for records and issued a decision letter to the appellant, advising that no records were found in relation to the requested emails and that partial access to the reports would be granted, with portions withheld under section 21(1) (personal privacy). The appellant appealed the ministry's decision to this office.

[3] During the mediation of the appeal, several issues were addressed, including whether the ministry's search was reasonable. Also during mediation, the ministry issued a revised decision letter to the appellant advising that it had changed its position regarding the reports, now claiming that they were not in its custody or control. I subsequently conducted an inquiry under the *Act*, and issued Interim Order PO-3612-I, disposing of most of the issues raised. I ordered the ministry to issue a decision letter to the appellant regarding the reports, and to conduct another search for responsive records, as set out in order provisions 2, 3 and 4 below:

2. I find that the ministry has custody or control of the records listed as items 5 and 6 [the reports] and I order the ministry to issue a decision letter to the appellant with respect to these records, treating the date of the order as the date of the request.
3. I do not uphold the ministry's search for records listed as items 3 and 4 [the specified emails]. I order the ministry to conduct a further search for those records by **June 30, 2016**. The ministry is to search the ministry-issued email folders of the three employees referred to in the order. If the further searches yield responsive records, I order the ministry to issue a decision letter to the appellant. If the further searches do not yield responsive records, I order the ministry to provide the appellant with a written explanation of the searches conducted.
4. I order the ministry to provide this office with representations detailing the searches ordered conducted in order provision 3 by **July 6, 2016**.

DISCUSSION:

[4] After the issuance of Interim Order PO-3612-I, the ministry issued a new decision letter to the appellant regarding the reports, including a fee estimate for access to them. In addition, the ministry advised the appellant it had conducted a further search for the specified emails, but located no records.

[5] The ministry also provided representations to this office concerning its further search for records. In particular, it advises that all of the employees named in the

request conducted searches of their email inboxes, including sub-folders, sent email folders, deleted email folders and archived emails. One employee's email inbox (including the folders described above), who left the ministry, was searched by the Freedom of Information Lead for the region in which this former employee worked.

[6] The ministry further advises that the individuals who carried out the searches were the employees alleged to have sent or received the responsive emails, or were otherwise familiar with the records. The search, it states, was comprehensive and involved a search of the relevant email folders as well as archived materials, and was based on the time periods set out in the appellant's request.

[7] Staff of this office subsequently contacted the appellant to obtain his representations regarding the ministry's search, but received no response.

[8] Given the efforts made by the ministry in its further search as described in its representations, and in the absence of representations from the appellant, I find that its search for emails responsive to the appellant's request is reasonable. The ministry also issued a decision letter to the appellant in accordance with order provision 2 of Interim Order PO-3612-I. As a result, I conclude that the remaining issues in this appeal have been disposed of, and I dismiss this appeal.

Original signed by: _____

Cathy Hamilton
Adjudicator

July 21, 2016