

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3639

Appeal PA15-462

Ministry of Community Safety and Correctional Services

July 26, 2016

Summary: The appellant requested all records relating to her held by the Ontario Provincial Police from the Ministry of Community Safety and Correctional Services (the ministry). The ministry located records responsive to the request and granted partial access to them. The sole issue on appeal is whether the ministry conducted a reasonable search for records responsive to the request. In this order, the adjudicator upholds the reasonableness of the ministry's search for records.

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

OVERVIEW:

[1] The appellant made a request under the *Freedom of Information and Protection of Privacy Act (the Act)* for all records relating to her held by the Ontario Provincial Police, (OPP) from the Ministry of Community Safety and Correctional Services (the ministry). The appellant's request was expressly motivated by her concern that she might be the subject of an investigation which could impact on her standing in her professional occupation.

[2] The ministry issued a decision granting access in part to the responsive records. The appellant did not take issue with the information that was withheld by the ministry. However, the appellant questioned whether additional records responsive to her

request existed. The ministry conducted another search for responsive records and issued a decision stating that no additional records involving the appellant were located.

[3] The appellant maintained that additional responsive records should exist. As no further mediation was possible, the appeal was moved to the adjudication stage of the appeal process. During the 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*. Portions of the appellant's representations were withheld due to the concerns of the appellant.

[4] For the reasons that follow, I find that the ministry's efforts to search for records relating to the appellant were reasonable. I therefore dismiss the appeal.

DISCUSSION:

[5] The sole issue in this appeal is whether the ministry conducted a reasonable search for records for the purposes of section 24 of the *Act*.

[6] 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 the institution to conduct further searches.

[7] 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 A responsive record is one that is "reasonably related" to the request.³ 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 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

[8] 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

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Order PO-2554.

⁴ Order M-909, PO-2469 and PO-2592.

⁵ Order MO-2185.

basis for concluding that such records exist.⁶

Representations and analysis

[9] Having carefully reviewed the representations of the parties, I am satisfied that the search conducted by the ministry for records responsive to the appellant's request was reasonable and is in compliance with its obligations under the *Act*.

[10] The ministry's searches were conducted by an OPP Constable knowledgeable in the subject matter of the request and of the procedures and processes for responding to requests under the *Act*. The Constable's affidavit evidence states he is a Freedom of Information liaison for the OPP and that he has been with the OPP for almost 15 years.

[11] I find that the ministry has provided sufficient evidence to demonstrate that it has made a reasonable effort to identify and to locate responsive records within its custody or control. The ministry's evidence is that after clarifying with the appellant the scope of her request, the Constable conducted two searches for records responsive to the request that encompassed searching the OPP records database currently used by the OPP and one no longer in use. The Constable subsequently also conducted a search of the Canadian Police Information Centre database administered by the RCMP.

[12] As noted above, although a requester will rarely be in a position to indicate precisely which records an institution has not identified, they must still provide a reasonable basis for concluding that such records exist. The appellant did not provide evidence that points directly to the existence of additional records. The appellant's belief that additional records exist is based on her view that she is being investigated by the police, a view that relies on two hearsay statements she did not wish to share with the ministry. The appellant did agree to share with the ministry her query whether responsive records had been deleted. The ministry response to the appellant's submission regarding record deletion was that it had no record of any responsive records having been deleted or otherwise destroyed.

[13] In light of the efforts taken by the ministry to locate additional responsive records, I am satisfied that the appellant has not provided a reasonable basis to justify her belief that additional records exist. Despite the appellant's expectation that additional documents should exist, the issue before me is not whether records ought to exist or should have been created, but whether the ministry's search for responsive records was reasonable. On my review of the evidence and explanations provided by the ministry, I accept that the ministry's search was reasonable.

[14] I am satisfied that the ministry has discharged its onus and has demonstrated that it has conducted a reasonable search in compliance with its obligations under the

⁶ Order MO-2246.

Act. Accordingly, I uphold the ministry's search for records responsive to the appellant's request and dismiss the appeal.

Original Signed By: _____
Hamish Flanagan
Adjudicator

_____ July 26, 2016 _____