

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3700

Appeal PA15-669

Ministry of Community and Social Services

February 22, 2017

Summary: The ministry received a request for all documents in the appellant's ODSP file and the caseworker's notes from January 2004 to September 2015. The ministry responded to the request granting partial access to the responsive records and noting that there were no further responsive records. The appellant claimed that the ministry had not conducted a reasonable search. This order finds that the ministry conducted a reasonable search in response to the request.

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

BACKGROUND:

[1] The appellant made a request to the Ministry of Community and Social Services (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records, as follows:

I would like all documents in my ODSP¹ file and a record of the caseworker notes.

[2] The timeline for his request for records was from January 1, 2004 to September 1, 2015.

¹ Ontario Disability Support Program

[3] In response, the ministry issued a decision indicating that access had been granted and that “severances were required to the enclosed records.”

[4] The requester (now the appellant) appealed the ministry’s decision to this office.

[5] In the course of mediation, the mediator spoke with the appellant and the ministry. The ministry clarified that it withheld portions of the records, pursuant to section 21(1) (personal privacy) of the *Act* and some other portions of information were deemed to be non-responsive. The appellant has since confirmed that he does not seek access to the withheld portions of the partially-disclosed records. These records are therefore not at issue in this appeal.

[6] During the mediation, the appellant indicated that he believes additional records should exist, specifically:

1. A letter sent to him in 2000 indicating that he could report his income yearly. He indicated that the ministry sent a copy of this letter to Ombudsman Ontario 2015 and a staff member there read it to the appellant.
2. The agreement he reached with a named manager at the ODSP Guelph Office and any records relating to it. The appellant provided a letter that, in his view, supports that such agreement should exist.

[7] The ministry conducted a further search and indicated to the mediator that it had located additional records, including records responsive to the two items the appellant had specified. Although the records subsequently found were not responsive to the original request as they pre-dated the timeline requested for records, the ministry issued a decision, granting full access to the further records they had located.

[8] After reviewing the records disclosed, the appellant indicated that he was satisfied with the record responsive to item 1. However, the appellant indicated that he continues to believe that additional records responsive to item 2 should exist.

[9] As no further mediation was possible, this matter was transferred to the adjudication stage of the appeals process, where an adjudicator conducts a written inquiry under the *Act*. The parties were invited to submit representations on the issues and once received those representations were shared in accordance with section 7 of the IPC’s *Code of Procedure and Practice Direction 7*.

[10] The sole issue in this appeal is whether the ministry conducted a reasonable search for records responsive to the appellant’s request. For the reasons that follow, I find that the ministry’s search was reasonable and I dismiss the appeal.

DISCUSSION:

[11] 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 24.² 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.

[12] 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.³ To be responsive, a record must be "reasonably related" to the request.⁴

[13] 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.⁵

[14] 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.⁶

[15] 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.⁷

[16] I adopt the approach taken in the above orders.

Representations

[17] In its representations, the ministry notes that it maintains the ODSP files in paper and electronic format. In responding to the appellant's request, the ministry conducted a search of the paper file, the electronic system (SAMS) and its predecessor to SAMS (SDMT). The search was completed by the ODSP program support clerk whose responsibility is to maintain the storage of the paper file and to respond to access

² Orders P-85, P-221 and PO-1954-I.

³ Orders P-624 and PO-2559.

⁴ Order PO-2554.

⁵ Orders M-909, PO-2469 and PO-2592.

⁶ Order MO-2185.

⁷ Order MO-2246.

requests under the *Act* relating to ODSP clients. The ministry submits that the program support clerk routinely responds to access to information requests and is qualified as an experienced employee with particular knowledge of the storage and maintenance of ODSP files.

[18] The ministry's representations included an affidavit sworn by the social assistance program manager for the ODSP who is responsible for overseeing the delivery of social assistance pursuant to ODSP across 6 offices in the central/west region. The affiant states that after receiving the appellant's request, the ministry conducted three separate searches for responsive records. It was confirmed that the program support clerk conducted the search and followed these steps:

1. The appellant's paper file was located and the portion relating to the requested time period was photocopied in their entirety;
2. All case notes and payment information contained in the SDMT relating to the requested time period were printed; and,
3. All case notes and payment information from SAMS for the relevant period were printed.

[19] The ministry notes that it attempted to assist the appellant during mediation by searching for a letter from the year 2000 which it located and provided to the appellant. According to the ministry this was not a responsive record as it pre-dated the period of the original request.

[20] With regard to the Guelph office and any records relating to an agreement, the ministry states that based on the file management practices of the ODSP, any such records ought to be found in either the paper file or referred to in a case note on SAMS or SDMT.

[21] The appellant made representations in this appeal. He believes there was an agreement, verbal or otherwise, between a regional manager and himself, that for a 10-year period he was only required to provide a notice of assessment. He states that after receiving the records from the ministry he found nothing in the documents to indicate that he was asked for any other information during the 10-year period, or any document that gave the impression that he was not supplying all the information the ministry sought. The appellant states that it is possible there is no document which contains this information and requested that the ministry confirm that for 10 years it accepted and asked for only one thing from him, an annual notice of assessment. The appellant states that he wants the ministry to admit that for this 10-year period, they did not ask him for any information other than the notice of assessment.

[22] In reply, the ministry reaffirmed its position that its search was reasonable within the meaning of section 24 of the *Act*. It also stated that the appellant's request that the ministry admit that for 10 years it did not ask him for information other than a notice of

assessment, is outside of the scope of the *Act*.

Analysis

[23] In this appeal, I have considered the appellant's representations where he suggests the possibility of a record existing concerning a verbal agreement or otherwise which he recalls being made by the ODSP Guelph office to support his position that further responsive records exist. I have also considered the ministry's initial and reply representations. In the circumstances of this appeal, I find that the ministry has provided sufficient evidence to establish that reasonable searches were conducted for responsive records. I make this finding for a number of reasons.

[24] After the mediator informed the ministry of the appellant's view that records should exist relating to this agreement, the ministry conducted a further search. Given the information, from the appellant, that the record related to an agreement from the year 2000, the ministry went beyond the parameters of the appellant's initial request and searched records from 2000. The record was found and given to the appellant reflected an agreement from 2000 that the appellant had referenced and was dated April 6, 2000.

[25] As set out above, in appeals involving a claim that further responsive records exist, the issue to be decided is whether the ministry conducted a reasonable search for the records as required by section 24 of the *Act*. As mentioned, if I am satisfied that the ministry's search for responsive records was reasonable in the circumstances, its search will be upheld. If I am not satisfied, I may order that further searches be conducted.

[26] Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response, the appellant must, nevertheless, provide a reasonable basis for concluding that such records exist. On my review of the appellant's representations, I note that all of his representations focus on a belief that records exist. While he does not have to identify precisely which records the ministry has not located, the appellant must provide a reasonable basis for concluding that such records exist. The appellant's reasonable basis that a record should exist is based on a verbal agreement or otherwise which he says he entered into with an individual at the Guelph office. I find that the appellant's suggestions that further records exist is not supported by information which would convince me that there is a reasonable basis for concluding that records should exist. Also, I find that the ministry has provided an adequate description of their searches to rebut the appellant's suggestion that further records exist.

[27] Further, the ministry maintains that it conducted a number of searches after their initial search including a further search after the appellant supplied more information which resulted in finding one record which was non-responsive to the original request. Despite the ministry finding records after their initial search, this was only as a result of going beyond the period requested by the appellant in his initial request.

[28] I am satisfied that the ministry conducted a reasonable search for responsive records in this appeal. I accept the affidavit evidence provided by the ministry, that they have made reasonable efforts to locate and identify responsive records. I am satisfied that the search was conducted by an experienced employee who expended a reasonable effort to locate records related to the request. The individual who conducted the various searches is responsible for maintaining the storage of the paper file and also routinely deals with searching and providing records in response to requests for information under the *Act*.

[29] Finally, while the appellant has referred to incidents suggesting that records should exist, I find that he has not provided a reasonable basis for me to conclude that additional records exist. In his representations, he indicated that that he was looking for a document that would show evidence of a verbal agreement or an agreement of some kind that was made at the Guelph ODSP office. This information was relayed to the ministry by the mediator resulting in another search. As stated the ministry only found one further record and it was not responsive to the initial request.

[30] As stated above, the *Act* does not require the ministry to prove with absolute certainty that further records do not exist. Accordingly, I am satisfied that the ministry provided sufficient evidence to demonstrate that they made a reasonable effort to address the appellant's request and locate all records reasonably related to the request.

[31] In addition, I agree with the ministry that in this appeal process it is not required to confirm, as the appellant has requested, that it never asked him for any other information other than his annual notice of assessment.

[32] Accordingly, I uphold the ministry's search for responsive records.

ORDER:

The appeal is dismissed.

Original Signed by: _____
Alec Fadel
Adjudicator

February 22, 2017 _____