

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-3733

Appeal PA15-131

Ministry of Community Safety and Correctional Services

May 18, 2017

**Summary:** The only issue in this appeal is whether the ministry conducted a reasonable search for records relating to the appellant and a specific Ontario Provincial Police (OPP) Report. In this decision, the adjudicator upholds the ministry's search as reasonable and finds that the appellant did not provide sufficient evidence to demonstrate that additional records should exist. The appeal is dismissed.

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

### OVERVIEW:

[1] The Ministry of Community Safety and Correctional Services (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to the requester and a specific Ontario Provincial Police (OPP) report. The requester later clarified her request and the clarified request reads as follows:

1. Voicemail transcripts and audio for telephone call between [a named constable] and the requester on December 10, 2014.
2. Voicemail transcripts for December 11, 2014 phone calls (approximately 4:00 a.m.) to [a named constable] and [the first name of an individual]
  - a. Similar to voicemails left for [a named constable] (cellphone).

3. Also relating to having London Police Service attending the requester's home after these calls were made.

[2] After conducting a search for responsive records, the ministry issued a decision granting the requester partial access to the responsive records. The ministry advised the appellant that the OPP number she identified was incorrect and provided her with the correct number. The ministry also advised the requester that no audio recordings were made for telephone calls with three named detectives and, therefore, the responsive information does not exist.

[3] However, the ministry stated that the recordings of voicemail messages left by the requester to a detective were retained. The ministry disclosed those records to the requester. In addition, the ministry advised the requester that no records relating to the London Police Service exist. Finally, with regard to the records that were located, the ministry advised the appellant that portions of the records were withheld under sections 49(a), read in conjunction with section 14(2)(a) (law enforcement report), and 49(b) (personal privacy) of the *Act*. The ministry also advised that some of the information, such as computer-generated data, is not responsive to the request and was marked as such.

[4] The requester, now the appellant, appealed the ministry's decision.

[5] During mediation, the appellant stated that she made requests under the *Act* to both the ministry and the London Police Service for records relating to the incident in question. The appellant stated that she believed that this appeal should deal with both the ministry and London Police Service's decisions. However, the mediator confirmed that this appeal, PA15-131, relates to the ministry's decision only.

[6] In addition, the appellant raised a number of concerns regarding the manner in which she was treated by the OPP officers involved in the incident. The IPC does not have the jurisdiction to review complaints regarding the police's conduct.

[7] The appellant confirmed that she does not wish to pursue access to the information withheld as not responsive to her request. As a result, that information is not at issue in this appeal.

[8] However, the appellant advised the mediator that she pursues access to the remainder of the information that was withheld from the General Occurrence Report. The ministry notified and obtained consent from an affected party, whose interests may be affected by the disclosure of the withheld portions of the records, and granted the appellant full access to the records at issue. Therefore, these records are no longer at issue in this appeal. As a result, the only issue remaining after mediation was whether the ministry's searches were reasonable.

[9] The appellant maintains that additional records should exist. In particular, the appellant advised the mediator that the following records should exist:

1. Recordings and transcripts of the appellant's December 11, 2014 teleconferences with two named detectives.
2. All recordings and transcripts of the electronic surveillance ordered subsequent to the appellant's December 11, 2014 conversations with the two detectives.
3. A copy of the OPP's DVD of the appellant's voicemails of December 11, 2014 sent to a named detective.
4. Any communications, emails, letters or recordings and transcripts relating to an order made to the OPP by the Premier's Office to investigate her.
5. Emails, recordings and transcripts of calls between [named OPP Commissioner], the Premier's Office and/or OPP detectives.
6. Copies of communications between the London Police Service and OPP relating to a welfare check conducted on the appellant.

The ministry responded numbers 1 to 5 of the appellant's concerns as follows:

1. There are no recordings of conversations between the appellant and the two named detectives.
2. There was no subsequent action taken post-December 11, 2014, therefore there are no transcripts or recordings.
3. These recordings of her voicemails were already provided in the original disclosure.
4. This documentation was already provided in the original disclosure request. There is nothing further to provide.
5. There was no correspondence with the Commissioner's office and no emails.

The ministry's response was shared with the appellant. However, the appellant continued to take issue with the ministry's search.

[10] No further mediation was possible and the appeal was transferred to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry. I began my inquiry by inviting the ministry to submit representations in response to a Notice of Inquiry. The ministry submitted representations. I then invited the appellant to respond to the ministry's representations, which were shared with her in accordance with Practice Direction 7 of the IPC's *Code of Procedure*. Although the appellant submitted a large amount of information throughout the inquiry, she did not submit formal representations in response to the Notice of Inquiry. In any case, I will review the materials submitted by the appellant below.

[11] In the decision that follows, I uphold the ministry's search as reasonable and

dismiss the appeal.

## **DISCUSSION:**

### **Did the ministry conduct a reasonable search for records?**

[12] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution conducted a reasonable search for records as required by section 24 of the *Act*.<sup>1</sup> If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the ministry's decision. If I am not satisfied, I may order the ministry to conduct further searches.

[13] 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 made a reasonable effort to identify and locate responsive records.<sup>2</sup> To be responsive, a record must be *reasonably related* to the request.<sup>3</sup>

[14] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends reasonable effort to locate records which are reasonably related to the request.<sup>4</sup>

[15] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it made a reasonable effort to identify and locate all of the responsive records within its custody or control.<sup>5</sup>

[16] 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.<sup>6</sup>

[17] A requester's lack of diligence in pursuing a request by not responding to requests from the institution for clarification may result in a finding that all steps taken by the institution to respond to the request were reasonable.<sup>7</sup>

[18] The ministry provided an affidavit sworn by a constable with the OPP (the constable). The constable states that, at the time the appellant made her request, he was assigned to the Dignitary Protection and Investigation Section of the OPP Security Bureau. In that role, the constable states that he was responsible for responding to an incident involving the appellant, which resulted in her request. The constable states that

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<sup>1</sup> Orders P-85, P-221 and PO-1954-I.

<sup>2</sup> Orders P-624 and PO-2259.

<sup>3</sup> Order PO-2554.

<sup>4</sup> Orders M-909, PO-2469 and PO-2592.

<sup>5</sup> Order MO-2185.

<sup>6</sup> Order MO-2246.

<sup>7</sup> Order MO-2213.

he is familiar with the records the OPP created in relation to the incident. The constable also states that he is familiar with the record holdings of the Dignitary Protection and Investigation section. The constable also states that he understands the requirements and procedures for responding to requests under the *Act*.

[19] The constable states that he received notice of the appellant's request on January 12, 2015 and began his search the next day. The constable states that he submitted all responsive records to the OPP Security Bureau on January 19, 2015.

[20] Given the nature of the request and the constable's involvement in creating the records, the constable submits that he understood the request sufficiently to conduct a search for and identify responsive records. The constable states that he did not need to seek further clarification from the appellant.

[21] The constable states that he searched through his own notes, the OPP's records management system and through the OPP Security Bureau's network drive. The constable claims that it is not likely that responsive records would be located elsewhere. The constable states that he discussed the incident and request with two colleagues and neither were aware of any additional responsive records that would exist.

[22] As the incident took place in December 2014, the constable submits that it is unlikely that any records would have been destroyed in contravention of the OPP's record retention schedules.

[23] In response to the appellant's numbered concerns raised during mediation which I reproduced above, the constable provided the following responses:

1. There are no recordings and transcripts of the appellant's December 11, 2014 teleconference with two named detectives. The Dignitary Protection and Investigation Section do not tape record conversations with members of the public.
2. There are no recordings and transcripts of electronic surveillance ordered subsequent to the appellant's December 11, 2014 conversations with two named detectives. There was no OPP involvement in the incident after December 11, 2014 and therefore there are no transcripts or recordings.
3. The copy of the OPP's DVD of the appellant's voicemails of December 11, 2014, sent to a named detective has already been disclosed to the appellant. There are no further responsive records to disclose.
4. Copies of responsive communications, emails, letters or recordings and transcripts relating to the inquiry of the well-being of the appellant made to the OPP by the Premier's Correspondence Unit were already disclosed to the appellant. There are no further responsive records to disclose.

5. There are no emails, recordings and transcripts of calls between the OPP Commissioner, the Premier's Office and/or OPP detectives. The Commissioner's office was not involved in this incident.

6. There are no copies of communications between the London Police Service and the OPP relating to a 'welfare check' conducted on the appellant. I am unaware of any such communications occurring.

The constable submits that his search was diligent and thorough. He states that he searched all locations that the records could be expected to be found.

[24] Given the above, the ministry submits that it conducted a reasonable search for records responsive to the appellant's request. The ministry further contends that the appellant has not provided evidence to establish a reasonable basis for concluding that the ministry's search was inadequate or that further records exist.

[25] The appellant did not submit formal representations in response to the Notice of Inquiry or the ministry's representations. However, throughout the inquiry, the appellant submitted a large amount of documentation, including information relating to her and her spouse's medical histories, copies of correspondence with and about her physician(s), her complaint with the College of Physicians and Surgeons of Ontario and her and her spouse's personal financial information. I reviewed all of the information the appellant provided me and find that none is relevant to whether the ministry conducted a reasonable search for records responsive to her request.

[26] On my review of the ministry's representations, I am satisfied that it conducted a reasonable search for records responsive to the appellant's request. I note that the appellant identified six additional types of records that she believes should exist during mediation. I find that the ministry addressed each of these concerns in the affidavit sworn by the constable. In addition, the constable confirmed the locations that the responsive records would be stored and provided detailed evidence regarding the search he conducted. Finally, I am satisfied that the constable is an experienced employee knowledgeable in the subject matter of the request and expended a reasonable effort to locate records responsive to the request. Based on my review of the ministry's evidence, I find that it conducted a reasonable search for responsive records.

[27] Additionally, I agree with the ministry that the appellant has not provided me with a reasonable basis for her belief that additional records exist. The appellant did not provide me with any response to the ministry's representations, which addressed the six types of records that she believes ought to exist. While the appellant is not expected to indicate precisely which records ought to exist, she must provide me with a reasonable basis for her conclusion that additional records exist.<sup>8</sup> I reviewed the appellant's documentation and find that none relate to the ministry's search. Further, the appellant's submissions do not contain any evidence to establish that additional records

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<sup>8</sup> Order MO-2246.

ought to exist.

[28] Therefore, in light of these circumstances, I find that the appellant has not provided me with a reasonable basis to find that additional responsive records exist and I uphold the ministry's search as reasonable.

**ORDER:**

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

Original signed by \_\_\_\_\_  
Justine Wai  
Adjudicator

\_\_\_\_\_ May 18, 2017