

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-3883

Appeal PA18-197

Ministry of Community Safety and Correctional Services

September 28, 2018

**Summary:** 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 “[a]ll provincial directions, related to the gathering, tracking, and management of a sudden death scene used by the OPP including evidence check lists”, for a specified time period. The ministry located two pages of responsive records and granted partial access to them, claiming a number of exemptions. The requester appealed. At adjudication, the sole issue in dispute was whether the ministry had conducted a reasonable search for records. The adjudicator finds that the ministry provided sufficient evidence of a reasonable search and that the appellant has not provided a reasonable basis for believing that additional responsive records exist.

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

### OVERVIEW:

[1] The Ministry of Community Safety and Correctional Services (the ministry), and by extension, the Ontario Provincial Police (the OPP), received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for “All provincial directions, related to the gathering, tracking, and management of a sudden death scene used by the OPP including evidence check lists”. At the ministry’s request, the requester clarified that she was seeking records for the years 1998 and 1999.

[2] The ministry located two pages of responsive records.

[3] It then issued an access decision granting partial access to the responsive records. The remainder of the information was denied pursuant to various discretionary law enforcement exemptions of the Act.

[4] The requester, now appellant, appealed the ministry's access decision to this office.

[5] During mediation, the issues were narrowed between the parties. The only issue that could not be resolved was reasonable search, and the case moved to adjudication.

[6] At adjudication, I sought and received written representations from the parties on the issue of reasonable search. Representations were shared in accordance with *Practice Direction 7* of the *IPC Code of Procedure*, though after receiving the appellant's sur-reply representations, I determined that I could dispose of the sole issue in this case.

[7] For the reasons that follow, I find that the appellant has not demonstrated a reasonable basis for concluding that further records exist, and I uphold the ministry's search.

## **DISCUSSION:**

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

[8] The appellant claims that additional records exist beyond those identified by the ministry, so the issue to be decided is whether the ministry has conducted a reasonable search for records as required by section 24.<sup>1</sup> As explained below, since I am satisfied that the search carried out was reasonable in the circumstances, I have no reason to order a new search.

[9] The Act does not require an 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.<sup>2</sup> To be responsive, a record must be "reasonably related" to the request.<sup>3</sup>

[10] 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.<sup>4</sup> A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable

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

<sup>2</sup> Orders P-624 and PO-2559.

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

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

effort to identify and locate all of the responsive records within its custody or control.<sup>5</sup>

***The ministry's evidence***

[11] The ministry was required to provide a written summary of all steps taken in response to the request, in affidavit form signed by the person or persons who conducted the actual search, and it did so.

[12] The search was conducted by an OPP Policy Development Officer of about eight years. This employee knew that the request covered a time period that required a search for responsive records in the OPP historic policies, and she attested that she is familiar with the archive in which responsive records would be stored. I accept that this employee was knowledgeable and experienced in the subject matter of the request.

[13] Since the ministry had already clarified the time period of interest with the appellant, I accept that the request was clear to the employee who conducted the search and that no further clarification was needed.

[14] The OPP employee's affidavit also sufficiently explains why she searched in the historical OPP Policy Orders Policy archive: for 1998-1999, if there was provincial direction related to the subject matter of the request, including evidence checklists that OPP officers were bound to follow, they would be contained in that archive. The affidavit states that policy orders are orders that all members of the OPP must comply with.

[15] When she received the request, the OPP employee searched this archive for the applicable time period in an electronic format, allowing her to focus on key search terms. Given the scope of the request, I find that the search terms "sudden death" and "crime scene", in connection with any policies that mentioned the management of evidence were reasonable search terms to use.

[16] I also find that OPP employee's use of the search terms "evidence" and "evidence check list" to determine if the OPP had any policy in place that related to the request (the gathering, training and management of evidence at a sudden death crime scene) was also reasonable and appropriate.

[17] The OPP employee attests, and I accept, that she identified two pages of responsive records consisting of policy, and that no policy changes were made during the 1998-1999 time period.

***The appellant's evidence***

[18] Although a requester will rarely be in a position to indicate precisely which records the ministry has not identified, the requester still must provide a reasonable

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

basis for concluding that such records exist.<sup>6</sup>

[19] In this case, the appellant did not do so.

[20] She provided excerpts from a 2015 American criminal investigations textbook, and highlighted that this apparently leading text indicates that a crime scene can generate 200 pieces of evidence, and that each piece must be accounted for, and why. The appellant conceded that the excerpt is from a book dated much later than the time period covered by the request, but submits that the ministry must have had databanks, even “rudimentary” ones in 1998, and if not, there must have been forms to fill out.

[21] I agree with the ministry that the appellant has not provided a reasonable basis for concluding that additional responsive records exist. The textbook excerpt and argument offered by the appellant do not persuade me that the employee who conducted the search was not sufficiently knowledgeable or experienced in the subject matter of the request, or that the locations searched and search terms used were unreasonable. I am unable to conclude from the appellant’s evidence that any particular policy should have come up in the OPP’s search for responsive records (or that another location or employee should have been involved in the search).

[22] Therefore, I find that the ministry’s affidavit sufficiently addresses the issue of reasonable search in light of the appellant’s representations and all the evidence before me.

**ORDER:**

I uphold the ministry’s search and I dismiss this appeal.

Original signed by: \_\_\_\_\_  
Marian Sami  
Adjudicator

September 28, 2018 \_\_\_\_\_

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