Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3907

Appeal PA16-373-2

Ministry of Children, Community and Social Services

November 29, 2018

Summary: The appellant submitted a seven-part access request to the Ministry of Community and Social Services (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for various records, including the responses of specific ministry staff to his emails and questions; examples of recent ministry payouts to benefit recipients for a particular program; and the names and College of Physicians and Surgeons ID numbers of the ministry staff who participated in the work to accept him into the Ontario Disability Support Program. The ministry issued access decisions and disclosed a number of records to him but it withheld some information under the mandatory exemption in section 21(1) (personal privacy) of the *Act*. It also advised him that no records exist with respect to most of his requests for staff responses to his emails and questions. In this order, the adjudicator finds that disclosing the client ID numbers and postal codes of benefit recipients in one record would constitute an unjustified invasion of those individuals' personal privacy, and this information is exempt from disclosure under section 21(1) of the *Act*. He also finds that there are no grounds for concluding that the ministry failed to comply with its obligations under section 24(2) of the *Act* or that it improperly interpreted the scope of the appellant's access request. Finally, he finds that the ministry conducted a reasonable search for records as required by section 24, and it did not have an obligation to create records in response to the appellant's emails and questions. The adjudicator upholds the ministry's access decisions and dismisses the appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 2(1) (definition of "personal information"), 21(1) and 24.

Orders and Investigation Reports Considered: Order 99.

OVERVIEW:

[1] The appellant submitted a seven-part access request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of Community and Social Services (the ministry) for various records. After communicating with the appellant, the ministry sent a letter to him confirming that he was seeking access to the following records:

1. All current [Ontario Disability Support Program] Policies, Procedures and Regulations.

2. [Named ministry employee's] complete, explicit, point-by-point written response to my email of 16 March 2016 (attached).

3. [Named ministry employee's] complete, explicit, point-by-point written response to my e-mail of 22 March 2016 (attached).

4. [Named ministry manager's and named ministry employee's] independent, non-co-ordinated, explicit, point-by-point response to my e-mail of 1 April 2016 (attached). [Named ministry employee] should contextualize the response with his comment to me on 18 March 2016 that ODSP front line workers do not know the disabilities of the clients whom they are making individualized financial decisions for.

5. 20 most recent examples of payouts from the Ministry of Community and Social Services detailing their portion of the assistive devices program payout to the Ministry of Health and Long-Term Care.

6. [Named ministry employee's] explicit comprehensive, non-evasive, written response to the following question: "FOI legislation empowers the Ontario resident to control his/her personal health information, under the sole discretion of the individual. Why does ODSP, in practice, use financial coercion to manipulate an ODSP member to violate that right (provision of medical information to a 3rd party NGO in order to receive incomplete compensation for ODSP-mandated services)?"

7. The names and professional identification numbers (ie [College of Physicians and Surgeons] ID numbers) of all [Disability Adjudication Unit] members/workers who participated in the DAU work to accept me into the ODSP. All notations from the DAU concerning my ODSP acceptance, including hand-written notes, e-mails, SAMS notations, voice recordings.

[2] The ministry then issued a decision letter to the appellant that provided him with full access to the records that are responsive to parts 1 and 2 of his access request. It provided him with access to most of the record that is responsive to part 5 of his access request but severed some information under the mandatory exemption in section 21(1)

(personal privacy) of the *Act*. For parts 3, 4 and 6 of his access request, the decision letter stated that "… the type of information you have requested is outside the scope of the *Act*. The *Act* only covers existing records, and cannot compel the creation of a record." For part 7 of his access request, the decision letter stated that a decision was "pending," and that the ministry would be releasing a decision to him with respect to such records shortly.

[3] The ministry then issued a supplementary decision letter with respect to part 7 of the appellant's access request which provided him with the names of three DAU staff. However, it advised him that these three individuals are not members of the CPSO and thus no responsive records exist with respect to that portion of his request. In addition, the supplementary decision letter stated that the ministry had previously disclosed all records in the custody of the DAU and no additional information was found after its staff conducted a new search.

[4] The appellant appealed the ministry's access decisions to the Information and Privacy Commissioner of Ontario (IPC), which assigned a mediator to assist the parties in resolving the issues in dispute. During mediation, the ministry clarified that records responsive to parts 3, 4 and 6 of the appellant's access request do not exist. The appellant advised the mediator that the ministry did not create the records he was seeking "whilst the work was being done." As a result, whether an institution has an obligation to create a record in response to an access request under the *Act* was added by the mediator as an issue in this appeal.

[5] At the conclusion of mediation, the mediator issued a report that identified the following issues as remaining in dispute:

- Personal privacy (section 21(1))
- Scope of request (section 24)
- Reasonable search (section 24)
- Obligation to create record (section 24)

[6] I sought and received representations from the parties on these issues. In this order, I find that:

- disclosing the client ID numbers and postal codes of the benefit recipients in the record responsive to part 5 of the appellant's access request would constitute an unjustified invasion of those individuals' personal privacy, and this information is exempt from disclosure under section 21(1) of the *Act*;
- there are no grounds for finding that the ministry failed to comply with its obligations under section 24(2) of the *Act* or that it improperly interpreted the scope of the appellant's access request;

- the ministry conducted a reasonable search for records as required by section 24 of the *Act*; and
- the ministry did not have an obligation under the *Act* to create records in response to parts 3, 4 and 6 of the appellant's access request.

ISSUES:

A. Does the mandatory exemption at section 21(1) apply to the withheld information in the records responsive to part 5 of the appellant's access request?

B. What is the scope of the request?

C. Did the ministry conduct a reasonable search for records?

D. Did the ministry have an obligation to create records in response to the appellant's access request?

DISCUSSION:

PERSONAL PRIVACY

A. Does the mandatory exemption at section 21(1) apply to the withheld information in the records responsive to part 5 of the appellant's access request?

[7] The ministry claims that there is personal information in the record responsive to part 5 of the appellant's access request that is exempt from disclosure under the mandatory personal privacy exemption in section 21(1) of the *Act*.

[8] In part 5 of his access request, the appellant is seeking the "20 most recent examples of payouts from the Ministry of Community and Social Services detailing their portion of the assistive devices program payout to the Ministry of Health and Long-Term Care."

[9] The ministry states that under the Assistive Devices Program (ADP), the Ministry of Health and Long-Term Care sets approved amounts for devices such as wheelchairs and hearing aids, and pays a set amount for a given device. Any remaining balance is paid by the recipient, unless that individual is receiving benefits under the ODSP. In that case, the ministry pays the balance to those individuals as a benefit.

[10] In response to part 5 of the appellant's access request, the ministry generated a spreadsheet entitled "MCSS Charge Back Report" which details the portion paid by the

ministry to benefit recipients for the 20 most recent ADP transactions. The report contains a number of fields, including Vendor Number, Invoice Number, Client ID, Payment Date, Invoice Date, Municipality Name, Postal Code (complete), and Social Assistance Portion.

[11] The ministry disclosed most of this record to the appellant but withheld the client ID numbers and postal codes of the benefit recipients under section 21(1) of the *Act*.

[12] In the Notice of Inquiry that I sent to the appellant, I asked him the following question:

> The ministry provided you with access to most of the records that are responsive to part 5 of your access request but severed some information under the mandatory exemption in section 21(1) of the *Act.* Are you seeking access to this information?

[13] The appellant did not respond to this question in his representations, nor did he address whether the information withheld by the ministry is exempt from disclosure under section 21(1). However, given that he appealed the ministry's access decision, including its refusal to provide him with the client ID numbers and postal codes of the benefit recipients, I will consider whether this withheld information is exempt from disclosure under section 21(1).

Personal information

[14] The mandatory personal privacy exemption in section 21(1) of the *Act* only applies to "personal information." Consequently, it must first be determined whether the client ID numbers and postal codes of the benefit recipients constitute their "personal information." That term is defined in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> > (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
> >
> > (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
> >
> > (c) any identifying number, symbol or other particular assigned to the individual,

> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except if they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[15] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.[1]

[16] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[2]

[17] For the reasons that follow, I find that the client ID numbers and postal codes of the benefit recipients in the record constitute their "personal information."

[18] The ministry submits that the client ID numbers of each benefit recipient are explicitly captured by paragraph (c) of the definition of "personal information" in section 2(1), which refers to "any identifying number, symbol or other particular assigned to the individual."

[19] With respect to the postal codes of each benefit recipient, the ministry submits that it is reasonable to expect that these individuals may be identified if this information is disclosed to the appellant. It cites Order PO-3429 and submits that while a postal code is seemingly anonymous, disclosing them runs a reasonable likelihood of identifying the specific benefit recipient because each postal code is shared by so few persons.

[20] As noted in the ministry's representations, the client ID numbers and postal codes of the benefit recipients are two fields in a spreadsheet which shows the social

---

[1] Order 11.
[2] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

assistance portion paid by the ministry to benefit recipients for the 20 most recent ADP transactions. The other fields, which were disclosed to the appellant, include Vendor Number, Invoice Number, Payment Date, Invoice Date, Municipality Name, and Social Assistance Portion.

[21] On their face, the client ID numbers and postal codes of benefit recipients appear to fall within two paragraphs of the definition of "personal information" in section 2(1). A client ID number appears to be an "identifying number" assigned to the individual under paragraph (c) and a postal code appears to be a component of an individual's "address" as stipulated in paragraph (d).

[22] However, the spreadsheet does not contain the names of the benefit recipients, which raises the question of whether their client ID numbers and postal codes are "about an identifiable individual." An essential requirement of the definition of "personal information" in section 2(1) is found in its opening words, which limit it to recorded information "about an identifiable individual." In Order P-230, former Commissioner Tom Wright set out the following test for whether information in a record is "about an identifiable individual":

> . . . If there is a reasonable expectation that the individual can be identified from the information, then such information qualifies under subsection 2(1) as personal information.

[23] Subsequently, in Order PO-2240, former Assistant Commissioner Tom Mitchinson elaborated on this approach when applying it to information in records which do not specifically name or otherwise identify any individuals:

> . . . The comments of former Commissioner Tom Wright in Order P-230 are the starting point for any discussion of "personal information" where no individual is named or otherwise specifically identified on the face of a record. In order to satisfy the definition of "personal information" in these circumstances, there must be a reasonable expectation that an individual can be identified from the information in the record.

[24] The same general approach was upheld by the Ontario Court of Appeal in a judicial review of Order P-1880, in which Adjudicator Irena Pascoe followed the test set out in Order P-230.[3] Her decision had previously been upheld by the Ontario Divisional Court, which stated that in order to establish that information is identifiable, an institution must provide submissions establishing a nexus connecting the record, or any other information, with an individual. It stated:

> The test then for whether a record can give personal information asks if there is a reasonable expectation that, when the information in it is

[3] Ontario (Attorney General) v. Pascoe, 2002 CanLII 30891 (ON CA).

> combined with information from sources otherwise available, the individual can be identified. *A person is also identifiable from a record where he or she could be identified by those familiar with the particular circumstances or events contained in the records.* [See Order P-316; and Order P-651].[4]
>
> [emphasis added]

[25] Even though the benefit recipients are not identified by name in the spreadsheet, there are undoubtedly other individuals who are familiar with the fact that they receive social assistance because of their disability. This could include their family members or even neighbours. In my view, if these latter individuals looked at the postal codes in the record, it is reasonable to expect that they could link a particular postal code to the specific benefit recipient whom they know, which would mean that it is reasonable to expect that this benefit recipient can be identified from the postal code in the record. Once the postal code connection is established, it is also reasonable to expect that this benefit recipient's client ID number can be linked to an identifiable individual because it is linked in a row to the postal code in the record.

[26] In short, I find that the client ID numbers and postal codes in the record are "about an identifiable individual" and this information qualifies as the benefit recipients' "personal information," as that term is defined in section 2(1) of the *Act*. I will now turn to determining whether this information is exempt from disclosure under the mandatory personal privacy exemption in section 21(1) of the *Act*.

Personal privacy exemption

[27] Where a requester seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies. In the circumstances, it appears that the only exception that could apply is section 21(1)(f), which states:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> > if the disclosure does not constitute an unjustified invasion of personal privacy.

[28] The factors and presumptions in sections 21(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 21(1)(f). Also, section 21(4) lists situations that would not be an unjustified invasion of personal privacy.

---

[4] *Ontario (Attorney General) v. Pascoe*, 2001 CanLII 32755 (ON SCDC), at para 15.

[29] If any of paragraphs (a) to (h) of section 21(3) apply, disclosing the personal information is presumed to constitute an unjustified invasion of another individual's personal privacy. The Ontario Divisional Court has found that once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the "public interest override" at section 23 applies.[5] It cannot be rebutted by one or more factors or circumstances under section 21(2).[6]

[30] The ministry claims that the presumption at section 21(3)(c) applies to the client ID numbers and postal codes in the record. Section 21(3)(c) states:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> > relates to eligibility for social service or welfare benefits or to the determination of benefit levels;

[31] The ministry submits that if the client ID numbers and postal codes are disclosed, which would link payout under the ADP to identifiable persons, doing so would reveal information about the determination of benefit levels of those individuals, resulting in a presumed invasion of personal privacy under section 21(3)(c).

[32] I agree with the ministry's submissions. As noted above, the ministry has already disclosed the other fields in the spreadsheet to the appellant, include Vendor Number, Invoice Number, Payment Date, Invoice Date, Municipality Name, and Social Assistance Portion. Disclosing the client ID numbers and postal codes is presumed to constitute an unjustified invasion of the benefit recipients' personal privacy under section 21(3)(c) because this personal information, when combined with the information already disclosed, relates to the determination of benefit levels.

[33] Given that I have found that the section 21(3)(c) presumption applies to the client ID numbers and postal codes, I find that this presumption cannot be rebutted by any of the factors in section 21(2). In addition, I find that none of the circumstances listed in paragraphs (a) to (d) of section 21(4) applies to this personal information. Finally, I find that the public interest override in section 23 cannot apply, because the appellant would have a private rather than a public interest in seeking this information.

[34] In short, I find that disclosing client ID numbers and postal codes to the appellant would constitute an unjustified invasion of the benefit recipients' personal privacy. Therefore, the section 21(1)(f) exception is not made out, and this information is exempt from disclosure under section 21(1) of the *Act*.

---

[5] *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).
[6] *Ibid.*

SCOPE OF THE REQUEST

B. What is the scope of the request?

[35] Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

> (1) A person seeking access to a record shall,
>
> (a) make a request in writing to the institution that the person believes has custody or control of the record;
>
> (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;
>
> . . .
>
> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[36] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.[7]

[37] The ministry submits that it adopted a liberal interpretation of the appellant's access request and did not act in an overly literal, narrow or unilateral manner in addressing that request. By way of example, it points out that a policy analyst at the ministry discussed the large scope of part 5 of the appellant's access request with him and they agreed to refined wording which would still satisfy the aim of the original request without necessitating a sizable search fee.

[38] In the Notice of Inquiry that I sent to the appellant, I asked him the following question:

> Are you disputing whether the ministry properly interpreted the scope of your access request? If so, please provide me with written representations on this issue . . .

[39] The appellant did not respond to this question in his representations nor did he clarify why "scope of request" is an issue in dispute in this appeal.

---

[7] Orders P-134 and P-880.

[40] Based on the evidence before me, I am satisfied that the ministry adopted a liberal interpretation of the appellant's access request and worked with him to clarify the scope of that request. In my view, there are no grounds for finding that the ministry failed to comply with its obligations under section 24(2) of the *Act* or that it improperly interpreted the scope of the request.

SEARCH FOR RESPONSIVE RECORDS

C. Did the ministry conduct a reasonable search for records?

[41] 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.[8] 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.

[42] 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.[9]

[43] 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.[10]

[44] 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.[11]

Summary of ministry's representations

[45] In parts 2, 3 and 4 of his access request, the appellant asked for written responses from specific ministry employees to emails that he sent to each of them. In part 6 of his access request, he asked for a specific ministry employee's written response to a question that he asked.

[46] As part of its representations the ministry provided sworn affidavits from each of the staff named in those parts. In their individual affidavits, each staff member provides background information about their job duties and the ODSP file management system. They then provide evidence about whether the written responses sought by the appellant exist in the ministry's record holdings.

---

[8] Orders P-85, P-221 and PO-1954-I.
[9] Orders P-624 and PO-2559.
[10] Orders M-909, PO-2469 and PO-2592.
[11] Order MO-2185.

[47] In her affidavit, the employee named in part 3 of the appellant's access request states:

> I did not conduct a search regarding the email I received from the appellant on March 22, 2016. I have never responded to emails from the appellant [because] I was instructed not to communicate with this client by an ODSP manager, [name of manager]. [The manager] advised that she was communicating with this client. Because I did not respond to the appellant's email on March 22, 2016, part 3 of the request does not exist.

[48] In her affidavit, the manager named in part 4 of the appellant's access request states:

> The ministry conducted one search for responsive records related to this request. The most recent search for responsive records involved a review of my email mailbox. I conducted this search on approximately May 20, 2016. I did not respond to the appellant's email due to all the requests that were addressed previously. Due to the amount of requests from the appellant, I, as manager, along with my colleague, [name of employee] made the decision to only address new concerns from the appellant.
>
> The appellant has not been provided with a record because the record does not exist.

[49] In his affidavit, the ministry employee who was also named in part 4 of the appellant's access request states:

> The ministry conducted one search for responsive records related to this request. The most recent search for responsive records involved a review of my email mailbox. This search was conducted on approximately May 23, 2016. I was copied on the email from the appellant to [other named ministry employee]. As the email was not directly addressed to me, I did not respond.
>
> The appellant has not been provided with a record because I did not respond to the email on April 1, 2013, and therefore the email in part 4 of the request does not exist.

[50] In her affidavit, the ministry director named in parts 2 and 6 of the appellant's access request states:

> The ministry conducted one search for the responsive records related to part 2 of the request. I conducted this search on April 27, 2016. One record was provided.

> The ministry did not search for the responsive records related to part 6 of the request. The request for the responsive record did not reference a response to an email sent to me as in part 2 and therefore I concluded that the request was not for me to produce an existing record but to create a record to respond to, which I am not compelled to do under the FOI legislation. In addition, this request was asking me to respond to a loaded and leading question and I would not respond to such questions if I received them in my normal course.

[51] In part 7 of his access request, the appellant asked for the names and the CPSO professional identification numbers of the DAU staff who participated in work to accept him into the ODSP. In addition, he requested, "all notations from the DAU concerning my ODSP acceptance, including hand-written notes, e-mails, SAMS notations, voice recordings."

[52] In its supplementary decision letter, which addressed part 7 of the appellant's access request, the ministry stated that it was providing him with the names of three DAU staff. However, it advised him that these three individuals are not members of the CPSO and thus no responsive records exist with respect to that portion of his request. In addition, the supplementary decision letter stated that the ministry had previously disclosed all records in the custody of the DAU and no additional information was found after its staff conducted a new search.

[53] In its representations, the ministry states that in fulfilling part 7 of the appellant's access request, it conducted a search in the DAU for any records concerning the appellant's acceptance into ODSP to determine if anything had been generated that had not been disclosed in response to the appellant's previous access request. It states that no records were found beyond what had already been disclosed to the appellant.

[54] In her affidavit, the senior manager responsible for the DAU states the following with respect to the searches conducted by ministry staff for records responsive to part 7 of the appellant's access request:

> The most recent search for responsive records involved a review of the appellant's ODSP records paper and electronic files maintained in the Disability Adjudication Unit for the relevant time period. This search was conducted around June or July, 2016. The search for the names and professional identification numbers of all DAU members/workers who participated in the DAU work to accept the requester into ODSP was conducted by me . . . The search for all notations from the DAU concerning the requester's ODSP acceptance, including handwritten notes, emails, SAMS notations, voice recordings, was conducted by [name of program analyst], DAU (now retired OPS employee).

> I reviewed the file to determine the identities of 3 disability adjudicators that reviewed the file and provided their names in response to the request. The DAU did not and does not have any information regarding CPSO ID numbers. I believe that [name of now retired program analyst], conducted as thorough a search as possible for all notations from the DAU concerning the requester's ODSP acceptance, including handwritten notes, emails, SAMS notations, voice recordings and disclosed all her findings.

Summary of appellant's representations

[55] In the Notice of Inquiry that I issued to the appellant, I asked him the following question:

> Are you claiming that additional records exist beyond those identified by the ministry, and that the ministry has not conducted a reasonable search for such records? If so, please provide me with written representations on this issue . . .

[56] The appellant did not answer this question in his representations, nor does he claim that additional records exist beyond those identified by the ministry. With respect to parts 3, 4 and 6 of his access request, he states that he exhorted the four ministry employees to ensure to make handwritten case notes outside the "bares bones SAMS system" and submits that it is essential that the ministry's ODSP compile and maintain comprehensive written records of work done for their clients. With respect to part 7 of his access request, he argues that the "medical qualifications" of the three DAU staff who evaluated his ODSP application are essential public information that should be accessible to him.

Analysis and findings

[57] 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.[12]

[58] In my view, the appellant has not provided a reasonable basis for showing that the ministry has not conducted a reasonable search for records responsive to parts 3, 4 and 6 of his access request and that further records exist. The appellant is essentially arguing that ministry staff failed to create records that are responsive to those parts of his access request, which I will address under Issue D below, which addresses whether the ministry had an obligation to create records in response to his access request. He does not argue that such records exist and that the ministry has failed to conduct a reasonable search for them.

---

[12] Order MO-2246.

[59] With respect to part 7 of his access request, the appellant is seeking the CPSO ID numbers of the ministry staff in the DAU who processed his ODSP application. As noted above, the ministry asserts that no responsive records exist because the three employees are not CPSO members. The appellant has not provided me with any evidence to show that records containing the CPSO ID numbers for these three ministry employees actually exist and that the ministry has not conducted a reasonable search for them.

[60] In my view, the ministry has provided sufficient evidence to show that it conducted a reasonable search for records that are responsive to all parts of the appellant's access request. Experienced ministry employees who are familiar with the subject matter of his access request conducted searches for responsive records and provided sworn affidavits that set out their search efforts and that explain why responsive records do not exist for specific parts of that request.

[61] In short, I find that the ministry has conducted a reasonable search for records as required by section 24 of the *Act*.

OBLIGATION TO CREATE A RECORD

D. Did the ministry have an obligation to create records in response to the appellant's access request?

[62] Section 24 of the *Act* does not, as a rule, oblige an institution to create a record where one does not currently exist.[13] However, in Order 99, former Commissioner Sidney Linden made the following observation with respect to the obligations of an institution to create a record from existing information which exists in some other form:

> While it is generally correct that institutions are not obliged to "create" a record in response to a request, and a requester's right under the *Act* is to information contained in a record existing at the time of his request, in my view the creation of a record in some circumstances is not only consistent with the spirit of the *Act*, it also enhances one of the major purposes of the *Act* i.e., to provide a right of access to information under the control of institutions.

[63] The *Act* does not impose a specific duty on an institution to transcribe oral views, comments or discussions.[14] Similarly, it does not require an institution to produce information from an individual's memory or knowledge.[15]

---

[13] Orders P-50, MO-1381, MO-1442, MO-2129, MO-2130, PO-2237, PO-2256 and MO-2829.
[14] Orders P-17 and P-196.
[15] Order M-33.

[64] The ministry submits that Order 99 is distinguishable from the facts and circumstances in this appeal and quotes from a further passage in that decision. It states:

> In that situation, the Commissioner wrote in the context of an institution in which public confidence had weakened, owing to an inquiry into its hiring practices. The request, in the form of a series of questions, had been answered in an unnecessarily narrow manner, in a manner that allowed the institution to assert that it did not have the records in question. In that case the Commissioner noted that the creation of records can serve the goals of FIPPA. But the Commissioner also explained:
>
> > Although I do not have the statutory power to order the institution to reply to the questions in the absence of a record, and the institution has no obligation under the *Act* to "create" a record, in my view, the institution's handling of these questions was not in keeping with the spirit of the *Act*.
> >
> > I believe that rather than taking a narrow and restrictive approach to the *Act*, an institution's co-ordinator should meet with a requester and offer assistance in reformulating a request so that information that a requester is entitled to can be provided. In this case, it would have been possible for the institution to provide answers to some of the questions that were asked and reasonable explanations when answers could not be provided.
> >
> > [emphasis added]

[65] The ministry states that in this appeal, the appellant is requesting responses to correspondence that he sent to the ministry. It submits that he is asking that the access process under the *Act* be used to compel communication from the ministry in response to his inquiries, which is not required under the *Act*. It further submits that it explained to the appellant why records do not exist with respect to specific parts of his access request and the steps it took to confirm this, as recommended in Order 99.

[66] The appellant states that with respect to parts 3, 4 and 6 of his access request, he exhorted the four ministry employees to make handwritten case notes outside the "bares bones SAMS system" and submits that it is essential that the ministry's ODSP staff compile and maintain comprehensive written records of work done for their clients. He further submits that the creation and maintenance of comprehensive written records by a government social service provider is an essential right for Ontarians receiving those services.

[67] As noted above, section 24 of the *Act* does not, as a rule, oblige an institution to

create a record where one does not currently exist.[16] I agree with the appellant that institutions have a general obligation to create records that document the work that they do because not doing so would render meaningless the right to access records held by institutions under the *Act*. However, there is nothing in the *Act* that statutorily compels institutions to respond to specific correspondence or questions from the public, which forms the basis of parts 3, 4 and 6 of the appellant's access request. The failure to respond to such correspondence or questions may, in some circumstances, raise more general issues relating to citizen engagement or compliance with customer service practices, but providing a response is not required by the *Act*.

[68] In the circumstances of this appeal, the ministry has provided defensible and reasonable explanations as to why its employees did not respond to the emails and questions set out in parts 3, 4 and 6 of the appellant's access request and why its approach was consistent with the principles set out in Order 99. I find, therefore, that the ministry did not have an obligation to create records in response to those parts of the appellant's access request.

ORDER:

I uphold the ministry's interpretation of the scope of the appellant's access request, the reasonableness of its search and its access decisions. The appeal is dismissed.

Original Signed by: November 29, 2018
Colin Bhattacharjee
Adjudicator

[16] *Supra* note 13.