

Information and Privacy Commissioner,
Ontario, Canada



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

FINAL ORDER PO-3919-F

Appeal PA15-482

Ministry of Community Safety and Correctional Services

January 9, 2019

Summary: This final order disposes of the remaining issue relating to the scope of the appellant's request. The appellant sought information relating to the location of samples and slides collected by the police that were sent to the Centre for Forensic Services (CFS). The appellant also sought information about the possible destruction of these records. The ministry responded that it does not have certain records and provided answers to the appellant's questions. In this order, the adjudicator finds the ministry's answers to the appellant's questions demonstrate that it properly interpreted the appellant's request.

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

Orders and Investigation Reports Considered: Order PO-3762-I

OVERVIEW:

[1] This final order arises out of the appellant's access request to the Ministry of Community Safety and Correctional Services (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records related to an incident that took place in 1980. The appellant stated that she was raped in 1980 and her clothes were sent to the Centre of Forensic Services¹ (CFS), which produced a report in February 1981. The appellant enclosed a copy of the CFS report with her request. She indicated her understanding that the CFS records were stored off site and, she asked

¹ The CFS is part of the ministry.

for samples, slides, and/or notes related to the investigation of her rape. Specifically, the appellant sought slides of the substance on her clothing and notes of the analyst or any other material. The appellant requested that the ministry forward unredacted copies of any of the requested slides and notes directly to the Halton Police Services Board (the police). The appellant added that if the samples were destroyed, she wanted to know the reason for their destruction.

[2] The ministry took the position that the appellant's request was not sufficiently detailed to enable it to locate records responsive to the request. It sought clarification from the appellant on the specific records she was requesting. In response, the appellant stated that she seeks access to unredacted copies of all the notes, reports, and documents pertaining to the information gathered and the conclusions reached as a result of all the testing done at CFS on her clothing. She added that she also wants to know if the CFS has the slides used for the tests and the samples tested (semen, hair, saliva etc.). She reiterated that if CFS has the slides, they should be sent to the police; if CFS does not have the slides, she wants to know where and when they were destroyed and why.

[3] In response to the appellant's clarified request, the ministry located 68 pages of responsive records. It then issued an access decision granting the appellant partial access to the records. The ministry relied on the discretionary personal privacy exemption in section 49(b) of the *Act* to withhold some pages in full and other pages in part. The ministry also withheld some information in the records on the basis that it was not responsive to the request.

[4] The appellant appealed the ministry's decision to this office. In her appeal letter, the appellant indicated that the ministry's decision did not address the most important aspect of her request, namely, the date that the slides and other forensic evidence were destroyed and the name of the person who ordered their destruction. During mediation, the ministry confirmed that CFS does not have the slides requested by the appellant and it advised that it has no information in the CFS file detailing whether or when the slides were destroyed. It also stated that CFS advised that the slides may have been returned with evidence items to the police or may have been disposed of within CFS at the conclusion of testing performed in the early 1980's. The ministry directed the appellant to the police to answer her questions about when the other forensic evidence was destroyed, who ordered the destruction, and who held the evidence that was collected.

[5] The appeal was not settled at mediation and proceeded to the adjudication stage, where an inquiry was held on the issues of the scope of the appellant's request and the redactions the ministry made to the records disclosed to the appellant.

[6] Following an inquiry into the issues on appeal, the adjudicator initially assigned, issued Interim Order PO-3762-I. She ordered the ministry to disclose some of the information it had withheld and, deferred the issues relating to the scope of the request and potentially, the ministry's search for responsive records, pending further inquiry into those matters.

[7] The appeal file was then assigned to me to conduct an inquiry into the remaining issues and to dispose of these issues in an order. I sought representations from both the ministry and the appellant on the scope of the request and the reasonableness of the ministry's search for records. The ministry provided representations that were shared with the appellant. The appellant did not provide representations.

[8] In this order, I find that the scope of the appellant's request included records relating to the possible destruction of records and that the ministry properly interpreted the scope of the request. I make no finding on the reasonableness of the ministry's search for responsive records.

DISCUSSION:

[9] During the inquiry into this appeal, the adjudicator sought representations from the ministry regarding the appellant's concerns about the destruction or loss of certain requested records.

[10] In response, the ministry submitted that it had already responded to the appellant's questions during mediation. Furthermore, the ministry noted:

The appellant further requests that the ministry conduct an "exhaustive search to locate slides and notes regarding forensic evidence sought..." In response, we submit we have conducted an exhaustive search for responsive records in accordance with our statutory duties under the [Act].

[11] The ministry also argued that as "reasonable search" was not identified in the initial notice of inquiry, the appellant's request was outside the scope of the appeal. The appellant argued that she did not have the name of the parties who destroyed the slides and samples and the reasons for the destruction. As stated above, the adjudicator issued Interim Order PO-3762-I, reserving on the issue of whether the appellant's request was a request for explanation or a request for records.

[12] Following Order PO-3762-I, the appellant continued to assert that she was seeking access to records. Accordingly, I sought representations from the ministry and the appellant on the issue of the scope of the appellant's request and the reasonableness of the ministry's search.

[13] The ministry submits that it is not required to submit representations on the reasonableness of its search, because this issue was not originally identified as an issue, because the passage of time, and because there are no records responsive to this part of the appellant's request. The appellant was given an opportunity to provide a response to the ministry's submissions about search, but did not do so. Accordingly, I make no finding on the reasonableness of the ministry's search for records and I will not comment further on that issue in this order.

[14] Accordingly, the sole issue remaining in this appeal is whether the scope of the appellant's appeal included records containing information relating to the destruction of the records.

[15] 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 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).

[16] Institutions should adopt a liberal interpretation of the 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.² To be considered responsive to the request, records must *reasonably relate* to the request.³

[17] The ministry was asked to provide representations on how it interpreted the appellant's request for information about the destruction of records, including whether this request included information about the date that certain items and/or records were destroyed, or identifying the individual who ordered the destruction of those records.

[18] The ministry submits that the explanation that it provided to the appellant during mediation satisfied its obligations under the *Act*. To reiterate, the ministry provided the following response to the appellant (via the mediator) regarding her request. The ministry:

- confirmed that CFS does not have the slides requested by the appellant.
- advised that it has no information in the CFS file detailing whether or when the slides were destroyed.
- advised that the CFS advised that the slides may have been returned to the police or disposed of at the conclusion of testing.

² Orders P-134 and P-880.

³ Orders P-880 and PO-2661.

- directed the appellant to the police to answer her questions about when other forensic evidence was destroyed, who ordered the destruction and who held the evidence that was collected.

[19] The appellant did not respond to the ministry's representations on its interpretation of her request. However, it is evident from the appellant's earlier submissions that she argues the ministry's responses were inadequate.

[20] Based on my review of the facts in this appeal, I find that the ministry sought clarification from the appellant about the scope of her request. Furthermore, based on the ministry's submissions, I accept that the ministry considered whether records responsive to this aspect of her request exist, and sought answers from the CFS in response to the appellant's questions about the location of the slides and samples related to her, the names of individuals who may have destroyed the slides and when the slides may have been destroyed. The ministry then provided the responses to the appellant's questions to her. I find that the ministry did not misconstrue or narrowly interpret the appellant's request. Instead, I find that the ministry sought clarification and endeavoured to answer the appellant's questions.

[21] While the appellant did not provide representations, her earlier position regarding additional responsive records indicates that she continues to seek information about the destruction of slides and samples relating to the incident. Section 24 of the *Act* does not, as a rule, oblige an institution to create record where one does not currently exist.⁴ Moreover, there is nothing in the *Act* to statutorily compel the institution to respond to the appellant's questions. Where a request takes the form of a question, the institution's obligation is to locate records that reasonably relate to the question posed⁵. In this case, however, the ministry chose to respond to the appellant's questions regarding the possible destruction of the slides and samples and I find its responses indicate that it understood the nature and scope of the appellant's request.

[22] Accordingly, I find that the ministry appropriately interpreted the scope of the appellant's request. As noted above, I make no finding about the reasonableness of the ministry's search for records.

ORDER:

I uphold the ministry's decision with respect to the scope of the request and dismiss the appeal.

Original Signed by: _____

Stephanie Haly
Adjudicator

January 9, 2019

⁴ Orders P-50, MO-1381, MO-1442, MO-2129, MO-2130, PO-2237, PO-2256 and MO-2829.

⁵ Order MO-2285.