

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3958

Appeal PA18-91

Ministry of Children, Community and Social Services

May 27, 2019

Summary: The Ministry of Children, Community and Social Services received a request pursuant to the *Freedom of Information and Protection of Privacy Act* for records relating to an individual's Ontario Disability Support Program file. The ministry located responsive records and granted the appellant partial access to them. At adjudication, the sole issue in dispute was whether the ministry conducted a reasonable search for responsive records. In this order, the adjudicator finds that the ministry provided sufficient evidence that it conducted a reasonable search for responsive records and dismisses the appeal.

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 Children, Community and Social Services (the ministry) received an access request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for a complete copy of all information and documentation in the requester's Ontario Disability Support Program (ODSP) file for a seven-year period.

[2] The ministry issued a decision granting the requester partial access to the records requested. The ministry denied access to some of the information in the records pursuant to the discretionary exemption in section 19 (solicitor-client privilege) of the *Act* and the mandatory exemption in section 21 (personal privacy).

[3] The requester, now the appellant, appealed the ministry's decision. The matter proceeded to mediation, during which the appellant expressed his belief that additional

responsive records should exist. Specifically, the appellant told the mediator that in 2011 he provided the ministry with documents regarding the death of his mother and asserted that the ministry should have those documents. He also stated that he wanted access to the information the ministry had severed.

[4] The ministry provided the mediator with information regarding its search for responsive records and the ministry's records storage practices. With the ministry's consent, the mediator conveyed this information to the appellant. The appellant advised the mediator that he continued to believe that additional responsive records should exist. As a result, the mediator added reasonable search as an issue in this appeal.

[5] During the course of mediation, the ministry revised its decision regarding the application of sections 19 and 21 of the *Act* and granted the appellant full access to the information in the records. As a result, those sections have been removed as issues in this appeal.

[6] However, further mediation of the reasonable search issue was not possible and this appeal proceed to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry under the *Act*.

[7] An adjudicator commenced this inquiry by seeking representations from the ministry. A copy of the ministry's representations were then sent to the appellant, along with a Notice of Inquiry, setting out the facts and issues in this appeal. The appellant provided representations in response.

[8] In this order, I uphold the ministry's search for responsive records as reasonable and I dismiss the appeal.

DISCUSSION:

[9] Where a requester claims 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 circumstances of the *Act*.¹ If I am satisfied 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.

[10] 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.²

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

[11] 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.³

[12] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester must still provide a reasonable basis for concluding such records exist.⁴

The parties' representations

[13] The ministry submits that it conducted a reasonable search for the records the appellant requested. In support of its representations, the ministry provided an affidavit from an ODSP manager.

[14] The manager attested that she is responsible for overseeing the delivery of income support pursuant to the *Ontario Disability Support Program Act* at the appellant's local office.

[15] The manager says that she has knowledge of the business processes respecting the maintenance of records and is responsible for responding to information requests from ODSP clients and their representatives. She also says that she is responsible for overseeing the work of the administrative support clerks at the local office.

[16] The manager provided the following information about the how the local office maintains its files:

- Information collected by the ministry for the purposes of administering ODSP income support is maintained in paper and electronic client files;
- When a client drops off a hard copy document to the office, or when a fax is received, an ODSP administrative support clerk date stamps the document, then looks the client up in the electronic database, writes the client's member ID and case worker name or number on the top corner of the document and places it in the caseworker's mail slot;
- Caseworkers collect their mail a number of times throughout the day;
- In the event that a document is left in the wrong mail slot, the caseworker who receives the document places it in the correct mail slot;

³ Orders M-909, PO-2469 and PO-2592.

⁴ Order MO-2246.

- When a caseworker receives a new document, they leave a note on the client's electronic file explaining what was received and any subsequent action that was taken;
- After the document is logged, all documents which the ministry has the authority to collect and retain are filed in the client's hard copy master file;
- The master file contains documents received by the ministry in the administration of ODSP income support, including any correspondence sent to or from the ministry in relation to the administration of income support;
- The electronic file is generated and stored using the ministry's Social Assistance Management System application (SAMS) and includes case notes generated by ministry staff, as well as other information relevant to the delivery of social assistance;
- Information may also be found in the predecessor system to SAMS, the Service Delivery Model Technology applications (SDMT) through which the ODSP case workers previously processed income support payments;
- SDMT was replaced by SAMS in 2014;
- Ministry employees are still able to access the information in SDMT;
- The ministry's local ODSP offices do not maintain client-level information outside of the paper file, SAMS or SDMT.

[17] The ministry says it took the following steps to locate records responsive to the appellant's request:

- An administrative support clerk reviewed the appellant's ODSP paper and electronic files in the local office for the relevant time period;
- After locating the paper file, the portion of that file that was related to the period requested was isolated and photocopied;
- All case notes and payment information from the relevant time period were printed from the SAMS and SDMT systems.

[18] Additionally, the manager attested that she also reviewed the appellant's paper and electronic files and cross-referenced them with the records the ministry released to the appellant. She says that she concluded from her review that all of the responsive records in the ministry's custody or control were released to the appellant.

[19] The appellant states in his representations that he handed in documents to the ministry at the beginning of 2011. He says that after he provided the documents he was supposed to get additional money on his cheque from the ministry. He says that he was

waiting for the ministry to complete this task and only recently found out that the ministry did not have the documents and he was asked to provide them again.

[20] The appellant says that the ministry's search took too long, that it wasn't effective and that he would like to know why the documents went missing.

Findings and Analysis

[21] As noted above, while a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester must still provide a reasonable basis for concluding that additional responsive records exist. In this case, the appellant has identified the records he believes are missing, but he has not provided a reasonable basis on which I may conclude that the ministry is in possession of those records.

[22] The appellant submits that he handed the documents in to the ministry in 2011 and concedes that they have gone missing. Based on his representations, I understand that he would like to know what happened to the documents and why he had to provide them again. However, that is not the issue in this inquiry. The issue in this inquiry is whether the ministry has completed a reasonable search for responsive records.

[23] I am satisfied, based on the manager's affidavit, that two ministry employees have searched in the appropriate locations and have made reasonable efforts to locate all of the responsive records. I also accept the manager's evidence that the records the appellant says he submitted are not in his electronic or paper client files and that there are no other places where those records might reasonably be located.

[24] In my view, it is possible that the appellant submitted the records but that, for some reason, they did not make it into his client file. I appreciate that the appellant would like to know why that would happen, but that is not the subject of this inquiry.

[25] For the reasons set out above, I find that the ministry tasked the appropriate persons with the requisite knowledge and skills to locate the records that would be responsive to the appellant's request, that it provided a satisfactory explanation of the steps it took to locate the records, and that those steps were reasonable in the circumstances.

[26] Based on this information, I am satisfied that the ministry's search was reasonable and that it has fulfilled its obligations under the *Act*. I decline to order any further searches and I dismiss the appeal.

ORDER:

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

Original Signed by
Meganne Cameron
Adjudicator

May 27, 2019
