

Information and Privacy Commissioner,
Ontario, Canada



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

FINAL ORDER PO-3959-F

Appeal PA16-231

Health Professions Appeal and Review Board

May 31, 2019

Summary: This final order disposes of the remaining search issue arising out of an appeal of a decision by the Health Professions Appeal and Review Board (the board). The adjudicator ordered the board to conduct a further search for certain records in Interim Order PO-3869-I. Following the issuance of the interim order, the parties provided further representations concerning the board's subsequent search and a further interim order, PO-3945-I was issued. The board was ordered to conduct a search relating to certain parts of the appellant's request. Subsequent to the issuance of PO-3945-I, the board provided an affidavit and provided records it located to the appellant. In this final order, the adjudicator finds that the board's search for responsive records is reasonable 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.

Orders and Investigation Reports Considered: Orders PO-3869-I, PO-3945-I.

OVERVIEW:

[1] This final order concludes the remaining search issue in Appeal PA16-231. It follows Interim Orders PO-3869-I and PO-3945-I, issued to address the searches conducted by the Health Professions Appeal and Review Board (the board) for records requested under the *Freedom of Information and Protection of Privacy Act* (the *Act*) by the appellant. Through her 30-part request, the appellant sought records pertaining to her case file with the board.

[2] This is the fourth order issued for this appeal and the background of the appeal

was discussed extensively in the prior three orders.¹ I do not repeat that background here.

[3] After conducting an inquiry, I issued Interim Order PO-3869-I where I found that the board had not provided sufficient evidence to show that its search for certain records was reasonable.² I ordered it to conduct a new search relating to parts 6 and 30(a) to 30(i), except for 30(b) of the appellant's request and to provide affidavit evidence of its search.

[4] After receiving the representations from the parties concerning the search the board conducted in compliance with Interim Order PO-3869-I, I issued Interim Order PO-3945-I. In that order, I found that the board's search for responsive records was reasonable. However, I ordered the board to conduct a further search for parts of the appellant's access request as I had neglected this order provision in Order PO-3869-I. Therefore, in Interim Order PO-3945-I, the board was ordered to search for records that relate to parts 16, 24, 30(b) and 30(ii) (except for a fax cover sheet dated August 21, 2014) of the appellant's request.

[5] The board conducted the further search for these parts of the appellant's request, located records and provided an affidavit concerning its search. The appellant was provided with an opportunity to reply to the board's affidavit but did not.

[6] In this final order, I find that the board's search is reasonable and dismiss the appeal.

DISCUSSION:

[7] The sole issue in this appeal was whether the board had conducted a reasonable search in response to the appellant's access request.

[8] Where a requester claims additional responsive 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*.³ If, after conducting an inquiry, the adjudicator is satisfied the institution carried out a reasonable search in the circumstances, the adjudicator will uphold the institution's search. If the adjudicator is not satisfied, the adjudicator may order further searches.

¹ Also issued were Interim Order PO-3869-I, Interim Order PO-3945-I and Reconsideration Order PO-3953-R.

² In Reconsideration Order PO-3953-R, I found that the appellant had not established any basis upon which I should reconsider Interim Order PO-3869-I and I dismissed her reconsideration request.

³ Orders P-85, P-221 and PO-1954-I.

[9] The *Act* does not require an institution to prove with absolute certainty that further records do not exist. However, the board must provide sufficient evidence to show it made a reasonable effort to identify and locate responsive records.⁴ To be responsive, a record must be *reasonably related* to the request.⁵

[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 reasonably related to the request.⁶ An adjudicator will order a further search if the institution does not provide sufficient evidence to demonstrate it made a reasonable effort to identify and locate all of the responsive records within its custody or control.⁷

[11] Although the 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 such records exist.⁸

The board's search

[12] In response to Interim Order PO-3945-I, the board conducted a further search for responsive records. The board provided an affidavit setting out the parameters and results of its search confirming that it conducted further searches searching its entire file for responsive records. According to the affiant, after conducting its search, it appeared that all of the records relating to parts 16, 24, 30(b) and 30(ii) (except for a fax cover sheet dated August 21, 2014) were previously located in an earlier search and were provided to the appellant. Therefore, the board submits that records relating to the parts of the request that it was ordered to search have already been provided to the appellant.

[13] Although invited, the appellant did not provide representations on the board's search subsequent to Interim Order PO-3945-I. I note, however, that when the appellant was previously provided with these records from the board, she submitted that the records were not responsive to her access request. In Interim Order PO-3869-I, I set out her submission to these parts of her request at paragraph 53.

Finding

[14] For the reasons that follow, I am satisfied that the board has conducted a reasonable search for responsive records pursuant to Interim Order PO-3945-I. I am satisfied that the evidence surrounding the board's further search demonstrates that it

⁴ Orders P-624 and PO-2559.

⁵ Order PO-2554.

⁶ Orders M-909, PO-2469 and PO-2592.

⁷ Order MO-2185.

⁸ Order MO-2246.

made a reasonable effort to locate responsive records in fulfillment of its obligations under the *Act*.

[15] Based on my review of the board's affidavit, I am satisfied that an experienced employee, knowledgeable in the subject matter of the request, expended a reasonable effort to locate the records that would be responsive to parts 16, 24, 30(b) and 30(ii) of the appellant's request.

[16] The board's search for responsive records, located the same records it has already provided to the appellant. As noted, the board must provide sufficient evidence to show it made a reasonable effort to identify and locate responsive records. In my view, the board has provided sufficient evidence to show that it conducted a search in its record holdings and provided the appellant with the results of that search. As the appellant did not make representations on the board's latest search, I have no reasonable basis to conclude that there are additional responsive records.

[17] Accordingly, I find that the board's search is reasonable.

ORDER:

I uphold the board's further search and dismiss the appeal.

Original Signed by: _____
Alec Fadel
Adjudicator

_____ May 31, 2019