

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-3988

Appeal PA18-220

Ministry of the Attorney General

August 29, 2019

**Summary:** The Ministry of the Attorney General (the ministry) received a request pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to an individual's conviction in a court proceeding. The ministry located responsive records and issued a decision to withhold 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 the Attorney General (the ministry) received a request under the *Act* for the following:

... all records of all proceedings related to my conviction, in addition to the Crown disclosure to the defense. I was arrested on [date] by York Regional Police. I was convicted on [date], at [place], by Judge [name].

[2] The ministry issued a decision withholding the entire crown brief pursuant to the exemptions under sections 19, 21(1) and 49(b) of the *Act*. The ministry directed the requester to a specific courthouse to request court records related to the matter.

[3] The requester, now the appellant, appealed the ministry's decision. During mediation, the appellant clarified for the mediator that he was narrowing the issue on

appeal to one of reasonable search. He advised that he was looking for a specific document where a judge granted "special permission" to the lead investigator to disclose "highly sensitive information."

[4] The mediator advised the ministry of this narrowed scope of the appeal and the ministry provided the appellant with a search explanation as to the specific document in question. The ministry also shared some information with the appellant, through the mediator, directing the appellant to an alternative process for seeking access to that type of record.

[5] The appellant subsequently advised the mediator that he still wished to proceed on the issue of reasonable search. As no further mediation was possible, the file was transferred to the adjudication stage of the appeals process, where an adjudicator may conduct a written inquiry under the *Act*.

[6] Based on the above, the only issue to be adjudicated is the reasonableness of the ministry's search. As the adjudicator assigned to this matter, I commenced this inquiry by seeking the representations of the ministry in response to the issues and questions set out in a Notice of Inquiry.

[7] The ministry submitted representations. However, this office was unable to communicate with the appellant and he did not submit representations. In this order, I uphold the ministry's search for responsive records as reasonable and I dismiss the appeal.

## **DISCUSSION:**

[8] 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 of the *Act*.<sup>1</sup> 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.

[9] 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.<sup>2</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

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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.

are reasonably related to the request.<sup>3</sup>

[11] 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.<sup>4</sup>

### **The ministry's representations**

[12] 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 the lead lawyer (the Lawyer), responsible for all freedom of information requests received by the Criminal Law Division of the Crown Law Office.

[13] The Lawyer says that after he received confirmation that the appellant had narrowed his request to a particular document, he reviewed the contents of the crown brief relating to the appellant's criminal prosecution and was unable to locate any record matching the description provided by the appellant.

[14] The Lawyer says he also spoke to the prosecuting lawyer involved in the appellant's case, who confirmed that she had no knowledge of, and was not in possession of, any such record.

[15] The Lawyer attests that he also conducted a secondary search for responsive records after the appellant provided additional detailed information to assist the ministry in locating the record he sought, if it existed, during the mediation process.

[16] The Lawyer says that after reviewing the contents of the crown brief for a second time, and conferring with the prosecuting lawyer again, the ministry confirmed it was not in possession of any responsive records.

### ***Findings and analysis***

[17] Based on the ministry's representations and the Lawyer's affidavit, I find that the ministry conducted a reasonable search for responsive records and I decline to order any further searches.

[18] In my view, the ministry tasked the appropriate person, with the requisite knowledge and skills, to locate any records that would be responsive to the appellant's request. I find that the Lawyer provided a satisfactory explanation of the steps he took to try to locate any responsive records, and I am satisfied that those steps were reasonable in the circumstances.

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<sup>3</sup> Orders M-909, PO-2469 and PO-2592.

<sup>4</sup> Order MO-2246.

[19] I accept the Lawyer's evidence that the record the appellant seeks is not in the crown brief. Absent any further information from the appellant about where the record could reasonably be located or the basis for his belief that it exists, I am satisfied that the ministry's search was reasonable and I find that it has fulfilled its obligations under the *Act*. I decline to order any further searches and I will dismiss the appeal.

**ORDER:**

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

Original Signed by: \_\_\_\_\_

Meganne Cameron  
Adjudicator

August 29, 2019 \_\_\_\_\_