

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-4026

Appeal PA19-00158

Public Guardian and Trustee

February 7, 2020

**Summary:** The Public Guardian and Trustee (PGT) received a request for access to correspondence between the requester and a named PGT employee for a specified period of time. The PGT conducted a search and granted partial access to records that it identified as responsive to the request. The requester appealed the PGT's decision to this office, based on her belief that an additional responsive record should exist. The sole issue is whether the PGT conducted a reasonable search, as required by section 24 of the *Freedom of Information and Protection of Privacy Act*. In this order, the adjudicator upholds the PGT's search as reasonable and dismisses the appeal.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F31, section 24.

### OVERVIEW:

[1] The Public Guardian and Trustee (the PGT) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

... [C]opies of all RBC visa records I sent to [a named employee] with the Public Guardian and Trustee, Hamilton Office. I also request all communications between [the named employee] and myself to be copied to me; including electronic and hard copy/emails communications. Additionally any other communications between myself and other staff with the Public Guardian and Trustee. For all the aforementioned, please refer to time period [2015/12/01 to 2017/01/01].

[2] The PGT issued a decision granting partial access to the responsive records, with severances pursuant to the mandatory personal privacy exemption in section 21 of the *Act*. In the decision, the PGT indicated that additional information had been withheld on the basis that it was not responsive to the request.

[3] The requester, now the appellant, appealed the PGT's decision to this office and Appeal PA19-00158 was opened. A mediator was appointed to explore the possibility of resolving the issues in the appeal.

[4] During mediation, the appellant confirmed that she was not taking issue with the PGT's claims regarding section 21 and the information identified as non-responsive. Accordingly, the information withheld by the PGT under section 21 and on the basis that it is not responsive to the appellant's request is not at issue in this appeal.

[5] However, the appellant raised the issue of reasonable search (section 24). She advised the mediator that she seeks access to a hard-copy letter that she mailed to the employee named in her request via Canada Post between January 1, 2015 and December 31, 2016. The appellant explained that the letter she seeks is a cover letter to a package of Visa statements, and there is a dollar figure between \$10,000 and \$15,000 specified in the body of the letter. The package was related to expenses that the appellant incurred on her mother's behalf, and for which she was seeking reimbursement by the PGT.

[6] The mediator discussed this with the PGT. The PGT conducted an additional search but was unable to locate the particular record sought by the appellant. The mediator shared this information with the appellant, who requested that the appeal proceed to adjudication.

[7] As the adjudicator, I conducted an inquiry by inviting and receiving representations from the PGT and the appellant. The parties' representations were shared in accordance with *Practice Direction Number 7* and the IPC's *Code of Procedure*. For the reasons that follow, I uphold the PGT's search as reasonable and dismiss the appeal.

## **DISCUSSION:**

### **Did the PGT conduct a reasonable search for records responsive to the appellant's request?**

[8] The sole issue for determination in this appeal is whether the PGT conducted a reasonable search for records that are responsive to the appellant's request. 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.<sup>1</sup> 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.

[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> To be responsive, a record must be "reasonably related" to the request.<sup>3</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 are reasonably related to the request.<sup>4</sup> 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.<sup>5</sup>

[11] 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.<sup>6</sup>

### ***Representations***

#### *The PGT's representations*

[12] The PGT maintains that it conducted a reasonable search for records responsive to the appellant's request, in accordance with the requirements of section 24 of the *Act*.

[13] In support of this position, the PGT provided an affidavit by a Senior Client Representative in the PGT's Hamilton Regional Office (the client representative). The PGT advises that the employee named in the appellant's request is no longer responsible for the relevant client file, and that her caseload was transferred to the client representative in November 2018. The PGT also advises that the client representative is responsible for managing finances and has access to the relevant client files, and is therefore the most knowledgeable and appropriate person to provide affidavit evidence.

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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.

<sup>3</sup> Order PO-2554.

<sup>4</sup> Orders M-909, PO-2469 and PO-2592.

<sup>5</sup> Order MO-2185.

<sup>6</sup> Order MO-2246.

[14] The client representative explains that the PGT's client legal counsel (client counsel) is responsible for processing access requests under the *Act*. The client representative attests that when the client counsel received the appellant's request, she asked the client representative to conduct a search for responsive records. The client representative attests to locating records during this search, which were the subject of the PGT's initial access decision.

[15] The client representative advises that when the client counsel learned that the appellant appealed the PGT's access decision to this office, the client counsel conducted her own review of the file, with the help of her assistant. When neither the client counsel nor her assistant were able to locate additional responsive records, the client counsel requested the client representative to conduct a second search.

[16] As background, the client representative explains that when letters are sent to the Hamilton office of the PGT, they are distributed to the appropriate client representative and then added to the relevant client file. The client representative compares this to the process at the Toronto office of the PGT, where letters are scanned into the PGT's electronic file system. The client representative attests to there being three "client file volumes" at the Toronto office relating to the appellant's mother, and one at the Hamilton office. The client representative attests to having access to both file keeping systems, and to obtaining and reviewing all four volumes of client files in search of responsive records.

[17] The client representative advises that while these searches located responsive records, the appellant told the mediator that they were not the record that she was looking for. Specifically, the appellant advised the mediator that she seeks access to a letter that she sent to the PGT via Canada Post between January 1, 2015, and December 31, 2016, and that mentioned a dollar value between \$10,000 and \$15,000.<sup>7</sup>

[18] The client representative attests to both her and the client counsel conducting another search of the electronic file for a record matching the description provided by the appellant. The client representative also attests to searching two guardianship files and one real estate file that she thought might contain the responsive record. In addition, she attests to an assistant in the PGT's Legal Services Division conducting a search of three relevant legal files, under the direction of the PGT's counsel.

[19] The client representative further explains that as part of her search efforts, she asked the employee named in the appellant's request to review her records from the time that she had carriage of the appellant's mother's file.

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<sup>7</sup> I note that the appellant's representations indicate that the dollar amount specified in the letter was \$10,000 - \$13,000, not \$10,000 - \$15,000; however, given that the PGT searched for records meeting the latter, broader inclusion criteria, this discrepancy does not affect my findings.

[20] Despite these efforts, the client representative advises that no one was able to locate a record matching the description provided by the appellant.

[21] Given the thoroughness of its search effort, the PGT maintains that it has provided sufficient evidence to demonstrate that it has made a reasonable effort to locate and identify the record responsive to the appellant's request.

*The appellant's representations*

[22] The appellant takes issue with the searches conducted by the PGT on the basis that they failed to locate a specific record, namely the cover letter to a package that she says she sent the PGT sometime between January 1, 2015 and December 31, 2016. The appellant explains that while the PGT sent her multiple copies of the records that accompanied the cover letter that she seeks, they did not send her the responsive cover letter itself. The appellant says that "there is a strong likelihood that the letter [she seeks was] intentionally [and] conveniently discarded" by the PGT.

[23] The appellant takes issue with the quality of evidence provided by the PGT on the basis that it is "hearsay" that amounts to "because we said so" testimony. She says that it is not possible to ascertain whether a thorough search was conducted, or whether the record that she seeks was deliberately discarded, based on the evidence provided.

[24] The appellant explains that the cover letter in question detailed expenses that she incurred on her mother's behalf, and for which she seeks reimbursement from the PGT. She maintains that although the employee named in her request "acknowledged by email that she 'was satisfied' with the evidence [the appellant] provided," she has yet to be fully compensated. The appellant says that she has only been reimbursed for approximately \$4,600, when the expenses incurred amounted to between \$10,000 and \$13,000.

[25] The appellant also describes her frustrations in dealing with the PGT over the years and, in particular, with the client representative who provided PGT's affidavit evidence. She maintains that it is in the client representative's financial interest not to cooperate with her request for a refund; and provided copies of her email correspondence with the client representative to support her assertion that the client representative is deliberately being uncooperative.

***Analysis and findings***

[26] As mentioned above, although an appellant will rarely be in a position to indicate which records an institution has failed to identify, they must still provide a reasonable

basis for concluding that such records exist.<sup>8</sup> In my view, the appellant has reasonable grounds for believing that the PGT failed to locate a record responsive to her request, specifically, the cover letter to a package that she sent the PGT between January 1, 2015 and December 31, 2016. I accept that she was justified in questioning why the PGT did not locate the cover letter in question when the documentation that she submitted to the PGT along with the cover letter was located and provided to her in response to her request.

[27] However, based on the totality of the evidence before me, I am also satisfied, and I find, that the PGT has responded to the appellant's request in a manner that satisfies the search requirements imposed by section 24 of the *Act*.

[28] In making this finding, I am satisfied that the scope of the request was sufficiently unambiguous, particularly after the appellant clarified exactly which record it is that she is looking for during the mediation stage of this appeal. As a result, I am satisfied that the PGT would be able to identify the relevant departments, employees, and locations that should be included in a search for the responsive record.

[29] I note that the individuals who coordinated and conducted the majority of the PGT's search efforts are the client representative with carriage of the appellant's mother's file, and the client counsel who ordinarily handles access requests under the *Act*. Accordingly, I am satisfied that the PGT's search was carried out by experienced employees who are knowledgeable in the subject matter of the request, as well as in the work required in order to respond to the request. I am also satisfied that, when appropriate, these employees asked other PGT employees, such as the mother's former client representative and counsel in the PGT's Legal Services Division, to search their files for the responsive record.

[30] Finally, I am satisfied that by conducting multiple searches of various electronic and hard-copy records, including the four client files from the Toronto and Hamilton offices, three legal files from the PGT's Legal Services Division, two guardianship files, and a real estate file, the PGT has expended a reasonable effort to locate the record sought by the appellant.

[31] The appellant maintains that the PGT has probably disposed of the record. However, the *Act* does not require the PGT to prove that the responsive record does not exist. It must simply provide evidence to establish that it has made a reasonable effort to identify and locate the record sought by the appellant.<sup>9</sup> As stated above, I am satisfied that the PGT has done so.

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<sup>8</sup> Order MO-2246.

<sup>9</sup> Orders P-624 and PO-2559.

[32] Accordingly, for the reasons outlined above, I find that the PGT has demonstrated that it conducted a reasonable search for the record responsive to the appellant's request, as required by the *Act*.

**ORDER:**

I uphold the PGT's search and dismiss the appeal.

Original Signed by: \_\_\_\_\_  
Jaime Cardy  
Adjudicator

February 7, 2020 \_\_\_\_\_