Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4083

Appeal PA17-353

Ministry of Children, Community and Social Services

November 9, 2020

Summary: The Ministry of Children, Community and Social Services received an access request pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*) from a requester regarding her son, as his guardian. The ministry located voluminous responsive records, but withheld portions of the records on the basis of the personal privacy exemption at section 49(b). The appellant appealed the ministry's decision and raised the issue of reasonable search. In this order, the adjudicator upholds the ministry's access decision and the reasonableness of its search efforts (before and during the inquiry), and dismisses the appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of "personal information"), 2(2), 2(3), 21(1)(b), 21(3)(a), 21(2)(f), 24, and 49(b).

OVERVIEW:

[1] The Ministry of Children, Community and Social Services received an access request pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*) from a requester regarding her son, for the following records:

> [Requester's son's] entire file, including records about adult funding services, etc. in paper and computer format since 2014-present. Incident reports for [son's name] or mentioning [the requester's son] in their content, including from [a named] agency, since 2014-to present.

[2] The ministry issued an access decision granting full access to the responsive records.

[3] The requester, now appellant, appealed that decision to the Office of the Information and Privacy Commissioner of Ontario (the IPC, or this office), as she believed more responsive records exists.

[4] Over the course of mediation, several developments occurred:

- the ministry conducted three additional searches and located additional responsive records after completing two of them; the appellant received full access to some newly located records, and partial access to other records, as the ministry withheld some information on the basis of the mandatory personal privacy exemption at section 21 of the *Act*;
- some information initially withheld under section 21 was disclosed to the appellant;
- the ministry confirmed that it relied on the discretionary personal privacy exemption at section 49(b) and not section 21, due to the presence of the appellant's son's personal information in the records;
- the parties had a mediated telephone discussion, whereby the ministry explained certain aspects of its search results;
- the appellant advised that she is not seeking personal information of other residents where her son resides, so that information was removed from the scope of the appeal.

[5] The parties could not reach a mediated resolution over the issues of access to the remaining information withheld under section 49(b) and the reasonableness of the ministry's search. Accordingly, the appeal was moved to adjudication, where an adjudicator may conduct a written inquiry.

[6] As the adjudicator of this appeal, I began my inquiry under the *Act* by sending a Notice of Inquiry, setting out the facts and issues on appeal, to the ministry. The ministry provided written representations in response. In the course of the inquiry, the ministry conducted further searches and issued revised access decisions to the appellant, resulting in further disclosure. I also sought and received representations from the appellant. The parties' representations throughout the inquiry were shared amongst them, on consent.

[7] For the reasons that follow, I uphold the ministry's access decision and the reasonableness of its search, and I dismiss the appeal.

RECORDS:

[8] The portions of the records remaining at issue are located on pages 224, 259, 263 and 280.

ISSUES:

A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

B. Does the discretionary exemption at section 49(b) apply to the information at issue?

C. Did the institution exercise its discretion under section 49(b)? If so, should this office uphold the exercise of discretion?

D. Did the ministry conduct a reasonable search for records?

DISCUSSION:

Issue A: Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[9] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1), in part, as follows:

> "personal information" means recorded information about an identifiable individual, including,
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> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
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> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
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> . . . .
>
> (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual[.]

[10] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.[1]

[11] Sections 2(3) and 2(4) also relate to the definition of personal information. These sections state:

> (3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
>
> (4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[12] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.[2]

[13] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.[3]

[14] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[4]

[15] Having reviewed the pages of the records at issue, I find that they contain personal information belonging to the appellant, her son, and/or other identifiable individuals. This information relates to these individuals and is considered personal information as defined under paragraphs (a), (b), (c), and/or (h), and the introductory wording of the definition of that term in section 2(1) of the *Act*.

[16] There is no dispute that the records at issue identify physical and/or medical conditions reported to be experienced by employees where the appellant's son resided.

[17] However, the ministry and the appellant disagree about whether this information

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[1] Order 11.
[2] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[3] Orders P-1409, R-980015, PO-2225 and MO-2344.
[4] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

qualifies as personal information under the *Act*, or whether it is professional or business information under section 2(3) of the *Act*, due to the professional context in which it appears.

[18] The appellant submits that the redacted information would not reveal information about the individuals in personal capacities, but rather, their business or professional information under section 2(3) of the *Act*. She submits that the employees were trained to take care of and deal with actions and the behaviours of residents with developmental disabilities, including application of First Aid, implementing certain methods and tracking data, implementing the health/behaviour protocols and other duties. In addition, she states that the employees reported her son's actions and their consequences to her, and to the relevant internal services at the time.

[19] While I recognize that the information about the employees' injuries appears in records relating to their employment, I disagree that this information is the business or professional information of these individuals under section 2(3) of the *Act*. I accept that the employees would have received specialized training relating to their work with people with developmental disabilities, and that the employees in question reported the appellant's son's behaviours. However, I find that the information about the employees' injuries suffered on the job reveal something of a personal nature about each of them. The redacted information identifies physical and/or medical conditions that were reported to be experienced by the employees, rather than information that relates to their duties and responsibilities as professionals. Therefore, I find that the information at issue is "personal information" as defined under s. 2(1) of the *Act* despite the professional context in which it appears.

[20] Given the nature of the information at issue, I find that it is also the personal information of the appellant's son, under the introductory wording of the definition of personal information at section 2(1) of the *Act*. I also find that it is inextricably linked to the personal information of the staff involved.

[21] Since the information at issue contains both the personal information of the appellant (as the guardian of her son) and other identifiable individuals, I must assess any right of access that the appellant may have to it under the discretionary personal privacy exemption at section 49(b) of the *Act*.

Issue B: Does the discretionary exemption at section 49(b) apply to the information at issue?

[22] Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right.

[23] Under section 49(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may

refuse to disclose that information to the requester. Since the section 49(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.[5]

[24] Sections 21(1) to (4) provide guidance in determining whether disclosure would be an unjustified invasion of personal privacy.

Do any of the exceptions in paragraphs 21(1)(a) to (e) apply?

[25] If any of paragraphs (a) to (e) of section 21(1) apply, the section 49(b) exemption does not apply.

[26] The parties do not argue that the exceptions at paragraphs 21(1)(a), (c), (d), or (e) apply, and based on my review of the evidence, I find that they do not apply.

[27] The appellant submits that the exception at paragraph 21(1)(b) (promotion of public health and safety) applies.

[28] The exception at section 21(1)(b) says:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except, [. . .] in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates[.]

[29] The appellant submits that paragraph 21(1)(b) applies because the information at issue contains circumstances affecting the health and safety of her son. She argues that knowledge of the details withheld would allow for developing "the preventive behaviour strategies to decrease such incidents," in the future for the benefit of both her son and the employees involved.

[30] While I appreciate the appellant's concern about preventing future injuries, in this case, the nature of her son's behaviour has been disclosed. What has been withheld are details about the staff members' physical and/or medical conditions as a result of that behaviour. I find that disclosing the nature of the appellant's son's behaviour is sufficient to address preventative strategies. In addition, I find that the appellant has not established that revealing the identities of the employees themselves, or the details of their physical and/or medical conditions, would promote the health and/or safety of an individual. As a result, I find that the exception at paragraph 21(1)(b) is not relevant in this case.

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[5] See a more detailed discussion of the ministry's discretion under section 49(b), below, under Issue C.

Sections 21(2), (3) and (4)

[31] Sections 21(2) and (3) also help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 49(b). Also, section 21(4) lists situations that would not be an unjustified invasion of personal privacy, none of which are relevant in this case, based on the evidence before me.

[32] In determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 49(b), this office will consider, and weigh, the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.[6]

Do any of the section 21(3) presumptions apply?

[33] If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 49(b).

[34] The ministry argues that the presumption at section 21(3)(a) (medical history) applies.

[35] Section 21(3)(a) says:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information, relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation[.]

[36] The ministry submits that this presumption applies because the redacted information would reveal the physical and/or medical conditions of the staff.

[37] The appellant asserts that the redacted portions of the records would not constitute the disclosure of the medical history of the employees involved, under section 21(3)(a), but does not sufficiently explain how that could be, given that it is known that the information withheld describes injuries.

[38] Based on my review of the information withheld, I find that disclosure of the information would reveal the physical and/or medical conditions of the employees to whom it relates. As a result, section 21(3)(a) applies to it. This means that disclosure of that information is presumed to constitute an unjustified invasion of personal privacy of the individuals to which it relates. This weighs significantly against disclosure.

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[6] Order MO-2954.

Do any of the section 21(2) factors apply?

[39] Section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.[7] The list of factors under section 21(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 21(2).[8]

[40] Some factors listed under section 21(2) typically weigh in favour of disclosure. For example, the institution must consider whether disclosure is desirable for the purpose of subjecting the activities of the government of Ontario and its agencies to public scrutiny, or whether access to personal information may promote public health and safety, or is relevant to a fair determination of rights affecting the requester. The appellant did not identify any of these factors as being relevant in this case. Based on my review of the records, I find that no factors favouring disclosure apply.

[41] Some factors under section 21(2) typically weigh in favour of the protection of personal privacy and against disclosure. The ministry submits that the factor at section 21(2)(f) (highly sensitive) applies here. Section 21(2)(f) says: [a] head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether, the personal information is highly sensitive[.] To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.[9]

[42] The appellant asserts that the factor at section 21(2)(f) does not apply, but I do not accept that assertion, given the nature of the information withheld, which I have reviewed.

[43] Rather, I accept the ministry's submission, and find, that the information at issue is highly sensitive because it relates to the physical and/or medical conditions of staff at a developmental services agency (or agencies). I give this factor significant weight.

Weighing the factors and presumptions at sections 21(2) and 21(3)

[44] In determining whether disclosure of the affected parties' personal information would constitute an unjustified invasion of personal privacy, I have considered the factors and presumptions at sections 21(2) and 21(3) of the *Act* in the circumstances of this case. I have found that there are no factors favouring disclosure of the personal information at issue. However, I have found that two factors weigh significantly against

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[7] Order P-239.
[8] Order P-99.
[9] Orders PO-2518, PO-2617, MO-2262 and MO-2344.

disclosure of this information: the presumption at section 21(3)(a) and the factor at section 21(2)(f). Weighing the factors and presumptions, I find that disclosure of the information at issue in the records would be an unjustified invasion of the personal privacy of the individual staff members to whom it relates. Therefore, I find that the withheld information exempt from disclosure under the personal privacy exemption at section 49(b), subject to my review of the ministry's exercise of the discretion.

[45] While the appellant's son's personal information is intertwined with this information, I am satisfied that the information at issue cannot be further redacted without revealing information that is exempt under the personal privacy exemption at section 49(b) of the *Act*.

Absurd result principle

[46] If the requester originally supplied the information, or the requester is otherwise aware of it, the information may not be exempt under section 49(b), because to withhold the information would be absurd and inconsistent with the purpose of the exemption.[10]

[47] The absurd result principle has been applied where, for example:

- the requester sought access to his or her own witness statement[11]
- the requester was present when the information was provided to the institution[12]
- the information is clearly within the requester's knowledge[13]

[48] However, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is within the requester's knowledge.[14]

[49] In this case, the appellant states that "the staff involved in these incidents verbally described [her] son's behaviours and actions, including antecedents and descendants toward them as the part of their professional duties and for the tracking and collection of [her] son's behaviour data." I take the appellant to mean that because the physical and/or medical conditions were described to her, they are no longer confidential. However, I find that there is insufficient evidence that the information withheld is all clearly within the appellant's knowledge. In any event, even if the

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[10] Orders M-444 and MO-1323.
[11] Orders M-444 and M-451.
[12] Orders M-444 and P-1414.
[13] Orders MO-1196, PO-1679 and MO-1755.
[14] Orders M-757, MO-1323 and MO-1378.

evidence established that it was, I find that disclosure of the type of information withheld is inconsistent with the purpose of the personal privacy exemption. Therefore, I find that it would not be absurd to withhold the individuals' personal information in the circumstances.

Issue C: Did the ministry exercise its discretion under section 49(b)? If so, should this office uphold that exercise?

[50] For the reasons that follow, I accept that the ministry exercised its discretion under section 49(b), and I uphold that exercise of discretion.

[51] The section 49(b) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[52] In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

[53] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[15] This office may not, however, substitute its own discretion for that of the institution [section 54(2)].

Relevant considerations

[54] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:[16]

- the purposes of the *Act*, including the principles that information should be available to the public, individuals should have a right of access to their own personal information, exemptions from the right of access should be limited and specific, and the privacy of individuals should be protected;
- the wording of the exemption and the interests it seeks to protect;

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[15] Order MO-1573.
[16] Orders P-344 and MO-1573.

- whether the requester is seeking his or her own personal information;
- whether the requester has a sympathetic or compelling need to receive the information;
- whether the requester is an individual or an organization;
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution;
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person;
- the age of the information; and
- the historic practice of the institution with respect to similar information.

[55] In denying access to the information at issue, the ministry states that it exercised its discretion under section 49(b) of the *Act* in good faith. The ministry considered the fact that the information relates to the appellant (as the guardian of her son, to whom the information relates) and to the employees of a developmental services agency (or agencies). The ministry states that it exercised its discretion in order to protect the privacy rights of the employees, and also considered the right of the appellant's access to the records requested on her son's behalf under section 47(1) of the *Act*. Furthermore, the ministry states, and I find, that the redactions made by the ministry are limited to discrete information which identifies the physical and/or medical conditions of the employees, rather than any information about the appellant's son. The ministry submits that these redactions balance the access rights of the appellant with the privacy rights of the individuals' whose personal information is included in the records. As such, the ministry submits that its exercise of discretion is appropriate.

[56] In response to the ministry's representations on the issue of the exercise of discretion, the appellant simply asserted, in one line, that the ministry did not take into account the relevant considerations "as noted the above," presumably in reference to her representations on the issues of personal information and personal privacy. She did not specifically identify which relevant considerations, if any, the ministry failed to take into consideration in exercising its discretion.

[57] Based on my review of the information at issue and the parties' representations, I am satisfied that the ministry exercised its discretion, taking into consideration the factors it described, which I find to be relevant in the circumstances. There is no evidence before me that the ministry took irrelevant factors into consideration. Furthermore, there is no evidence before me that the ministry exercised its discretion in bad faith. Therefore, I uphold the exercise of discretion by the ministry.

Issue D: Did the ministry conduct a reasonable search for records?

[58] 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.[17] 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.

[59] 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.[18] To be responsive, a record must be "reasonably related" to the request.[19] 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.[20]

[60] Although the ministry provided representations and affidavits in response to the Notice of Inquiry that I sent at the beginning of the inquiry for searches it had already conducted, after the inquiry began, the ministry continued to conduct further searches, at its own initiative. In doing so, it found additional or duplicate records and issued further access decisions to the appellant, and it also provided further representations and affidavit evidence in support of those further searches.

[61] All of the ministry's representations and affidavits were shared with the appellant. Accordingly, I will summarize the ministry's lengthy evidence regarding its search efforts, below.

[62] 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.[21]

The ministry's position

[63] The ministry submits its searches were reasonable, in light of the above definition of a reasonable search.

[64] It should be noted that the ministry clarified that through mediation at the IPC, the relevant time period covered by the request was extended by the appellant, and

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[17] Orders P-85, P-221 and PO-1954-I.
[18] Orders P-624 and PO-2559.
[19] Order PO-2554.
[20] Order MO-2185.
[21] Orders M-909, PO-2469 and PO-2592.

this resulted in the ministry carrying out additional searches.

[65] The representations and affidavits provided by the ministry indicate that it does not maintain case files about individuals accessing ministry-funded developmental services. Both affidavits presented by the ministry describe its Developmental Services file management as follows:

- Program supervisors do not keep case files about individuals receiving developmental services from service providers funded by the ministry. At times, agencies that provide developmental services send information, via email, about their clients to Program Supervisors at the ministry for the purpose of sharing information about urgent situations or funding needs.

- Correspondence from agencies about their clients that is sent to the ministry is maintained in program supervisors' email accounts.

- Program supervisors also approve transfer payment funding for developmental services administered by agencies. Documents such as funding approvals are saved to the East Region office's electronic shared drive.

- The ministry does not maintain developmental services client- level information in separate electronic or paper files.

[66] In light of this evidence about the ministry's file management, I find it reasonable that the ministry engaged program supervisors (along with a program advisor, administrative assistant, and the issues manager and freedom of information lead) to conduct searches for responsive records. Furthermore, I find it reasonable that these employees searched their email accounts and/or the ministry's shared drive, based on the above evidence about the ministry's file management.

[67] Turning to the affidavits themselves, the ministry initially presented two.

[68] One affidavit was affirmed by the current program supervisor. She attests to being responsible for overseeing the delivery of developmental services pursuant to Ontario Regulation 299/10 (Quality Assurance Measures) under the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008* at the East Region office. As such, she attests to having knowledge of the business processes respecting the ministry's maintenance of records relating to developmental services. Her affidavit also provided the details the five searches that she conducted of her email account and the ministry's shared drive, to date, and mentioned which searches yielded responsive records and which did not.

[69] The other affidavit was provided by the issues manager and FOI lead for the ministry's East Region office. She attests that, as the issues manager, she is responsible for the management and coordination of issues brought to the attention of the ministry's East Region office. As the FOI lead for the East Region office, she coordinates

certain access requests made under the *Act* received by the East Region office. As a result, she attests to having knowledge of the business processes respecting the maintenance of records and responding to access to Information requests from the public. In her affidavit, she describes assigning the request to the former freedom of information and issues management analyst in the East Region Office, who in turn coordinated the search for records. After that individual left her role with the ministry, the manger (who provided the affidavit) took over the coordination of the search.

[70] I am satisfied that both of these employees are experienced employees knowledgeable in the subject matter of the request, and that it was reasonable for the ministry to call on them to conduct or coordinate searches in the circumstances.

[71] The issues manager and FOI lead also attest that the former program supervisor searched his email account for the relevant time periods before he left the ministry. Given the above information about the ministry's record holdings, I find that it was reasonable for the ministry to ask the former program supervisor to do so. When the former program supervisor left, the issues manager and FOI lead attests to searching his archived emails for a specific un-redacted incident report requested by the appellant. She could not locate it. It was determined that the only version of that record was already redacted upon the ministry's receipt of it, and that was the version that was disclosed to the appellant. I am satisfied that the ministry's efforts to locate this record were reasonable in the circumstances.

[72] In addition, the issues manager and FOI lead also attest to the fact of a search conducted by an administrative assistant at the ministry's East Region Office's Serious Occurrence team. The administrative assistant searched East Region office's serious occurrence reports for the relevant time period and confirmed to the issues manager that he did not find any responsive records. He did so again, with the same results, when the time period covered by the request was expanded.

[73] The issues manager and FOI lead also attest to the details of the searches conducted by the other affiant (the program supervisor at the ministry's East Region office), and the program analyst (at the same office).

The appellant's position

[74] Although an appellant will rarely be in a position to indicate precisely which records the institution has not identified, the appellant still must provide a reasonable basis for concluding that such records exist.[22] Here, the appellant asserts that the ministry did not conduct a reasonable search, but did not provide a reasonable basis for coming to such a conclusion.

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[22] Order MO-2246.

[75] The appellant asserts that the ministry deliberately withheld the records about funding and financial information, and other (unspecified) matters. She also claims that additional records exist regarding an investigation relating to a certain third party agency, and three specific employees whose emails should have been searched, stating that the ministry had not released information about one of these employees' search efforts. In addition, she repeatedly asserts that the ministry failed to explain why it does not have (unspecified) un-severed records. I note that the ministry's representations do address a specific un-redacted record that could not be found, as discussed above.

[76] The remainder of her representations relate to details specific to her son's funding and care at various third party agencies, the ministry's centralized database for Developmental Services, and the ministry's relationship with its East Region office of Developmental Services. However, I find that these representations do not establish a reasonable basis for concluding that additional records exist, as they do not bring into question the expertise of the employees involved in the search, the locations they searched, or their search parameters.

The ministry's reply

[77] In light of the appellant's representations, and based on my review of the records, I provided the ministry with an opportunity to reply to the appellant's concerns, and to comment on what appeared to be mention a of attachments to some emails, though the IPC did not appear to have a copy of those records.

[78] The ministry provided representations in response. In doing so, it also prepared detailed indices to assist in the location of the attachments to the emails, as there were voluminous records. The first index covers 737 pages of records. It sets out a general description of each record, the page numbers involved, and descriptions of attachments (including the page number of any duplicates). If an email did not have attachments, the ministry indicates this in the index. The second index sets out the same information regarding the ministry's further disclosure of records (58 pages) after conducting a further search, as well as information about where specific attachments, which I had referenced in my letter to the ministry. By replying with these details, I find that the ministry submitted sufficient evidence to address the question of the existence and locations of attachments to emails, if any.

Appellant's sur-reply:

[79] In response to the ministry's reply, the appellant addressed the redaction of a specified record, and the records subsequently released by the ministry to her in a search conducted during the inquiry. However, redactions are not relevant to the issue of a reasonable search, and in any event, any records released through any subsequent access decisions issued by the ministry are not within the scope of this appeal.

[80] In addition, the appellant raised concerns about records that she stated were not released to her, including records of a specific employee, and an attachment that

appeared to be missing from the index that covered 737 pages of disclosure.

[81] I extended the ministry's opportunity to reply to the appellant's concerns because the ministry advised this office that it was currently conducting a search for records responsive to another request from the appellant. That request covered a time period that had a roughly 13-day overlap with the time period involved in this appeal. The ministry anticipated that that search would yield voluminous records. As a result, I put this appeal on hold to give the ministry an opportunity to complete that search.

[82] The ministry released further records to the appellant in the ensuing months. One release consisted of 4353 pages (in May of that year), the other of 423 pages (in August of that year). However, as mentioned, this search yield covered a request that had a short overlap in time period with the request at issue in this appeal. After these releases, and despite the ministry's submission that the bulk of its search was reasonable, it undertook to revisit one aspect of its search. This yielded about seventy pages of records (in October of that year, and which the appellant stated were mostly duplicates of previously disclosed information).

Further/overlapping search conducted by the ministry

[83] After the ministry completed its search and issued another access decision to the appellant, it provided evidence about those further search efforts, which I will discuss below. The ministry takes the position that its new search was one in which an experienced employee coordinated the search undertaken by, or on behalf of, ministry employees. That employee was the FOI and issues management analyst for the ministry's East region.

[84] With its representations, the ministry provided an affidavit from the employee who coordinated the search, and the search logs of the employees who had been called upon to conduct searches for responsive records. These included employees in the East Region, in the compliance unit of the Service Delivery and Supports Branch, and in the assistant deputy minister's office. The ministry had the email accounts of former employees searched too.

[85] In her affidavit, the employee attests that as FOI and issues management analyst, some of her responsibilities include the coordination, analysis and drafting of responses to access requests in accordance with the *Act* in the East region. She attests to coordinating the search in question. Specifically, employees who might have responsive records were identified in the ministry's East Region office, the assistant deputy minister's office, and the compliance unit of the ministry's Service Delivery and Supports Branch. Given the expertise of the affiant and the subject matter of the request, I accept that these were reasonable offices to engage in a search for responsive records. The affidavit identified the staff in each of these offices by name, location, and title. From the titles of the employees listed (and descriptions provided with the 23 search logs provided by the ministry), the employees called upon covered a wide range of responsibility and seniority. In my view, this weighs towards finding that

the choice of employees was not unreasonably narrowed, but was reasonable in the circumstances.

[86] The affidavit also explains how the specific employees were identified for the purposes of the search: as a starting point, the employees who had been previously asked to conduct searches were asked to conduct searches again, but they were also asked to recommend others who may have records. I find that these were reasonable steps to take in the identification of experienced employees to conduct a search.

[87] Each of the identified employees received detailed instructions, the search requirements, and a series of questions to answer. Each employee was asked to identify their position, relationship to the subject matter, methods used to search, electronic search terms, their search results, the time spent to search, and any further areas/persons that they recommended to search. Sometimes, employees conducted searches on behalf of staff that were not available to search, and this was specified and reasonably explained. The results of these searches were captured in the 23 search logs provided by the ministry to this office.[23] The appellant received a copy of these logs (along with the detailed affidavit and representations), so it is not necessary to delve into the details of each log. Based on my review of the search logs, I find that they provide sufficient evidence that the ministry engaged employees experienced in the subject matter of the request, and who expended reasonable efforts to search for responsive records.

[88] In addition to providing the detailed affidavit and search logs, the ministry also addressed the appellant's points about records of a specified employee, a specific attachment listed in the index covering 737 pages of records, and the existence of additional records.

[89] The ministry explained that it released the records of the specified employee in the aforementioned voluminous May and August release of records.

[90] With respect to the appellant's point about a specified attachment referenced in the index, the ministry submitted that the index contained a typographical error and that the records listed as having a specified attachment do not have an attachment. Rather, the specific record mentioned by the appellant was an attached to other records released (which the ministry identified by page number). I am satisfied by this explanation, and find that it sufficiently puts to rest the concern raised by the appellant.

[91] Finally, the ministry also addressed the appellant's points about redactions to email attachments and the possibility that the ministry may have an additional 87

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[23] The employees from the deputy minister's office also conducted searches but did not return the logs. The two employees who found responsive records forwarded them on.

records that it did not release. I will not address the redactions because the relevant access decision(s) are not within the scope of this appeal, and they are not relevant to the question of whether the ministry conducted a reasonable search. The ministry explained that the email in question refers to "87 individual records" that a third party agency considered, but clarified that this is not a reference to 87 records "or pieces of information" in the possession of the ministry.

The appellant's supplementary sur-reply

[92] In response to the ministry's evidence described above, the appellant did not establish a reasonable basis for believing further records exist.

[93] Her submissions mainly concern access issues (redactions), which are not relevant to the issue of reasonable search.

[94] She also asserted that other specified records should exist but were not released to her, but I am not persuaded to accept this as a reasonable basis for believing further records exist. The record-holdings of the employees named in her representations were searched (and detailed logs were produced regarding those searches). I am satisfied with the ministry's evidence concerning the searches of the record-holdings of those employees.

Conclusion re: reasonable search

[95] When I consider the evidence before me as a whole, and the fact that the ministry is not required to prove with absolute certainty that further records do not exist, I accept the ministry's submissions, and find, that the ministry conducted a reasonable search in the circumstances of this appeal.

ORDER:

I uphold the ministry's decision, and the reasonableness of its search, and dismiss this appeal.

Original signed by
Marian Sami
Adjudicator

November 9, 2020