

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4085

Appeal PA18-411

Ministry of Training, Colleges and Universities

November 16, 2020

Summary: The ministry received an access request pursuant to the *Freedom of Information and Protection of Privacy Act* for information or documentation relating to the requester's OSAP applications. In its decision, the ministry granted full access to the responsive records. Subsequently, the ministry issued a supplemental decision in which it granted full access to additional records. The appellant appealed on the issue of the ministry's search for responsive records. As such, the sole issue in this appeal is whether the ministry conducted a reasonable search. In this order, the adjudicator finds that the ministry conducted a reasonable search for responsive records.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 24.

OVERVIEW:

[1] The requester submitted an Ontario Student Assistance Program (OSAP) application for 2014-2015. The Ministry of Training, Colleges and Universities (the ministry) rejected it.

[2] Subsequently, the ministry received an access request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for the following:

"...follow-up information or documentation including but not limited to all internal or external correspondence, notes, emails, memoranda or supporting documentation relating to my [specified name] OSAP appeal.

My student number is: [specified number].”

[3] In its decision, the ministry granted the requester full access to the responsive records. Subsequently, the ministry issued a supplemental decision granting the requester full access to additional records.

[4] The requester, now the appellant, appealed the ministry’s decisions to this office on the basis that she believes more records exist.

[5] During mediation, the ministry provided the mediator with information regarding the search that it conducted. The mediator relayed that information to the appellant.

[6] Subsequently, the parties participated in a teleconference. At the appellant’s request, the ministry provided the appellant with an additional copy of the records with the pages numbered.

[7] As further mediation was not possible, the appeal was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct a written inquiry under the *Act*.

[8] I commenced my inquiry by seeking representations from the ministry and the appellant. Pursuant to section 7 of the IPC’s *Code of Procedure* and *Practice Direction Number 7*, the parties’ representations (in their entirety) were shared.

[9] In this order, I find that the ministry conducted a reasonable search for responsive records.

DISCUSSION:

[10] The sole issue in this appeal is whether the ministry conducted a reasonable search for responsive records.

[11] 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 24.¹ 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.

[12] 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

¹ Orders P-85, P-221 and PO-1954-I.

show that it has made a reasonable effort to identify and locate responsive records.² To be responsive, a record must be "reasonably related" to the request.³

[13] 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.⁴

[14] 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.⁵

[15] 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.⁶

Representations

[16] The ministry submits that it conducted a reasonable search for records. In support of its assertion, the ministry attached an affidavit sworn by the Financial Administrative Assistant in the Finance Department of the Student Financial Assistance Branch (SFAB), who has been in that position since September 2008. The affiant explains that the Student Financial Assistance Branch's OSAP records are principally stored in an AS400 mainframe database (AS400) and since 2016-17 on a web-based system (System). When completing access requests, staff in the Finance Unit of the ministry are tasked with collecting all available documentation on the AS400 and System related to the access request.

[17] The affiant asserts that, once the ministry received the appellant's access request, she searched (using the appellant's social insurance number) and printed all responsive records from the System.

[18] The affiant explains that she conducted an additional search at the request stage and provided the supplemental documents to the appellant's request as the appellant had expressed concern that pertinent records appeared to be missing.

[19] After the ministry received the Notice of Inquiry, the affiant states that she reviewed the appellant's file and discovered that documents from York University (the university) for the 2012-13 academic year were scanned into the file on February 26,

² Orders P-624 and PO-2559.

³ Order PO-2554.

⁴ Orders M-909, PO-2469 and PO-2592.

⁵ Order MO-2185.

⁶ Order MO-2246.

2019. These records were originally provided to the university by the appellant. She explains that normally all OSAP related documents are to be sent to the ministry to be scanned to the student's files. She states that the university misdirected the Income Verification System (IVS) related documents to an off-site record storage facility instead of sending them to the ministry to be scanned into the student's file. When the university realized the oversight, the documents were retrieved from the university's off-site record storage facility at the request of its financial aid office and shared with the ministry.

[20] The affiant also states that an email created by a ministry employee in response to a request for a further explanation of the decision regarding the IVS discrepancy was provided to the appellant, along with copies of the AS400 IVS screens.

[21] Finally, the affiant states that page 2 of Exhibit A includes several sections where white-outs were applied to the page, and information was written on top of the white-outs. She explains that she made inquiries with the author of the document to determine if the original was preserved but was informed that no copy of the original exists in the file.

[22] In response, the appellant explains that she received a letter from the ministry dated April 27, 2018 confirming it had received "Verification of Income and supporting documentation" and "information provided to the ministry by the [CRA] for the 2014 taxation year". The appellant submits that a reasonable search would locate copies of records the ministry received from the CRA.

[23] With respect to page 2 of Exhibit A of the ministry's affidavit, the appellant submits that the ministry needs to locate the background documents that prompted the calculations supporting the original numbers that were whited out, the documents that prompted the recalculations resulting in the replacement numbers, and the worksheets.

[24] The appellant also submits that the ministry should have located notes of phone conversations she had with ministry staff. She explains that she initiated numerous telephone conversations to clarify the distinction between disability benefits and earning income.

[25] Further, she submits that previously disclosed records from the ministry indicate that further records exist. The appellant states:

The records that the ministry did disclose include a fax transmission sheet dated February 15, 2012 (copy enclosed), sole support parent credit report request form dated February 15, 2012 (copy enclosed), and a "worksheet" dated April 27, 2018 containing numerous white outs including outcome change from pass to fail (copy enclosed). These documents, in and of themselves, contain references to other documents – giving rise to a reasonable belief that further responsive records exist, including policy documents, Briefing Notes, Ministerial directives, minutes

of meetings and conversations. Responsive Disclosure includes background materials, documents explaining why the ministry made the changes and whether my numerous explanations and calculations of monthly disability benefits being received and deductions from source were considered and why they were disregarded. Responsive Disclosure would also include any statutory provisions and case authorities that may have been considered in rendering its decision.

[26] In response, the ministry explains the following about income verification:

Income verification is done through electronic means, comparing the income a student reported to [CRA] to what the student entered in her OSAP application. This comparison is completed in the AS400 mainframe database, and the ministry provided her all records from this database...

The income verification process is almost entirely automated. The AS400 database is programmed with rules to determine what tax year information should be requested from the [CRA]. When that information is received, it is matched to the student's file and the computer system compares the information that the student entered in the OSAP application with the information about the student's income for a given tax year as received from [the CRA]. The computer system performs the initial calculations to determine the difference between the income on a person's OSAP application and what was reported to [the CRA]; this calculation is subject to some additional adjustments.

[27] The ministry explains that as the appellant's difference in income was over \$30,000, she received a notification letter that informed her the amount of the variation and its consequences, and invited her to provide further information to OSAP that could affect the determination regarding her income. It explains that once the ministry receives the information from the student, its staff reviews the information. The ministry explains that its staff uses the internal worksheet in order to do that comparison. It submits that there are no other records generated.

[28] With respect to the appellant's position that she is entitled to policies, directives, and manuals in response to her request, the ministry submits that such documents were not part of her original access request, and, therefore, they are not subject to this appeal.

[29] With respect to notes of telephone conversations with ministry staff, the ministry submits that it is not the practice of ministry staff to take extensive notes on calls regarding OSAP, and that such records do not exist.

[30] In addition, the ministry points out that the fax cover page the appellant attached with her representations was marked as "Record 17 – page 6 of 6", and it follows a page marked "Record 17 – page 1 of 6" that notes the appellant as the sender

of the fax. It submits that the balance of the pages of that record (Record 17) would appear to be the related fax.

[31] Finally, the ministry submits that the appellant is attempting to re-argue her OSAP appeal in the context of this access appeal. It submits:

She is requesting additional documents that were not part of the request that is the subject of this appeal. She is arguing that the ministry's processes for income verification are insufficient, and more, that they are discriminatory. She alludes to her concern that the process considers gross income rather than net income after taxes and her argument that "earned income" should not include her disability benefits because she does not work to earn those (but rather receives them as a benefit from an employer that she did work for previously). These arguments are outside the scope of this [access] appeal, in which the question is simply whether the ministry has conducted an appropriate search for records.

[32] In response, the appellant submits that decisions are not made on the basis of one individual's subjective discretion. She submits that records exist and are relied upon on all the time by ministry staff to provide objective guidance in making decisions of this kind.

[33] She submits that the ministry's representations are inconsistent with its own letter of January 17, 2018. The appellant argues that a further search is necessary to obtain records explaining this inconsistency.

[34] In addition, the appellant disagrees with the ministry that notes/logs of telephone conversations with ministry staff does not exist. She submits that government employees log calls and under certain circumstances failure to do so is even a disciplinable offence. She states:

...It is disingenuous to allege that I have falsified my income, a serious allegation that, once again, I vehemently deny, and in the same breath, deny me access to the very employee logs that clear my name and prove that I was following employee instructions. Semantics aside, these "notes" or "logs" are critical component of the record and an order should be made for a further search to ensure their disclosure.

Analysis and findings

[35] As stated above, 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.

[36] In this case, the appellant makes a number of arguments for why further records exist. She argues that further records exist as previously disclosed records from the

ministry indicate that other records exist. In other words, previously disclosed records reference other records. However, the ministry explains that the fax cover page the appellant attached with her representations was marked as "Record 17 – page 6 of 6", and it follows a page marked "Record 17 – page 1 of 6" that notes the appellant as the sender of the fax and includes a fax number that appears to be for the university. The ministry also explains that the balance of the pages of that record (Record 17) would appear to be the related fax.

[37] The appellant also argues that the ministry has not provided her with the following records:

- i. The Policy itself (I specifically want to see the Policy statement, Briefing Notes or Ministerial Directives, including all drafts, supporting the allegation that only "pay stubs" or "letters from employers are acceptable".
- ii. All documentation that the ministry relied to interpret this Policy.
- iii. All documentation that the ministry relied to implement this Policy.

This would include any Interpretation Bulletins, Briefing Notes or Ministerial Directives, including all drafts, addressing this issue, and all the communications including who interpreted the Policy in a discriminatory manner contrary to human rights legislation, and whether it considered and why it did not meet its duty to accommodate.

[38] She further argues that responsive records include records about the OSAP application process, eligibility criteria, review standards, policies and procedures.

[39] As stated earlier, responsive records are records that are "reasonably related" to the request. The appellant's request is for all internal or external correspondence, notes, emails, memoranda or supporting documentation relating to her OSAP applications for 2012/2013, 2013/2014 and 2014/2015. In my view, the Policy itself and documentation about its interpretation or implementation are beyond the scope of the appellant's request. As well, information about the OSAP application process, eligibility criteria, review standards, policies and procedures are beyond the scope of the appellant's request. All of these documents are not reasonably related to the appellant's request relating to her three specific OSAP applications.

[40] Finally, the appellant argues that, as the ministry's further search (after it received the Notice of Inquiry) located additional records at an off-site record storage facility, other records do exist – whether at the off-site record storage facility, some other off-site storage facility, website or server. In other words, the appellant concludes that additional records must exist because the ministry located additional records shortly after it received the Notice of Inquiry. However, I do not find that such a conclusion necessarily follows from the fact that the ministry located additional records

during the inquiry. I also find that this conclusion fails to take into account the ministry's explanation for finding the additional records.

[41] I understand that the appellant is very upset that the ministry has accused her of failing to report additional income. I also understand that she believes further records exist that will explain why her 2014/2015 OSAP application was rejected. More specifically, she argues that a reasonable search would locate copies of records the ministry received from the CRA about her income for 2014. However, as the ministry explains, its income verification process is almost entirely automated. It states:

The AS400 database is programmed with rules to determine what tax year information should be requested from the CRA. When that information is received, it is matched to the student's file and the computer system compares the information that the student entered in the OSAP application with the information about the student's income for a given tax year as received from the CRA.

[42] As such, the ministry did not receive document(s) physically from the CRA about the appellant's 2014 income but instead this information was sent directly to the ministry's AS400 database electronically.

[43] I note that page 8 of Exhibit E of the ministry's affidavit is the AS400 IVS screen, which indicates the appellant's 2014 income. I also note that pages 2-3 of Exhibit D of the ministry's affidavit is an email in which the writer explains the numbers used in page 2 of Exhibit A of the ministry's affidavit. In my view, the appellant's questions about the income calculation appear to be answered.

[44] In any event, based on the evidence, I am satisfied that an experienced employee, who was knowledgeable in the subject-matter of the request and familiar with the relevant record-keeping practices, conducted the search for responsive records. Accordingly, I find that the ministry conducted a reasonable search.

[45] As a final note, I acknowledge that the appellant raised a number of issues that are outside of my jurisdiction, including allegations of human rights violations by the ministry. These arguments about the ministry's duty to accommodate and the ministry's potential human rights violations are not within my jurisdiction. It is not within my jurisdiction to determine whether or not the ministry is acting in contravention of any other Acts. The only issue before me in this appeal is whether the ministry conducted a reasonable search.

ORDER:

I uphold the ministry's search and I dismiss this appeal.

Original Signed by: _____

November 16, 2020 _____

Lan An
Adjudicator