

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4167

Appeal PA18-315

Ministry of the Solicitor General

July 26, 2021

Summary: The appellant sought access to records about himself from the Justice Officials Protection & Investigation Section of the ministry. The ministry advised the appellant that no records responsive to his request existed and the appellant challenged the reasonableness of the ministry's search. In this order, the adjudicator upholds the reasonableness of the ministry's search and dismisses the appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, section 24.

OVERVIEW:

[1] This order addresses the sole issue of the reasonableness of the search for records conducted by the Ministry of the Solicitor General (the ministry)¹ after receiving the following request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) from the appellant:

We are seeking disclosure of any and all information in respect of the above-noted lawyer [the appellant] including all decisions, findings, assessments, consents, records and or documents (the "Data") held, stored or maintained by JSSO (Justice Sector Security Office), JITO (Judicial Information Technology Office), JOPIS (Justice Officials Protection & Investigation Section), JSSEM (Justice Sector Security and Emergency Management Branch) and CSD (Court Services Division) (the "Offices").

More particularly, and without limiting the generality of the foregoing, we are requesting all Data from the Offices including the following:

¹ Formerly the Ministry of Community Safety and Correctional Services.

- a) Data originating from the Superior Court of Justice (or any court in Ontario or Canada) in or about 2015 in respect of the above-noted lawyer or his publications on spirituality in 2014 and or 2015;
- b) Data originating from [the] Attorney General of Ontario or the Ontario Provincial Police or the Law Society of Upper Canada in respect of the above-noted lawyer;
- c) Complete copy of the "*Memorandum of Understanding*" (with signatures) purportedly between the Chief Justice of the Superior Court of Justice and the Attorney General of Ontario dated on or about May 6th, 2008 together with any amendments, substitutions, additions or qualifications to same (bearing the signatures of the parties thereto);
- d) Complete copy of each "*Memorandum of Understanding*" (with signatures) purportedly between the Chief Justice of the Ontario Court of Justice and the Attorney General of Ontario dated August 10th, 2016 together with any amendments, substitutions, additions or qualifications to same (bearing the signatures of the parties thereto); and
- e) All documents on the policies, mandates, procedures, organization and committees of the Offices effective as of June 2015 and secondly, effective as of 2018.

[2] On May 15, 2018, the ministry responded to the appellant and advised him that the request did not provide sufficient details for experienced ministry staff to identify the requested records. The ministry asked the appellant to provide his middle name and the Ontario Provincial Police (OPP) detachment that would be in possession of the requested records. The ministry noted that the only program area of the ministry listed in his request is JOPIS, the Justice Officials Protection & Investigation Section. The ministry advised that it left the appellant a voicemail message on April 27, 2018, to discuss the contents of his request and did not receive a response. Due to the length of time that passed, the ministry noted that it was no longer able to transfer part of the request² and advised the appellant to file a separate request with the Ministry of the Attorney General.

[3] The appellant responded to the ministry on June 7, 2018, providing his date of birth. The appellant stated he did not know which OPP detachment was involved, and he referred the ministry to JOPIS's records for that information.

[4] On June 15, 2018, the ministry issued an access decision advising the appellant that it did not locate any records responsive to his request. On June 19, 2018, the appellant wrote to the ministry requesting that it confirm that its search for records included a search of JOPIS. On June 20, 2018, the ministry responded to the appellant advising him that JOPIS is a section of the OPP and a search was performed by a staff member familiar

² This refers to the transfer of a request under section 25(2), which states:

Where an institution receives a request for access to a record and the head considers that another institution has a greater interest in the record, the head may transfer the request and, if necessary, the record to the other institution, within fifteen days after the request is received, in which case the head transferring the request shall give written notice of the transfer to the person who made the request.

with the record holdings of the OPP. On June 26, 2018, the appellant wrote to the ministry claiming that the ministry did not search JOPIS records.

[5] The appellant was dissatisfied with the ministry's decision and appealed it to the Information and Privacy Commissioner of Ontario (the IPC). The IPC attempted to mediate the appeal. During mediation, the appellant took the position that the ministry failed to conduct a reasonable search for records and asserted that records responsive to his request exist. A mediated resolution was not possible and the appeal was transferred to the adjudication stage of the appeals process in which an adjudicator may conduct an inquiry under the *Act*.

[6] An IPC adjudicator conducted an inquiry into the appeal, inviting and receiving representations from the parties. The appeal was then transferred to me to complete the inquiry. In this order, I uphold the decision of the ministry and dismiss the appeal.

DISCUSSION:

[7] The sole issue in this appeal is whether the ministry conducted a reasonable search for records responsive to the appellant's request as required by section 24 of the *Act*. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the ministry's decision. If I am not satisfied, I may order further searches.

[8] The *Act* does not require the ministry to prove with absolute certainty that further records do not exist. However, the ministry must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.³ To be responsive, a record must be "reasonably related" to the request.⁴

[9] 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.⁵

[10] Previous IPC orders have consistently held that 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

The ministry's representations

[11] The ministry maintains that its searches were reasonable because experienced staff, familiar with the record holdings in the databases where responsive records would be located if they existed, conducted record searches. The ministry states that it conducted searches using the appellant's name and searched each database more than once at different times; it says that if the ministry had made an error, that error should have been caught by the second searches. The ministry further states that it has no reason to believe that responsive records have been destroyed. The ministry concludes by asserting that the appellant has not provided any reason to date to support his claim that responsive records

³ Orders P-624 and PO-2559.

⁴ Order PO-2554.

⁵ Orders M-909, PO-2469 and PO-2592.

⁶ Order MO-2246.

exist.

[12] The ministry provides two affidavits summarizing the steps it took in response to the appellant's request. The first affidavit is sworn by an OPP Sergeant, who affirms:

- She has been employed with the OPP since 1997. Since 2010, she has been assigned to the Security Assessment Unit where she serves as a Physical Security Specialist assessing incidents of threats, harassment or risks against officials engaged in the administration of justice in Ontario.
- Because of her work, she is familiar with the records stored in the JOPIS database, which is where her Unit stores records that it creates or collects. Due to the special and sensitive nature of the records created by her Unit, JOPIS records are stored separately from general occurrence records, which are stored on the Niche RMS (Record Management System).
- On June 14, 2018, she searched the JOPIS database, using the appellant's name, for records all the way back to 2009 when the Unit was created. She did not find any records as a result of this search.
- She conducted another search on May 14, 2019, and again did not find any responsive records.
- She swore the affidavit for the purpose of responding to Appeal PA18- 315 and for no other purpose.

[13] The second affidavit is sworn by an OPP Constable, who affirms:

- She has been a Freedom of Information Coordinator with the OPP since 2013 and she serves the Central Region. Since the appellant appears to be based in the Central Region, she assumed carriage of the part of the search related to the Niche RMS and the OMPPAC⁷ databases.
- On June 14, 2018, she checked the Niche RMS database, which is the computerized records management system used by the OPP to record information relating to incidents investigated by the OPP throughout the province. All OPP occurrences since 2001 are stored on the Niche RMS and records dated earlier than 2001 are archived on the Niche RMS.
- She searched the Niche RMS database using the appellant's name and then continued her search on OMPPAC, a database the OPP used prior to the Niche RMS.
- Neither of her searches yielded any responsive information.
- She completed a second search of both the Niche RMS and OMPPAC on May 22, 2019 and obtained the same result.

⁷ The ministry confirms that this acronym stands for Ontario Municipal Provincial Police Automation Cooperative.

- She swore the affidavit for the purpose of responding to Appeal PA18- 315 and for no other purpose.

The appellant's representations

[14] The appellant's lengthy representations are difficult to follow and summarize. They refer to two spiritual articles published by the appellant on the algebraic unity between the Torah, Gospel and Quran, and the appellant's view of what happened after he sent these articles to a judge of the Superior Court of Justice. They also refer to another appeal that is before me, but involves a different institution, the Ministry of the Attorney General.

[15] The appellant's representations that are relevant to the issue of reasonable search appear to be that the ministry engaged in "serial misrepresentations" when it decided that no records responsive to his request exist in JOPIS or in the record holdings of the Solicitor General. He argues that the ministry refused to search JOPIS for records and admitted to refusing, and then "used unethical (if not likely criminal) means to disguise it through false affidavits from police." The appellant also argues that the affidavits provided by the ministry show "serious substantive fallacies" because they do not name him or any "material search particulars." The appellant calls the ministry's affidavits "a blazing beacon of the Malfeasant Pattern on the Compelling Public Interest."

[16] The appellant submits that there are "six objective facts" that "exemplify the Misrepresentations through indicia of deception" in the affidavits. First, the affidavit sworn by the Constable addresses a search related to a request to the OPP, but he did not make a search request to the OPP. Second, the affidavit sworn by the Sergeant does not name him or the analyst and does not substantiate documentary exhibits "in support of the evasive gibberish." Third, the commissioner's stamp on the affidavit of the Constable contains a first name, "Shella," that is spelled differently than the handwritten signature below it, "Sheila." Fourth, both affidavits use an "obsolete style of cause" naming the ministry "Ministry of Community Safety and Correctional Services" well after the "alleged name change of MCSCS on or about April 4th, 2019." Fifth, each of the affidavits is "devoid of particularity." Sixth, the affidavit sworn by the Sergeant "repeats the same evasion in the inapplicable Central Region Affidavit, on a word for word basis with the same errors."

[17] The appellant also objects to the fact that the ministry changed from the Ministry of Community Safety and Correctional Services to the Ministry of the Solicitor General without his knowledge or consent and "in the absence of any evidence on the alleged name change." On this issue, he states, in part:

Premier Ford and AG Jones publicably [*sic*] declared in a questionable manner on April 4th, 2019 of [*sic*] the alleged change in name of MCSCS to MSG. The Appellant [name redacted] objected to the *ex parte* amendment of the style of cause to the proceedings due to the alleged re-naming of MCSCS to MSG. The alleged renaming was apparently sought by MCSCS or MSG unilaterally and accepted by the Adjudicator without a hearing or submissions.

Analysis and finding

[18] The ministry's affidavit evidence establishes that two experienced OPP staff,

knowledgeable in the subject matter of the request, conducted two searches each for responsive records. I am satisfied that the particulars of the searches set out in the two affidavits—the dates of the searches, the names of the databases searched and confirmation that the searches conducted were based on the appellant’s name—establish that the affiants expended a reasonable effort to locate records that are reasonably related to the request for all information about the appellant.

[19] The appellant’s representations do not persuade me. Nor do they provide a reasonable basis for me to conclude that responsive records exist contrary to the ministry’s evidence that no responsive records were located during its multiple searches of JOPIS’s record holdings and the Niche RMS and OMPPAC databases of the OPP Central Region. I make these comments having reviewed the totality of the voluminous representations, supporting materials and correspondence that the appellant has provided during the adjudication stage of this appeal.

[20] The appellant’s representations contain bald allegations against the ministry. They also contain inaccurate statements, including the assertion that the commissioner’s stamp on the affidavit of the Constable contains the name “Shella.” It does not. Both the commissioner’s stamp and the signature beside it list the name “Sheila.” I will not address the appellant’s remaining representations regarding the change in name of the ministry, as they are not relevant to the issue before me. I also dismiss the appellant’s remaining “six objective facts” and allegations about “serial misrepresentations” because they are irrelevant and/or without merit.

[21] I accept the ministry’s affidavit evidence and I find that the ministry conducted a reasonable search for records responsive to the appellant’s request.

ORDER:

I uphold the reasonableness of the ministry’s search and dismiss the appeal.

Original signed by: _____
Stella Ball
Adjudicator

_____ July 26, 2021