

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4174

Appeal PA19-00122

Human Rights Tribunal of Ontario

August 9, 2021

Summary: The appellant sought records about herself from the Human Rights Tribunal of Ontario (the HRTO). The HRTO located responsive records and granted partial access to them. The appellant appealed the HRTO's decision to the Information and Privacy Commissioner (the IPC), claiming that additional responsive records exist. She did not appeal the exemptions that the HRTO applied to the records it had located.

In this order, the adjudicator finds that the HRTO has conducted a reasonable search for responsive records and dismisses the appeal.

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

OVERVIEW:

[1] In this appeal, the appellant is seeking records about herself from the Human Rights Tribunal of Ontario (the HRTO), which is part of the Social Justice Division (SJD) of Tribunals Ontario.

[2] Specifically, the appellant submitted a request to the HRTO under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) for the following information:

I am requesting all the information, files, applications, decisions, adjudicator notes, respondents info submitted about me, that the Ontario Human Rights Tribunal has in regards to my name.

[3] The HRTO issued an interim access and fee estimate decision letter, estimating a \$64 fee for photocopying the 262 pages identified as responsive to the request. The HRTO also stated that it anticipated it would be granting access to the majority of the

records related to the appellant that are held by the HRTO and the SJD, while withholding some information related to other HRTO applicants pursuant to section 21(1) (personal privacy) of the *Act*.

[4] The appellant appealed the decision to the Information and Privacy Commissioner of Ontario (the IPC), and a mediator was appointed to explore the possibility of resolving the issues.

[5] During the course of mediation, consent was received from the appellant's daughter, as her personal information was contained in records along with the appellant's name. The HRTO then issued a final decision letter, waiving the fees associated with the request and granting partial access to the responsive records.

[6] The HRTO noted in its final decision letter that it was denying access to the following information:

- the personal telephone number of a staff member,
- references to HRTO applications that do not relate to the appellant's or her daughter's applications to the HRTO, and
- the personal notes of HRTO adjudicators.

[7] Upon receipt and review of the records disclosed to her by the HRTO, the appellant advised the mediator that she believes that additional records should exist that are responsive to her request, thereby confirming that the issue on appeal is that of reasonable search.

[8] When she appealed the HRTO's access decision to the IPC, the appellant sought only to have the issue of reasonable search reviewed. She did not appeal the denial of access to the phone number, references to the HRTO applications that do not relate to either her or her daughter's applications to the HRTO, or to the HRTO adjudicator notes. Accordingly, this order does not address the issues around access to this information.

[9] As mediation did not resolve the issues in this appeal, this file was transferred to adjudication, where an adjudicator may conduct an inquiry.

[10] I decided to conduct an inquiry on the sole issue in this appeal, namely, whether the HRTO conducted a reasonable search for responsive records.

[11] Representations were exchanged between the HRTO and the appellant in accordance with section 7 of the Information and Privacy Commissioner's (the IPC) *Code of Procedure and Practice Direction 7*.

[12] In this order, I uphold the HRTO's search as reasonable and dismiss the appeal.

DISCUSSION:

Did the HRTO conduct a reasonable search for records?

[13] 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.

[14] 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.² To be responsive, a record must be "reasonably related" to the request.³

Representations

[15] The HRTO states that it granted the appellant access to the appellant's and her daughter's HRTO application files, internal staff records related to these applications and records related to the appellant's correspondence with the HRTO.

[16] The HRTO states that, other than adjudicator personal notes, which are not subject to *FIPPA*,⁴ access, was denied under the mandatory personal privacy exemption in section 21(1) of *FIPPA*⁵ to:

...references to HRTO applications that did not relate to either the applications of the [appellant] or her daughter (non-responsive records); and the personal telephone number of a staff member.

[17] The HRTO states that the following HRTO and SJD employees provided responsive records:

- a named HRTO Case Processing Officer;
- a second named HRTO Case Processing Officer;
- the HRTO Assistant Register;
- the former HRTO Assistant Registrar; and,

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Order PO-2554.

⁴ The personal notes of HRTO adjudicators were withheld as excluded from the *Act* by reason of section 65(3.1), which reads:

This Act does not apply to personal notes, draft decisions, draft orders and communications related to draft decisions or draft orders that are created by or for a person who is acting in a quasi-judicial capacity.

⁵ The information that access was denied to is not at issue in this appeal.

- the former SJD Complaints Coordinator.⁶

[18] The HRTO states that the search was conducted by its Freedom of Information Coordinator (the FOIC). It states that the FOIC requested all program areas to conduct an extensive search of:

...emails (including internal mails), any correspondence that relates to [the appellant] (for example, any correspondence related to complaints) and any other form of record that relates to [the appellant]. This could include notes related to [the appellant] (not adjudicator notes)...

Some of the records will overlap with the material for [the appellant's daughter]...

[19] The appellant did not provide representations that address the search conducted by the HRTO.

Analysis/Findings

[20] At issue is whether the HRTO conducted a reasonable search for responsive records.

[21] 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.⁷

[22] 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.⁸

[23] 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.⁹

[24] The appellant sought access to records from the HRTO that are about herself. I find that the HRTO disclosed to the appellant everything related to her in the HRTO's files. This included the appellant's HRTO application files, internal staff records related to these applications and records related to the appellant's correspondence with the HRTO.

[25] The HRTO denied access under section 21(1) to a personal telephone number and references to HRTO applications that do not relate to either the appellant's or her daughter's applications to the HRTO. It also denied access to personal notes taken by HRTO adjudicators.

[26] With its representations, the HRTO provided a copy of the instructions provided to its employees who conducted the searches. The HRTO asked the employees listed above

⁶ The HRTO named all five of these employees in its representations.

⁷ Orders M-909, PO-2469 and PO-2592.

⁸ Order MO-2185.

⁹ Order MO-2246.

to search for all records related to the appellant, including emails (including internal emails), correspondence and any other form of record that relates to the appellant, including notes related to appellant (except for adjudicator notes, discussed above).

[27] I find that the HRTO has had experienced employees, knowledgeable in the subject matter of the request, expend a reasonable effort to locate records which are reasonably related to the appellant's request.

[28] The appellant has not provided specific representations supporting her claim that the HRTO, in conducting its search, did not make a reasonable effort to identify and locate responsive records about her.

[29] The appellant has indicated that she believes her name was in public HRTO decisions where she was not the applicant or respondent. However, the appellant has not provided sufficient details about any such public decisions or how this is connected to the HRTO's search for responsive records. I accept that the HRTO withheld, under section 21(1) or as non-responsive, references to HRTO applications that do not relate to either the appellant or her daughter. The appellant did not seek to have this denial of access adjudicated upon.

[30] I find that the appellant has not provided a reasonable basis for me to conclude that additional responsive records exist related to her request for records about herself that have not yet been located by the HRTO.

[31] Based on my review of the parties' representations, I find that the HRTO carried out a reasonable search for all responsive records that relate to the appellant.

[32] Accordingly, as the HRTO has conducted a reasonable search for responsive records, I uphold its search and dismiss the appeal.

ORDER:

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

Original Signed by: _____
Diane Smith
Adjudicator

_____ August 9, 2021