

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4249

Appeal PA20-00568

Ministry of the Attorney General

March 31, 2022

Summary: The appellant made a request to the Ministry of the Attorney General (the ministry) for access to call logs and email communications relating to him between specific victim services employees. The ministry granted partial access to responsive records, but withheld some information on the basis that it was not responsive to the appellant's request. The appellant challenged the ministry's claim that the withheld information was non-responsive, and claimed that its search for responsive records was not reasonable. In this order, the adjudicator finds that the request was clear and specific and that the ministry's search for responsive records was reasonable. She upholds the ministry's decision 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] This order addresses the reasonableness of the Ministry of the Attorney General's (the ministry's) search for records in response to a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records about the appellant's communications with Haldimand Norfolk Victim Services (victim services).

[2] The appellant sought access to the following information after a phone call with the victim services Regional Manager:

On Friday, May 8, 2020, from 2:04pm until 3:50pm I spoke on the phone to [named individual #1], Regional Manager Victim Services. She called

me at [appellant's telephone number] from her number [telephone number].

May I have the following information as per this phone call; a written transcript of this call. All call log information and email communication that resulted after this call, like call log information and email communication from Regional Manager Victim Services [named individual #1, email address and phone number], and the Executive Director of [Haldimand Norfolk Mississaugas of the Credit First Nation] (HNMCFN) Victim Services [named individual #2, phone number and email address] from May 8th, 2020 to August 25, 2020 pertaining to [the appellant].

From May 6, 2020 to May 12, 2020 I wrote 7 emails to Victim Services HNMCFN at info@victimserviceshn.com from [appellant's email address]. I would like all emails that were sent to [named individual #1's email address] or [named individual #3's email address] from [named individual #2's email address] or anyone else at the Victim Services HNMCFN that included this personal information or were a result of the information in those 7 emails. Also all email communications between [named individual #1's email address] and her boss [named individual #3's email address] about these emails or personal information from May 6, 2020 to August 25, 2020 pertaining to [the appellant].

[3] The ministry searched for and located responsive records and issued a decision granting partial access. The ministry withheld some information from the records on the basis that it is non-responsive to the request.

[4] The appellant appealed the ministry's decision to the Office of the Information and Privacy Commissioner of Ontario (the IPC).

[5] The parties participated in mediation, during which the appellant indicated that he was seeking access to the information that the ministry withheld on the basis that it is not responsive to the request. The appellant also stated that he seeks access to additional records. He prepared a document setting out those records. The ministry responded that the additional records identified in that document were outside the scope of the request, and that the ministry does not have further records responsive to the request that is the subject of this appeal.

[6] The appellant disputed the ministry's position that no further responsive records exist. The issues of the scope of the request and the reasonableness of the ministry's search for responsive records were identified as the only issues in this appeal.

[7] When a mediated resolution was not reached, the mediator issued a report summarizing the outstanding issues in the appeal. After the mediator issued her report, the appellant produced more information about the additional records he believes should exist in response to his request. The appellant wrote that:

I never received an answer to my request for a written transcript of the call. I never received an answer to my request for any call log information that resulted from the 2 hour call. All phone numbers [have] a record of the number that called into or was called out to a number and the date and time and length of the call (number of minutes). I requested all call log information, which is also notes taken as a result of the two hour call or any other notes taken afterward during a subsequent phone call, as a result of the two hour call. Also note that my request included the words "or anyone else at victim services" and I know that there was some but [the ministry] did not include this information as per this request.

[8] With no further mediation possible, the file was moved to the adjudication stage of the appeal process where an adjudicator may conduct an inquiry. I conducted an inquiry under the *Act* during which I received representations from the ministry and the appellant.

[9] In this order, I find that the scope of the appellant's request was clear and specific and I uphold the ministry's search for records responsive to it as reasonable.

ISSUES:

- A. What is the scope of the request and what records are responsive to it?
- B. Did the ministry conduct a reasonable search for records?

DISCUSSION:

A: What is the scope of the request? Is some information in the records not responsive to it?

[10] Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. These include the requirement that a requester provide sufficient detail in the request to enable an experienced employee of the institution, upon a reasonable effort, to identify the record.¹ Where the requester does not sufficiently describe the record to which access is sought, section 24 requires the institution to inform the requester of the defect, and to offer assistance in reformulating the request.²

[11] In order to best serve the purposes of the *Act*, institutions should interpret requests liberally. Generally, if there is ambiguity in the request, it should be resolved in the requester's favour.³

¹ Section 24(1)(b) of the *Act*.

² Section 24(2) of the *Act*.

³ Orders P-134 and P-880.

[12] Finally, to be considered responsive to a request, the information at issue must “reasonably relate” to the request.⁴

Representations

Appellant’s representations

[13] The appellant says that, rather than contacting him to clarify his “choice of words,” the ministry chose to “split hairs beyond belief.” The appellant says that when he realized that the ministry did not want to give him what he wanted, he filed “additional requests by adding a few words,” in response to which he “received 564 pages” of records.⁵

[14] The appellant also submits that he did not receive a copy of letter dated May 14, 2020 from a corporate manager (“or anyone else” at victim services) that he says was sent to the regional manager named in his request, and which he says should have been disclosed in response to this request.⁶

The ministry’s representations

[15] The ministry submits that the appellant’s request is very narrow in scope, and that it names the specific individuals, email addresses and phone numbers relating to which he wanted records.

[16] The ministry says it searched for and responded with what it believed to be responsive records that fell specifically within the defined terms of the request.

[17] The ministry says that, given the specificity of the request, it relied on the fact that the appellant knew what he wanted and only wished to receive a very defined set of records; otherwise he would have made a broader request for all communications.

[18] The ministry says that the appellant’s submission after the mediator’s report was issued expanded the scope of his original request and it takes the position that the records it withheld as non-responsive fell outside of the parameters of the request at issue in this appeal. The ministry also says that the appellant subsequently submitted new access requests, one of which asked for records identical to those in this appeal, but also for a broader set of records.

[19] The ministry says the appellant asked for the new requests to be dealt with separately and the ministry respected those wishes. The ministry submits that, as part of processing the appellant’s new requests, it released all of the additional records that

⁴ Orders P-880 and PO-2661.

⁵ The appellant submits that the ministry nevertheless claimed exemptions to withhold portions of the 564 pages to which partial access was granted. The appellant’s other requests and the exemptions claimed by the ministry over those records (that are responsive to the other requests) are not before me in this appeal.

⁶ The appellant says this letter was titled “Detailed Timeline Review Regarding [the appellant].”

were requested in this appeal, subject to applicable exemptions.

[20] The ministry says that, while searching for records responsive to the new requests, it located a mobile phone invoice that it determined was responsive to the request at issue in this appeal. The ministry says that, although not a call log, the invoice contains information about calls between the numbers identified in the request, including their dates, times, and duration, which is information the appellant sought access to. The ministry issued a supplementary decision granting access to the responsive portions of the invoice, disclosing the phone numbers identified by the appellant, and date, time and call duration.

[21] The ministry says that, in response to the appellant's subsequent (and broader) requests, it disclosed all portions of the records that had it withheld as non-responsive to the request in this appeal, so that all remaining records that the ministry initially claimed were non-responsive to this appeal have now been disclosed to the appellant. The ministry submits that, with the appellant now having received all of the records responsive to this request that exist in full, plus additional records requested in the second request, there are no further issues outstanding with respect to the scope of the request or responsiveness of records to be determined on this appeal.

Analysis and findings

[22] As noted above, section 24(1)(b) of the *Act* requires a person seeking access to a record to give enough detail to enable an experienced employee, upon a reasonable effort, to identify the record. If the request does not sufficiently describe the record to which access is sought, section 24(2) of the *Act* requires the institution to inform the appellant of the defect and to help with reformulating the request. Where the request is ambiguous, the institution should also resolve any ambiguity in the appellant's favour.

[23] The appellant's request is for access to all call log information and email communications and a written transcript relating to a specific telephone call he had with a victim services' regional manager. In my view, the request contained enough detail to allow the ministry to identify records that would be responsive to it. The request identified the types of records sought, the organization, employee names, phone numbers, email addresses and relevant time periods. I find that the request was detailed and specific, and that the ministry did not require clarification from the appellant before it began its search for responsive records.

[24] By naming the employees to whose email communications access was sought, I accept that the appellant's request clearly identified both email addresses and the employees that should be included in the search for specific types of responsive records.

[25] In his representations, the appellant submits that the wording of the request included a May 14, 2020 letter that he says was a 'timeline review' about him from a corporate manager or anyone else at victim services. In my view, however, the request specifically sought access to call logs and emails, and not other correspondence. I agree

with the ministry that the request was specific. The appellant's call was with the regional manager, and I find it was not unreasonable for the ministry to have interpreted the request to be for all call log and email communications involving the regional manager and the other named employee, as well as for emails exchanged between and sent to their email addresses relating to the appellant. Similarly, in the second part of the request (relating to seven emails), the appellant sought access to emails sent *to* two specific individuals' email addresses from another specified email address "or anyone else" relating to the appellant.

[26] Given the appellant's subsequent requests, it is apparent that he also sought access to a broader range of records than those identified in this request. In response to those later requests, the ministry granted partial access to 564 pages of records. As for the request at issue in this appeal, however, I find that it was clear and specific and that it was not unreasonable for the ministry to have proceeded to search the email addresses identified for the specific records identified, without contacting the appellant to verify whether he did, in fact, intend for the request be so narrow and specific. I find that the request was sufficiently clear that the ministry was not obliged to contact the appellant for further clarification to help reformulate it pursuant to section 24(2) of the *Act*.

[27] I have also reviewed the invoice partially disclosed to the appellant, which contains telephone numbers, call date, time and duration, as identified by the appellant. Although the invoice may not be the specific type of records sought by the appellant, I find that the information disclosed to him from this record is responsive to the request.

Non-responsive information severed

[28] I have examined the portions of the records that the ministry withheld on the basis that they are not responsive to the request. I find that they are not reasonably related to the request. The portions the ministry withheld as non-responsive include emails between employees exchanged while searching for responsive records. They include information about their search, discussions between ministry employees about items unrelated to the appellant or his request, and emails exchanged with ministry employees about responding to the request (but that do not discuss responsive records). As this information is not related to the appellant's request for call logs and emails about his May 8, 2020 telephone call or his May 6 to May 12, 2020 emails, I find that it is not responsive to the request.

[29] For these reasons, I find that severances withheld as non-responsive have been properly withheld from the records.

B: Did the ministry conduct a reasonable search for records?

[30] The appellant has also challenged the reasonableness of the ministry's search for responsive records, claiming that call logs and transcripts exist that have not been located or disclosed to him.

[31] 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 24.⁷ If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision. Otherwise, it may order the institution to conduct another search for records.

[32] 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;⁸ that is, records that are "reasonably related" to the request.⁹

[33] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are reasonably related to the request.¹⁰ A further search will be ordered if the institution does not provide enough evidence to show that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.¹¹

[34] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.¹²

Representations

The appellant's representations

[35] The appellant says that he asked for access to "All call log information" but "didn't get anything."

[36] The appellant submits that the invoice the ministry disclosed is not a call log. He submits that a call log "is a record of any telephone calls made, received or missed to or from a phone [containing] information such as date, duration and contact (name or number)."

The ministry's representations

[37] The ministry says that when the request was received, the freedom of information (FOI) unit contacted a program coordinator in the Office of the Assistant Deputy Attorney General for the Victims and Vulnerable Persons Division who is responsible for coordinating FOI requests. Given its contents, the request was then forwarded to the Ontario Victim Services Branch for processing, where the then-director of Ontario Victim Services (the director) and the Regional Manager, Central West

⁷ Orders P-85, P-221 and PO-1954-I.

⁸ Orders P-624 and PO-2559.

⁹ Order PO-2554.

¹⁰ Orders M-909, PO-2469 and PO-2592.

¹¹ Order MO-2185.

¹² Order MO-2246.

Region (the regional manager) – the two employees named in the request – were instructed to search for responsive records, including any transcripts or call logs in relation to the request.

[38] The ministry says that, because the request specifically named these two individuals as the employees from whom the appellant wanted records, the records search was limited to their ministry email accounts (including inbox, sent items, deleted and archived items) for the records specified during the relevant dates.

[39] The ministry says that, after it received the mediator's report, which the ministry says included new submissions from the appellant (as well as one of the new access requests), its staff conducted a third search for records. As part of processing the other request, the ministry says it identified phone invoices that, while not call logs, contain information that contains call in-and-out information that relates to the request. As noted, the ministry granted partial access to that invoice under a supplementary decision, while redacting information about other calls that are not related to the appellant or his phone number.

[40] The ministry also provided affidavits from the two employees identified in the request. In the first, the regional manager, says that she:

- reviewed the request and discussed it with legal counsel
- felt the request to be straightforward, seeking access to specific records during specified times between herself and a particular agency as well as her communications with her director
- searched her entire email account (inbox, sent email, deleted items and archives) for records pertaining to the appellant. She searched using the appellant's name, the executive director's and agency's name and email account, and her director's name for the relevant time periods
- sorted through the search results to identify potentially responsive records
- checked the call history on her business cell phone. She says that given the length of time that had passed since the communications, nothing showed up in her call history, and she does not manually log phone calls so those records did not exist
- confirmed that no recording of the call was made and no transcript was created, and
- when processing the appellant's later access requests, she decided to see if she could locate any phone invoices during the relevant period to see whether those might contain the information the appellant was seeking. As a result of this search, she located a phone invoice that the ministry then partially disclosed with its supplementary decision.

[41] The director states in her affidavit that:

- at the time of the request, she was also acting in the role of Director of Ontario Victim Services, Victims and Vulnerable Persons Division and is familiar with the processing of FOI requests
- she discussed the request with legal counsel
- she searched for communications between herself and the executive director, named staff of the named agency, as well as for her communications with the regional manager, as set out in the request
- because she did not have any direct email or other communication with the executive director or the other agency named in the request, she was not able to locate records responsive to that portion of the request
- she located a number of communications, not all of which were responsive records (because they involved communications the appellant had not asked for), were disclosed in any event,¹³ and
- since this request, the appellant has made two subsequent FOI requests, which resulted in disclosure of additional records (in response to those requests).¹⁴

[42] With respect to the request for a transcript of the call, the ministry submits that it advised the appellant that transcripts of calls are not available because it is not the ministry's practice to record calls with members of the public.

Analysis and findings

[43] I am satisfied that the ministry conducted a reasonable search for records responsive to the appellant's request for responsive records. The ministry's representations demonstrate that experienced employees (two of whom were identified in the request), knowledgeable in the records related to the subject matter of the appellant's request, made reasonable efforts to locate call logs and email communications that were responsive to the request. I accept the ministry's explanation that, because it does not record calls with its members, it did not have transcripts to disclose.

[44] Regarding the call logs sought by the appellant, I found above that the invoice provided information that is responsive to the appellant's request, even if not in the form he is seeking it.

[45] I also find that it was reasonable for the ministry not to have searched for

¹³ The ministry withheld portions of those emails on the basis that they were non-responsive to the request.

¹⁴ As noted above, those requests or the records disclosed in response to those requests, are not before me in this appeal.

records from other staff who were not named in the request. Since the request sought access to emails sent *to* two specific addresses (from another address and from “anyone else” at victim services), I find that searching the email accounts of the recipient addresses identified in the request (as the ministry says it did) for emails relating to the appellant, the call and the appellant’s emails, was reasonable in the circumstances.

[46] 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 such records exist. The appellant argues that he had to submit broader requests in order to get access to more information. While that may be true, he has not provided me with a sufficient basis on which I could conclude that additional records exist that are responsive to the particular request that is at issue in this appeal.

[47] In these circumstances, I find that the appellant has not provided a reasonable basis for me to conclude that additional records exist in response to this request, but have not been located by the ministry. I therefore uphold the ministry’s search for responsive records as reasonable and dismiss this appeal.

ORDER:

I uphold the ministry’s decision and dismiss this appeal.

Original Signed By: _____
Jessica Kowalski
Adjudicator

_____ March 31, 2022