

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4067-I

Appeal PA17-300

Ministry of the Attorney General

September 17, 2020

Summary: The appellant submitted a request under the *Act* to the ministry for records about him that he alleges the ministry sent to the regulatory body for his profession. The appellant appealed the ministry's decision to this office and claimed that additional records should exist. In this order, the adjudicator upholds the ministry's search for records relating to an OPP investigation as reasonable. However, the adjudicator finds that the ministry's search for records relating to regulatory or non-criminal investigative matters, which the appellant alleges were sent to his professional regulator, was not reasonable and she orders the ministry to conduct a further search. The adjudicator also orders the ministry to transfer or forward, to the Ministry of the Solicitor General, the portion of the appellant's request for police records the ministry sent to his regulatory body, because she does not accept that the ministry did so at the request stage as claimed.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, sections 24, 25(1) and 25(2).

OVERVIEW:

[1] The appellant is a veterinarian who was involved in criminal proceedings as well as matters before the Alcohol and Gaming Commission of Ontario and the College of Veterinarians. Following these proceedings, he, submitted a two-part request under the *Freedom of Information and Protection of Privacy Act* (the *Act* or *FIPPA*) to the Alcohol

and Gaming Commission of Ontario (the commission).¹ The Ministry of Attorney of General (the ministry) is responsible for responding to access requests submitted to the commission.

[2] The first part of the request sought access to records the appellant alleges the commission² sent to the College of Veterinarians (the college). The second part of the request sought a copy of a specific Memorandum of Understanding (MOU) between the commission and the college.

[3] The ministry issued an access decision to the appellant granting partial access to the MOU but claimed that disclosure of the withheld information would constitute an unjustified invasion of personal privacy under section 21(1).

[4] The appellant appealed the ministry's access decision to this office and a mediator was appointed to explore resolution of the appeal.

[5] During mediation, the ministry revised its access decision and withdrew its claim that the personal privacy exemption under section 21(1) applied. As a result, a complete copy of the MOU was disclosed to the appellant. However, the appeal was not resolved as the appellant raised questions about the reasonableness of the ministry's search for records responsive to the first part of his request. In particular, the appellant took the position that the ministry failed to respond to the first part of his request for records he alleges the commission sent to the college.

[6] The ministry responded that it transferred this part of the request to the Ministry of the Solicitor General (Solicitor General)³ pursuant to section 25(2), but stated that it failed to notify the appellant of the transfer. Despite its position that it transferred the request, the ministry conducted a search for records that would respond to this part of the request and reported that no records were located. The appellant requested further information about the ministry's search but was not satisfied with the explanations provided. Accordingly, the file was transferred to adjudication and I conducted an inquiry.

[7] During the inquiry, I sought and obtained the written representations of the parties on whether the ministry conducted a reasonable search for responsive records, as well as the issue of whether records that would respond to the appellant's request are in the custody or control of the ministry. I also invited the ministry's reply

¹ The appellant submitted the same request to the ministry in two separate letters dated days apart in May 2017. The ministry issued one decision letter to the appellant. For the remainder of this order, I will refer to the appellant's May 2017 requests as one single request.

² The ministry advises that on April 1, 2016 (the merger date), the Ontario Racing Commission (ORC) merged with the Alcohol and Gaming Commission of Ontario (AGCO or commission). As of the merger date, the AGCO assumed the ORC's previous responsibility for the regulation of horse racing under the *Horse Racing Licence Act*.

³ At the time, the Ministry of the Solicitor General was called the Ministry of Community Safety and Correctional Services.

representations on the scope of the request and whether a portion of the appellant's request was forwarded or transferred under section 25, as the ministry claimed. Neither party claimed that their representations contained confidential information and their representations were shared with one another in accordance with Practice Direction 7.

[8] I order the ministry to conduct a further search for records relating to regulatory or non-criminal investigation matters (non-police records), which the appellant alleges the commission sent to the college. Though I uphold the ministry's search for any police records sent to the college as reasonable, I order it to transfer or forward this portion of the appellant's request to the Ministry of the Solicitor General because I do not accept that the ministry did so at the request stage as claimed.

ISSUES:

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

DISCUSSION:

A. What is the scope of the request? What records are responsive to the request?

[9] The second part of the appellant's request, the MOU, is no longer at issue. However, the appellant takes issue with the ministry's response to the first part of his request. In his representations, the appellant takes the position that his request is for any records relating to any investigation that were sent to the college, "not just from the investigation of 2013." I invited the ministry's reply representations in response to the appellant's position on the scope of this part of his May 2017 request.

[10] The request stated:

Subject – *FIPPA* request for disclosure re: Ontario Racing Commission Investigation of [the name of the appellant]

Please consider this as a formal request, under *FIPPA*, for disclosure of documentation obtained by the Ontario Racing Commission which was subsequently disclosed to [the college]. As well, I am requesting disclosure of the Memorandum of Understanding (MOU) between the Ontario Racing Commission and [the college].

[11] Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

1. A person seeking access to a record shall,
 - a. make a request in writing to the institution that the person believes has custody or control of the record;
 - b. provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;

...

2. If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[12] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.⁴ To be considered responsive to the request, records must "reasonably relate" to the request.⁵

Representations of the parties

[13] The appellant maintains that records should exist which would inform him when and how records ended up at the college. The appellant states that the commission "played an early role in the [2013 OPP] investigation" and that he has been the subject of "multiple" investigations spanning several years. In support of this position, the appellant states:

The request does not specify a certain investigation, nor does it specify seized evidence. It requests disclosure of any materials disclosed to the [college] that are in the possession of [the commission]. This may also include various reports from investigators of [the commission], along with professional reports requested. The request is of a broad, all encompassing nature, and is not restricted to those items that only the [commission] had and supposedly the OPP have access to.

[14] Although the appellant's request did not specify a time period, he states in his representations that he believes the commission sent investigation materials to the college between March 18, 2013 and January 1, 2016. I note that throughout his representations, the appellant asserts that the relevant end date of the time period for the requested records is before April 1, 2016 when the Ontario Racing Commission merged with the Alcohol and Gaming Commission of Ontario (the commission).

⁴ Orders P-134 and P-880.

⁵ Orders P-880 and PO-2661.

[15] In its reply representations, the ministry takes the position that the appellant is now seeking to expand the scope of his original request. The ministry argues that the singular form of the term "investigation" in the subject line of the appellant's request confines the scope of the request to the 2013 OPP investigation. The ministry argues that the appellant seeks in his representations to unilaterally expand the scope of the request to include multiple investigations. The ministry submits that the appellant's use of the term "obtained" in the subject line of his request supports this position. The ministry argues that the term "obtained" could only refer to a police investigation since the appellant was not licenced by his regulator at the time of his request. The ministry goes on to state:

In any event, records from a regulatory investigation are ordinarily construed as records created or prepared by the ORC and not "obtained by that organization."

An organization does not typically "obtain" records from itself.

...

Although the appellant currently takes the position that his request is for any records that would relate to any investigations that were sent to the [college], this does not accord with the plain language of the Request. The Request did not contain the words "any" or "all" when referring to the "Ontario Racing Commission Investigation". Moreover, "Investigation" was referred to in the present tense, in singular form and capitalized. Finally, the Request was for records "obtained" by the [commission]. Clearly, internal records prepared in the course of regulatory investigations were not being sought because these records cannot in any reasonable interpretation of the word "obtained" have been obtained by the [commission]. Records prepared by an agency in furtherance of its regulatory investigations are records of an organization and not "obtained" by it. If the appellant now claims that he intended to request records pertaining to all investigations by the [commission] or obtained by the [commission], this constitutes an unreasonable interpretation of the Request given the language of the Request and the [commission's history with the appellant]. In doing so, the appellant is attempting to retroactively create a new request by way of his representations.

Decision and analysis

[16] In my view, the appellant's request submitted to the ministry in May 2017 is plainly worded and sought access to specific records: a copy of the MOU along with copies of records he alleges the commission sent to the college. In addition, I am satisfied that the request contained sufficient detail for the ministry to identify the records responsive to the request.

[17] The ministry argues that the omission of the words “any” or “all” in the request, along with the use of the terms “investigation” and “obtained”, restrict the appellant’s request to a 2013 OPP investigation matter.

[18] Neither the ministry’s evidence nor a plain reading of the appellant’s request support a finding that its scope is restricted to one investigation matter. As mentioned above, the appellant had written to several provincial and federal government offices requesting records regarding various investigation matters that resulted in criminal and/or provincial offence charges being laid against him. In addition, the appellant was involved in civil and administrative proceedings related to various commission investigation matters. I find that it is reasonable to conclude that the appellant seeks access to the type of records which would inform him about what, if any, records relating to the commission’s investigation of him were sent to the college.

[19] In my view, the ministry’s evidence, at best, suggests potential ambiguity in the appellant’s request. However, any perceived ambiguity in the appellant’s request should be resolved in the appellant’s favour.⁶ Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*.

[20] Having regard to the unique circumstance of this appeal, I find that the scope of the request before me includes any records that would inform the appellant about what, if any, records relating to the commission’s investigation of him were sent to the college. I also find that the scope of his request for any records, electronic or paper, the appellant alleges the commission sent to the college reasonably contemplates a time period of March 1, 2013 to April 1, 2016.

B. Did the ministry conduct a reasonable search for responsive records?

[21] The remaining issue in this appeal is whether the ministry conducted a reasonable search for records the appellant alleges the commission sent to the college between March 1, 2013 and April 1, 2016.

[22] The majority of the appellant’s representations discuss his concerns about the transfer of information between the commission and the college. The appellant advises that the criminal matter was subsequently withdrawn but that during the proceedings the court issued a sealing order to prevent certain records from being available to third parties. The appellant advises that the sealing order remains in place and he confirms that he did not consent to any of the records subject to the sealing order being accessed by a third party, which is how the appellant views the college.

[23] The appellant argues that the college ended up with copies of records that were the subject of the sealing order and used them in a disciplinary hearing which resulted in his licence being suspended. The appellant takes the position that the college was in “possession of illegally disclosed evidence and conducted a regulatory hearing using

⁶ Orders P-134 and P-880.

said evidence.”

[24] The appellant also raises concerns about the roles and exchange of information between staff employed by the commission and the college. In his representations, the appellant provided a list of individuals he identified as being “involved in the breach of the relevant Sealing Order,” allegedly in contravention of the *Criminal Code*.

[25] I will not be making any findings or comments regarding the appellant’s claim that the commission or college acted inappropriately or contrary to a court order. My jurisdiction is limited to deciding whether the ministry conducted a reasonable search for records that would be responsive to his access request under the *Act*.

[26] In addition, I note that the parties use the terms “disclose” or “disclosure” frequently in their representations to describe the appellant’s allegation that the commission sent records to the college. “Disclosure” is the copy of the evidence that a prosecuting party has collected to prosecute an individual. Typically, individuals facing a prosecution are provided with a copy of the disclosure before their trial or hearing. In the discussion that follows, I use the terms “sent” or “provided” to avoid any confusion with the disclosure process relating to the appellant’s criminal matter and administrative hearing, which are also outside the jurisdiction of this office.

The ministry’s representations

[27] During the inquiry, the ministry was asked to provide a written summary of the steps it took in response to the appellant’s request.

[28] The ministry takes the position that the Solicitor General⁷ has custody of the records requested by the appellant, but it argues nevertheless that it conducted a reasonable search for responsive records in its record holdings. The ministry states in its representations that:

The [Senior Manager of its Regulatory Compliance Branch (manager)] was asked whether there were any responsive records to this part of the Request. He advised, based on his knowledge of [the commission’s] procedures and records, that there were no responsive records. The only records responsive to this part of the Request are OPP records.

External counsel who acted for the [commission] and advised both the [commission] and the OPP officers on numerous regulatory, civil and investigative matters related to [the appellant] during the relevant time period, was also asked to confirm whether there were any such responsive records. [External counsel] confirmed that he was aware of the following:

⁷ The Ministry of the Solicitor General oversees policing services throughout Ontario, including the Ontario Provincial Police (OPP).

- In or about fall of 2015, [a named officer] of the OPP provided certain materials to the [college] that arose from an OPP investigation into certain activities of [the appellant] then being pursued as potential charges under the *Food and Drugs Act*;
- To the best of his knowledge and understanding, [the college subsequently disclosed this information to the appellant as part of the disclosure process relating to the discipline proceeding].

[29] The ministry also provided a lengthy explanation regarding OPP officers seconded to the commission's investigation unit. The ministry advised that seconded OPP officers conduct both regulatory and police investigations under the *Criminal Code* and quasi-criminal statutes such as the *Food and Drugs Act* and *Controlled Drugs and Substances Act*. Civilian investigators employed by the commission conduct regulatory investigations under the *Racing Commission Act* and Rules of Racing, although they assist OPP officers at times. The OPP officers, unlike the civilian investigators, can lay charges pursuant to criminal and quasi-criminal legislation. The ministry states that:

Investigative files and materials created or obtained by these seconded OPP officers for purposes of investigating, charging or assisting in the prosecution of criminal or quasi-criminal offences ("OPP Investigative Records") are records in the custody and control of the OPP.

[30] The ministry summarizes its arguments, as follows:

- OPP officers seconded to the commission's Investigative Unit conducted a police investigation into the appellant;
- In 2015, an OPP officer provided certain OPP investigative records to the college;
- Outside parties might be confused about the distinction between police investigative records and records obtained as a result of regulatory investigations, and the arrangements for the custody and control over such records;
- However, the records sought by the appellant are OPP records not within the ministry's custody or control;
- In any event, it conducted a search for the requested OPP records and could not locate any records in its record-holdings.

The appellant's representations

[31] The appellant maintains that records should exist that would inform him when and how records ended up at the college.

[32] The appellant concedes that the commission's Investigative Unit is made up of commission investigators working on regulatory matters and OPP officers, working primarily on criminal matters. However, the appellant submits that his request is for *any* records the commission provided the college. Accordingly, this would include records predating the police investigation that resulted in the laying of criminal charges. In support of this position, the appellant states:

At the merger date (April 1, 2016), the investigative records were admittedly transferred from the [commission's] Investigative Unit to the OPP evidence vault. The suspected time range of disclosure to the [college] is between [March 18, 2013 and January 1, 2016]. This falls into the period before the merger date. [The commission] has admitted to responsibility for this period, both in their position and by virtue of the *Horse Racing License Act*. Their position statement concedes that the records were part of the [commission's] Investigative Unit in [a named city]. The "records of interest" include the time period subsequent to the latest [commission's] investigation but also includes any information previously acquired by [the commission] and subsequently disclosed. There may not have been police involvement in any preceding investigations conducted by [the commission].

[33] The appellant also takes the position that records should exist capturing communications relating to "various reports from investigators" and "professional reports" being requested from the commission and sent to the college.

[34] The appellant questions the reasonableness of the ministry's search given the expertise and knowledge of the manager delegated with the responsibility to conduct the search. The appellant submits that this individual would not be familiar with the commission's investigative record holdings before the merger. The appellant also argues:

[t]here is no supporting information to indicate that [this individual] had access to the specific information at the time of disclosure to verify it. There is no way, at the current time of the request, that he would know what he was looking for, unless he corroborated with OPP and had their consent.

[35] Finally, the appellant argues that the ministry's evidence that a named OPP officer sent certain materials to the college in the fall of 2015 should not be relied upon. In support of this position, the appellant submits that the ministry failed to specify the exact date or produce documentary evidence confirming when it occurred. The appellant submits that the college was in possession of the commission's investigative materials before fall 2015 and he provides examples he argues establish that the records were made available to the college's counsel and third party experts as early as 2013. Finally, the appellant submits that the named OPP officer could not have been

the individual who sent the investigative materials to the college, as he was not assigned to the file in the fall of 2015.⁸

Decision and Analysis

[36] 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 24.⁹ 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.

[37] 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.¹⁰ To be responsive, a record must be "reasonably related" to the request.¹¹

[38] 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.¹²

[39] 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.¹³ I disagree with the appellant's assertion that the manager who conducted the search for responsive records lacks the required experience and knowledge. This individual has worked with the commission since 2004 in various positions, taking on more responsibility over the years. I am satisfied that the search was conducted by an experienced employee knowledgeable in the subject matter of the request.

Police records

[40] Based on his submissions, it appears that the appellant concedes that records about him created by OPP officers are not in the ministry's custody and are located at the OPP vault. However, it is not clear whether the appellant takes the position that the ministry has control of the OPP records stored at an OPP facility for the purpose of section 10(1) of the *Act*.¹⁴

⁸ The appellant refers to an excerpt in a transcript in which the named officer advises that he returned to his regular police duties in April 2013 in support of this argument.

⁹ Orders P-85, P-221 and PO-1954-I.

¹⁰ Orders P-624 and PO-2559.

¹¹ Order PO-2554.

¹² Order MO-2185.

¹³ Orders M-909, PO-2469 and PO-2592.

¹⁴ Section 10(1) of *FIPPA* states, in part: "Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless ..."

[41] This office has developed a list of factors to consider in determining whether a record is in the custody or *under the control* of an institution for the purpose of section 10(1) of the *Act*.¹⁵ Included in this list are factors to consider where an individual or organization other than the institution holds the record, as in this appeal. In addition, this office has adopted a two-part test established by the Supreme Court of Canada on the question of whether an institution has control of records that are not in its physical possession.¹⁶

[42] Neither party specifically addressed the two-part test or the list of factors identified in the Notices of Inquiry inviting their representations on whether the requested records are *under the control* of the ministry.

[43] The ministry submits that in the fall 2015, a named OPP officer sent OPP records to the college but submits that it cannot provide a copy of them because the Solicitor General has custody or control over these records, which are now stored at the OPP vault. Despite its position that the records that respond to this part of the appellant's request are not within its custody or control, the ministry argues that it conducted a search for these records in its record-holdings and report that no records were located.

[44] I have considered the evidence presented and I find that the ministry conducted a reasonable search for the requested OPP records in its record holdings. I accept the ministry's evidence regarding its record maintenance policies and practices and am satisfied that it adduced sufficient evidence to show that it made a reasonable effort to identify and locate responsive records in its possession. As referenced above, the *Act* does not require the institution to prove with absolute certainty that further records do not exist. In addition, I considered the evidence from the ministry's counsel who has knowledge of the specific criminal matter involving the appellant. In light of that evidence, I do not accept the appellant's assertion that I should discount the ministry's evidence that a named OPP officer sent records to the college.

[45] Further, because of my findings below on the transfer/forward issue, it is not necessary for me to make a finding as to whether those OPP records at issue are *under the control* of the ministry for the purpose of section 10(1) of the *Act*.

¹⁵ *City of Ottawa v. Ontario*, 2010 ONSC 6835 (Div. Ct.), leave to appeal refused (March 30, 2011), Doc. M39605 (C.A.) stands for the proposition that in determining whether records are in the "custody or control" of an institution, a number of factors have been identified that should be considered contextually in light of the purpose of the legislation. See also Orders 120, MO-1251, PO-2306 and PO-2683.

¹⁶ In *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25, [2011] 2 SCR 306 the Supreme Court of Canada adopted the following two-part test on the question of whether an institution has control of records that are not in its physical possession:

1. Do the contents of the document relate to a departmental matter?
2. Could the government institution reasonably expect to obtain a copy of the document upon request?

[46] As mentioned above, the ministry asserts that it transferred or forwarded this part of the request under section 25.

[47] Section 25 of the *Act* states:

25 (1) Where an institution receives a request for access to a record that the institution does not have in its custody or under its control, the head shall make all necessary inquiries to determine whether another institution has custody or control of the record, and where the head determines that another institution has custody or control of the record, the head shall within fifteen days after the request is received,

(a) forward the request to the other institution; and

(b) give written notice to the person who made the request that it has been forwarded to the other institution.

25 (2) 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.

(3) For the purpose of subsection (2), another institution has a greater interest in a record than the institution that receives the request for access if,

(a) the record was originally produced in or for the other institution;
or

(b) in the case of a record not originally produced in or for an institution, the other institution was the first institution to receive the record or a copy thereof.

[48] As referenced above, during mediation the ministry advised that it transferred the portion of the appellant's request for OPP records, but inadvertently failed to notify the appellant that this transfer took place. However, I have reviewed the appeal file and cannot locate any documentation supporting the ministry's assertion that a transfer or forwarding of a part of the appellant's May 2017 request to the Solicitor General took place. Instead, it appears that the ministry wrote the appellant the year before, in May 2016, to advise that it was transferring the appellant's April 2016 request for "complete disclosure of all information gathered"¹⁷ regarding the investigation of his activities to

¹⁷ In May 2016, the appellant submitted a request to the Minister of Agriculture, Food and Rural Affairs (OMAFRA) for "complete disclosure of all information gathered with respect to this investigation of

the Solicitor General under section 25(2). The Solicitor General subsequently issued a decision letter to the appellant in 2016 granting him partial access to various records. The file for the appeal before me, however, contains no similar paper trail for the appellant's May 2017 request, which is the request at issue before me.¹⁸

[49] In my request for reply representations, I invited the ministry to respond to my observation that there was insufficient evidence before me to substantiate its claim that it transferred (or forwarded) part of the appellant's May 2017 request to the Solicitor General. In response, the ministry stated that it "continues to take the position that there was a transfer of [this] portion of the request." The ministry, however, did not provide any substantiating documentation.

[50] Having regard to the above, I find that there is insufficient evidence demonstrating that the ministry forwarded or transferred the part of the appellant's May 2017 request seeking access to OPP records he alleges the commission sent to the college to the Solicitor General under section 25(1) or 25(2). As the ministry has not established that it forwarded or transferred the relevant part of the appellant's May 2017 request, I will order the ministry to remedy this situation by ordering it to forward or transfer this part of the request to the Ministry of the Solicitor General, and provide the appellant with written notice that this has occurred.

Non-police records

[51] The appellant argues that records relating to regulatory or non-criminal investigations should exist, including whatever investigative work was completed before seconded OPP investigators were assigned to his file. 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.

[52] In this case, I am satisfied that the appellant has established a reasonable basis for concluding that records relating to regulatory or non-criminal investigations concerning him should exist in the ministry's record holdings, but were not located by the searches conducted. I note that the ministry itself concedes that the appellant was the subject of "numerous regulatory, civil and investigative matters."

myself, including the names of "confidential informants", as well as a copy of the un-redacted Information to Obtain (ITO) in this matter". OMAFRA notified the appellant by letter that it had transferred the appellant's request to the Ministry of the Attorney General, which subsequently transferred the request to the Ministry of the Solicitor General. The Ministry of the Solicitor General responded to the request by granting the appellant partial access to officers' notes, surveillance-related records, occurrence summaries and other records generated by the Ontario Provincial Police (OPP). The appellant appealed the Ministry of the Solicitor General's decision to this office and that appeal was resolved by Order PO-4037.

¹⁸ In addition to not being able to locate a copy of the ministry's transfer letter to the Ministry of the Solicitor General, I note that the appellant asserts in his representations that he did not receive a letter in 2017 from the Ministry of Solicitor General notifying him of its receipt of the transferred request.

[53] I found above that the scope of the request before me in this appeal includes investigative records the appellant alleges the commission sent to the college between March 1, 2013 and April 1, 2016. I have reviewed the ministry's evidence and find it insufficient to demonstrate that the ministry conducted a reasonable search for records apart from the 2013 police investigation. Given the parties' evidence that the appellant was the subject of several investigations, I find that a reasonable search would have looked beyond the records created by OPP officers. The steps the ministry submits it took in responding to the request only speak to its efforts to locate OPP records. There is insufficient evidence before me to establish that a search for records that would inform the appellant about what, if any, non-police records were sent to the college. Instead, it appears that the ministry is relying merely on the claim that it would be a rare occasion for a civilian investigator to provide investigative materials to the college, which is speculative and does not support the ministry's position in this appeal.

[54] Having regard to the above, I order the ministry to conduct a further search of its electronic and physical record-holdings for regulatory or non-criminal records that were sent to the college from March 1, 2013 to April 1, 2016.

ORDER:

1. I find that the ministry's search of its own record holdings for OPP records the appellant alleges the commission sent to the college is reasonable and dismiss this part of the appeal.
2. I order the ministry to either transfer or forward, to the Ministry of the Solicitor General, the part of the appellant's May 2017 request for records relating to the commission's OPP investigation, which the appellant alleges the commission sent to the college. The ministry is to treat the date of this decision as the date of the request and is to give written notice to the appellant that this has occurred.
3. I order the ministry to conduct a search of its record holdings for regulatory or non-criminal investigation records the commission sent the college between March 1, 2013 and April 1, 2016.
4. I order the ministry to provide representations to this office on the new search referred to in order provision 3, within 30 days of the date of this order, including an affidavit outlining the following:
 - a. The names and positions of the individuals who conducted the searches;
 - b. Information about the types of files searched, the nature and location of the search, and the steps taken in conducting the search;
 - c. The results of the search; and

- d. If the search described in order provision 3 does not yield any further records, an explanation.

The ministry's representations and affidavit may be shared with the appellant, unless there is an overriding confidentiality concern. The procedure for submitting and sharing representations is set out in Practice Direction Number 7 of the IPC's *Code of Procedure* and is available on the IPC's website. The ministry should indicate whether it consents to the sharing of its representations and affidavit with the appellant.

5. If the ministry locates additional responsive records as a result of its further search, I order it to issue an access decision to the appellant in accordance with the requirements of this *Act*, treating the date of this order as the date of the request.
6. The timelines noted in this order may be extended if the ministry is unable to comply in light of the current COVID-19 situation.
7. I remain seized of this appeal to deal with: any outstanding issues arising from order provisions 2 to 5; and, if the parties are unable to resolve them, any additional time that may be required by the ministry to comply with the order due to the current COVID-19 situation.

Original signed by: _____
Jennifer James
Adjudicator

September 17, 2020 _____