Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4335

Appeal PA20-00767

London Health Sciences Centre

January 11, 2023

Summary: London Health Sciences Centre (the hospital) received a request under the *Freedom of Information and Protection of Privacy Act* for various records related to the requester, who was a hospital employee. At issue in this appeal is the hospital's decision to withhold three groups of records under the exclusion at section 65(6)3 (employment or labour relations) and certain information and one group of records as not within the hospital's custody or control. The reasonableness of the hospital's search is also disputed. In this order, the adjudicator upholds the hospital's access decision and the reasonableness of its search, and dismisses the appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 10(1), 24, 65(6)3, and 65(7)3.

Orders Considered: Orders PO-4224 and MO-2660.

Cases Considered: *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25 (CanLII), [2011] 2 SCR 306.

OVERVIEW:

[1] London Health Sciences Centre (the hospital) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*), as follows:

> I, [name], employee number [number], request a copy of all notes, files, transcripts, emails, memos, recording, minutes from all meetings

> pertaining to myself in all correspondence to and from and not excluding outside queries with regard to my health and limitations during my employment at LHSC (2010 to present), all medical restrictions, grievances, health reports, accommodations, AEMS reports for the years 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017 , 2018, 2019, 2020 all levels of management, human resources, Occupational health and local Union Local [number].

[2] The requester clarified that he would like copies of all correspondence referencing his name and employee number to and from specified hospital personnel and leaders. The requester also clarified that he wanted "a copy of all notes, transcripts, efiles, emails and recordings taken by all participants present at the meeting of [a specified date] - participants at the meeting included [specified hospital and Union individuals]."

[3] In response to the request, the hospital issued an access decision, granting partial access to the responsive records.[1] The hospital provided an index of records, and withheld information in the records, claiming the exclusion at section 65(6) (employment or labour relations) of the *Act*, and some exemptions.[2] In addition, it noted that the records requested from the Director of People Services for a specified meeting no longer exist due to a technical/computer-related issue. The hospital also noted that the union declined to share the records from that meeting with the hospital's Privacy Office because of an active grievance by the union on behalf of the requester.

[4] The requester, now the appellant, appealed the hospital's access decision to the Information and Privacy Commissioner of Ontario (IPC).

[5] The IPC appointed a mediator to explore resolution. The hospital provided information regarding the search for, and nature of, the responsive records.[3] Furthermore, the hospital clarified that it does not have custody or control over the union representative's records. The appellant advised the mediator that he continues to seek full access to "records 2, 3, and 4", and that he challenges the hospital's position on both custody or control of the union records and the reasonableness of the hospital's search (specifically as to the hospital's Department of Peoples Services).

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[1] The hospital released 26 of the 92 pages of responsive records in full, and one page in part.

[2] These exemptions are no longer relevant, given my findings on the issue of the exclusion at section 65(6)3.

[3] In addition, the hospital clarified that all copies of all available personal health information collected for the research studies were provided to the appellant, with the exception of coded data; the hospital denied access to that data under section 51 exclusions in Part V of the *Personal Health Information Protection Act* (*PHIPA*). The appellant did not indicate that he wished to pursue access to this information at mediation; however, he attempted to raise this issue at adjudication during the inquiry. Access to this information is not within the scope of this present appeal, so I do not discuss it in this order. Since access through *PHIPA* was not an issue listed for adjudication, and given my finding that that all the records withheld are excluded under section 65(6)3, it is not necessary to decide whether *PHIPA* would provide the appellant with "flow- through" rights to *FIPPA*.

[6] Since no further mediation was possible, the appeal moved to the adjudication stage of the appeal process, where an adjudicator may conduct a written inquiry.

[7] I conducted an inquiry, seeking written representations from the hospital and the appellant on the exclusions and exemptions claimed by the hospital, and the issues of custody or control of the union representative's records and the reasonableness of the hospital's search; I also asked the union for representations about the custody or control of its representative's records. The parties provided representations in response, which I shared amongst them for replies.

[8] For the reasons that follow, I uphold the hospital's decision to withhold the records in groups 2, 3, and 4 under section 65(6)3 of the *Act*, as well as the hospital's determination that the records in group 5 are not in its custody or control. I also uphold reasonableness of the hospital's search, and dismiss the appeal.

RECORDS:

[9] During the inquiry, I clarified with the hospital that what was meant by "records" 2, 3, 4, and 5 was not actually four records, but four groups of records. The hospital also provided a revised index of records with its representations, indicating that all records in groups 2, 3, and 4 were withheld under the exclusion at section 65(6)3, and that it has no custody or control over the union records in group 5, under section 10(1) of the *Act*.[4] The hospital provided the following description of each group of records:

Record group	Description
2	Records from the president and CEO and personnel in Medicine and Occupational Health - internal email correspondence and memoranda discussing restrictions on the appellant's work program, the appellant's training requirements, and the investigation of an adverse event report filed by the appellant involving an unsafe work refusal.
3	Records from the Director of People Services - records relating to grievances filed by the appellant under a specified collective agreement between the hospital and the union.
4	Records from Corporate Counsel - internal email correspondence, meeting notes, and a report prepared by the hospital's legal counsel regarding the investigation of an adverse event report filed by the appellant involving an unsafe work refusal.

[4] I have omitted mention of portions of the revised index of records, regarding records and/or exemptions that are not (or are no longer) at issue.

5	Records of a named union representative.

ISSUES:

A. Does the section 65(6) exclusion for records relating to labour relations or employment matters apply to the records in groups 2, 3 and 4?

B. Are the records in group 5 "in the custody" or "under the control" of the institution under section 10(1)?

C. Did the hospital conduct a reasonable search for records?

DISCUSSION:

Issue A: Does the section 65(6) exclusion for records relating to labour relations or employment matters apply to the records in groups 2, 3 and 4?

[10] The hospital withheld all the records in groups 2, 3 and 4, in full, under the exclusion at section 65(6)3. For the reasons that follow, I uphold the hospital's decision to do so.

[11] Section 65(6) of the *Act* excludes certain records held by an institution that relate to labour relations or employment matters. If the exclusion applies, the record is not subject to the access scheme in the *Act*, although the institution may choose to disclose it outside of the *Act*'s access scheme.[5]

[12] The purpose of this exclusion is to protect some confidential aspects of labour relations and employment-related matters.[6]

[13] Section 65(6)3 states:

> Subject to subsection (7), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:
>
> > 3. Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest[.]

[14] If section 65(6) applies to the records, and none of the exceptions found in section 65(7) applies, the records are excluded from the scope of the *Act*.

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[5] Order PO-2639.
[6] *Ontario (Ministry of Community and Social Services) v. John Doe*, 2015 ONCA 107 (CanLII).

[15] If section 65(6) applied at the time the record was collected, prepared, maintained or used, it does not stop applying at a later date.[7]

What types of records are covered by this exclusion?

[16] The types of records excluded from the *Act* by section 65(6) are those relating to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue.[8]

[17] Section 65(6) does not exclude all records concerning the actions or inactions of an employee of the institution simply because their conduct could give rise to a civil action in which the institution could be held vicariously liable for its employees' actions.[9]

"In relation to"

[18] For the collection, preparation, maintenance or use of a record to be "in relation to" one of the three subjects mentioned in this section, there must be "some connection" between them.[10]

[19] The "some connection" standard must, however, involve a connection relevant to the scheme and purpose of the *Act*, understood in their proper context. For example, given that accountability for public expenditures is a core focus of freedom of information legislation, accounting documents that detail an institution's expenditures on legal and other services in collective bargaining negotiations do not have "some connection" to labour relations.[11]

"Labour relations"

[20] The term "labour relations" refers to the collective bargaining relationship between an institution and its employees, as governed by collective bargaining legislation, or to similar relationships. The meaning of "labour relations" is not restricted to employer- employee relationships.[12]

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[7] *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 509.
[8] *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.). The CanLII citation is "2008 CanLII 2603 (ON SCDC)."
[9] *Ministry of Correctional Services*, cited above.
[10] Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).
[11] Order MO-3664, *Brockville (City) v. Information and Privacy Commissioner, Ontario*, 2020 ONSC 4413 (Div Ct.).
[12] *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.); see also Order PO-2157.

Section 65(6)3: labour relations or employment-related matters in which the institution has an interest

[21] For section 65(6)3 to apply, the institution must establish that:

1. the records were collected, prepared, maintained or used by an institution or on its behalf;

2. this collection, preparation, maintenance or use was in relation to meetings, consultations, discussions or communications; and

3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest.

Records in group 3

[22] During the inquiry, in response to the hospital's representations about the records in group three, the appellant expressed agreement that these records would meet the three-part test for section 65(6)3, if the records are as described by the hospital. Having reviewed the records, I confirm that they are as described by the hospital. Therefore, the hospital's decision to apply section 65(6)3 to these records is upheld.[13]

Records in groups 2 and 4

[23] Based on the parties' representations, there is a dispute about whether the hospital collected prepared, maintained, or used these records on its own behalf or, rather, on the appellant's behalf. If the hospital did so on its own behalf, then the parties disagree with respect to whether the communications or meetings are about matters in which the hospital has an interest as employer.

[24] The hospital's detailed representations about the records in groups 2 and 4 were shared with the appellant, and they generally agree that the records relate to matters such as the appellant's accommodation, training, and work schedule, as a hospital employee at the time. To summarize, the hospital describes the group 2 records as email messages and memoranda prepared by staff members in the hospital's Occupational Health and Safety Services and Medicine departments. It describes the group 4 records as consisting of email messages, meeting notes, and a report that were prepared, maintained, and used by the hospital's internal legal counsel. The hospital submits that it has a clear interest in the appellant's accommodation, training, and work schedule because these matters involve specified legal obligations which the hospital,

[13] Given my finding, it is not necessary to consider the hospital's additional claim that these records are also excluded under section 65(6)1.

as an employer, must meet.[14]

[25] The appellant argues that the hospital collected, prepared, and maintained the records, but did so on his behalf, as he was requesting an accommodation based on a disability. He says accommodation is a shared responsibility between him and his employer, union, and health care provider.[15] He also submits that his accommodation, placement, training, and scheduling of work was tailored to meet his medical needs and were not matters in which the hospital had an interest.

[26] Having considered the parties' representations and the records themselves, I find that the records in groups 2 and 4 were collected, prepared, maintained, and/or used by the hospital or on its behalf (under part one of the test), and that the meetings, consultations, discussions or communications are about labour relations or "employment- related" matters in which it has an interest.

[27] I disagree with the appellant's view, essentially, that the hospital's collection, preparation, and maintenance of the records relating to his accommodation, training, and work schedule as a hospital employee was on his behalf alone, and that the meetings consultations, discussions or communications regarding his accommodation, training, and work schedule are matters in which the hospital does not have an interest. Such matters inherently involve both the employer and the employee. Clearly, the hospital, as employer, has an interest in human resources matters involving the appellant, its employee.

[28] For these reasons, I find that the records in groups 2 and 4 are excluded under section 65(6)3 of the *Act*.

Section 65(7): exceptions to section 65(6)

[29] If the records fall within any of the exceptions in section 65(7), the records are not excluded from the application of the *Act*. Section 65(7) states that the *Act* applies to certain "agreements," or an expense account of certain specifications, involving the institution.

[30] The appellant submits that the exception to the exclusion found at section 65(7)3 applies to the records in group 2 because he requested an accommodation that was "agreed" to by him, the hospital, and the union.[16]

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[14] The hospital cites Order M-830. The hospital also discusses its obligations under the *Ontario Human Rights Code,* the *Occupational Health and Safety Act*, and the hospital's collective agreement with the union.

[15] He cites the Ontario Human Rights Commission's policy paper entitled "Preventing Discrimination based on Mental Health Disabilities and Additions."

[16] He also argues that the records mentioned in the exceptions at section 65(7) relate to the conclusion of a process, whereas the matters to which the exclusion at section 65(6) relate are in regards to events in a process, citing Order PO-2947. However, I am not persuaded that this is helpful to him: if anything,

[31] Section 65(7)3 says that the *Act* applies to:

> . . . an agreement between an institution and one or more employees resulting from negotiations about employment-related matters between the institution and the employee or employees."

[32] The hospital submits, and I find, that the records in group 2 do not fall within the exception at section 65(7)3 because they are not "agreements" between the hospital and the appellant, but are, rather, internal email communication and memoranda between hospital personnel, and do not reflect negotiated final agreements between the hospital and any of its employees. The hospital submits, and I agree, that an "agreement" is the product of a negotiated process between parties, such as a severance agreement[17] or collective bargaining agreement.[18]

[33] In conclusion, the records in group 2 are not subject to the exception at section 65(7)3. For these reasons set out above, I uphold the hospital's decision to withhold them and the records in group 4 under section 65(6)3. Therefore, the appellant does not have a right of access to these records under the *Act*.

Issue B: Are the records in group 5 "in the custody" or "under the control" of the institution under section 10(1)?

[34] The hospital and the union take the position that records in group 5 (that is, records of a named union representative) are in the custody or the control of the union, and not the hospital. For the reasons that follow, I agree, and as such, the appellant does not have a right of access to these records under section 10(1) of the *Act*.

[35] Section 10(1) provides for a general right of access to records that are in the custody or under the control of an institution governed by the *Act*. It reads, 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 . . .

[36] Under section 10(1), the right of access applies to a record that is in the custody *or* under the control of an institution; the record need not be both.[19]

[37] There are exceptions to the general right of access set out in section 10(1).[20]

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the records in group 2 are emails and memoranda reflecting the process of reaching a concluding negotiated agreement, and not the actual agreement itself, thus undermining the appellant's argument that the exception applies.

[17] The hospital cites Order MO-1622.

[18] The hospital cites *Canadian Medical Protective Association v. Loukidelis*, 2008 CanLII 45005 (ON SCDC) at para 35.

[19] Order P-239 and *Ministry of the Attorney General v. Information and Privacy Commissioner*, 2011 ONSC 172 (Div. Ct.).

[20] Order PO-2836.

The record may be excluded from the application of the *Act* by section 65, or may be subject to an exemption from the general right of access.[21] However, if the record is not in the custody or under the control of the institution, none of the exclusions or exemptions need to be considered since the general right of access in section 10(1) is not established.

[38] The courts and the IPC have applied a broad and liberal approach to the custody or control question.[22] In deciding whether a record is in the custody or control of an institution, the relevant factors are considered in context and in light of the purposes of the *Act*.[23]

[39] Here, the union has physical possession of the records in group 5, and the hospital unsuccessfully made efforts to obtain these records from the union. The question then becomes whether the hospital has control of these records.

Do records in group 5 meet the two-part test regarding whether an institution has control of records that are not in its physical possession?

[40] The Supreme Court of Canada has 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?[24]

[41] Here, the request for records in group 5 is a request for records of a named union representative.

[42] The hospital states that the records do not relate in any way to its mandate as a healthcare provider. In addition, the hospital states that union records are created by employees or representatives of the union, in connection with their duties as employees or representatives of the union, and not on behalf of the hospital. The hospital states that the union may create and maintain records that are similar in nature to records held by hospital, such as recorded notes about meetings where representatives from the hospital and the union are present. The hospital submits that, while notes generated by its own employees are under the control of the hospital and are subject to

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[21] Found at sections 12 through 22 and section 49 of the *Act*.
[22] *Ontario (Criminal Code Review Board) v. Hale*, 1999 CanLII 3805 (ON CA), [1999] O.J. No. 4072; *Canada Post Corp. v. Canada* (*Minister of Public Works*), 1995 CanLII 3574 (FCA), [1995] 2 FC 110; and Order MO-1251.
[23] *City of Ottawa v. Ontario*, 2010 ONSC 6835 (Div. Ct.), leave to appeal refused (March 30, 2011), Doc. M39605 (C.A.).
[24] *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25 (CanLII), [2011] 2 SCR 306.

the *Act*, notes generated by the union remain in the custody and under the control of the union alone. In addition, the hospital states that it has no authority to regulate the use of union records.

[43] The union explains that it is the legal bargaining agent for a unit of hospital employees. It says that, in the normal course, union records about matters including workplace grievances are created by elected or appointed workplace representatives, and elected or appointed officers and union representatives. In some cases, those representatives are hospital employees who agree to undertake a role in their union; these individuals assist the union in the fulfilment of the union's representational obligations under the *LRA*. The union states that the records which its representatives create in their capacity as union representatives are for the exclusive use of the union, and are held in the exclusive custody and control of the union.

[44] While the appellant does not address the legal test and relevant factors, he says that he is seeking records in the custody or control of the hospital regarding any discussions or resolutions between the hospital and the union representatives on his behalf, relating to any accommodation, placement, training, or grievance discussions.

Analysis/findings

[45] Regarding step one of the two-part test for control of records not in an institution's physical possession, the Supreme Court of Canada provided this guidance:

> Step one of the test acts as a useful screening device. It asks whether the record relates to a departmental matter. If it does not, that indeed ends the inquiry. The Commissioner agrees that the *Access to Information Act* is not intended to capture non-departmental matters in the possession of Ministers of the Crown. If the record requested relates to a departmental matter, the inquiry into control continues.[25]

[46] In Order MO-2660, the IPC recognized that "[a]ll institutions operate through their employees" and that "[e]mployees are the means by which all institutions provide services to the public." Although this recognition is found in the context of appeals considering whether records are excluded from the scope of the *Act*,[26] I find this reasoning relevant here. I adopt it for the purpose of considering the hospital's position that records in group 5 do not relate to its mandate, as I find no basis for concluding that the hospital carries out its business without its employees. Therefore, broadly speaking, records in group 5 could be said to relate generally to employment matters, which in this context is a hospital matter, since the hospital must employ people to carry out its healthcare mandate. However, given that the records would not be expected to represent the hospital's activities but rather the union's, it is arguable that

[25] *Ibid*, paragraph 55.
[26] See Order MO-2660, and, for example, Orders MO-3904 and PO-4223.

the records to do not relate to a hospital matter.[27] I do not need to decide this, however, given my finding below.

[47] Since both parts of the *National Defence* test must be met for there to be a finding of control, I now turn to part two of the test. In order to assess whether the hospital could reasonably expect to receive the union's request on request, I will examine various factors that the IPC has found helpful in determining custody or control where an institution does not have physical possession of the records, including:

- If the record is not in the physical possession of the institution, who has possession of the record, and why?[28]
- Who owns the record?[29]
- What are the circumstances surrounding the creation, use and retention of the record?[30]
- Was the individual who created the record an agent of the institution for the purposes of the activity in question?
- What is the customary practice of the individual who created the record and others in a similar trade, calling or profession in relation to possession or control of records of this nature, in similar circumstances?[31]
- Is the individual, agency or group with physical possession of the record an "institution" for the purposes of the *Act*?
- Are there any contractual provisions between the institution and the individual who created the record that give the institution an express or implied right to possess or otherwise control the record?[32]

[48] The evidence before me is that the records in group 5 (if any) is are records created by a named union representative, as an agent of the union (not the hospital), in relation to certain grievance issues of the appellant. Furthermore, the evidence before me is that these records are not in the hospital's physical possession and are inaccessible to its employees, given the nature of their respective roles in dealing with unionized employees; both the hospital and the union emphasize this. The hospital states that it does not have any statutory or contractual authority to access the requested records. Both the hospital and the union provided background information

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[27] See Order MO-3471.
[28] Order PO-2683.
[29] Order M-315.
[30] Order PO-2386.
[31] Order MO-1251.
[32] *Greater Vancouver Mental Health Service Society v. British Columbia (Information and Privacy Commissioner)*, 1999 CanLII 6922 (BC SC).

about the nature of records created and maintained to deal with matters related to employees that are represented by the union. The union is not an institution under the *Act*.[33] Based on all of this evidence, I find that the factors listed above are clearly relevant here, and that they all weigh in favour of finding that the hospital does not have control of any records in group 5. Given the respective roles of the hospital and the union, it is not reasonable to expect that the hospital could obtain a copy of the records from the union.

[49] I note that my findings in this regard are consistent with those in Order PO-4224, where the adjudicator found that records in the hands of a professor in the context of his member of a union were not in the university's custody or control. In my view, the reasoning in Order PO-4224 is applicable here.

[50] In summary, the records in group 5 do not meet the two-part test for being in the hospital's control. Therefore, I uphold the hospital's decision that it does not have custody or control of any records in group 5 and that, therefore, the appellant does not have a right of access to them under section 10(1) of the *Act*.

Issue C: Did the hospital conduct a reasonable search for records?

[51] As noted in the Overview, at mediation, the appellant challenged the reasonableness of the hospital's search (specifically as to the hospital's Department of Peoples Services), so the issue of reasonable search was added to the appeal. For the following reasons, I uphold the reasonableness of the hospital's search for responsive records.

[52] If a requester claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 24 of the *Act*.[34] 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.

[53] 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.[35]

[54] 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.[36] The IPC will order a further search if the institution does not provide enough evidence to show that it has made a reasonable effort to

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[33] See the following link for a directory of institutions under the *Act*: Directory of Institutions | Ontario.ca.
[34] Orders P-85, P-221 and PO-1954-I.
[35] Order MO-2246.
[36] Orders M-909, PO-2469 and PO-2592.

identify and locate all of the responsive records within its custody or control.[37]

[55] The *Act* does not require the institution to prove with certainty that further records do not exist. However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;[38] that is, records that are "reasonably related" to the request.[39] The institution must provide a written explanation of all steps taken in response to the request, and details of any searches the institution carried out including: who conducted the search, the places searched, who was. An institution is asked to provide this information in an affidavit from the person or people who conducted the search.

The hospital's evidence

[56] The hospital provided detailed affidavit evidence from its privacy consultant, who coordinated the hospital's response to the appellant's request, regarding her experience in processing requests under the *Act*, and specifically with respect to her efforts to clarify the appellant's request and direct searches for responsive records. This affidavit was shared with the appellant, so it is not necessary to set out all of its details in this order.

[57] To summarize, the privacy consultant facilitated a search for responsive records, using the appellant's past and present names, and his employee ID, and with regard to the hospital employees named in his request. The privacy consultant attached copies of her correspondence to the employees in each of the respective departments and details about how many records were found. I will discuss the response from Peoples Services, as this was the aspect of the search flagged by the appellant at mediation, and the cause of raising reasonable search in this appeal.

[58] With respect to the response from Peoples Services, the Director of Human Resources informed the privacy consultant that certain responsive records were maintained outside the appellant's employee file. The director then sent the privacy consultant, via interoffice mail, a paper copy of all records responsive to the request that were not maintained in his employee file.

[59] Aside from the meeting notes that were inadvertently deleted when the laptop of the Director of Human Resources was upgraded (as described to the appellant at mediation, and now in the affidavit), the privacy consultant attests that she has no reason to believe that further responsive records existed but had been destroyed as of September 2020.

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[37] Order MO-2185.
[38] Orders P-624 and PO-2559.
[39] Order PO-2554.

The appellant's representations

[60] The appellant maintains his position that the hospital did not conduct a reasonable search, and that the privacy analyst has not shown a reasonable search was conducted for all of the requested medical information, beyond what was provided. The relevance of his representations about search were somewhat difficult to see as they mainly describe his views about what the responsive records should say (or not say), and who was involved in various communications (or not involved). The appellant mentions that in his pre-mediation communications with the privacy analyst about the scope of his request, he identified a certain person as the coordinator for clinical studies who would be the contact person for the information he sought. He asserts that he is entitled to any email correspondence involving a certain individual, regarding his (the appellant's) training and accommodation.

Analysis/findings

[61] Having reviewed the evidence provided by the hospital, and the appellant's representations, I am satisfied that the hospital provided sufficient evidence that it conducted a reasonable search; I am not persuaded that the appellant has raised a reasonable basis to believe that additional records exist.

[62] I am satisfied that the hospital tasked an experienced employee in the subject matter of the appellant's request to facilitate searches for responsive records, and that she, in turn, asked relevant experienced employees to search for responsive records. The evidence establishes that these employees conducted searches using relevant search terms, and that the Director of Human Resources even provided records to the privacy analyst that were not kept in his file, based on the director's knowledge about the subject matter of the request.

[63] In my view, the appellant asserts that the hospital's search was unreasonable, but does not sufficiently explain why or how that is. In addition, it is not clear how the appellant's mention of a certain contact is relevant to the aspect of the search specified in the Mediator's Report as being in dispute, if at all. His expectations about what records say (or do not say) do not undermine the detailed evidence from the hospital about its search efforts, and are not relevant to whether the hospital conducted a reasonable search. Likewise, his views about who was involved in certain communications are not relevant to an assessment of whether the hospital employees involved in the searches conducted took reasonable steps to respond to his request. Since I have found that the hospital sufficiently established that they did, I uphold the hospital's search as reasonable, and dismiss the appeal.

ORDER:

I uphold the hospital's decision and the reasonableness of its search, and dismiss the appeal.

Original Signed By: January 11, 2023

Marian Sami
Adjudicator