

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-4435

Appeal PA21-00516

Ministry of Education

August 29, 2023

**Summary:** The sole issue in this appeal is whether the Ministry of Education (the ministry) conducted a reasonable search for records responsive to the appellant's request under the *Freedom of Information and Protection of Privacy Act*. In this order, the adjudicator finds that the ministry conducted a reasonable search 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.

**Orders Considered:** Order MO-4432.

### OVERVIEW:

[1] The Ministry of Education (the ministry) received a request pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

1. A signed and executed copy of an agreement entitled "Addendum No 1 to Google Apps for Education Agreement" or an agreement that would match what was written in the IPC's [Privacy Complaint Report MC17-52] in paragraph 7 on page 3. The Toronto District School Board claims this agreement was signed and executed by the Ministry of Education on August 26, 2013 with Google being the other party.

2. Evidence (including the agreement) that the Ministry of Education entered into a formal agreement directly with Google around G Suite for Education. To be extra clear, based on the IPC's written comments in the privacy report, I suspect there is something more than the "Addendum No 1 to G Suite for Education" template that was sent to the Ontario school boards on or after September 30, 2013 based on the information already shared in [a previous access request].
3. The document/record that demonstrates that the Ministry of Education communicated to the Toronto District School Board that the "Addendum No 1 to Google Apps for Education Agreement" came into effect on August 26, 2013."

[2] The ministry issued a decision indicating that after a thorough search, it determined there are no records responsive to the request. The ministry further indicated that "while [it] created the contract addendums to address privacy obligations, the addendums are to be used along with the standard agreements that each school board signs with. . .Google."

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

[4] During mediation, the appellant indicated that he filed the appeal because he believes that there is an executed agreement between the ministry and Google. The appellant also advised that he believes there must be documented communication between Google and the ministry that states both parties agreed to execute the addendum and that the execution of the document took place on August 26, 2013. He believes that these records exist because in Privacy Complaint Report MC17-52, issued by the IPC, it states that the "Ministry of Education executed the document."

[5] The ministry provided the appellant with a copy of the "Addendum No 1 to Google Apps for Education Agreement" (the addendum) dated August 26, 2013 and a memorandum to school boards dated September 30, 2013 (the memo).

[6] The ministry advised that it had created and negotiated the addendum for the school boards to use with the standard agreements that each school board signs with Google, as noted in the memo. It explained that it had not signed a contract with Google itself and that the addendum was not executed on August 26, 2013. The ministry also confirmed that it does not have a document that indicates that the addendum came into force on August 26, 2013.

[7] Since no further mediation was possible, the appeal was transferred to the adjudication stage of the appeal process.

[8] The adjudicator originally assigned to this appeal conducted an inquiry in which she sought and received representations from the parties. The ministry submitted representations, which were shared in accordance with the IPC's *Practice Direction 7*. The adjudicator then invited representations from the appellant, and the Toronto

District School Board (TDSB) as an affected party. The appellant and TDSB submitted representations in response.

[9] The file was assigned to me to continue the adjudication of the appeal. I have reviewed the file, including all the parties' representations and supporting documents and concluded that I do not need further representations from them before rendering a decision.

[10] In this order, I find that the ministry conducted a reasonable search and dismiss the appeal.

## **DISCUSSION:**

[11] The sole issue to be determined is whether the ministry conducted a reasonable search for responsive records.

[12] 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*.<sup>1</sup> 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.

[13] 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.<sup>2</sup>

[14] 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;<sup>3</sup> that is, records that are "reasonably related" to the request.<sup>4</sup>

[15] 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.<sup>5</sup> 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 identify and locate all of the responsive records within its custody or control.<sup>6</sup>

[16] If the requester failed to respond to the institution's attempts to clarify the access request, the IPC may decide that all steps taken by the institution to respond to

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<sup>1</sup> Orders P-85, P-221 and PO-1954-I.

<sup>2</sup> Order MO-2246.

<sup>3</sup> Orders P-624 and PO-2559.

<sup>4</sup> Order PO-2554.

<sup>5</sup> Orders M-909, PO-2469 and PO-2592.

<sup>6</sup> Order MO-2185.

the request were reasonable.<sup>7</sup>

### **Representations, analysis and findings**

[17] The ministry submits that it conducted a reasonable search for records related to the request and that none were located. In addition, the ministry provided explanations as to why the records sought by the appellant do not exist.

[18] Along with its representations, the ministry provides an affidavit from a Senior Policy Advisor (the advisor) explaining his search efforts and the results of the search. The advisor has worked in the Curriculum, Assessment, and Student Success Policy Branch (CASSPB) of the Student Achievement Division since October 2016. The advisor affirms that his responsibilities include searching for records in response to requests under the *Act* that relate to policy files assigned to him.

[19] I have reviewed the ministry's representations and affidavit, and find that it conducted a reasonable search for records responsive to the appellant's request.

[20] In its representations, the ministry explains that the request was assigned to an advisor in the CASSPB of the Student Achievement Division based on the subject matter of the request, noting that that this division has oversight for the development of online and remote learning policies, and the development of online courses and digital resources. In his affidavit, the advisor affirms that he and a colleague from the same division carried out the search. Based on the foregoing, I am satisfied that the ministry's search was conducted by experienced employees, knowledgeable in the subject matter of the request.

[21] The advisor affirms that according to the CASSPB's record retention policy, hard-copy records from 2013 would have been destroyed by the time the ministry received the request. As a result, the search was conducted on the CASSPB's shared hard drive, where electronic records relating to ministry licenses for digital learning tools are stored. As the ministry and the advisor explain, two records – the addendum and the memo – were located, and while these were not responsive to the request, they related to the subject matter of the request. As noted above, the addendum and memo were provided to the appellant during mediation. I find that the ministry provided relevant details about how it conducted its search and the results of its search. Accordingly, I am satisfied that the ministry made reasonable efforts to locate records reasonably related to the request.

[22] In his request, the appellant seeks a "signed and executed copy" of the addendum and other records related to it. He cites Privacy Complaint Report MC17-52 as the basis for which he believes these records exist. This report was based on a privacy complaint from the parent of a student, objecting to the TDSB's use of Google's G Suite for Education services and alleging that this use contravened the *Municipal*

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<sup>7</sup> Order MO-2213.

*Freedom of Information and Protection of Privacy Act (MFIPPA)*. The appellant cites the following excerpt from paragraph 7 of the report which reads: "The Ministry of Education and Google later executed Addendum No. 1 to Google Apps for Education Agreement (the Addendum)."

[23] The advisor affirms that the statement in paragraph 7, that the ministry and Google "executed" the addendum, is incorrect and that the ministry did not enter into any such agreement with Google. By way of background, the advisor explains that the ministry and Google, along with other stakeholders, formed a working group to develop a sample addendum for school boards to consider incorporating into their own agreements with Google, to address requirements they needed to meet under *MFIPPA*. The advisor notes that this sample addendum is the addendum referred to in the request, and was dated August 26, 2013. He explains that the ministry shared the addendum with the school boards through the memo referred to above.

[24] The advisor affirms that he confirmed with an individual from the ministry's Legal Services Branch, who was a member of the working group, that the ministry was never the intended signatory of the addendum. He explains that school boards are legal entities separate from the ministry, and that the ministry was not a party to the agreements between Google and any of the school boards.

[25] The ministry's position is that the addendum was a template, provided to school boards for their own contracting purposes with Google, and was not meant for the ministry itself. The memo and addendum both support this position. The memo states:

"the Ministry of Education has created contract addendums to address these privacy obligations [under *MFIPPA*, which are] to be used along with the standard agreements that each board signs with...Google..."

[26] Meanwhile, the addendum sets out that it is incorporated by reference into the Google Apps for Education Agreement, which is entered into by and between Google and the customer identified in the order form. In the addendum, it is also explained that a "customer" is an "educational institution":

Customer represents that it is an Educational Institution. "Educational Institution" means any *publicly funded elementary or secondary school or school board or educational program operated by school boards* throughout the Province of Ontario, and further includes First Nation and native schools in Ontario, operating under the Ontario educational curriculum as such curriculum may exist from time to time, publicly funded Faculties of Education and Ontario teacher training institutes...

[my emphasis]

[27] I can understand why the appellant refers to paragraph 7 of Privacy Complaint Report MC17-52 in support of his belief that records responsive to the request exist.

However, based on my review of the ministry's representations, the addendum and the memo, I am satisfied that a further search would not yield responsive records.

[28] The appellant submits that the addendum played a central role in the investigator's analysis and decision. I have reviewed this report and note that the parties were a parent of a TDSB student, the complainant, and the TDSB, the respondent. The ministry was not involved, nor was it asked to make representations, about the addendum in question or otherwise. Given the context provided in ministry's representations, the addendum and the memo, I am not persuaded that the excerpt from the report or the appellant's other arguments demonstrate a reasonable basis for concluding that responsive records exist.

[29] The appellant makes additional arguments with regard to the meaning and interpretation of the word "execute." However, these do not relate to the issue before me, which is whether the ministry conducted a reasonable search.

[30] As noted above, the adjudicator originally assigned to this appeal invited the TDSB to submit representations. The appellant made a related request to the TDSB, which resulted in Appeal MA21-00663 and Order MO-4432. The TDSB made similar representations in both appeals, and submitted the same affidavits documenting their searches in response to the request at issue in Appeal MA21-00663. The TDSB submits that if the addendum was executed in August 2013, it was between the ministry and Google, noting that any records, to the extent that they exist, are not in its custody and control, but rather the ministry's or Google's. In the alternative, the TDSB submits that if it did execute the addendum in August 2013, no responsive records to the appellant's request were discovered following its reasonable efforts to search for them.

[31] I do not find that the TDSB's representations of assistance in determining the issue before me, that is, whether the ministry conducted a reasonable search for records responsive to the appellant's request to the ministry.

[32] In light of my findings above, I conclude that the ministry has met its search obligations, as required under section 24 of the *Act* and am not persuaded that further searches would yield responsive records.

**ORDER:**

Original Signed by: \_\_\_\_\_  
Hannah Wizman-Cartier  
Adjudicator

\_\_\_\_\_ August 29, 2023