

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4444

Appeals PA21-00362 and PA21-00363

Ministry of Transportation

October 2, 2023

Summary: The Ministry of Transportation received two requests under the *Freedom of Information and Protection of Privacy Act* for access to records relating to the access of the appellant's information by third parties. The ministry issued two decisions granting full access to the responsive records. The appellant appealed the ministry's decisions to the Information and Privacy Commissioner of Ontario, because he believes further records responsive to his requests should exist. In this order, the adjudicator dismisses both appeals because she finds that additional information requested by the appellant is outside the scope of one appeal and that the ministry conducted a reasonable search for responsive records in both appeals.

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

OVERVIEW:

[1] The Ministry of Transportation (the ministry) received two requests under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The first request¹ is for:

Can you please provide me with all the list of individuals who have obtain[ed] my name, through a Service Ontario location or online[?] From August 15-2020 to March 31-2021.

¹ Appeal PA21-00362.

[2] The second request² is for:

In regard to the information I am requesting, can you please provide me with all the list of corporations and licence organizations with the Ministry of Transportation and Driver Licence Database, and Vehicle Registration Database who have retrieve[d] my information from the system[?]

The date I am requesting is from August 15, 2020 to March 31, 2021.

[3] The ministry issued a decision in response to each request granting access to the responsive records in full.

[4] The appellant appealed both of the ministry's decisions to the Information and Privacy Commissioner of Ontario (IPC) because he believes further records responsive to his requests should exist, and a mediator was appointed to explore resolution in each appeal.

Appeal PA21-00362

[5] In his appeal letter, the appellant stated:

I need the full name, address, phone, fax number, and email address as well as the credit card information use[d] in this matter regarding the individual who accessed my information online or at a Service Ontario location, including the number of times the individual has accessed my information.

[6] During mediation, the ministry conducted additional searches and issued a supplementary decision disclosing a revised record containing additional information.

[7] After reviewing the revised record, the appellant maintained his position that there should be further records responsive to his request.

[8] The ministry agreed to include the information listed in the appellant's letter of appeal, as outlined above, within the scope of the appellant's request. However, the ministry confirmed that no further responsive records exist.

Appeal PA21-00363

[9] In his appeal letter, the appellant stated:

Concerning the corporations or various organizations that have a license agreement with the Ministry of Transportation Driver Licence Database and Vehicle Registration Database System, I am also requesting the full name of all the Corporations and Organization's addresses, phone fax numbers, and email addresses, copy of any documents or forms including names or

² Appeal PA21-00363.

badge numbers used to retrieve my information from any of the Ministry databases.

[10] During mediation, the ministry conducted additional searches and issued a supplementary decision disclosing a revised record containing additional information.

[11] After reviewing the revised record, the appellant maintained his position that there should be further records responsive to his request.

[12] The ministry took the position that the information listed in the appellant's letter of appeal, as outlined above, is outside the scope of the appellant's request.

[13] The appellant indicated that he continues to seek access to the information as outlined in his letter of appeal. Accordingly, the scope of the appellant's request and the reasonableness of the ministry's search are at issue in this appeal.

[14] As a mediated resolution was not possible in either appeal, both appeals were transferred to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. I commenced two inquiries in which I sought and received representations from the parties about the issues in the appeals.

[15] In this order, resolving both appeals, I find that the additional information requested by the appellant is outside the scope of his request in Appeal PA21-00363, and I also uphold the ministry search as reasonable in both appeals and dismiss them.

ISSUES:

- A. In appeal PA21-00363, what is the scope of the request for records? Which records are responsive to the request?
- B. Did the ministry conduct a reasonable search for records in both appeals?

DISCUSSION:

Issue A: In appeal PA21-00363, what is the scope of the request for records? Which records are responsive to the request?

[16] 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).

[17] 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.³

[18] To be considered responsive to the request, records must "reasonably relate" to the request.⁴

Representations, analysis and findings

[19] After reviewing the ministry's representations, the appellant's request, and his appeal letter, I find that the appellant's request for the contact information of the corporations and licence organizations that have accessed his information is outside the scope of his request.

[20] As indicated above, the ministry has taken the position – and submitted in the inquiry – that the information listed in the appellant's letter of appeal is outside the scope of the appellant's request.

[21] The appellant did not make any representations on the issue of scope.

[22] In his initial request to the ministry, the appellant requested a list of corporations and licence organizations that have accessed his information from August 15, 2020 to March 31, 2021, and the ministry granted access to this information in full. In his appeal letter, the appellant stated, "...I am also requesting the full name of all the Corporations and Organization's addresses, phone fax numbers, and email addresses, copy of any documents or forms including names or badge numbers used to retrieve my information from any of the Ministry databases."

[23] I find the appellant expanded the scope of his request in his appeal letter. In his initial request, he is only asking the ministry for a list of corporations and licence organizations, i.e. their names. In his appeal letter, he expanded his request to include the contact and other information of these corporations and licence organizations. This is supported by the appellant stating he is "also requesting" in his appeal letter and listing additional information that was not part of his original request. I find that the additional information requested does not reasonably relate to the appellant's original request.

³ Orders P-134 and P-880.

⁴ Orders P-880 and PO-2661.

[24] Accordingly, I find that the contact and other information of the corporations and licence organizations that the appellant requested in his appeal letter is not responsive to his request in Appeal PA21-00363. If the appellant continues to seek access to this information, he should submit a new access request to the ministry.

Issue B: Did the ministry conduct a reasonable search for records in both appeals?

[25] The appellant claims that further records responsive to his requests should exist. Where a requester claims 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 24.⁵ If I am satisfied 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.

[26] 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 it has made a reasonable effort to identify and locate responsive records.⁶ 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 (responsive) to the request.⁷

[27] 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.⁸

Representations, analysis and findings

[28] For the reasons that follow, I find that the ministry conducted a reasonable search for responsive records in both appeals.

[29] The appellant takes the position that further records responsive to his requests should exist.

[30] In both appeals, the ministry submits that it conducted a reasonable search for responsive records. In support of its position, the ministry provided an affidavit in each appeal. In Appeal PA21-00362, the ministry submitted an affidavit from a Senior Policy Advisor (policy advisor) in the Safety Program Development Branch of the ministry. In Appeal PA21-00363, the ministry submitted an affidavit from the Manager of Drivers and Vehicle Services. Both affidavits describe the places/databases that were searched, the results of the search, and the staff involved.

⁵ Orders P-85, P-221 and PO-1954-I.

⁶ Orders P-624 and PO-2559.

⁷ Orders M-909, PO-2469 and PO-2592.

⁸ Order MO-2246.

[31] The ministry has described where they searched, the results of the searches, and the staff involved. In both appeals, I am satisfied that the ministry carried out a search involving experienced employees knowledgeable in the subject matter of the request and that those employees expended a reasonable effort to locate records which are reasonably related to the request.⁹ I am satisfied that the ministry's searches were sufficiently thorough and it has provided sufficient evidence to establish the reasonableness of its efforts.

[32] As noted above, 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.¹⁰ The appellant's representations do not address the ministry's search in Appeal PA21-00363, and he has not indicated what further records he believes should exist outside of the additional information he is requesting in his appeal letter. Therefore, I am not persuaded that additional responsive records exist, especially since I found above that the additional information the appellant is requesting is outside the scope of his request.

[33] In Appeal PA21-00362, the appellant states that the ministry admits that it had located the date and location of the specified purchase of information (specified purchase), which was made over the counter, and that it was purchased by credit card. The appellant states that all credit card transactions are approved electronically, and the ministry should be able to use the time stamp of the credit card transaction to determine the name of the purchaser and disclose it to him.

[34] In his affidavit, the ministry's policy advisor states that the ministry does not capture the information of a purchaser, only that the purchase was made by credit card. The policy advisor confirmed that with respect to the specified purchase the appellant is requesting, no purchaser information was kept.

[35] The *Act* does not require the ministry to prove with absolute certainty that further records do not exist. However, the ministry must provide sufficient evidence to show it has made a reasonable effort to identify and locate responsive records, and I find that it has done so.¹¹

[36] In summary, I find that the ministry conducted a reasonable search for responsive records in both appeals.

ORDER:

1. I find that the additional information requested by the appellant in Appeal PA21-00363 is outside the scope of his request;

⁹ Orders M-909, PO-2469 and PO-2592.

¹⁰ Order MO-2246.

¹¹ Orders P-624 and PO-2559.

2. I uphold the ministry search as reasonable in each appeal and dismiss both appeals.

Original Signed by: _____

Anna Truong
Adjudicator

October 2, 2023 _____