

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4511

Appeal PA22-00527

Archives of Ontario

April 18, 2024

Summary: The appellant sought access to records from the Archives of Ontario (the archives) for information related to his mother's incarceration in two Ontario prisons from 1957 to 1971. The archives conducted multiple searches and disclosed responsive records to the appellant. The appellant maintained that the archives did not conduct a reasonable search for records and that additional records existed.

In this order, the adjudicator upholds the archives' search for responsive records as reasonable and dismisses the appeal.

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

OVERVIEW:

[1] Archives of Ontario (the archives) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for information in specific records series related to the requester's mother's incarceration in two specified Ontario prisons.

[2] The archives issued a decision stating that multiple searches were conducted, but responsive records were not located. The requester clarified his request as all records pertaining to his mother's incarceration in the two Ontario prisons from 1957 to 1971. The archives located two responsive records and provided access in full. A third record was located and partial access was granted. The requester (now the appellant) appealed

the decision to the Information and Privacy Commissioner of Ontario (IPC).

[3] During mediation, the appellant challenged the redactions in the third record and raised the issue of reasonable search. The appellant and the archives further clarified the scope of the request and basis for access, and a second search was conducted. Twelve additional records were located in the second search and partial access was granted to them. The archives also granted full access to the third record pursuant to section 21(4)(d) (compassionate grounds) of the *Act*.

[4] The appellant did not raise any issues with the additional disclosures, but maintained his position that additional responsive records exist. No further mediation was possible, and the appeal was transferred to the adjudication stage of the appeal process. I conducted an inquiry where I sought and received representations from the archives and the appellant. Representations were shared in accordance with the IPC's *Code of Procedure*.

[5] During the inquiry, the archives conducted another search for records and disclosed additional records to the appellant. The appellant maintained his position that further records exist.

[6] For the reasons that follow, I find that the archives' search was reasonable and dismiss the appeal.

DISCUSSION:

[7] The sole issue in this appeal is whether the archives conducted a reasonable search for records responsive to the appellant's request.

[8] 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*.¹ 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.

[9] 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.²

[10] 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;³ that is, records that

¹ Orders P-85, P-221 and PO-1954-I.

² Order MO-2246.

³ Orders P-624 and PO-2559.

are "reasonably related" to the request.⁴

[11] 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.⁵ 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.⁶

Representations

[12] The archives submit that all freedom of information requests it receives are assigned to individual analysts to administer and that the analyst who conducted the search had considerable experience as a freedom of information analyst and in conducting searches at the archives. The archives provided an affidavit from the employee who conducted the search and set out the multiple steps that it took to identify the locations and records series that were searched and to locate responsive records.⁷ It explains that the search following the appellant's initial request did not yield any records, but at the archives employee's suggestion the timeframe was expanded and responsive records were found.

[13] In response to the archives' representations, the appellant provided an overview of the history of the access request, the archives' response to it, and the IPC mediation process. He submits that the archives' search efforts, access decision, and affidavit were insufficient, and did not fully address all of the records sub-series that were available to be searched. He further takes issue with the archives' explanation of the records sub-series that were searched prior to the adjudication stage and the explanation of the archives' search efforts, stating that the archives did not correctly characterize which of the sub-series they were searching. He also notes that the information in some of the records that he received suggests that additional records exist, which would have been found if the appropriate sub-series were searched.

[14] In response to these concerns, the archives conducted an additional search in various records series, and found additional records, which were provided to the appellant. Having located these records, the archives maintained that its searches were sufficient. The archives further submits that it has a unique role as a repository of records submitted to it from public bodies, and it emphasized that it has no role in ascertaining the completeness of information provided to it. It submits that it does not independently verify whether relevant retention schedules have been followed by public institutions, in

⁴ Order PO-2554.

⁵ Orders M-909, PO-2469 and PO-2592.

⁶ Order MO-2185.

⁷ Records series and sub-series refers to the way Government of Ontario records are organized by the archives. See https://www.archives.gov.on.ca/en/db/add/help/h-about_archives.aspx for more information (accessed April 18, 2024).

this case the two Ontario prisons, when archiving their records.

[15] In reply to the archives' response, the appellant reiterated various issues with the decision letters that were provided prior to the adjudication stage and the specific sub-series that were searched, going into significant detail about the records found in various sub-series and why the information in the records suggests the existence of further records. He submits that, despite the additional records that were provided following the search at the reply stage, additional records should exist.

Analysis and finding

[16] Based on my review of the parties' representations and evidence, I am satisfied that the archives have conducted a reasonable search for records.

[17] The archives' representations and accompanying affidavit show that it had experienced employees search the appropriate locations for records responsive to the request. The employee initially assigned to the request took steps to understand the appellant's request, including expanding the relevant timeframe after the initial search did not find any records. Although there was some dispute about the specific locations that should be searched, the archives took reasonable steps to ensure that relevant locations were searched and incorporated the appellant's feedback when conducting subsequent searches.

[18] I acknowledge that there is the possibility that there are other records related to the appellant's mother's incarceration that may have existed at some point. However, as discussed above, an institution is not required under the *Act* to prove with certainty that no further records exist, it must only provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records.

[19] In his representations, the appellant explained why he believes that further records should exist, based on the information in the records he received. He pointed to numerous possible gaps in the records, referencing the dates that his mother entered the prisons and various events that occurred during the time range of the request, submitting that appropriate searches should have yielded corresponding records. While I acknowledge the importance of this matter to the appellant and his thoroughness in assessing the records he received, I also accept the submissions of the archives regarding its role as a repository of records.

[20] From its representations, it is clear that the archives understood the appellant's arguments about the gaps in the records. The archives explained that it can only provide access to records that have been transferred to it from various public bodies, and it cannot create or request records from public bodies. It does not independently verify if relevant retention schedules have been followed and does not have a role in ascertaining the completeness of information provided to it. I accept its submission on its role in merely retaining records, and I find that this addresses the appellant's arguments about the gaps

in what he received.

[21] Even if gaps in the records that the appellant received exist, I can only assess the thoroughness of the archives' searches of its own record holdings. Considering the role of the archives, even a perfect, complete search of their holdings may yield incomplete records, since they can only produce what they received from other institutions. Additionally, given the circumstances of the request, where much of the information being sought is over a half century old and retained in microfilm and paper-based records, I also accept the possibility that a reasonable search, as required by the *Act*, may not uncover every record. As stated above, the issue before me in this appeal is if the archives conducted a reasonable search for records.

[22] Throughout the course of the access request and appeal, the archives clarified the appellant's access request and conducted additional searches for records responsive to it. Although there is some debate between the parties about the particular records series that should have been searched, with the archives maintaining that all appropriate ones were searched and the appellant generally disputing this, the appellant has not, in my view, demonstrated that the search conducted by the archives was not reasonable.

[23] Based on the evidence before me, the archives had experienced employees make a reasonable effort to identify and locate responsive records, which were disclosed to the appellant. Given the volume of searches already conducted by the archives, I am not satisfied that ordering an additional search would yield additional records. I find that the archives conducted a reasonable search for records in response to the appellant's request.

ORDER:

I uphold the archives' search as reasonable and dismiss the appeal.

Original Signed by: _____
Chris Anzenberger
Adjudicator

_____ April 18, 2024