

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4621-I

Appeal PA22-00232

Ministry of Children, Community and Social Services

March 19, 2025

Summary: A lawyer asked the ministry for information about a policy. The ministry located and disclosed some information. The lawyer believes the ministry has more records. In this order, the adjudicator finds that the ministry did not demonstrate that it conducted a reasonable search for records responsive to the request and orders the ministry to conduct another search.

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

OVERVIEW:

[1] This order addresses whether the Ministry of Children, Community and Social Services (the ministry) conducted a reasonable search for records relating to “birth alerts”¹ for children in need of protection and to a related policy directive.²

[2] The appellant made a request to the ministry for access under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the following information from January 2016 to March 2021³:

¹ Birth alerts were, until 2020, used to notify children’s aid societies without parental knowledge or consent when a baby was considered at risk of harm. This permitted the removal of the newborn from the mother’s care.

² Policy Directive CW 005-20, issued July 13, 2020, titled *Ceasing the practice of birth alerts in Ontario*.

³ The date of the request, which was March 30, 2021.

All documentation since January 2016 to the present relating to the practice of Children's Aid Societies issuing notifications to a hospital regarding an expectant parent, where the society believed that, following delivery, the child may be in need of protection (commonly referred to as "birth alerts" or "hospital alerts"), and the decision of the Ministry to issue Policy Directive CW 005-20, including, but not limited to:

- a) All correspondence with the Children's Aid Societies with respect to Police Directive CW 005-20 or birth alerts in general; and
- b) The consultations between the Ministry and Children's Aid Societies, children and foster families, and advocacy groups undertaken in 2019-2020 prior to the issuance of Police Directive CW 005-20.

[3] The ministry located responsive records and issued a decision⁴ granting partial access. The ministry claimed various exemptions over withheld portions of the records.⁵

[4] The appellant appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (IPC). The parties participated in mediation to explore the possibility of resolution.

[5] During mediation, the appellant challenged the adequacy of the ministry's search for responsive records, setting out reasons for their belief in the existence of responsive records predating 2019, or relating to birth alerts not specifically related to Policy Directive CW 005-20 (the 2020 policy directive).

[6] The ministry issued a revised decision⁶ by which it granted access to some information that it previously withheld.⁷ The appellant indicated that they no longer sought access to the remaining redacted information. As a result, the exemptions claimed by the ministry to withhold portions of the responsive records were removed as issues in the appeal. However, the appellant maintained that the ministry's search for records was not reasonable, and that additional records predating 2019 exist. The appellant cited examples of birth alerts issued before 2019 that they say were not included in the records identified by the ministry in response to the request for records from January 1, 2016 to the request date in 2021.

[7] A mediated resolution was not reached, and the appeal was transferred to the adjudication stage of the appeal process on the sole issue of the reasonableness of the ministry's search for responsive records. I conducted an inquiry during which I received representations from the ministry and the appellant.

⁴ Dated April 28, 2022.

⁵ The ministry relied on the exemptions in sections 12 (cabinet records), 13 (advice or recommendations), 15.1 (relations with Aboriginal communities), 19 (solicitor-client privilege), and 21(1) (personal privacy).

⁶ Dated April 14, 2023.

⁷ Under section 15.1.

[8] In this order, I find that the ministry has not demonstrated that it conducted a reasonable search for records responsive to the appellant's request, and I order it to conduct a further search.

DISCUSSION:

[9] 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 24.⁸ 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.

[10] 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.⁹ 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.¹⁰

[11] Although a requester will rarely be in a position to indicate precisely which records an institution has not identified, the requester must still provide a reasonable basis for concluding such records exist.¹¹

Representations

The ministry's representations

[12] After clarifying the request with the appellant, the ministry says it directed the request to specific individuals within its Child Welfare and Protection Division. The ministry states that one of these individuals assigned the request to the Child Welfare Secretariat, a branch within the division, to lead the search.

[13] The ministry submits¹² that a former senior policy analyst in the Child Welfare Secretariat provided a "search estimate" to the FOI policy analyst responsible for processing the request. This search estimate contained "a log of the proposed search areas led by the Child Welfare Secretariat to be conducted by ministry staff in the relevant program areas and branches that would have records responsive to the request." Using this search estimate, the ministry prepared a fee estimate, followed by an interim access decision.

[14] The ministry provided a summary of responsive records that were located by

⁸ Orders P-85, P-221 and PO-1954-I.

⁹ Orders P-624 and PO-2559.

¹⁰ Orders M-909, PO-2469 and PO-2592.

¹¹ Order MO-2246.

¹² In the form of an affidavit sworn by the FOI policy analyst responsible for the request.

relevant program areas or branches. The ministry says, however, that it cannot confirm how the searches outlined in the search log were conducted because the staff responsible for conducting the searches are no longer employed with the ministry. In her affidavit, the FOI policy analyst responsible for processing the request says it is her understanding that the records came from a “wide array of sources and locations within the ministry” and that this, along with the conversations she had with staff over the course of the search cause her to be confident that a thorough search had been performed. The ministry says that, at the first indication that the appellant felt the search was not reasonable, the ministry compared the records it located with those located in response to what the ministry says was a similar request it received the year before. The ministry says that this earlier request overlapped with the appellant’s request and resulted in a set of records that were “all accounted for in the records gathered for the appellant’s request.” The ministry submits that, because that prior search had been conducted by an experienced employee of the Child Welfare Secretariat (but who left before the appellant’s request was made), it is satisfied that all records responsive to the appellant’s request have been located.

Appellant’s representations

[15] The appellant submits that the request was clarified to include ministry records related to birth alerts, such as briefing materials, meeting notes, information notes, policy guidelines, directives, and any communications with children’s aid societies (CASs) regarding the policy and practice of birth alerts, and, in particular, records concerning the 2020 policy directive and consequent changes in CAS practices.

[16] The appellant argues that the ministry likely has records regarding birth alerts for several reasons. First, two of the appellant’s clients had birth alerts issued against them in 2016 and 2019. Second, the appellant states that the 2020 policy directive was developed in direct response to stakeholder consultations that began in 2016. Third, an academic paper published in 2017¹³ includes interviews with child protection workers conducted before that year, suggesting that discussions about birth alerts were taking place before 2017.

[17] Additionally, the appellant says that records already disclosed indicate that the 2020 policy directive was issued in response to the national inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG). The appellant argues that, given that the MMIWG inquiry began in 2016 and its final report was released in June 2019, the ministry must have records for that period. The appellant further argues that it does not make sense for the ministry to issue a policy directive in 2020 instructing CASs to stop issuing birth alerts without first reviewing how the practice had been functioning in the years prior.

[18] Finally, the appellant submits that it is difficult to imagine that CASs were actively issuing birth alerts leading up to the 2020 policy directive but that the ministry has no

¹³ Meredith Berrouard, *Medicine, Monitoring and Motherhood: An Exploration of the Interplay Between Stigma and Paradox in the Child Welfare and Healthcare Systems*.

records concerning the practice before that time. The appellant says that disclosed records suggest the existence of records from 2016 to 2019, and argues that the ministry has not provided any evidence to confirm that no such records exist.

Analysis and findings

[19] The onus is on the ministry to provide sufficient evidence demonstrating that it has made a reasonable effort to identify and locate responsive records. As noted above, 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 that it has made a reasonable effort to identify and locate responsive records.¹⁴ For the following reasons, I find that the ministry has not met this requirement.

[20] While the ministry expresses confidence in the thoroughness of its search – citing the fact that records were obtained from a “wide array” of sources following “many conversations” – these assertions, without substantiating details, are insufficient for me to conclude that the search was reasonable. While the ministry provided a summary with its representations of the records that it located, the records are not sufficient evidence on which I can conclude that the search itself was reasonable.

[21] I also find it inadequate for the ministry to simply state that the individuals responsible for conducting the search are no longer employed there, without providing details about the steps they took to locate records. Furthermore, the ministry’s reliance on the results of a separate, earlier search – conducted in response to a different request from a presumably different requester – is not a sufficient basis to conclude that all records responsive to the present request have been identified. The issue before me is whether the ministry conducted a reasonable search for records responsive to this specific request. The fact that some records overlapped with the results of a different search does not demonstrate that the ministry’s search in this case was reasonable. I cannot conclude that the ministry’s search was reasonable by reference to a prior search conducted for another requester, in response to a different request that is not before me.

[22] I accept the appellant’s submissions regarding the basis for their belief that additional records may exist. The appellant has provided a reasonable explanation that the ministry may have engaged in policy discussions and maintained records related to birth alerts before discontinuing the practice in 2020. The ministry, however, has not demonstrated that it took adequate steps to search for these records. The ministry has not explained why no such records – from 2016 to 2019 – were located, nor provided evidence that they do not exist. While it is possible that no responsive records exist for this period, the ministry has not provided an explanation or sufficient evidence to establish that it conducted a search for them.

[23] In these circumstances, I am satisfied that the appellant has provided a reasonable basis for the belief that additional responsive records may exist.

¹⁴ Orders P-624 and PO-2559.

[24] For these reasons, and based on the ministry's representations, there is insufficient evidence before me on which to find that the ministry has conducted a reasonable search for responsive records. Accordingly, I order the ministry to conduct a further search.

ORDER:

1. I order the ministry to conduct a further search for records responsive to the appellant's request.
2. If the ministry locates additional records as a result of its further search, I order the ministry to issue an access decision to the appellant in accordance with the *Act*, treating the date of this order as the date of the request.
3. I order the ministry to provide me with a copy of the decision sent to the appellant in accordance with order provision 2, above.
4. I order the ministry to provide me and the appellant with affidavit evidence describing its search efforts in response to provision 1 by **April 23, 2025**. The affidavit should include:
 - a. the name and position of the individual(s) who conducted the search(es);
 - 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. details of whether records existed but could have been destroyed, including information about record maintenance policies and practices, such as retention schedules.

Original Signed by: _____
Jessica Kowalski
Adjudicator

_____ March 19, 2025