

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4693

Appeal PA23-00158

Ministry of Education

July 30, 2025

Summary: An individual made a request under the *Freedom of Information and Protection of Privacy Act* for records relating to how a \$20 million grant from the Ministry of Education to the Ontario Psychological Association was used.

The ministry initially indicated that it did not locate any responsive records, then issued a revised decision granting partial access to some records. The individual appealed the ministry's decision on the basis of his belief that additional records should exist.

In this order, the adjudicator finds that the ministry conducted a reasonable search for records responsive to the request 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] The Ministry of Education (the ministry) received a request pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to "audits of how [a \$20 million fund provided from the ministry to the Ontario Psychological Association in 2006] was used, financial statements including expenses". The relevant timeframe for the request was identified as January 1, 2006 to January 1, 2012.

[2] The ministry issued a decision stating that there are no records responsive to the

request. The requester, now the appellant, appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (IPC). The IPC appointed a mediator to explore resolution.

[3] During mediation, the appellant advised that he believes responsive records should exist. The ministry informed the mediator of its belief that the responsive records were destroyed pursuant to its records retention policy. The ministry indicated that it would therefore not be conducting additional searches.

[4] As mediation did not resolve the appeal, the file was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry under the *Act*. I decided to conduct an inquiry and sought and received representations from the parties.

[5] The ministry subsequently advised that it had located some information that was potentially responsive to the request. The ministry issued a revised decision letter in which it granted partial access to the newly located responsive records¹ and provided supplementary representations regarding its search.

[6] Following the ministry's revised decision and representations, I contacted the appellant to ask whether he had any remaining concerns with the reasonableness of the ministry's search. The appellant indicated that he had outstanding concerns, which were shared with the ministry for its response.

[7] The ministry provided reply representations in response to the appellant's concerns, which were shared with the appellant. The appellant confirmed that he was not satisfied with the ministry's search and the appeal was moved to the order stage of the adjudication process.

[8] For the reasons that follow, I uphold the ministry's search for records responsive to the appellant's request and dismiss the appeal.

DISCUSSION:

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

[10] 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 of the *Act*.² If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's

¹ In the ministry's revised decision, the ministry cited section 21(1) (personal privacy) of the *Act* to deny access to some information. The section 21(1) exemption is not at issue in this appeal.

² Orders P-85, P-221 and PO-1954-I.

decision. Otherwise, it may order the institution to conduct another search for records.

[11] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they must still provide a reasonable basis for concluding that such records exist.³ The *Act* does not require the institution to prove with certainty that further records do not exist.⁴ However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;⁵ that is, records that are "reasonably related" to the request.⁶

[12] 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.⁷ 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.⁸

Representations

The ministry's initial representations

[13] By way of background, the ministry indicates that in June 2006, the ministry announced that it would be providing \$20 million in funding to the Ontario Psychological Association (OPA) as a one-time unconditional grant. The ministry states that this money was intended to flow through the OPA to individual school boards to help reduce wait times for student assessments.

[14] The ministry submits that it conducted a reasonable search in response to the request. The ministry also submits that the access request was clear and specific, and that it did not unilaterally narrow the scope of the request. In support of its position, the ministry submits an affidavit from the former manager of the Strategic Policy and Coordinated Programs Unit in the Special Education / Success for All Branch (SESAB), in which the manager provides information about the search process and the results of the search.

[15] The manager states that upon receiving the request, the Corporate Legislative Programs & Freedom of Information and Protection of Privacy Unit (FOI unit) forwarded the request to SESAB. The manager explains that in 2006, this unit was known as the Program Policy and Coordinated Services Unit in the Special Education Policy and Programs Branch, and that as the successor to that unit, SESAB was responsible for

³ Order MO-2246.

⁴ *Youbi-Misaac v. Information and Privacy Commissioner of Ontario*, 2024 ONSC 5049 at para 9.

⁵ Orders P-624 and PO-2559.

⁶ Order PO-2554.

⁷ Orders M-909, PO-2469 and PO-2592.

⁸ Order MO-2185.

conducting the search.⁹

[16] The manager states that after reviewing the request and associated materials, she conducted the following searches:

- An electronic search of SESAB's shared drive, including a search using the keywords "OPA", "Ontario Psychological Association", and "professional assessments."
- An electronic search of folders on the shared drive that may have contained responsive records, including a folder-by-folder search of the financial subfolder for 2006 and folders related to the Ontario Psychological Association and professional assessments.
- A physical search of SESAB's hard copy financial files from 2006 to 2012.

[17] The manager submits that she did not locate any responsive records using the above methods.

[18] The manager states that it is her understanding that the FOI unit asked the Corporate Finance and Services Branch in the Corporate Management and Services Division to search for any audit related materials, and that the Corporate Finance and Services Branch did not locate any responsive records. The manager states that it is her understanding that a second search of SESAB's shared drive also failed to yield any responsive records.

[19] The manager explains that based on the applicable records retention schedule, records related to financial projects from 2006-2008 would fall under the government's common records series titled "Financial Management – Accounting – Governmental Grants, Series FIN-Act-004", a copy of which is attached to her affidavit. The manager submits that records falling under this classification would be transferred off-site and destroyed at the end of eight fiscal years, which would have been around 2017.

[20] The manager submits that it is also her understanding that the FOI unit contacted the ministry's Records Information Management (RIM) team to search for any boxes of records governed by the common records series and belonging to SESAB. According to the manager, the RIM team confirmed that there was one box of records under the common records series and belonging to SESAB at the ministry's records centre. The manager submits that the FOI unit retrieved and searched the box and did not locate any

⁹ The ministry explains that SESAB's primary functions are to "develop evidence-based policies and programs to support the educational achievement of students with education needs, liaise with a wide range of stakeholders / educational partners to inform policy and programs, and to identify issues requiring policy responses". According to the ministry, SESAB also "develops special education funding policy and ensures horizontal policy integration for inter-Ministry policy initiatives that serve children and youth with special education needs".

responsive records.

[21] Finally, the ministry submits that in 2006, the processes governing the distribution of one-time grants did not necessarily require a Transfer Payment Agreement to be executed between the ministry and the receiving entity (i.e. the OPA). Furthermore, the ministry submits that it did not locate any records to indicate that a Transfer Payment Agreement was executed for the purpose of this grant.

The appellant's initial representations

[22] The appellant argues that the OPA has misused the \$20 million in funding in a significant act of "theft and fraud". The appellant states that he has collected evidence which suggests that the OPA did not have a system for keeping track of how funds were used or allocated, and that a significant amount of the funds were used for nefarious purposes and contrary to the intended purpose of the grant. The appellant submits that there is no information on whether any children actually benefited from the grant.

[23] Although the appellant does not explicitly comment on the reasonableness of the ministry's search, the appellant poses the following questions to the ministry at the conclusion of his representations:

1. It is our understanding that if files were destroyed, there would be a record or inventory of those records that were destroyed. Does the Ministry not keep such a record when files are destroyed? Without such a record we are left believing that the Ministry had no controls or monitoring in place when funds were advanced to organizations such as the corrupt OPA. Perhaps there were no documents ever in existence.
2. Can the Ministry provide information of a generic nature on how one-time grants of such an amount were monitored or managed to ensure that they were utilized for their intended purpose?
3. There is no indication that the Ministry requested documents from the OPA regarding this matter, nor has there been any time since the funds were provided to the OPA. Why did they not request records from the OPA, as we believe they would be entitled to do so?

The ministry's revised decision and supplementary representations

[24] While preparing its response to the appellant's representations, the ministry indicated that it had located some information that was potentially responsive to the request. The ministry subsequently issued a revised decision letter in which it granted partial access to 133 newly located records and provided supplementary representations regarding its search, including a second affidavit, this time from the acting manager of SESAB.

[25] The acting manager explains that while working on a different matter, a SESAB staff member who was aware of the request found a folder named "OPA Funding, 2006-(Open)" in SESAB's shared drive. Upon reviewing the contents of the folder, the staff member determined that the information contained therein could be responsive to the request and brought it to the attention of the acting manager and the FOI unit.

[26] The acting manager states that she directed additional searches of SESAB's shared drive, which resulted in the identification of two additional folders, both named "OPA Funding". The acting manager explains that "OPA Funding, 2006-(Open)" is a third level folder, which means that from inside the shared drive, staff would need to click through three folder levels to arrive at that folder. The acting manager states that the two "OPA Funding" folders are fifth and sixth level folders.

[27] The acting manager reiterates that the ministry previously searched SESAB's shared drive using the keywords "OPA" and "Ontario Psychological Association". The acting manager submits that these searches should have identified any folders named "OPA" or containing "OPA" in their name, as well as any documents containing "OPA" in their name or contents, but did not yield any results at the time. The acting manager submits that these searches now return results for all three of the newly discovered folders, and that the ministry has reached out to its IT team to understand why the folders and the documents within them did not appear in prior searches. The acting manager states that the IT team is continuing to investigate.

[28] In addition to the acting manager's affidavit, the ministry also provides responses to the appellant's questions in its supplementary representations. With respect to the appellant's first question, the ministry explains that both the RIM team and the Information Storage and Retrieval (IS&R) unit of the Archives of Ontario keep high-level records relating to the destruction of records at the end of the records retention period.

[29] The ministry explains that the RIM team is responsible for helping ministry staff manage the lifecycle of ministry records in accordance with the *Archives and Recordkeeping Act*, 2006. The ministry states that the RIM team keeps an inventory of records in an excel spreadsheet that is constantly updated. The ministry reiterates that the RIM team reviewed its holdings and identified only one box of records under the common records series that belonged to SESAB at the ministry's records centre. The ministry reiterates that the FOI unit retrieved and searched the box and did not locate any responsive records.

[30] Additionally, the ministry explains that the IS&R unit manages the disposition of ministry records at the offsite records centre. The ministry submits that the IS&R unit confirmed that it identified five boxes of records under the common records series that belonged to SESAB and that all five boxes were destroyed.

[31] Finally, the ministry submits that based on the results of its most recent search, it appears that the ministry received regular reports from the OPA regarding the program

and the use of the funding.

The appellant's response to ministry's revised decision

[32] Following the ministry's revised decision and supplementary representations, I contacted the appellant to ask whether he had any remaining concerns with the reasonableness of the ministry's search.

[33] The appellant identified the following concerns with the ministry's revised decision and supplementary representations:

1. The Ministry did not indicate whether its failed search for the files was due to the fact that there were never any or if the files were destroyed.
2. The files were reportedly destroyed; however, the Ministry did not provide its policy regarding such destruction, including whether a record is kept of the files being shredded and why.
3. There was no indication of the Ministry's policy on providing lump sum grants to organizations, nor the due diligence commonly carried out before such grants were released, nor the monitoring of the use of such grant funds.

The ministry's reply representations

[34] The ministry submits that it provided information in its previous representations about the destruction of hard copy records. The ministry reiterates that both the RIM team and the IS&R unit keep high-level records relating to records that have been destroyed following the expiration of the records retention period. The ministry also reiterates the RIM team and IS&R unit's responsibilities, as described in its supplementary representations.

[35] The ministry provides the following attachments in support of its position on records deletion as set out in its supplementary representation:

- An excerpt of the excel spreadsheet that the RIM team uses to track holdings, which identifies the box from the common records series that was retrieved from offsite storage and searched.
- A copy of an FAQ by the Information, Privacy and Archives unit of the Ministry of Public and Business Service Delivery, which reflects that it is the ministry's protocol to conclude that other records in the series (i.e. those not listed on the inventory report) have been destroyed in accordance with the ministry's retention schedules.
- An email from the IS&R unit, indicating that it identified five boxes of records under the common records series that belonged to SESAB and confirming that all five of the boxes had been destroyed.

[36] The ministry also advises that the RIM team confirmed that the common records series FIN-Act-004 (referenced and attached to its initial representations) replaced an older records series, and that IS&R was asked to review their holdings under both series.

[37] Finally, in response to the appellant's third concern, the ministry reiterates that in 2006, one-time grants did not necessarily require a Transfer Payment Agreement to be executed. The ministry provides a copy of the 1998 Transfer Payment Accountability Directive, which was in effect at the time of the grant in 2006.

[38] The ministry reiterates that it did not locate any evidence to indicate that a Transfer Payment Agreement was executed for the purpose of this grant. However, the ministry submits that the records that were disclosed to the appellant indicate that the ministry received regular and detailed reports about the project, at different phases of said project.

The appellant's sur-reply representations

[39] In his response to the ministry's reply representations, the appellant expressed his concern that the ministry did not have a process in place to monitor the actual use of the funds. The appellant also confirmed that he was not satisfied with the ministry's search.

Analysis and findings

[40] For the reasons that follow, I am satisfied that the ministry has conducted a reasonable search for records responsive to the appellant's request.

[41] I accept that the former manager of SESAB and the acting manager of SESAB are experienced employees who are knowledgeable in the subject matter of the request. In particular, I accept that both the former and acting manager of SESAB have held various positions at the ministry, with the acting manager having worked in the Ontario Public Service for 25 years. I also note that the ministry coordinated with various groups in responding to the request, including the Corporate Finance and Services Branch, the RIM team, and the IS&R unit, all of whom have specific expertise in the matter of responding to the appellant's request.

[42] Based on the information in the managers' affidavits, which include the method of the search, the locations that were searched, and the results of the search, I am satisfied that the ministry has made a reasonable effort to locate records relating to the appellant's request. While I acknowledge that the ministry located records after its initial claim that no responsive records exist, I find that the ministry received new information and revised its position accordingly. I also find that in formulating its new position, the ministry took reasonable steps including keyword and folder searches and coordinating with its IT team to investigate why its initial searches did not reveal the existing information.

[43] I have also reviewed the various attachments to the ministry's representations, which were shared with the appellant. I accept that FIN-Act-004 provides for the

governance and disposition of records, and that that documentation from the RIM team and IS&R unit supports the ministry's claim that the five boxes of records under the common records series that belonged to SESAB were destroyed, and that the remaining box at the ministry's records centre was retrieved and searched. I also find that the ministry has responded to the appellant's queries about records deletion, including by providing information about the RIM team and IS&R unit's responsibilities and the actions taken in response to the request.

[44] As previously indicated, 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. Based on the information before me, I am satisfied that the ministry has done so.

[45] Also as previously indicated, although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they must still provide a reasonable basis for concluding that such records exist.¹⁰ In the circumstances of this appeal, I find that the appellant has not provided a reasonable basis for concluding that additional records should exist, beyond the responsive records located by the ministry in its subsequent search.

[46] While the appellant expresses concerns about the use of the \$20 million in funding, these concerns do not amount to arguments about the reasonableness of the ministry's search. Consequently, I am not satisfied that the appellant has provided a reasonable basis for concluding that additional records exist, especially following the ministry's revised decision and subsequent search which located a significant number of responsive records.

[47] As a result, I find that the ministry's search for responsive records was reasonable and in compliance with its obligations under section 24 of the *Act*.

ORDER:

I uphold the ministry's search and dismiss the appeal.

Original Signed by: _____

Anda Wang
Adjudicator

July 30, 2025 _____

¹⁰ Order MO-2246.