Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4694

Appeal PA23-00058

Royal Victoria Regional Health Centre

July 30, 2025

Summary: An individual asked the Royal Victoria Regional Health Centre (the hospital) for copies of various agreements. The hospital identified responsive records and granted the individual partial access to them. The hospital withheld an agreement from 1988 because it said that it was excluded from the application of the *Act* by section 69(2). The individual appealed the hospital's decision not to disclose the agreement and said that additional responsive records should still exist. In this decision, the adjudicator upholds the hospital's decision that section 69(2) of the *Act* applies to the agreement and that, as a result, the *Act* does not. She also finds that the hospital conducted a reasonable search for responsive records, and dismisses the appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, sections 24 and 69(2).

Orders Considered: Orders PO-3223 and PO-3445.

OVERVIEW:

[1] The Royal Victoria Regional Health Centre (the hospital) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for various records, including specific agreements dating back to 2012. After clarifying the request with the requester, the hospital issued a decision granting the requester partial access to the responsive records. It denied access to some of the responsive information pursuant to various exemptions in the *Act*. The hospital also said that one of the responsive records, an agreement with a radiology company from 1988 (the 1988 agreement), was dated

prior to 2007 and, as a result, was not subject to the *Act* pursuant to the exclusion at section 69(2).[1]

[2] The requester, now the appellant, appealed the hospital's decision to the Office of the Information and Privacy Commissioner of Ontario (the IPC). During mediation, the appellant advised the mediator that the only record at issue was the 1988 agreement the hospital said was excluded by section 69(2) of the *Act*. The hospital maintained its decision. It said that the 1988 agreement predates 2007 and that, to its knowledge, there have been no amendments to it, so the *Act* does not apply.

[3] After further discussions, the appellant told the mediator that two issues remain on appeal. First, whether the *Act* applies to the 1988 agreement, and second, whether any amendments to that agreement exist. The mediator added the issue of whether the hospital conducted a reasonable search for responsive records to address the second issue.

[4] No further mediation was possible, and the matter was transferred to the adjudication stage of the appeals process where an adjudicator may conduct a written inquiry under the *Act*. An adjudicator commenced an appeal and sought representations from the hospital and the appellant. During the inquiry the hospital located additional records and issued a supplemental decision to the appellant. The appellant confirmed that the supplemental decision did not resolve the appeal because he had still not received a copy of the 1988 agreement, or any related documents. The matter was then transferred to me to continue the inquiry.

[5] After reviewing the parties' representations, I asked the hospital to provide the IPC with a copy of the 1988 agreement, which it did. I also invited the appellant to make reply representations after he received copies of the records the hospital decided to disclose in its supplemental decision. In this order, I uphold the hospital's decision that the 1988 agreement is excluded from the operation of the *Act* by section 69(2) and I find that it conducted a reasonable search for records that would be responsive to the appellant's request.

ISSUES:

A. Is the 1988 agreement excluded from the *Act* by section 69(2)?

B. Did the hospital conduct a reasonable search for responsive records?

[1] Section 69(2) says that the *Act* only applies to records in the custody or under the control of a hospital where the records came into the custody or under the control of the hospital on or after January 1, 2007.

DISCUSSION:

Issue A: Is the 1988 agreement excluded from the *Act* by section 69(2)?

Background

[6] The hospital says the 1988 agreement is a contract between the hospital and a group of radiologists. It says that because the 1988 agreement came into the hospital's custody or control prior to January 1, 2007, and no amendments or changes were made to it following that date, it is not subject to the *Act* pursuant to section 69(2). Section 69 of the *Act* states:

1. This Act applies to any record in the custody or under the control of an institution regardless of whether it was recorded before or after this Act comes into force. R.S.O. 1990, c. F.31, s. 69.

2. Despite subsection (1), this Act only applies to records in the custody or under the control of a hospital where the records came into the custody or under the control of the hospital on or after January 1, 2007. 2010, c. 25, s. 24 (21).

[7] The appellant says that section 69(2) does not apply to the 1988 agreement because it was amended after 2007 and continues to be relied on by the hospital.

The hospital's representations

[8] In support of its position that section 69(2) of the *Act* applies to the 1988 agreement, the hospital refers me to IPC Order PO-3223. It says that in Order PO-3223, Niagara Health received a request for an employment contract and denied access to it under section 69(2) of the *Act* because the contract came into its custody or under its control prior to January 1, 2007. The hospital notes that Adjudicator Donald Hale upheld Niagara Health's decision, stating the following:

> the language of section 69(2) is plain and unambiguous … [the] provision establishes a clear and certain threshold for the application of the *Act* as it pertains to hospitals. The provision refers only to custody or control. It does not refer, directly or indirectly, to the date or dates upon which the requested document was legally effective.

[9] The hospital also refers me to Order PO-3445, where it says that Adjudicator Gillian Shaw concluded that certain agreements dated prior to January 1, 2007, were not excluded from the operation of the *Act* by virtue of section 69(2) because of later amendments to those agreements after 2007. The hospital says Order PO-3445 is not relevant because, in the present case, there are no amendments or addenda to the 1988 agreement.

The appellant's representations

[10] The appellant says that the hospital's decision not to disclose the 1988 agreement is based on a broad and overly technical interpretation of section 69(2) of the *Act.* He asserts that the 1988 agreement continues to govern the hospital's relationship with its radiologists.

[11] The appellant also notes the hospital identified several draft versions of a revised version of the 1988 agreement from the year 2018 (collectively referred to in this decision as the "2018 drafts").[2] The appellant submits that the 2018 drafts confirm that the hospital continued to rely on the 1988 agreement after January 1, 2007. As a result, the appellant argues that the *Act* applies to the 1988 agreement and any other related pre-2007 records.[3]

[12] The appellant disagrees with the hospital that Order PO-3445 is not relevant. As noted above, in Order PO-3445 Adjudicator Shaw concluded that an institution could not rely on section 69(2) of the *Act* to exclude pre-2007 agreements because later, amended versions of those agreements existed that came into the custody or control of the institution after January 1, 2007. The appellant says the adjudicator determined that because the newer versions modified terms in the original agreements and signaled an intention to be read together with the original agreement, they did not constitute "standalone agreements." The appellant argues that the current case is similar in that the amendments to the 1988 agreement in the 2018 drafts bring the 1988 agreement into the scope of the *Act*'s application.

[13] The appellant argues that the 2018 drafts suggest an intention to amend, modify, update or replace the 1988 agreement and should be treated in the same manner as the amendments in Order PO-3445. The appellant also submits that the hospital's representations are inconsistent with the "purposes" section of the *Act*, which provides a right of access to information under the control of institutions. The appellant argues that section 69(2) of the *Act* should be interpreted narrowly, in light of the *Act*'s purposes, and in a manner that does not subvert the principles of openness and public accountability that the *Act* is designed to foster.

[14] Finally, the appellant argues that the hospital's reliance on Order PO-3223 is misplaced. It says that the paragraph it relies on was made by the affected party and summarized by Adjudicator Hale. The appellant denies that Adjudicator Hale relied on the affected party's statement. He submits that the Adjudicator Hale did not comment on how to construe section 69(2) of the *Act* or say whether that section is inclusive or

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[2] The hospital provided the appellant with copies of the 2018 draft after issuing its supplemental access decision.

[3] During the inquiry process the IPC confirmed with the appellant that the hospital gave him copies of the 2018 drafts, as such, they are not at issue. I note that the appellant had an opportunity to review the 2018 drafts prior to submitting his sur-reply representations.

exclusive of dates on which a requested document becomes legally effective.

The hospital's reply

[15] The hospital reiterates its position that no amendments or changes were made to the 1988 agreement after January 1, 2007. It says the 2018 drafts are drafts of a stand-alone document, which does not reference, amend, modify, or continue the 1988 agreement sought by the appellant.

[16] The hospital denies that its reliance on Order PO-3223 is misplaced. It argues that the current situation is the exact same scenario. The hospital says that Adjudicator Hale summarizes his decision paragraphs 11 and 12 as follows:

> In the present appeal, the employment agreement at issue was entered into prior to January 1, 2007, but remained in effect up to the date that the affected person ceased her employment with Niagara Health, several years after that date. I accept the evidence of the affected person that there has been no post-January 1, 2007 extension agreement or other contract entered into between the affected person and Niagara Health which incorporated the terms of the earlier agreement. Based on the evidence provided to me by the affected person and Niagara Health, I find that the original contract remained in effect and was not supplanted or adopted by another agreement after January 1, 2007.
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> The contract was entered into between Niagara Health and the affected person prior to the January 1, 2007 date prescribed in section 69(2) and, as a result, came into the custody or under the control of Niagara Health on the date it was executed. Because the record in question came into the custody or under the control of Niagara Health prior to January 1, 2007, it is excluded from the operation of the *Act* by virtue of section 69(2).

[17] The hospital also reiterates its assertion that the current situation is different than Order PO-3445. It says that in PO-3445, later amendments specifically modified the original agreements and confirmed the continued operation of certain sections of the original agreements. It says that in the present case, there are no amendments, modifications or addenda to the 1988 agreement that would bring it within the scope of the *Act*.

[18] The hospital submits that the 1988 agreement was terminated in December 2018. It further states that there were no changes or amendments to the 1988 agreement prior to 2018. The hospital says the 2018 drafts were not finalized or executed and the radiologists now operate without an agreement. The hospital also submits that the 2018 drafts are "quite different" from the 1988 agreement in format, content and structure. It submits that the 2018 drafts were working versions of an entirely new document that was never finalized. It says the 2018 drafts did not adopt, reference, amend or modify

the 1988 agreement.

The appellant's sur-reply

[19] In its sur-reply, the appellant states that the 2018 drafts contain a provision that states:

> With respect to its subject matter, this Agreement contains the entire understanding of the parties and supersedes and replaces ***all previous agreements***, promises, proposals, representations, understandings and negotiations, whether written or oral, between the parties respecting the subject matter hereof. [emphasis added by appellant]

[20] The appellant says that contrary to the hospital's reply submissions, this provision evidences an intention to modify and/or replace previous agreements that would include the 1988 agreement. It says that the 2018 drafts should be treated and considered in a manner consistent with prior IPC decisions which state that an original agreement (in this case the 1988 agreement) should not be excluded under section 69(2) of *Act* in circumstances where there are subsequent amendments that evidence an intention to replace or modify it.

[21] The appellant argues that its position is consistent with the animating principles and purpose of the *Act*, which encourage access to information by the public in respect of publicly funded institutions. It submits that the 1988 agreement is still being relied on by the hospital to govern its affairs. It also says that there is evidence that the hospital intended to modify or replace it. The appellant argues that, in these circumstances, the 1988 agreement should be disclosed and not shielded by technical interpretations of the *Act* that are inconsistent with the *Act*'s overarching principles and goals that protect rights of access by the public to information.

Findings and analysis

[22] I agree with the hospital that the 1988 agreement is excluded from the application of the *Act* by section 69(2). Section 69(2) excludes records that "came into the custody or under the control of the hospital" before January 1, 2007. The 1988 agreement clearly pre-dates January 1, 2007. However, as the parties both noted in their representations, that is not the end of the analysis. In Order PO-3445 Adjudicator Shaw concluded that an institution could not rely on section 69(2) of the *Act* to exclude a pre-2007 agreement in circumstances where newer agreements modified terms in the original agreement and signaled an intention that they be read together. Specifically, Adjudicator Shaw determined that the agreements were not "standalone agreements." At paragraph 64 of Order PO-3445, she said:

> I find that the amendments in this case are not standalone agreements, because they modify the terms of the original agreements between the parties and are clearly intended to be read with the original agreements.

> The amendments go beyond merely referring to the original agreements; they add to, delete from, and replace provisions found in the original agreements, and they confirm the continued operation of the remainder of the original agreements. They also provide that to the extent the provisions in the amendments conflict with any other provision of the original agreements, the provisions in the amendments shall prevail. […] I find that once the amendments were executed, the original agreements ceased to operate as a matter of law and were superseded by new agreements in the form of the original agreements, as amended on August 1, 2011. Therefore, the agreements, as amended, came into the custody and control of the HPHA after January 1, 2009, and the responsive records include both the original agreements and the August 2011 amendments.

[23] At paragraph 68, she further clarified her findings as follows:

> I also do not find that this interpretation results in unacceptable ambiguity for institutions who are responding to requests for information. Where an institution locates an amending agreement that post-dates January 1, 2007, it should be a fairly simple matter to locate the original agreement to which the amendment relates and, where the original agreement pre-dates January 1, 2007, to determine whether the amendment incorporates the original agreement so as to bring it within the scope of the *Act*.

[24] I agree with and adopt Adjudicator Shaw's approach. I have reviewed both the 1988 agreement and the 2018 drafts. I agree with the hospital that they are substantially different documents. The form, content and structure are not at all the same. Using Adjudicator Shaw's framework, there are no amendments in the 2018 drafts that incorporate the 1988 agreement in any way so as to bring it into the scope of the *Act.*[4]

[25] In finding that the 1988 agreement is excluded, I have considered the appellant's assertion that a provision of the 2018 drafts specifies it "supersedes and replaces all previous agreements…" supports his position that the 1988 agreement should not be excluded under section 69(2) of *Act.* The appellant argues that this proposed amendment is evidence of an intention to replace or modify the 1988 agreement and that brings it into the scope of the *Act*. In my view, this is not the sort of scenario described by Adjudicator Shaw in Order PO-3445. Adjudicator Shaw referred to agreements that were not "standalone agreements" and were meant to be read together. Based on my review of the 1988 agreement and the 2018 drafts, this is clearly not the case here. The draft agreements appear to me to be standalone agreements.

[26] I find that the current scenario is similar to that in Order PO-3223. In that decision, Adjudicator Hale held that an employment contract entered into prior to January 1, 2007

[4] Had I determined the opposite was the case, I would have then considered whether the fact that the 2018 drafts were not executed was relevant to the determination of the issue. However, given my finding, it is not necessary to consider this issue now.

was excluded from the *Act*, despite the fact that the agreement continued to operate subsequent to that date. Adjudicator Hale stated:

> Based on the evidence provided to me by the affected person and Niagara Health, I find that the original contract remained in effect and was not supplanted or adopted by another agreement after January 1, 2007.
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> The contract was entered into between Niagara Health and the affected person prior to the January 1, 2007 date prescribed in section 69(2) and, as a result, came into the custody or under the control of Niagara Health on the date it was executed. Because the record in question came into the custody or under the control of Niagara Health prior to January 1, 2007, it is excluded from the operation of the *Act* by virtue of section 69(2).
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> Accordingly, the requested document falls outside the scope of the Act and I have no jurisdiction to review Niagara Health's decision to deny access to it. I must, therefore, dismiss the appeal on that basis.

[27] Adjudicator Hale made this finding even though there was evidence that the contract was in force after 2007. While the appellant is correct that Adjudicator Hale was citing the affected party's representations in the portions of text the hospital relied on, the affected party's point is valid and accurate: the language of section 69(2) is plain and unambiguous and does not refer to the dates upon which a requested document was legally effective.

[28] The fact that the hospital may have continued to rely on the 1988 agreement does not bring it within the scope of the *Act* if it came into the hospital's custody or control prior to 2007, unless it was modified by, or incorporated into, any subsequent agreements after 2007, as in Order PO-3445. In this case, the evidence before me indicates that it was not. As a result, I find that the 1988 agreement is excluded from the operation of the *Act* by section 69(2).

Issue B: Did the hospital conduct a reasonable search for responsive records?

[29] When a requester claims that additional records exist beyond those found by an institution, the issue is whether the institution has conducted a reasonable search for records as required by section 24 of the *Act*.[5] 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.

[30] 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

[5] Orders P-85, P-221 and PO-1954-I.

that such records exist.[6]

[31] The *Act* does not require the institution to prove with certainty that further records do not exist.[7] However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;[8] that is, records that are "reasonably related" to the request.[9]

[32] 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.[10] 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.[11]

The hospital's representations

[33] The hospital submits that it conducted a reasonable search for records in relation to the appellant's request. It says that it clarified that the records being sought were from the period of 2012 to 2021. It submits that it located the 1988 agreement during its search and determined it was out of the scope of the request. It says that although it did not find any amendments to the 1988 agreement, it located the 2018 drafts (which were draft agreements between the hospital and certain named physicians).

[34] The hospital provided an affidavit from its Regional Director, Privacy, Patient Access & Records (the Director) in support of its representations. The Director's affidavit provides a detailed summary of the hospital's searches. The Director explains that at the time of the appellant's request she was acting as the Regional Privacy Lead at the hospital and was delegated responsibility for handling the request. She attests that she is an experienced employee knowledgeable in the subject matter of the request, and in the relevant records storage and filing systems. She states that she engaged the Regional Privacy Team to support the search for responsive records and oversaw it herself.

[35] After receiving the request, the Director says that she and the Regional Chief Privacy Officer (the RCPO) met with the Senior Leadership Team (the SLT) who identified the individuals who would likely be in possession of any responsive records. The Director says this included members of the Hospital's SLT and medical staff leadership.

[36] The Director attests that the RCPO prepared a memo to members of the Hospital's SLT and medical staff leadership who may have custody of the records in their respective areas. They were asked to conduct a search for records that would be responsive to the

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[6] Order MO-2246.
[7] *Youbi-Misaac* v. *Information and Privacy Commissioner of Ontario*, 2024 ONSC 5049 at para 9.
[8] Orders P-624 and PO-2559.
[9] Order PO-2554.
[10] Orders M-909, PO-2469 and PO-2592.
[11] Order MO-2185.

request. The Director confirms that the computer searches included each individual's email and their personal computer drives ("P-Drive") and shared drives ("S-Drive").

[37] The Director says that the RCPO sought clarification from the appellant's counsel on the nature of the request. Following this, the Director says the hospital received notification from the IPC that the appellant filed a deemed refusal appeal. The Director says that an IPC medicator indicated that one of the documents that the appellant was seeking as a priority was a contract between the hospital and Georgian Radiology. The Director says that none of the initial searches identified a Georgian Radiology agreement and so the RCPO requested staff conduct further searches.[12] The Director attests that the only document that was located during these searches was the 1988 agreement.[13]

[38] The Director says that the hospital then received notice of the current appeal. The Director says the hospital communicated its position that the only contract between it and Georgian Radiology was the 1988 agreement, which it said was not subject to the *Act* because of section 69(2). The Director says the RCPO confirmed that, to the hospital's knowledge, there had been no amendments to the 1988 agreement.

[39] The Director says that after receiving the Notice of Inquiry in this appeal, she followed up with the hospital's Chief of Staff and Executive Vice President, Corporate Services and CFO to confirm that they found no addendums or updated versions of the 1988 agreement. The Director states that these additional searches produced a draft Radiology Services Agreement from 2018, which was found on a P-Drive that had not been previously available and/or accessible during earlier searches because the P-Drive belonged to a former employee.

[40] The Director explains that based on the discovery of the draft Radiology Services Agreement, The RCPO sent an email to all staff previously involved in the initial search informing them that the hospital would be performing an administrative IT search using specific keywords (such as the agreement number, and "Radiology Agreement"), and that their P-Drives and S-Drives would be searched. Following these searches, the Director says 2018 drafts were located.

[41] The Director states that, to the best of her knowledge, members of the hospital's SLT and professional staff conducted thorough searches of their records, as requested, which included reviewing applicable paper files, electronic files and emails with the support of the Regional Privacy Team. She says that any records that were reasonably related to the request were provided to the Regional Privacy Office.

[42] She attests that, to the best of her knowledge no other records exist that are

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[12] The Director attests that the search additional requests were directed to the Chief of Staff, Executive Vice President, Corporate Services & CFO, Operations Director, Imaging and Laboratory and Director, Business Development and Supply Chain.

[13] My understanding is that this is the 1988 agreement that is at issue in this appeal.

responsive to the request.

The appellant's representations

[43] The appellant denies that the hospital has conducted a reasonable search for responsive records.[14] He submits that I should order the hospital to search for:

1. responsive records for the period 2007 to 2012 which clearly fall within the scope of s. 69(1) of the *Act*; and

2. responsive records for the period pre-dating 2007 on the basis that the Hospital found later versions of a Radiology Agreement that bring any pre-2007 records into the scope of s. 69(1) of the *Act*.

[44] The appellant submits that it is unclear from the affidavit whether the hospital's searches were conducted for the period prior to 2012. Although the appellant acknowledges that its request was for record from 2012 to the present, he says that this was based on the hospital's nine-year records retention policy reflected in its Directory of Records. The appellant says that during the IPC's mediation process, the 1988 agreement was identified, following which the 2018 drafts were located. However, the appellant says that notwithstanding this, the Director's affidavit does not confirm that searches for records pre-dating 2012 were conducted.

The hospital's reply

[45] The hospital reiterates that it has undertaken a reasonable search for records in relation to the request and submits that no additional searches for responsive records ought to be ordered. It disagrees with the appellant's claims that there is insufficient evidence as to whether there were any amendments or changes to the 1988 agreement. The hospital says this issue was specifically addressed in its representations and supporting affidavit.

[46] The hospital says the searches it conducted were not time limited in scope and covered the periods before and after 2007, even though the appellant's request was for records after January 1, 2012. It notes that the search produced the 1988 agreement, which demonstrates it searched for records preceding 2012. Furthermore, the hospital says it specifically followed up and conducted another search to determine if there were any amendments or modifications to the 1988 agreement. It says that despite a thorough search, no amendments or modifications to the 1988 agreement were identified.

[47] The hospital also points out that the discovery of the draft agreement from 2018 resulted in further searches being conducted of all shared folders, as well as the personal

[14] In its initial representations, the hospital noted that it had not been provided a copy of the Director's affidavit. The adjudicator previously assigned to this appeal provided the appellant with a copy of the affidavit and offered him another opportunity to make representations.

drives and paper records of all record holders who could reasonably be expected to have responsive records. Again, the hospital says these searches were not date specific. The searches resulted in the identification of the remaining 2018 drafts, but no other responsive records.

[48] Finally, in response to the appellant's suggestion that the hospital ought to search for responsive records for the period 2007 to 2012 for all records that fall within the scope of their request, it says this would be a new request entirely. The original request was for records from 2012 until present. As set out above, the hospital has already searched for records relating to the 1988 agreement, both before and after 2007. It says that further searches should not be ordered.[15]

Findings and analysis

[49] Based on the hospital's representations and the Director's affidavit, I find that the hospital conducted a reasonable search for responsive records, and I decline to order any further searches.

[50] In my view, the hospital tasked an appropriate person, with the requisite knowledge and skills, to locate any records that would be responsive to the appellant's request. I find that the Director provided a satisfactory explanation of the steps the hospital took to locate responsive records, and I am satisfied that those steps were reasonable in the circumstances.

[51] Of note, the hospital has provided evidence that individuals who could be reasonably expected to be in possession of responsive records, including its senior leadership team and medical staff leadership, searched their computer drives and paper records, without any limitations on dates. During the appeal process, the hospital undertook additional searches, with additional employees, and located further responsive records from before and after 2012.[16] Based on the results of those searches, the hospital then conducted further searches that identified additional versions of records already located, but no new records.

[52] Given the evidence and submissions before me, I am satisfied that the hospital's search was reasonable. I find that it has fulfilled its obligations under the *Act*.

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[15] The appellant was invited to make a sur-reply after he received copies of the draft agreements from 2018, following the hospital's supplementary access decision. Those representations focused on Issue A, rather than whether the hospital conducted a reasonable search for responsive records.

[16] I note that the appellant's request was for records from 2012 to the date of the request. Although the hospital was not obligated to search for records prior to 2012, it did so voluntarily and, as such, I have considered whether its entire search has been reasonable, not just its search for records after 2012.

ORDER:

The appeal is dismissed.

Original Signed by: July 30, 2025

Meganne Cameron
Adjudicator