



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER PO-2462

Appeal PA-020399-2

Ministry of Public Safety and Security



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NATURE OF THE APPEAL:

This appeal concerns a decision of the Ministry of Public Safety and Security (now the Ministry of Community Safety and Correctional Services) (the Ministry) made pursuant to the provisions of the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requester (now the appellant) made a request under the *Act* for access to his Corrections file from 1995 to July 18, 2002 (the date of the request). The request included access to the appellant's complete Probation and Parole file (Cambridge branch, head office or any other branch), his Wellington Detention Centre file from 1995, his Waterloo Detention Centre file from 1998 and all medical records or clinical files. The request also included any correspondence relating to the appellant during the time that he was incarcerated or thereafter.

The Ministry located several hundred pages of responsive records and granted partial access to them. The Ministry denied access to the remaining records in whole or in part, pursuant to section 49(a), read in conjunction with sections 14(1)(c), (e), (i), (k) and (l), 14(2)(d) (law enforcement) and 19 (solicitor-client privilege) and section 49(b), read in conjunction with section 21(1) (invasion of privacy). With respect to the section 49(b)/21(1) exemption claim, the appellant specifically raised the application of section 21(2)(f) (highly sensitive). The Ministry also claimed the application of sections 49(d) (prejudice to the mental or physical health of the individual) and 49(e) (information in a correctional record supplied in confidence). In addition, the Ministry stated that access to pages 334, 361, 365 and 366 was denied pursuant to section 65(2)(a) and (b) (non-application of the *Act* where the record relates to a patient in a psychiatric facility). The Ministry also stated that access to medical records from the Wellington Detention Centre could not be granted, as the records could not be located. The Ministry stated that experienced staff, familiar with its records holdings and the records, conducted a thorough search and that no records were located.

The appellant appealed the Ministry's decision.

During the mediation stage of the appeal process, the mediator contacted both the appellant and the Ministry. The mediator reviewed the records in conjunction with the Ministry's decision letter and the exemptions claimed. The Ministry provided an Index of Records (the Index) to the appellant and this office, reflecting the exemptions claimed for the information at issue.

During mediation, the appellant raised the issues of the reasonableness of the Ministry's search for responsive records and the adequacy of its decision letter. The mediator had discussions with the appellant on the issue of the adequacy of the decision letter and the appellant indicated that he would make submissions to the adjudicator at the inquiry stage. These two issues were added to the appeal.

The appellant confirmed during the mediation stage that he was not interested in access to pages 11, 12, 17, 128, 129, 152-165, 167, 168, 169, 175, 177, 179, 286, 363, 364, 382, 383 and 391. Therefore, these pages are no longer at issue.

The mediator noted that the Index listed pages that are duplicates of those that the Ministry had already disclosed to the appellant. These are pages 138-139 (duplicate of pages 3-4), 194 (duplicate of page 188), 215-220 (duplicate of pages 57-62) and 228-230 (duplicate of pages 211-213). In addition, page 286 is a duplicate of page 285, which has been withheld by the

Ministry. The appellant agreed that the pages listed as duplicates in the Index are not at issue. However, page 285 remains at issue.

In the Index, the Ministry states that pages 152-165 were placed in the appellant's file in error. The mediator reviewed these pages and advised the appellant that, in her opinion, these pages were not related to the request and, therefore, not responsive. The appellant accepted the mediator's view and, accordingly, these pages are not at issue.

The appellant also indicated that he was not interested in pursuing access to pages 334, 361, 365 and 366. Therefore, these pages and the application of section 65(2) to them are no longer at issue.

Also during mediation, the Ministry reconsidered its access decision and issued a new decision letter in which it agreed to disclose pages 127, 192, 206, 234, 235, 236, 237, 239, 273, 288-290, 291, 317 and 358-360. Accordingly, these pages are no longer at issue.

The Ministry also agreed to provide clearer copies of pages 227-230, 235-236, 261-262, 275-276 and 358 to the appellant and clearer copies of pages 193 and 295 to this office. The Ministry has provided clearer copies of pages 227, 235-236, 261-262 and 275-276 to the appellant and clearer copies of pages 193 and 295 to this office. However, the Ministry did not provide clearer copies of pages 228-230 and 358 to the appellant.

Still with mediation, the mediator noted that page 361 appears to be the second page of a two-page document but that the first page is not among the records provided by the Ministry. The Ministry indicated that it had checked its record holdings and checked with its program area and had not been able to locate the missing page.

In preparing this file for inquiry I note that while the Ministry's initial decision letter raises the application of section 49(a), read with sections 14(1)(c), (e), (i), (k) and (l), 14(2)(d) and 19, section 49(b), read with section 21, section 49(d) and section 49(e) to all of the records at issue, the exemptions cited in the Index and on the face of the records themselves are at times inconsistent with the exemptions claimed in this initial decision letter. That said, to the extent that the Ministry has not overtly withdrawn the exemptions cited in its initial decision letter (see below) I accept that the Ministry intends to rely on all of the exemptions raised in its decision letter to deny access to the information at issue in this appeal.

However, I also note that with respect to pages 181, 193, 251 and 252 the Ministry indicates in the Index that it is relying on section 49(a), read with section 15(b) to deny access to this information. The Ministry did not raise the application of section 15(b) in its original decision letter. This exemption claim first appears in the Index. This raises the possible issue of the late raising of a discretionary exemption. The parties make representations on this issue. However, in light of my findings below I will not address this issue further in this appeal.

I commenced my inquiry by first sending a Notice of Inquiry to the Ministry seeking representations on the application of the exemptions claimed in its initial decision letter to the

information at issue. The Ministry submitted representations on the application of the exemptions claimed to the information at issue

I also requested the Ministry to conduct a further search for the first page of a two-page letter marked page 361. The Ministry also made representations in regard to this issue and it is addressed under the discussion of the "REASONABLE SEARCH" issue below.

I also asked the Ministry to submit clearer copies of pages 228-230 and 358 to this office. In its representations, the Ministry submits that pages 228-230 are duplicates of pages 211-213, which have been released to the appellant, and that the copy of page 358 provided to the appellant is the best quality copy available. I have verified that pages 228-330 are duplicates of pages 211-213, which are not at issue in this appeal. In addition, I accept that the Ministry has provided the appellant with the best available copy of page 358. Accordingly, pages 228-230 and 358 are no longer at issue in this appeal.

In its representations the Ministry indicates that it has reconsidered its decision to withhold the information at pages 18, 19, 193, 265, 294, 303, 306 and 307 and a portion of page 260 of the records. The Ministry provided me with a copy of a decision letter confirming its revised decision and it submits that this information has been released to the appellant. The Ministry points out that the balance of the withheld information on page 260 remains at issue. Accordingly, I accept that pages 18, 19, 193, 265, 303, 306 and 307 and a portion of page 260 are no longer at issue in this appeal.

I also note that the Ministry indicates in its representations that it is no longer relying on certain exemptions with regard to some of the information at issue. Specifically, the Ministry states:

- it is no longer relying on section 49(b), read with section 21(1), to deny access to information at issue in pages 14, 16, 120, 149, 191 and 260
- it is no longer relying on section 49(d) to exempt page 233
- it is no longer relying on section 49(e) to exempt pages 242-248

Accordingly, I will not be considering these exemptions for these pages. However, to the extent that any of these pages form part of a record to which the Ministry is claiming sections 49(b), read with section 21(1), 49(d) or 49(e) I will consider these exemptions in respect of that record (see "APPENDIX" at the conclusion of this order for a complete description of the records at issue).

Following the receipt of the Ministry's representations, I sent a Notice of Inquiry to the appellant seeking his representations. The appellant was also provided with a copy of the Ministry's non-confidential representations. The appellant submitted representations in response, which he asked remain confidential.

RECORDS:

There are 40 records at issue in this appeal, including Level of Service Inventory-Ontario Revision documents, Records of Case Supervision, Offender Incident Reports, Probation and Parole Office documents, court documents, segregation records, occurrence reports, misconduct reports, police documents, memoranda and correspondence. A complete list of the records at issue is set out in the APPENDIX found at the end of this order.

DISCUSSION:

Preliminary issue

Adequacy of decision letter

The appellant indicated during the mediation stage that the Ministry's decision is not in compliance with section 29(1)(b) of the *Act*.

Section 29(1)(b) of the *Act* reads:

Notice of refusal to give access to a record or part under section 26 shall set out,

- (b) where there is such a record,
 - (i) the specific provision of this Act under which access is refused,
 - (ii) the reason the provision applies to the record,
 - (iii) the name and position of the person responsible for making the decision, and
 - (iv) that the person who made the request may appeal to the Commissioner for a review of the decision.

In order to meet the requirements of section 29(1)(b), an institution's decision letter should provide the requester with reasons for the denial of access. A restatement of the language of the legislation is not sufficient to satisfy this requirement. The decision letter should provide an explanation of why the exemptions claimed by the institution apply. [Order M-913]

The purpose of the inclusion of the above information in a decision letter is to put the requester in a position to make a reasonably informed decision on whether to seek a review of the head's decision. [Orders 158, P-235 and P-324]

The Ministry states in its representations that it would not be making submissions on this issue.

The appellant provides strongly worded representations that articulate his frustration with the manner in which institutions process access to information requests.

I acknowledge the appellant's frustration. However, the appellant has not provided any basis for asserting that the Ministry's decision letters were inadequate in this case. I am satisfied that the Ministry's decision letters meet the requirements of section 29(1)(b).

PERSONAL INFORMATION

General principles

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and

- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

Parties' representations

The Ministry states that the records contain recorded information about identifiable individuals, namely the appellant and individuals other than the appellant. The Ministry describes this information as opinions/information of other individuals about the appellant, opinions/information of other individuals about other individuals and medical information pertaining to the appellant and other individuals.

The appellant did not provide representations that address this issue.

Analysis and findings

On my review of the records I find that all of the records contain the appellant's personal information, including in many cases the appellant's name, sex, date of birth and other personal identifiers, in some cases the personal opinions or views of other individuals about the appellant and in other cases the appellant's medical and criminal history. In my view, in the context of the request, all of the information at issue is recorded information about the appellant as it is contained within the Ministry's file pertaining to the appellant.

In addition, I find that many of the records contain information about other individuals in their capacity as staff of the Ministry. However, owing to the sensitive circumstances surrounding the

appellant's request, I find that this information qualifies as the personal information of these other individuals, as it reveals something of a personal nature about them.

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION

Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right.

Section 49(e)

The Ministry seeks to apply the section 49(e) discretionary exemption to all of the records at issue, with the exception of record 22.

Section 49(e) reads:

A head may refuse to disclose to the individual to whom the personal information relates personal information,

that is a correctional record where the disclosure could reasonably be expected to reveal information supplied in confidence

For section 49(e) to apply, the institution must demonstrate that disclosure of the information "could reasonably be expected to" lead to the specified result. To meet this test, the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

The term "correctional record" is not defined in the *Act*.

The *Oxford Concise Dictionary*, 7th edition, defines "correction" as including "punishment".

Webster's Third New International Dictionary defines "correction" as "the treatment of offenders through a program involving penal custody, parole, and probation".

Black's Law Dictionary, 8th edition, similarly defines "correction" as "the punishment and treatment of a criminal offender through a program of imprisonment, parole, and probation".

Webster's also defines "correct" as "to rebuke or punish or discipline for some fault or lapse" and defines "correctional" as "of or relating to correction; esp: dealing with or charged with the administration of corrections".

Commenting on these definitions, Adjudicator John Swaigen made the following statement in Order PO-2456:

These definitions have in common that they relate to punishment or rehabilitation after a person has been found guilty of or otherwise responsible for an offence or wrong-doing.

Parties' representations

The Ministry submits that the records to which the section 49(e) exemption has been applied consist "mainly of case file documents that were maintained by the appellant's probation and parole officers." The Ministry states that the case file is maintained by probation and parole officers in "carrying out the Ministry's mandate of providing treatment and rehabilitation programs for adult offenders." The Ministry submits that it operates a number of Probation and Parole Area Offices that provide supervision to individuals serving community dispositions. The Ministry states that probation is one of the community dispositions given instead of incarceration. On this basis the Ministry takes the position that probation is a "correctional activity" and that the records relating to probation are "correctional records".

The Ministry states that the records at issue in this case form part of the appellant's case file documents for "the time period during which [he] was on probation and required to report to a probation and parole officer." The Ministry asserts that they are correctional records as they were "compiled by the Ministry probation and/or parole officers in the discharge of their duties."

The Ministry makes reference to previous orders of this office (Order P-748 and Order 64) in support of its position regarding the status of the case file documents under section 49(e). In addition, relying on Orders 64 and P-421, the Ministry states that an institution has the "discretion to deny access to an individual's own personal information that is a correctional record where disclosure could reasonably be expected to reveal information that was supplied in confidence."

With particular reference to the "fax cover pages" (records 12, 17 and 19) the Ministry states that they qualify for exemption under section 49(e) since they are connected to records that it maintains are exempt under section 49(e).

The Ministry provides further detailed representations regarding the application of the section 49(e) exemption to specific records. However, due to the sensitive circumstances of this case I am not able to make direct reference to these portions of the Ministry's representations.

The appellant does not make representations that are responsive to this issue.

Analysis and findings under section 49(e)

The Ministry has made reference to Order P-748 in support of its position that the records at issue qualify for exemption under section 49(e). In that case, Adjudicator Anita Fineberg examined the application of section 49(e) to information contained in a case file maintained by an appellant's probation and parole officers for the period during which the appellant was on probation and was required to report to a probation and parole officer. She found as follows:

A review of the record indicates that the information withheld from the appellant consists of information received in confidence from other parties by Ministry employees (the probation and parole officers) who supervised the appellant during his probation. The record was thus created during the Ministry's discharge of its responsibilities described above.

Having considered the nature of the record and the Ministry's representations with respect to the circumstances of the receipt of the information, I am satisfied that the personal information is a correctional record. I am also of the view that disclosure of this record could reasonably be expected to reveal information that was supplied to the Ministry in confidence. Accordingly, I find that the record at issue in this appeal qualifies for exemption under section 49(e) of the *Act* and should not be disclosed.

More recently, Adjudicator Swaigen explored the scope of the definition of "correctional record" as it applies in the section 49(e) exemption, in Order PO-2456. He states:

The origin and purpose of a record must be considered in determining whether it is a "correctional record". To treat every record in a correctional authority's files as a "correctional record" regardless of source or purpose would broaden the section 49(e) exemption unacceptably and would not be consistent with the purposes of the *Act*.

In summary, "correctional records" may include records created and maintained by institutions with correctional functions in the course of and for the purpose of these functions, but will not generally include purely administrative records. Correctional functions include the punishment and rehabilitation of offenders after a finding of wrong-doing, through programs such as imprisonment, parole and probation, but not matters such as investigation, prosecution, court proceedings, and pre-trial and pre-sentence detention. Nor do "correctional records" include standard documents routinely created and maintained by other organizations just because those documents have been supplied to an institution with correctional functions and have been placed in a file relating to these functions.

I agree with and adopt the approaches taken by Adjudicators Fineberg and Swaigen in the above noted orders with regard to the treatment of correctional records.

On my review of the Ministry's representations and the records at issue under this exemption, I am satisfied that these records, with the exception of records 12, 17 and 19, were created, maintained and used by the Ministry in the course of and for the purpose of its correctional functions. It is apparent from the records that these functions included the pursuit of ongoing monitoring, supervision, treatment and rehabilitation efforts by the Ministry's probation and parole staff while the appellant was on probation. I am also of the view that disclosure of these

records could reasonably be expected to reveal information that was supplied to the Ministry in confidence. Accordingly, I find these records exempt under section 49(e).

Turning to the information remaining at issue under this exemption, the “fax cover pages” (records 12, 17 and 19), the treatment of this type of information under this exemption has been addressed in decisions of this office. In Order PO-2334 Adjudicator Frank DeVries’ rejected the Ministry’s position that because transmittal forms and covering pages are used in relation to records that qualify for exemption under section 49(e), they too qualify for exemption under that section. In reaching his decision, he found that “these documents cannot be described as ‘correctional records’”. Adjudicator DeVries’ analysis was recently followed by Adjudicator Swaigen in Order PO-2456 with regard to “purely administrative records”. In that order, Adjudicator Swaigen states that “correctional records” do not include “standard documents routinely created and maintained by other organizations just because those documents have been supplied to an institution with correctional functions and have been placed in a file relating to those functions.” Following Adjudicator DeVries’ and Adjudicator Swaigen’s analysis in Orders PO-2334 and PO-2456 I find that the fax cover pages in this case are purely stand-alone administrative records and therefore do not fall within the section 49(e) exemption.

Section 49(a)

Under section 49(a) of the *Act*, the institution has the discretion to deny an individual access to their own personal information in instances where the exemptions in sections 12, 13, 14, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that information.

The Ministry has claimed the application of sections 14(1)(c), (e), (i), (k) and (l) and 14(2)(d), read in conjunction with section 49(a), to the information remaining at issue (records 12, 17, 19 and 22). Because I have found that all of the records remaining at issue contain the personal information of the appellant, I will examine the application of these exemptions in the context of section 49(a).

Section 14(1)(e)

Section 14(1)(e) states:

(1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,

(e) endanger the life or physical safety of a law enforcement officer or any other person;

The term “law enforcement” is used in several parts of section 14, and is defined in section 2(1) as follows:

“law enforcement” means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b)

With respect to the application of this exemption in the circumstances of this appeal, the Ministry has provided confidential representations in support of its position that section 14(1)(e) applies to the records remaining at issue.

Concerning the application of the exemption, the Ministry states that the Ontario Court of Appeal has drawn a distinction between the requirements for establishing “health and safety” harms under section 14(1)(e), and the requirements for establishing the harms in the other parts of section 14.

The appellant does provide representations. However, his submissions do not address the elements of this exemption; rather, they represent speculation on the nature of the records that have been withheld under this exemption and are of no assistance to me in my analysis of this issue.

Analysis and findings

Previous orders of this office have identified that, generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)].

In the case of section 14(1)(e), the institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated [*Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.)].

The Ministry has provided confidential representations on the application of section 14(1)(e) to the records. The Ministry has provided detailed representations in support of its position that section 14(1)(e) applies to the records, and its representations refer to portions of the records, as well as other contextual information, in support of its position that disclosure of the records could reasonably be expected to result in the harms identified in section 14(1)(e).

As mentioned above, while the appellant does offer representations his comments do not address the application of the section 14(1)(e) exemption to the records at issue.

I have described the nature of records 12, 17 and 19 above. Record 22 is comprised of a fax cover page with correspondence attached.

In the circumstances of this appeal, on my review of the Ministry's representations and the contents of records 12, 17, 19 and 22, I am satisfied that there is a reasonable basis for believing that a person's safety could be endangered by disclosing these records to the appellant. Accordingly, I find that they are exempt under section 49(a), read in conjunction with section 14(1)(e).

Having found most of the records at issue in this appeal exempt under section 49(e) and the balance exempt under section 49(a), read with section 14(1)(e), I am not required to consider the application of section 49(a), read with section 19, or section 49(b), read with section 21.

EXERCISE OF DISCRETION UNDER SECTIONS 49(a) and 49(e)

The section 49(a) and 49(e) exemptions are discretionary, and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution has failed to do so.

In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations

In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 43(2)].

The Ministry states that it is "sensitive to the principles and spirit of the *Act* and to the rights of individuals to have as much information as possible." The Ministry submits that with regard to the appellant's request it has responded "in keeping with the legislated requirements and spirit of the *Act*." The Ministry also provides submissions that specifically address its decision to exercise its discretion not to disclose the information that is exempt under sections 49(a) and 49(e) to the appellant. This Ministry's representations under exercise of discretion were shared with the appellant in their entirety. The appellant's representations address indirectly the Ministry's exercise of discretion.

In considering all of the circumstances surrounding this appeal, as well as the representations submitted by both parties, I am satisfied that the Ministry has taken appropriate factors into consideration in exercising its discretion, and has not erred in the exercise of its discretion not to disclose the records under sections 49(a) and 49(e) of the *Act*.

SEARCH FOR RESPONSIVE RECORDS

The test

Where a requester claims that additional records exist beyond those identified by the institution, as is the case in this appeal, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24 [Orders P-85, P-221, PO-1954-I]. If I am satisfied that 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.

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 that it has made a reasonable effort to identify and locate responsive records [Order P-624].

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 that such records exist.

Parties' representations

The Ministry was asked to provide a written summary of all steps taken in response to the appellant's request, including affidavits from the people who conducted the actual searches. The Ministry did not provide affidavit evidence; however, the Ministry did address its search efforts in its representations.

The Ministry's representations include a detailed chronology of the steps taken to respond to the appellant's request.

The Ministry states that its Freedom of Information Office (FOI Office) first contacted a number of areas within the Ministry and requested that searches be conducted within these areas. The areas contacted were

- the Superintendent, Maplehurst Correctional Complex – for records while the appellant was at the Wellington Detention Centre in 1995 and the Waterloo Detention Centre in 1998
- Area Manager, Cambridge Probation and Parole Office

The Ministry states that its FOI Office was informed that a search had been completed and that "no responsive records could be located at the Maplehurst Complex." The Ministry indicates that its FOI Office was advised that the records being requested had been "transferred to the Government Records Centre and would have to be retrieved from that location." In addition, the FOI Office was advised that record transfer lists had been located for clinical and institutional records for 1998 but that "no transfer lists could be located" for the appellant's medical files from the Wellington Detention Centre in 1995.

The Ministry states that as a result of its initial search, responsive records were retrieved from the Government Records Centre pertaining to the appellant's file with the Cambridge Probation and Parole Office, his institutional and medical files from the Waterloo Detention Centre, as well as the appellant's institutional file from Wellington Detention Centre. The Ministry adds that the only records that could not be located were the appellant's "medical/clinical records" while he was at the Wellington Detention Centre in 1995.

The Ministry states that a "transfer number, location code and box number were located with respect to the appellant's 1995 medical records." The Ministry indicates that staff at the Government Records Centre conducted a search for the records but that the records were not located.

The Ministry submits that in October 2002 the FOI Office contacted a named Records Officer with Information Management Solutions at the Government Records Centre with respect to the missing records. The FOI Office provided the Records Officer with the transfer number, location number and box number (number 32) and asked that he conduct another search, including efforts to determine whether the records had been misfiled or had been signed out and not returned.

The Ministry states that staff at the Records Centre did conduct another search, including checking another box (box 31) and confirmed that the records at issue were not found and there was no evidence that the records had been signed out. The Ministry states that the Records Officer indicated that "possibly the file was not sent with the original transfer of records incoming to the Records Centre."

The Ministry submits that "all locations within the Ministry where the appellant's 1995 medical records from the Wellington Detention Centre could be located have conducted thorough and extensive searches for these records." The Ministry states that "experienced staff" at the Maplehurst Complex conducted searches and that "[a]ll indications were that the records had been transferred to the Records Centre." The Ministry adds that "employees who have knowledge of the Ministry's records have conducted two separate and thorough searches of the Records Centre" and that "these records could not be located."

With regard to the issue of the existence of a first page of a letter that was marked as page two and numbered as page 361, the Ministry states that it assigned a named staff member of the "Transition Planning Unit" to conduct another search to ascertain whether such a page existed. The Ministry states that this staff member did conduct another search through "the entire original file that was retrieved from the records centre" and that he "could not locate" another page for the document that was numbered as page 361.

In response, the appellant states that he believes that further records exist, particularly medical records from the period during which he was incarcerated at the Wellington Detention Centre. The appellant suggests that there is evidence of instances in which Ministry employees have "shredded" documents that "implicated themselves in criminal activity." The appellant submits

that at one institution it is his understanding that a doctor who was sent to view medical records was told “conspiratorially” by a guard that they had “destroyed” those documents.

Analysis and findings

I find that the Ministry has adequately discharged its responsibilities under section 24 of the *Act* to conduct a reasonable search for records responsive to the appellant’s request.

While I acknowledge and echo the appellant’s concerns regarding the whereabouts of his medical records for the period of his incarceration at the Wellington Detention Centre, I am satisfied that the Ministry has taken reasonable steps to locate these records as set out in its evidence.

I am also satisfied that the Ministry has provided sufficient evidence to show that it made a reasonable effort to identify and locate the first page of what appears to be a two-page letter numbered as page 361 in the Ministry’s records.

ORDER:

1. I uphold the Ministry’s decision to deny access to the records at issue in this appeal.
2. I uphold the Ministry’s search for responsive records.
3. I dismiss the appellant’s appeal.

Original Signed By: _____

Bernard Morrow
Adjudicator

March 31, 2006 _____

APPENDIX

| Record # | Description | Severed or Denied in Full | Exemptions Claimed or Exemptions that Could Apply |
|-------------------|--|----------------------------------|---|
| 1 (pp. 14-15) | Level of Service Inventory - Ontario Revision (LSI-OR) documents | Denied in full | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 2 (pp. 16, 20-22) | LSI-OR documents | Severed | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 3 (pp. 23-119) | Record of Case Supervision | Denied in full | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 4 (p. 120) | LSI-OR documents | Denied in full | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(d) 49(e) |
| 5 (pp. 123-126) | Correspondence | Denied in full | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 6 (p. 149) | Court document | Severed | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(d) 49(e) |
| 7 (p. 166) | Ontario Provincial Police Security document | Denied in full | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 8 (pp. 170-173) | Internal memo | Denied in full | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |

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| 9 (p. 181) | Ministry of the Attorney General facsimile | Denied in full | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 10 (p. 186) | Offender Incident Report | Denied in full | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 11 (pp. 189-191) | Probation and Parole Office documents | Denied in full | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 12 (p. 196) | Fax cover page | Denied in full | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 13 (p. 197) | Probation and Parole Office email correspondence | Denied in full | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 14 (pp. 198-199) | Internal memo | Denied in full | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 15 (p. 201) | Offender Incident Report | Severed | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 16 (p. 208) | Special Management Concerns document | Severed | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 17 (p. 214) | Fax cover page | Denied in full | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |

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| 18 (pp. 221-226) | Offender Incident Report | Denied in full | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 19 (p. 233) | Fax cover page | Denied in full | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(e) |
| 20 (p. 238) | Internal handwritten note | Denied in full | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 21 (pp. 240-241) | Offender Incident Report | Denied in full | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 22 (pp. 242-248) | Internal correspondence | Denied in full | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 23 (pp. 251-252) | Waterloo Regional Police documents | Denied in full | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 24 (p. 260) | Offender Management System Client Profile | Severed | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(d) 49(e) |
| 25 (p. 285) | Probation and Parole Office document | Denied in full | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 26 (p. 295) | Internal handwritten note | Denied in full | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |

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| 27 (pp. 335-336) | Offender Data Sheet/Identification | Severed | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 28 (pp.338-349) | Segregation records | Denied in full | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 29 (pp. 351-357) | Segregation records | Denied in full | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 30 (p. 362) | Occurrence Report | Denied in full | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 31 (pp. 367-369) | Occurrence Report | Severed | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 32 (p. 371) | Occurrence Report | Severed | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 33 (p. 373) | Occurrence Report | Severed | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 34 (p. 384) | Occurrence Report | Severed | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 35 (p. 385) | Misconduct Report | Severed | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |

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| 36 (p. 393) | Offender Management Unit Offender Card | Severed | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 37 (p. 394) | Offender Data Sheet | Severed | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 38 (pp. 395-403) | Segregation Records | Denied in full | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 39 (p. 405) | Occurrence Report | Severed | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |
| 40 (p. 406) | Segregation Records | Denied in full | 49(a)/14(1)(c), (e), (i), (k), (l), 14(2)(d), 19 49(b)/21 49(d) 49(e) |