



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2667

Appeal PA07-26

Ministry of Community Safety and Correctional Services



Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Ministry of Community Safety and Correctional Services (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the Act) for access to the following information:

... a copy of my complete institutional and medical file with all the data and notes in possession of the Ministry of Correctional Services including those for the detention at the Toronto West Detention Centre at 111 Disco Road, Toronto, M9W 5L6 during the periods of March 30, 1999 to June 5, 1999 and April 5, 2001 to August 6, 2001.

The Ministry located 50 pages of institutional records and 34 pages of health care records that were identified as responsive to the request. In its decision letter, the Ministry advised that it was granting partial access to the responsive records. Access was denied to portions of the responsive records pursuant to the exemptions at section 49(a) (discretion to refuse requester's own personal information) in conjunction with section 15(b) (relations with other governments), section 49(b) in conjunction with section 21(1) (personal privacy) with reference to the factor at section 21(2)(f) (highly sensitive), and section 49(e) (confidential correctional record).

The requester, now the appellant, appealed the decision issued by the Ministry.

During mediation, additional information was disclosed to the appellant. The appellant advised that he is satisfied with the disclosure and does not wish to pursue access to any of the information for which the Ministry continues to claim exemptions. Accordingly, access to the remaining portions of the responsive records is no longer at issue in this appeal.

Also during mediation, the appellant advised that he takes the position that additional responsive records should exist. In particular, he believes that the following records are missing for the April to August 2001 period during which he was detained at the Toronto West Detention Centre (the Detention Centre):

- Segregation records for the period after June 15, 2001
- Medical records indicating further medical interventions and procedures such as
 - chest x-rays
 - blood tests
 - injections of psychotropic drugs
 - injections of vitamins
 - physical exams
- Letters from his mother and the Russian consulate which were translated. The appellant advised that a Toronto West Detention Staff member of an identified name was involved with respect to the translation of these letters.
- The name of the radiologist that performed the chest x-rays.

- Records charting his daily activity. The appellant believes that his daily activity was recorded on graph paper, with checkmarks.

The Ministry takes the position that the responsive records make up the appellant's complete institutional and medical file and that no additional records exist.

As further mediation did not resolve the issue, the file was transferred to the adjudication stage of the appeal process for an inquiry to address whether the Ministry has conducted a reasonable search for responsive records.

I decided to begin my inquiry by sending a Notice of Inquiry to the Ministry. The Ministry provided representations in response.

I then sent a copy of the Notice of Inquiry to the appellant, together with a copy of the Ministry's representations, in their entirety. The appellant provided representations in response.

As the appellant's representations raised issues to which I believed the Ministry should have an opportunity to respond, I provided it with a complete copy of the appellant's representations. The Ministry provided reply representations in response.

DISCUSSION:

SEARCH FOR RESPONSIVE RECORDS

Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;
 - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and...
- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Where a requester claims that 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 [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]. A reasonable search is one in which an experienced employee, expending reasonable effort, conducts a search to identify any records that are reasonably related to the request [Order M-909].

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.

Representations in response to the Notice of Inquiry

The Ministry's representations

The Ministry submits that experienced staff at the Detention Centre conducted comprehensive searches in order to identify any records responsive to the appellant's request. In support of its position, the Ministry has provided sworn affidavits from the following two employees who conducted searches: a Health Care Coordinator and a Security Manager.

The affidavit of the Health Care Coordinator, whose duties and responsibilities include ensuring the provision of health care, overseeing the management of Health Care Services and the utilization of staff/resources, describes the action she took to locate responsive records. The Health Care Coordinator also identifies a number of the additional health care records that the appellant believes should exist and provides the following explanations as to why they could not be located:

- (a) medical records indicating further medical examinations and procedures such as:
- Additional records relating to the chest x-ray completed on the appellant on June 15, 2001, part from the chest x-ray report (page 82 of the responsive records previously disclosed to the appellant). *I have verified that no additional records relating to the chest x-ray are held by the Toronto West Detention Centre. The actual chest x-ray film would be held by the service provider.*
 - Additional records relating to the physical exam of the appellant by [named doctor] on April 9, 2001, as documented in the Health Care Record - Part B (page 72 of the records previously disclosed to the appellant). *I have verified that no additional records exist relating to the physician's examination of the appellant.*

- Injections of psychotropic drugs. *I have verified that no records of this nature exist as psychotropic drugs were not prescribed.*
 - Injections of vitamins. *I have verified that no records of this nature exist as injections of vitamins were not prescribed.*
 - Blood tests. *I have verified that no records of this nature exist as blood tests were not ordered.*
- (b) The name of the radiologist that performed the chest x-ray is unknown to the Toronto West Detention Centre. *The x-ray results were read by [named doctor], Radiologist, with [named company].*

[Emphasis added]

The Health Care Coordinator also submits:

The only records that exist are specified above, as ordered by the attending physician, [named doctor] at the time. If tests/medications were not ordered by [named doctor], then they do not exist.

The affidavit of the Security Manager, whose duties and responsibilities include copying files for freedom of information requests, sets out the actions he took to locate the responsive records. He also addresses the additional institutional records that the appellant argues must exist but were not provided to him. He submits:

I understand the appellant believes that a number of additional responsive records exist. In particular, the appellant believes that the following correctional records for the period of April 5, 2001 to August 6, 2001 should exist:

- (a) Segregation records for the period after June 15, 2001
- (b) Letters from his mother and the Russian consulate, which were translated ...
- (c) Records charting his daily activity...

With respect to the records that he identified as (a), (b), and (c), the Security Manager provides the following responses:

- (a) Accordingly to our records [the appellant] was not housed in segregation after June 15, 2001.
- (b) Incoming letters are not translated.

(c) The only incidents that would be recorded would be of a negative or problematic nature.

In its representations, the Ministry also makes particular reference to the appellant's belief that copies of personal letters sent to him by his mother and the Russian consulate should have been located. It submits:

[I]nmate correspondence is generally considered to be personal property of the inmate receiving the correspondence. Correctional staff would not normally make or keep copies of such correspondence. It should be noted that page 48 of the responsive records indicates that "all" of the appellant's personal property was released to his mother on [specified date].

The Ministry further submits that all searches were diligent and thorough and that it is not aware of the existence of any additional responsive records.

The appellant's representations

The appellant submits that in addition to the responsive records provided to him, additional records should exist from the time period that he was held at the Detention Centre. He submits:

I have read [the] submission and affidavits presented by the staff of the [Detention Centre], and I do state that material mentioned on page 2 of the Notice of Inquiry ... must exist and it is missing [from] the file that I received from the Ministry of Community Safety and Correctional Services.

The appellant submits that during his time at the Detention Centre he was held in segregation in "noise chambers" with motors "installed under the ceiling." He also submits that he underwent "numerous x-rays, injections, medical examinations by physicians, blood tests and other medical interventions." He submits that as a result of these medical examinations and procedures he now suffers permanent psychological and physical disability, including hearing damage.

The appellant has enclosed medical reports from several doctors and health professionals along with his representations. He submits that the reports, support his view that he suffers from hearing loss, and constitute "proof of the damages caused to [him]" by the staff at the Detention Centre. He submits that the "severity of the damage" described in the reports provide evidence that he was subject to many more medical interventions and segregations than the records show and he believes that the records have "been hidden."

The appellant also makes the following submissions to explain his position that additional records should exist:

Noticeable is the fact that there are pages and pages of medical records prior to June 15, 2001 and only two entries afterwards. It is impossible that there were no medical procedures done or recorded after June 15, 2001. That fact that most of

them were done unlawfully explains such scarcity of records after June 15, 2001 until August 6, 2001.

There is no record of segregation after June 15, 2001, even though I had been placed in noise chambers of segregation more than ten times.

I definitely remember that the staff of the [Detention Centre] was copying my letters and they even told me of that. Some of the letters were not delivered to me at all, and I received only photocopies of them. Once, the photocopy of the document in a foreign language from the letter was given to me with an indication that Ministry made its translation and would keep it on the file. Once the above documents were not disclosed to me it means that there is in my file at least the material I mentioned in this paragraph, and most likely there is much more than that.

...

I want to see all the material that is in possession of the Ministry as there is much more of that on my file.

The appellant requests that the Ministry be ordered to conduct a new search to find and disclose the “hidden” parts of the file as he requested the complete institutional and medical file in the Ministry’s possession.

The Ministry’s reply representations

In response to the appellant’s representations the Ministry submits:

The Superintendent of the [Detention Centre] has been consulted in regard to the appellant’s representations. The Superintendent is of the view that the records search issues that continue to be raised by the appellant have been addressed to the best of the Ministry’s ability through the previously submitted detailed records search affidavits prepared by the [Detention Centre] Health Care Coordinator and the Toronto West Detention Centre Security Manager. All of the institutional and health care records have been considered in relation to the appellant’s request. The Ministry is not aware of any “hidden” parts of the requested records.

The Superintendent has suggested that the appellant may wish to address any concerns he has in relation to his admission and incarceration at the [Detention Centre] directly to the attention of the Superintendent. [Emphasis added]

Analysis and finding

As set out above, the issue before me is whether the search carried out by the Ministry was reasonable in the circumstances. The *Act* does not require the Ministry to prove with absolute certainty that further records do not exist, but only to provide sufficient evidence to establish that it made a reasonable effort to identify and locate responsive records [Order P-624].

I have reviewed all of the relevant material in this appeal, including the representations of both parties and the documents provided by the appellant. 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.

As noted above, in the context of a reasonable search appeal, a requester must provide a reasonable basis for concluding that additional records exist. In my view, aside from his assertions that additional records related to his time in segregation at the Detention Centre and related to medical treatments he received while in custody must exist, the appellant has not provided me with any evidence to support his claim. Although the medical records enclosed with his representations evidence damage to his hearing and other medical and psychological conditions, the appellant has not established a link between those reports and his assertion that this damage was sustained while he was in custody at the Detention Centre. Accordingly, I find that the appellant has not provided a reasonable basis to conclude that additional records exist.

In my view, through its affidavits and representations, the Ministry has provided a clear and thorough explanation of the reasonable steps taken by two experienced employees, to identify and locate any records responsive to the appellant's request, as well as explanations as to why the additional records identified by the appellant could not be located. I find that the Ministry has provided sufficient evidence to establish that it has made a reasonable effort to identify and locate all responsive records.

Therefore, I find that the Ministry has conducted a reasonable search for records responsive to the appellant's request and has discharged its obligations under the *Act*.

ORDER:

I uphold the Ministry's search as reasonable.

Original Signed by: _____
Catherine Corban
Adjudicator

_____ April 29, 2008