

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3070

Appeals PA11-335-2/ PA11-420-2

Ministry of Community and Social Services/ Ministry of Children and Youth Services

April 18, 2012

Summary: The appellant submitted two requests to the Ministry of Community and Social Services and Ministry of Children and Youth Services for records relating to their special home funding program. The ministries identified responsive records and granted the appellant with partial access. The appellant takes the position that additional records exist. The search is found reasonable and the appeal is dismissed.

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

OVERVIEW:

[1] The appellant submitted two separate requests under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records to the Ministry of Community and Social Services and Ministry of Children and Youth Services (the ministries). The ministries are served by the same Freedom of Information and Protection of Privacy Unit.

[2] The request sought access to records relating to the ministries' special home funding program, including records relating to the appellant's application for funding.

[3] The ministries located responsive records but withheld portions of a briefing note claiming that disclosure of the withheld information would result in an unjustified invasion of personal privacy under section 21 of the *Act*.

[4] Upon receipt of the responsive records, the appellant submitted a request to the ministries to correct her personal information. The ministries denied the appellant's correction request but invited her to file a statement of disagreement in the paper file held at the regional office.

[5] The appellant appealed the ministries' access and correction decision to this office. The appellant's appeal also raised an issue as to whether the ministries conducted a reasonable search for responsive records.

[6] During mediation, the ministries issued a revised decision to the appellant. The revised decision letter, dated December 14, 2011 confirmed that the appellant's statement of disagreement was added to the paper file. The letter also provided the appellant with information about the ministries' record management systems. The ministries attached an updated briefing note with its letter to the appellant.

[7] At the end of mediation, the appellant confirmed that the sole issue remaining in dispute was whether the ministries conducted a reasonable search for electronic records relating to the ministries' second level review of the appellant's application. The appellant maintains that such records should exist.

[8] The reasonable search issue was transferred to the adjudication stage of the appeals process, in which an adjudicator conducts an inquiry under the *Act*. I conducted a telephone conference inquiry in which the appellant and ministries participated and provided oral and documentary evidence.

[9] In this order, I find that the ministries' search was reasonable.

Did the ministries conduct a reasonable search for responsive records?

The appellant's evidence

[10] The appellant believes that electronic records relating to the ministries' second level review of her application should exist. The appellant submitted copies of correspondence she sent to the ministry and made the following arguments in support of her position:

- she received information from the ministries directly that electronic records exist and are located in the Ministry of Community and Social Services Assistant Deputy Minister's Office (ADMO) in Toronto;
- the additional information contained in the updated briefing note provided to her with the ministries' revised decision demonstrates that additional information was retained in the electronic file located in the ADMO's office; and

- the ministries should retain electronic records.

[11] The appellant advised that before she filed her access request, she contacted the ministries and made inquiries as to how she could obtain the briefing notes for the second level review relating to her request for funding. The appellant advised that the Manager of Program Support Services and Supports Branch advised her that the files for the second level reviews are kept electronically and are located in the ADMO's office. The appellant stated that she was told that upon receipt of her request for the briefing note, the ADMO's office would electronically send the requested document to the regional office who would then print a copy and mail it to her.

[12] The appellant also argued that the additional information contained in the updated briefing note demonstrates that there exists an electronic file which contains information about the ministries' second level review of her application. The appellant submitted that the briefing note provided with the ministries' revised December 14, 2011 letter contains additional information than the briefing note originally provided to her. The appellant advised that the differences in the briefing notes is the result of the original being retrieved from the paper file in the regional office and the updated version being retrieved from the electronic file in the ADMO's office. When asked why she believed that the updated briefing note was retrieved from the ADMO's office, the appellant advised that it was retrieved during the mediation process and after the ministries' Toronto Freedom of Information and Protection of Privacy Unit got involved.

[13] Finally, throughout the oral inquiry the appellant made comments suggesting that the ministries should retain electronic records of its second level review. The appellant expressed dissatisfaction that the ministries relied on paper files and did not maintain electronic copies.

The ministries' evidence

[14] Two individuals provided evidence on behalf of the ministries. The first individual is a policy analyst in the ministries' Freedom of Information and Protection of Privacy Unit. The second individual is the manager the appellant indicates she spoke with before she filed her access request.

[15] In support of its position that a reasonable search for responsive records occurred and that no additional records exist, the ministries' representatives made the following points:

- Upon receipt of the appellant's access requests, the ministries' Freedom of Information and Protection of Privacy Unit conducted a search for responsive records and located a paper file in the regional office, which was provided to the appellant. The ministries advised that it also consulted the ADMO's office and

received confirmation that no electronic file relating to the ministries' second level review of the appellant's application exists.

- The ministries use a tracking system called the Online Correspondence Management System which can be accessed by both the ADMO and regional offices. The purpose of the system is to transmit documents between the ADMO and regional offices. The transmission of documents is a necessary part of the second level review process as the ADMO has to sign off on certain documents.
- The ministries' Freedom of Information and Protection of Privacy Unit consulted with a senior advisor in Operations about the capabilities of its Online Correspondence Management System and were advised that once documents are uploaded on the tracking system and sign off from the ADMO's office is received, they are printed and placed in the paper file in the regional office. The ministries advised that the uploaded documents are deleted from the system once sign off is received. The ministries advised that no retention schedule is associated with the tracking system.
- The ministries advised that it made inquiries as to whether the appellant's statement of disagreement could be added to the tracking system and it was told that it could not as the tracking system does not have the capability to add documents. The ministries advised that the tracking system is not a database and currently does not have the capability to retain and maintain electronic records.
- The ministries advised that the paper file is the complete record. The ministries also advised that the regional office provided the updated briefing note that was attached to its December 14, 2011 revised decision letter.

Decision and Analysis

[16] 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 and 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.

[17] 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 [Orders P-624 and PO-2559]. To be responsive, a record must be "reasonably related" to the request [Order PO-2554].

[18] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request [Orders M-909, PO-2469, PO-2592].

[19] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control [Order MO-2185].

[20] 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 [Order MO-2246].

[21] I have carefully reviewed the evidence of the parties and am satisfied that the ministries' search for responsive records was conducted by an individual knowledgeable in the subject matter of the request. I am also satisfied that this individual's original search for responsive records in the regional office and follow-up consultations with the ADMO's office and Operations demonstrates that the ministries expended a reasonable effort to locate the requested records. Accordingly, I am satisfied that no electronic records relating to the ministries' second review of the appellant's application exists in the ADMO's office.

[22] In making my decision, I reviewed the appellant's evidence along with the documents she provided in support of her position that additional records must exist. Though I appreciate the appellant's questions about the limitations of the ministries' record management system, the issue I am to determine is whether the ministries conducted a reasonable search of its record holdings for responsive records. In this regard, I considered the appellant's evidence that she received advice from the ministries that electronic records relating to its second level review are located in the ADMO's office. However, after considering the ministries' evidence about its record holdings, I am satisfied that the information the appellant relied upon was either incorrect or misunderstood. In addition, I accept the ministries' evidence that its tracking system does not retain electronic documents.

[23] Finally, I also considered the appellant's argument that the additional information contained on the updated briefing note supports her position that an electronic file exists, in addition to the paper file. Having regard to the ministries' evidence that the updated briefing note was provided by the regional office, I find that the appellant's evidence fails to demonstrate a reasonable basis for concluding that electronic records in the ADMO's office exist.

[24] Having regard to the above, I find that the ministries conducted a reasonable search for responsive records and dismiss the appeals.

ORDER:

I uphold the ministries' search as reasonable and dismiss the appeals.

Original signed by: _____

Jennifer James

Adjudicator

_____ April 18, 2012