Information and Privacy Commissioner,
Ontario, Canada

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

# ORDER PO-3280

Appeal PA12-214

Ministry of Community Safety and Correctional Services

November 27, 2013

**Summary:** The appellant requested access to information held by the Ontario Provincial Police (OPP) in relation to incidents involving houses used for illegal marijuana grow operations and/or clandestine labs in all communities that fall within the jurisdiction of the OPP. The time period for the request was for the years 2000 to 2012. The ministry responded by stating that the requested record is not included in the definition of "record" on the basis of section 2 of Regulation 460 of the *Act*, because the process of producing the record would unreasonably interfere with the operations of the ministry. This order upholds the ministry's decision.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of record), Regulation 460, section 2.

**Orders Considered:** PO-2752.

## OVERVIEW:

[1] 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 information held by the Ontario Provincial Police (OPP) in relation to incidents involving houses used for illegal marijuana grow operations and/or clandestine labs (grow-ops) in communities province-wide that fall within the jurisdiction of the OPP. The time period for the request was January 1, 2000 to March 2, 2012.

[2] The request was for the following information in relation to each incident:

- The house address, date and number of plants seized in each marijuana grow operation: and

- The house address and quantity of drugs seized in each clandestine lab and the date when the clandestine lab was dismantled.

[3] The ministry issued a decision in response to the request. In that decision, the ministry took the position that the process of producing the records from machine readable records would unreasonably interfere with the operations of the ministry, and that the requested record is not included in the definition of "record" because of the operation of section 2 of Regulation 460 under the *Act*. The ministry's decision letter indicated that "Niche RMS" is the OPP's computerized records management system, used to record information relating to incidents investigated by the OPP throughout the province. The ministry also stated that Niche RMS functions include "police incident and investigation data reporting, data retrieval and data searching." The decision then stated:

> The OPP estimates that approximately 14,000 incidents stored in Niche RMS would need to be retrieved and reviewed in order to identify data responsive to your request. It is anticipated that approximately 10 minutes would be required in order for an experienced OPP employee to retrieve and review each incident for responsiveness to your request. Approximately 2,334 hours would be required for this task.
>
> In view of the foregoing, please be advised that it is the position of the Ministry that section 2 of regulation 460 under the *Act* is applicable in the circumstances of your clarified request. This regulation states:
>
> > A record capable of being produced from machine readable records is not included in the definition of "record" for the purpose of the Act if the process of producing it would unreasonably interfere with the operations of an institution.
>
> It is the position of the Ministry that in the circumstances of your request and given the manner in which OPP incident records regarding illicit drug operations province-wide are stored in Niche RMS producing the requested data would unreasonable interfere with the operations of the Ministry.

[4] The appellant appealed the ministry's decision.

[5] Mediation did not resolve this appeal, and it was transferred to the inquiry stage of the appeal process. I sent a Notice of Inquiry to the ministry, initially, and received representations in response. I then sent the Notice of Inquiry, along with a complete copy of the representations of the ministry, to the appellant, who also provided representations in response. After reviewing the appellant's representations, I sent a copy of those representations to the ministry, inviting it to provide reply representations, which it did.

[6] In this order, I find that the process of producing the requested record would unreasonably interfere with the operations of an institution, and uphold the ministry's decision.

## DISCUSSION:

### Is the requested information a "record" as defined in section 2 of the *Act* and section 2 of Regulation 460?

[7] "Record" is defined in section 2(1) of the *Act* as follows:

> "record" means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,
>
> > (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and
> >
> > (b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution; ("document")

[8] However, section 2 of Regulation 460 also relates to the definition of the word "record." It reads:

> A record capable of being produced from machine readable records is not included in the definition of "record" for the purposes of the Act if the process of producing it would unreasonably interfere with the operations of an institution.

[9] The ministry takes the position that although the record responsive to the request may be capable of being produced from a machine readable record for the purpose of section 2(1)(b) of the definition, the process of producing the record would unreasonably interfere with the operations of the ministry under section 2 of Regulation 460. As a result, the requested record is not included in the definition of "record" because of the operation of that section.

[10] Accordingly, the issue in this appeal is whether the process of producing the record would unreasonably interfere with the operations of the ministry.

***Representations***

*The ministry's representations*

[11] The ministry begins by providing some background information about the dangers of illegal marijuana grow operations and clandestine drug labs, the increase in the number of these illegal operations, and the government's commitment to fight them. It also refers to the *Law Enforcement and Forfeited Property Management Statute Law Amendment Act, 2005*, which is designed, among other things, to improve communications between local police services and municipalities when an illegal marijuana grow operation is dismantled to ensure, for example, that appropriate health and safety inspections take place.

[12] The ministry then provides the following specific information about Niche RMS which is the OPP Records Management System:

> All OPP occurrences since 2001 are stored on Niche RMS. Records from prior to 2001 are archived on Niche RMS. Niche RMS is a large, highly complex, relational database that contains multiple tables linked by fields. Navigation through Niche RMS is complicated to learn, and requires training. Niche RMS is used by police services in Ontario, and by law enforcement agencies in other jurisdictions around the world, and it has become a vital technological solution to manage the vast amounts of data that law enforcement agencies collect, and then must use as part of their enforcement mandate.
>
> Niche RMS is an 'incident-centric' system, meaning a single law enforcement incident can yield vast amounts of information on the persons who were charged, persons under surveillance, and the property in question, among other things. Niche RMS incidents link to other incidents where there are common features (e.g., same addresses, or same individuals of interest). In other words, Niche RMS endeavours to be as comprehensive as possible in locating records that may be relevant to a specific incident.

> Where only specific data is being searched for, as is the case with this appeal, a specific search capability in Niche RMS must be designed. There are only two individuals in the OPP who have the training to design this type of specific search capability, and they ordinarily support front-line law enforcement operations. These individuals are working at full capacity.
>
> Operators who use Niche RMS must first receive training. Initial training must be provided by a qualified trainer. The training provides Niche RMS operators with specialized knowledge they require to use the Niche RMS data base.
>
> There are only a limited number of Niche RMS operators, and trainers. Both Niche RMS operators and trainers are working at full capacity. Due to security concerns, outside consultants, or employees from elsewhere in the Ministry are not provided with access to Niche RMS, unless they have first received appropriate security clearances.

[13] The ministry then states that it considered the following factors in determining that producing the records would unreasonably interfere with the operations of the OPP:

> (a) *The multi-year time line for the request:* The request is from 2000 to 2012. …
>
> (b) *The size and breadth of OPP operations:* Unlike municipal police services who serve a single municipality, the OPP delivers front-line policing services in 322 municipalities, operating out of 166 detachments located throughout the province. Illegal marijuana grow operations and clandestine drug labs exist in most parts of the province, and recent media articles highlight the fact that this is becoming a growing problem in rural Ontario, which is served by the OPP. In 2010, the OPP Drug Enforcement Unit seized over $257 million dollars worth of drugs, a $30 million dollar increase over 20O9. The scale of OPP operations mean that producing responsive records is a vastly greater undertaking than it would be for municipal police services, and therefore will interfere much more greatly with OPP operations.
>
> (c) *The large number of records at issue:* The Ministry estimates that there are records related to 14,000 responsive incidents on Niche RMS. Trained Niche RMS operators would have to search through these records to produce responsive records. We estimate that at least 2334 hours would be spent producing records responsive to this request.

(d) *Only trained Niche RMS operators can produce responsive records:* This means that existing Niche RMS operators would have to be removed from their existing duties, which support front-line policing operations, in order to produce the records responsive to this request. … Any removal of Niche RMS operators therefore interferes with front-line policing, and the Ministry submits this would unreasonably interfere with front-line policing and could have adverse consequences for officer safety.

… The Ministry submits that the removal of Niche RMS operators from supporting front-line law enforcement operations would unreasonably interfere with the operations of the OPP.

(e) *The Niche RMS configuration:* Niche RMS contains all OPP occurrence records. As noted above, Niche RMS was created primarily to support front line law enforcement operations, and not for the purpose of creating incident data, which is essentially what the appellant is seeking.

As a result, in order to produce responsive records, the OPP would first have to create a customized search capability using an Excel spread sheet. There are only two staff members in the OPP who are trained to create these customized search capabilities on Niche RMS, and they both support front-line policing operations. [They] create customized search capabilities not only for the OPP but also for other law enforcement agencies, who lack this particular capacity. What this means is that as with Niche RMS operators, removing these two staff members from their existing duties has adverse consequences for front-line policing operations not only in the OPP but also possibly in other police services these two staff members support.

Once the customized search capability produces records, trained Niche RMS operators must then go through the records which are produced to find out which ones are responsive. For example, the appellant wants to find out house addresses for illegal marijuana grow operations and clandestine drug labs. For many incidents involving illegal marijuana grow operations and clandestine drug labs, there will be multiple house addresses that will be produced that were not the location of the illegal marijuana grow operation or clandestine drug lab. One home address may belong to a complainant, the other might be the home address of a suspect, and so forth. Home addresses would not be relevant if the illegal marijuana grow operation or clandestine drug lab was not in a residence, but say in a shed or outdoors. The Niche RMS operators will have to interpret the records that are produced to find out which address is the actual address of the illegal marijuana grow operation or clandestine drug

lab, a task which by its nature requires careful review and is therefore time consuming.

(f) *Setting a Precedent:* The Ministry is concerned that an order to produce the records responsive to this request could be precedent-setting, and could lead to similar requests for bulk data from Niche RMS.

[14] The ministry then submits that previous orders of this office support its position that producing the record would unreasonably interfere with the operations of the ministry. It refers to a number of orders, and states as follows:

- In Order M-583, Former Commissioner Tom Wright held that "government organizations are not obliged to maintain records in such a manner as to accommodate the various ways in which a request for information might be framed". The ministry submits that Niche RMS has been configured to meet the needs of the law enforcement community. It therefore does not need to be configured in order to suit the needs of the appellant, who is seeking incident data.

- Order MO-488 held that government organizations are not obligated to retain more staff than is required to meet its operational requirements. The ministry submits that in accordance with this order, the OPP should not have to hire and train additional staff in order to produce records responsive to this request.

- Order PO-2151 accepted that producing Ministry of Transportation (MTO) records required the use of internal specialized staff, whose time and services were "in high demand" in finding that producing responsive records would unreasonably interfere with the operations of MTO. The ministry submits that a similar finding should be made with respect to OPP employees who work on Niche RMS, all of whom have specialized knowledge and are also in high demand.

- Order MO-1989 found that an institution must provide sufficient evidence beyond stating that extracting information would take "time and effort" to support a finding that the process of extracting the information would unreasonably interfere with its operations. The ministry submits that it has done just that in this instance, for example, by submitting the number of incidents we estimate are on Niche RMS and the amount of time it would take to retrieve them.

- Order PO-2752 found that an estimate of 1,377.5 hours to produce responsive records would unreasonably interfere with the operations of the ministry's OTIS data base (Offender Tracking and Information

> System). In contrast, the ministry estimates it would take at least 2334 hours to produce the records responsive to this access request. The ministry submits that if PO-2752 serves as a threshold for the standard the ministry must meet, then it has done so given that it has estimated that the records responsive to this request will take significantly more hours to produce.

*The appellant's representations*

[15] The appellant takes issue with some of the information provided by the ministry. The appellant also refers to the health and safety concerns resulting from grow-ops, which I address under "additional matter" below.

[16] To begin, the appellant questions the ministry's characterization of the Niche RMS. He states that the Niche RMS "prides itself on being the most advanced and complete police operating systems in the world and that it was put together to answer front line police work, administrative tasks and program specific records (reports)." He then refers to the ministry's position that Niche RMS is an "incident-centric" system and is "not for the purpose of creating incident data," and then quotes from the following information about the Niche RMS, which he obtained from the Niche RMS website:

> Niche Technology also supplies ready-made interfaces that can be adapted for specific customer environments:
>
> - Human resources/duty management systems
> - Statistical reporting and analysis systems, including data warehouses
> - Computer Aided Dispatch systems
> - Address verification systems and databases
> - Mapping software and databases
> - Prosecuting agencies
> - Court systems
> - National criminal records databases
> - Major case management systems

[17] The appellant also refers to a testimonial taken from the Niche website which praises the search features of the Niche RMS database and calls them "extremely flexible" and "one of its strongest features."

[18] By referring to this information, the appellant seems to suggest that the Niche RMS ought to able to access the requested data more quickly and efficiently than the ministry states.

[19] The appellant also suggests that responding to this request may not take the amount of time indicated by the ministry and also suggests that, because of the number of records that need to be browsed, this may be an opportunity to test the "ease of the system." He states:

> … The computer language used by Niche RMS to store its data is one of the most versatile database systems used in the world. SQL-based relational databases such as the one that stores the data for Niche RMS follow a widely understood and standard framework and set of tools. While the Niche RMS system may limit the ability of the user to quickly and easily draw out the exact data required in this request, a sufficiently skilled database administrator should be able to access the underlying database and very rapidly understand and retrieve only the information requested. This should be possible even if the database administrator is not currently familiar with the Niche RMS system or database schema. …

[20] The appellant then proceeds to identify the manner in which these searches could be conducted as follows:

> The process would be to understand the schema and then construct an SQL query that retrieves only the required data. Since the query could be formulated to the exact data required, bypassing the limitation on the Niche RMS's capability to pull back data, a manual examination of the resulting data at the row-by-row level would be unnecessary and a simple sanity check of randomly selected rows would be sufficient to ensure the integrity of the data. This approach would not only dramatically reduce the effort required by the OPP to retrieve this information, it would also enable the use of personnel not currently trained and committed to the operation of Niche RMS. In this instance, one of the many skilled database administrators cleared to the secret level in Canada could be employed to retrieve the data.

[21] The appellant notes that he employs a computer consultant with "Canadian government secret clearance" who could be made available to perform the suggested work, at no cost to the ministry.

[22] The appellant also notes the public safety risks posed by the grow-ops (as noted by the ministry) and the OPP's goal of public safety. He refers to the recent protocol put in place by the province, which requires information about grow-ops to be made public, and states that the information he is requesting therefore ought to be available. He states that the fact that the OPP covers a vast area does not mean they are not required to follow the protocol, nor should it "alleviate them from public request for information such as the one…."

*The ministry's reply representations*

[23] The ministry provides reply representations addressing a number of the appellant's arguments.

[24] With respect to the appellant's position that other Canadian police services maintain the kinds of records the appellant is seeking as publicly accessible records, the ministry states that such records are maintained on a "go-forward" basis. It states:

> The ministry is not aware of any police services retroactively providing public access to records going back to 2000, which is what the appellant has requested. For example, the RCMP website, which the appellant references, only began posting the list of marijuana grow operations in 2012.[1]

[25] The ministry states that it is the "vast breadth" of the appellant's search request which brings it within the scope of section 2 of Regulation 460.

[26] Regarding the appellant's position that a "sufficiently skilled database administrator" should be able to quickly retrieve the information requested and that such an administrator would not need to be familiar with the "Niche RMS system," the ministry states that appellant has not defined what a "sufficiently skilled database administrator" means. The ministry also states that, in any event, it maintains its position that operators who use Niche RNS must first be trained by trainers who themselves are qualified to train operators to use Niche RMS.

[27] Lastly, the ministry disagrees with the appellant's submission that another query option could be used which would make it easier to retrieve only the data that the appellant wants to retrieve. It states:

> … any search the OPP did would retrieve much more data than just the data the appellant was seeking, and … some of this data would likely be incorrect and non-responsive. This would mean we would still have to do a manual search of the data to ensure we were not releasing incorrect

[1] The ministry references the RCMP website in support of its position.

> data, or data that was not responsive (e.g, related to legal medical marijuana grow operations), but that the search would nevertheless retrieve.

**Analysis and findings**

[28] A number of previous orders have addressed the issue of whether the process of producing a record would unreasonably interfere with the operations of an institution under section 2 of Regulation 460. In Order P-50, Former Commissioner Sidney B. Linden first addressed this issue and stated:

> What constitutes an "unreasonable interference" is a matter which must be considered on a case-by-case basis, but it is clear that the Regulation is intended to impose limits on the institution's responsibility to create a new record.

[29] Orders since then have reviewed the various circumstances where this case-by-case analysis has been conducted. In Order PO-2752, Assistant Commissioner Brian Beamish reviewed a number of these orders and their findings. He also noted that these orders have confirmed that, in order to establish "interference," an institution must, at a minimum, provide evidence that responding to a request would "obstruct or hinder the range of effectiveness of the institution's activities."[2] These orders have also noted that, where an institution has allocated insufficient resources to the freedom of information access process, it may not be able to rely on "limited resources" as a basis for claiming interference.[3] Although government organizations are not obliged to maintain records in such a manner as to accommodate the various ways in which a request for information might be framed,[4] an institution must provide sufficient evidence beyond stating that extracting information would take "time and effort" in order to support a finding that the process of producing a record would unreasonably interfere with its operations.[5]

[30] In Order PO-2752, Assistant Commissioner Beamish applied these principles to the circumstances before him, and found that an estimate of 1377 hours to produce responsive records would unreasonably interfere with the ministry's operations.

[31] I agree with the approach taken by the Assistant Commissioner and adopt it for the purpose of this appeal.

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[2] Reference to Orders P-850 and PO-2151.
[3] Reference to Orders MO-1488 and PO-2151.
[4] Reference to Order M-583.
[5] Reference to Order MO-1989, upheld in *Toronto (City) Police Services Board v. Ontario (Information and Privacy Commissioner)*, [2009] O.J. No. 90 (C.A.); reversing [2007] O.J. No. 2442 (Div. Ct.).

[32] With respect to the amount of time it would take to produce the responsive records, the ministry has provided detailed evidence in support of the estimate of the number of hours it would take to do so. It identifies the reasons why it would take this amount of time, including the number of years covered by the request and the volume of incidents, the nature of the searches that would need to be conducted, the expertise required by those conducting the searches and the necessity to review each result to confirm the accuracy of the responsive information.

[33] Although the appellant challenges the ministry's time estimate, I find that a number of his arguments are general in nature. The appellant refers to the robust nature of Niche RMS and information in the promotional material available on its website in support of his position that the searches ought not to take that amount of time; however, this material is general in nature, and does not address the possible amount of time to conduct a search for the volume of information at issue in this appeal. It also does not suggest that the level of expertise required to conduct these searches would be different than those identified by the ministry. Furthermore, I accept the ministry's position that any responsive records located during the search would still require a careful review of the data to ensure that incorrect or non-responsive information is not included.

[34] Based on the information provided, I accept the ministry's estimate of the approximate number of hours it would take to produce the records responsive to this request.

[35] I am also satisfied that producing the records would unreasonably interfere with the ministry's operations. I accept the ministry's statements that Niche RMS operators and trainers would need to be involved in the production of these records, and would be removed from their existing duties. Although the appellant suggests that other trained database administrators with security clearances could be involved in producing these records, given the nature of this database, the information stored in it, and its importance to law enforcement in Ontario, I do not find this suggestion to be a practical or viable option.[6]

[36] As a result, I am satisfied that the ministry has established that producing the record would unreasonably interfere with its operations. As a result, even if a record is capable of being produced in response to the appellant's request, it does not fall within the definition of "record" because the process of producing it would unreasonably interfere with the ministry's operations.

[6] I note that Assistant Commissioner Brian Beamish addressed a similar possibility in Order PO-2752, and stated: "I am also satisfied that the Ministry is not in a position to permit external consultants to access the OTIS database for the purpose of responding to the appellant's request, due to system and operational security issues."

## Additional matter

[37] In the appellant's representations, he states that grow-ops represent "a health and financial threat to thousands of unsuspecting victims in Ontario every year." He states:

> It is proven that toxic mould, poisonous gas, chemicals and criminal activities can create long lasting problems for … homebuyers and tenants. Higher risk of fires and damaged structures cannot be discounted from dangers of [grow-ops].

[38] He also states that he is requesting the information to provide a resource for real estate professionals and homebuyers to easily determine whether a home has been used as a grow-op. He then states:

> The purchase of a new home is an investment which is often the most significant financial commitment in a family's life, and such an investment should not put a family's personal or financial health at risk if they unwittingly buy a former grow op that has not been properly repaired.

[39] The appellant then argues that section 11 of the *Act* applies to this information. That section reads:

> Despite any other provision of this Act, a head shall, as soon as practicable, disclose any record to the public or persons affected if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public.

[40] Previous orders have confirmed that there is a public interest in certain information relating to municipal grow-ops.[7] However, I am not satisfied that section 11 applies to the records requested in this appeal.

[41] Even if I had found that the information constituted a record for the purpose of the *Act*, I have not been provided with sufficiently compelling evidence to satisfy me that section 11 ought to apply. The appellant provides general assertions about the types of health or safety concerns that these homes could present; however, he does not link these general concerns to any specific "grave environmental, health or safety hazard." The evidence provided by the appellant is insufficient to support a finding that section 11 applies to the information at issue, and I find that section 11 does not apply in the circumstances of this appeal.

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[7] See, for example, Order MO-2019.

## ORDER:

I uphold the ministry's decision.

Original Signed By: November 27, 2013
Frank DeVries
Adjudicator