Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3361

Appeal PA12-567

Ministry of Children and Youth Services

July 16, 2014

Summary: An individual submitted a request to the ministry, seeking access under the *Freedom of Information and Protection of Privacy Act* to information relating to decision-making about discharge from the Intensive Behaviour Intervention program. The appellant appealed the ministry's decision, raising issues with the custody or control of responsive records and the adequacy of searches conducted for them. 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 10(1) and 24.

OVERVIEW:

[1] This order addresses the issues raised by the appellant respecting his access request to the Ministry of Children and Youth Services (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for clinical management criteria around decisions to discharge participants from the Intensive Behaviour Intervention (IBI) program, a treatment program for children with autism, and a related ministry "directive". The request was based on an August 2010 decision of the Health Professions Appeal and Review Board (HPARB) which read, in part:

> On August 17, 2010, the [HPARB] rendered a decision regarding a complaint brought forward by private citizens of Ontario against [a named

> psychologist] (Clinical Director, AIP[1]-EO) and [a second named psychologist] (Clinical Director, Central West Autism Intervention Services.)
>
> Paragraph [34] of the documented "Decision and Reasons" specifies:
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> 34. The committee indicated that Dr. W had based her final recommendation mainly on the clinical reasoning that P. was no longer benefiting from the IBI services. The Committee then discussed the issue of the discharge criteria. The applicants complained that there were no discharge criteria in the Ontario Ministry's Guidelines. In her response to the College, Dr. W wrote that the directors of Ontario's nine regional programs worked together to develop and implement appropriate practices and develop clinical management criteria to assist in decisions about discharge from the IBI program. She also indicated that in order to respect a Ministry directive she was not at liberty to share the criteria with the College. In their reply to his response the Applicants queried whether the guidelines included the systematic discharge of older children (over six years old).
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> My Freedom of Information [FOI] Request is for the following:
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> The Ministry directive: "The Ministry directive [to the effect that] she (Dr. [W.]) was not at liberty to share the criteria with the College."
>
> AND
>
> The clinical management criteria developed by the directors of Ontario's nine regional programs "to assist in decisions about discharge from the IBI Program."

[2] The ministry issued a decision to the requester on November 21, 2012, advising that the referenced "ministry directive" does not exist. Regarding the IBI program discharge criteria, the ministry identified a February 2009 document, titled "Clinical Continuation Criteria," as responsive. The ministry indicated that this document had been independently developed by the Regional Autism Providers of Ontario Network

[1] AIP refers to Autism Intervention Program, which is the responsibility of the Autism Policy Unit of the ministry's Specialized Services and Supports Branch. In this context, "EO" refers to Eastern Ontario.

(RAPON), without the ministry's involvement. The ministry advised the appellant that the document is publicly available online and provided a website link.[2]

[3] The appellant appealed the ministry's decision to this office, which appointed a mediator to explore resolution of the issues. The appellant challenged the adequacy of the ministry's search for responsive records, arguing, in part, that the search ought to have included the record-holdings of each of the nine regional service providers. He argued that responsive records must exist within the ministry and/or the regional service providers and that as a result, the ministry's search was not reasonable because it did not include the nine regional service providers. The appellant also provided this office with documents in support of his position, including the HPARB decision referred to in the text of his request, service description schedules and various service contracts signed by the ministry with regional service providers.

[4] During mediation, the ministry provided the following clarification of its position. The ministry advised that its autism unit had conducted the search and that the search did not include the nine regional service providers because if the requested records are within the custody of the regional service providers, the ministry does not have the requisite degree of control over them. The ministry stated that it is not involved in developing or approving the discharge criteria. The ministry had received copies of more recent versions of the discharge criteria[3] from RAPON after processing the request initially, and offered them to the appellant.

[5] In response, the appellant clarified that he is interested in the program discharge criteria in effect during the period from September 2009 to April 2011. The ministry indicated that the discharge criteria are not established annually; for the period specified by the appellant in his clarification, the relevant criteria are found in the February 2009 document, and these were replaced by the September/October 2012 guidelines.

[6] It was not possible to resolve this appeal through mediation, and it was transferred to the adjudication stage where an adjudicator conducts an inquiry. I started my inquiry by sending a Notice of Inquiry to the ministry, seeking representations on the search and custody or control issues. I received representations from the ministry and provided a complete copy of them to the appellant for response. At that time, I added the scope of the request as an issue because I concluded that I

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[2] The document indicates that the draft criteria are RAPON-endorsed and were developed by the clinical directors in 2006 to serve as best practice for clinical decision-making for IBI programming and continuation. The document notes that the criteria served as a resource and guide to assist in clinical decision-making, but were not formally implemented across the province. The document also states that the development of the criteria was discontinued because the ministry established expert panels to review the decision-making process for the provision of IBI.

[3] "Clinical Decision-Making Guidelines for Continuation in Intensive Behavioural Intervention," dated September 2012 and October 2012.

may need to determine it in order to decide the search issue. The appellant provided representations.

[7] In seeking reply representations, I provided copies of several attachments from the appellant's representations to the ministry for comment. I did not send copies of documents I concluded the ministry would already have or regarding which I did not require reply from the ministry.[4] The ministry provided reply representations.

[8] In this order, I find that the ministry properly interpreted the scope of the appellant's request and that there is no live issue with the custody or control of records responsive to the request. I also uphold the ministry's search as reasonable, and I dismiss the appeal.

ISSUES:

A. What is the scope of this request?

B. Are the records "in the custody" or "under the control" of the ministry for the purpose of section 10(1) of the *Act*?

C. Did the ministry conduct a reasonable search for records?

DISCUSSION:

A. What is the scope of this request?

[9] As suggested above, I concluded that determination of the scope of this request was required to provide the necessary context for deciding the other issues.

[10] Without the introductory wording related to the HPARB decision, which was outlined in its entirety in the introduction of this order, the appellant's request stated:

> My Freedom of Information Request is for the following:
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> The Ministry directive: "The Ministry directive [to the effect that] she (Dr. [W.]) was not at liberty to share the criteria with the College."

[4] The attachments I sent consisted of a one-page letter (with personal identifiers removed) and a partial excerpt from an April 2013 decision of the Inquiries, Complaints and Reports Committee of the College of Psychologists of Ontario. The attachments not sent were the 1999 MERX posting of the RFP for Regional Intensive Early Intervention Programs for Children With Autism (RFP#99-OISC-001); Program Guidelines for Regional Intensive Early Intervention Programs For Children with Autism (updated Sept/00); Preschool Intervention Program for Children with Autism – Program Guidelines (Sept/04 and Sept/04, revised Nov/04 versions); Autism Intervention Program – Program Guidelines (revised Aug/06); and documentation related to Appeal PA13-247 with Senior Adjudicator Sherry Liang (now closed).

> AND
>
> The clinical management criteria developed by the directors of Ontario's nine regional programs "to assist in decisions about discharge from the IBI Program."

[11] Section 24 of the *Act* provides the basis for the determination of the scope of a request. It imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. Section 24 states, in part:

> (1) A person seeking access to a record shall,
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> (a) make a request in writing to the institution that the person believes has custody or control of the record;
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> (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;
>
> . . .
>
> (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).

[12] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.[5] To be considered responsive to the request, records must "reasonably relate" to the request.[6]

Representations

[13] Respecting the request's scope, the appellant states:

> Please note that in my Request for Information I did not enclose a portion of the original request for the clinical management criteria nor did I use capitalization to grammatically identify a specific document. The request was generalized as I was not aware of any particular document title. The only portion of both the complaint to the [HPARB] and my Freedom of Information Request was contained within quotation marks to properly define and to put into proper context the requested document. At no time

[5] Orders P-134 and P-880.
[6] Orders P-880 and PO-2661.

> (that I am aware of) did I explicitly request neither the "Clinical Continuation Criteria" nor the "Clinical Discharge Criteria" titled document.

[14] The appellant appears to be suggesting that the ministry improperly narrowed the scope of his request. He submits that the ministry is attempting to "assign the issue to a non-relevant document/record" so that it may claim that the "directive does not exist" and that they "don't condone the use of the irrelevant 'Clinical Continuation Criteria'." The appellant argues that the directive he mentions in the first part of the request is related to a document he calls the "Acquisition of Learning Targets." He submits that the "Targets" document is responsive to the second part of the request, as opposed to the RAPON document disclosed to him. In support of this assertion, the appellant relies on the ministry correspondence he provided with his representations. This letter written by an AIP program supervisor to another family refers to the identified regional provider "using the Acquisition of Learning [T]argets consistently with all families since 2006." According to the appellant, the issue of concern to him and, hence, the scope of his request, is not the removal of the age ceiling (of 6 years) for IBI,[7] but the "existence and use of the 'Acquisition of Learning Targets' for the time frame specified in my request for information."

[15] The ministry maintains that its response to this request and the related appeal has been forthcoming and comprehensive. The ministry submits that the appellant was "clear and specific" in the wording of his request and that it understood that he was seeking "the clinical management criteria developed by the directors of Ontario's nine regional programs to assist in decisions about discharge from the IBI program," as referenced in the HPARB decision provided by the appellant. The ministry states that due to the "detailed and clear" wording of the request and context, ministry FOI staff determined there was no need to contact him for clarification.

[16] The ministry notes that the time period specified on the appellant's request form was "2000/01/01 to 2012/08/12," but that during mediation, the appellant clarified that the time period of particular interest was September 2009 to April 2011. The ministry adds that the appellant first mentioned the possible existence of records relating to the "Acquisition of Learning Targets" during adjudication and suggests that this represents a broadening of the scope of the request.

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[7] Referenced in both parties submissions were legal proceedings brought by a group of Ontario families with autistic children challenging the province's funding decision regarding intervention programs for autistic children aged six years and older. In March 2005, the Ontario Superior Court of Justice determined that the province violated the *Canadian Charter of Rights and Freedoms* by failing to provide the program to children aged six years and older: *Wynberg v. Ontario* 2005 CanLII 8749 (ON SC). In July 2006, the Court of Appeal overturned that decision: *Wynberg v. Ontario* 2006 CanLII 22919 (ON CA).

Analysis and findings

[17] Given the evidence provided, I am satisfied that the ministry satisfactorily met its obligations under section 24 of the *Act* with respect to interpreting the scope of the appellant's request.

[18] I understand the appellant's concern with the ministry taking "sole ownership and responsibility to ensure the provision for this program and services it delivers to Ontario's children with autism." While the accountability piece associated with the program delivery is clearly of some significance, this appeal under the *Freedom of Information and Protection of Privacy Act* can only address the issues arising from his request for access to records considered responsive to the request he submitted to the ministry. In the circumstances, I agree with the ministry that the appellant's request is clear.

[19] First, I find that the time period of the request, initially stated to be January 1, 2000 to August 8, 2012 on the appellant's request form, was narrowed by him during mediation to include only the period from September 2009 to April 2011.

[20] The appellant challenged the ministry's interpretation of the scope of the request, apparently due to concern that the ministry may have limited its searches following the identification (online) of the 2009 "Clinical Continuation Criteria" document prepared by RAPON. However, the evidence does not support this assertion. I accept that the ministry was well aware that the appellant was interested in clinical management criteria, particularly around decision-making about discharge from the IBI program. Notwithstanding the concern about phrasing, I am satisfied that the ministry afforded a liberal interpretation of the request that included criteria around management, continuation and discharge from the IBI program.

[21] With specific reference to the appellant's concerns about the Acquisition of Learning Targets, I note that the correspondence provided by the appellant with his representations states that these targets "were informed by and developed from the Clinical Management Criteria established by the provincial Clinical Directors from the nine regional autism providers across the province." In my view, the appellant's request contemplates other types of tools or measures associated with decision-making around discharge from the program, such as the learning targets, whether they are a separate document or not. This point will be addressed later in the order in my review of the search issue.

[22] Additionally, I find that the "directive" the appellant identified in his request was equally clear in its meaning, given the context provided by him on the request form and the ongoing communication between the parties on the issue. I will review the ministry's search for such a directive below, with reference to my finding regarding the

scope of the second component of the request relating to the criteria for decision-making around IBI program discharge.

B. Are the records "in the custody" or "under the control" of the ministry for the purpose of section 10(1)?

[23] Custody or control was added as an issue in this appeal due to the appellant's contention that "if the ministry did not have the directive or the criteria, the ministry should obtain the directive and discharge criteria from the regional service providers, based on the ministry's oversight of the IBI program and based also on IPC Order PO-3036 and Reconsideration Order PO-3083-R." The appellant relies on the legislative scheme and RFP/contractual documents for the autism intervention programs to support the argument that the ministry ought to, in this case, be construed as having "control" over the "clinical management criteria" referred to in the request, notwithstanding RAPON's development of them.

[24] Ostensibly therefore, the question put before me was whether records that are responsive to the request are "in the custody or under the control" of the ministry for the purpose of section 10(1) of the *Act*, which states, in part:

> Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless ...[8]

[25] In other words, access (and other) rights under the *Act* are triggered only in relation to records that are in the custody or under the control of an institution. A record will be subject to the *Act* if it is in the custody *or* under the control of an institution; it need not be both.[9] The courts and this office have applied a broad and liberal approach to the custody or control question. To explore the issue, I set out the full list of factors developed by this office to determine whether or not a record is in the custody or control of an institution in the Notice of Inquiry sent to both parties.[10]

Representations

[26] The ministry acknowledges that its Autism Policy Unit is responsible for the creation of guidelines and policies for the delivery of the AIP, the ministry-funded program that provides IBI. The ministry maintains that no directive like the one

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[8] A record within an institution's custody or control may be excluded from the application of the *Act* under one of the provisions in section 65, or may be subject to a mandatory or discretionary exemption (at sections 12 through 22 and section 49).

[9] See Order P-239 and *Ministry of the Attorney General v. Information and Privacy Commissioner*, 2011 ONSC 172 (Div. Ct.).

[10] *Ontario (Criminal Code Review Board) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 4072 *Canada Post Corp. v. Canada (Minister of Public Works)* (1995), 30 Admin. L.R. (2d) 242 (Fed. C.A.) and Order MO-1251. See also Orders 120, P-239, and PO-2683.

described in the first part of the request exists. However, the ministry admits that it would clearly have custody of any such directive issued by the ministry.

[27] Respecting the second part of the request for clinical management criteria, the ministry submits that at the time of the request, the responsive record – the February 2009 RAPON criteria document – was not in its physical custody, but was determined by ministry staff in the Autism Policy Unit to be available online. Next, the ministry clarifies the basis of its position that the clinical management criteria should not be considered under its control. First, the ministry submits that the orders relied on by the appellant (Orders PO-3036 and PO-3083-R)[11] are not relevant in this appeal because the requested information is qualitatively different. The ministry submits that since it is not involved in IBI program discharge decisions, it does not develop, approve or implement the criteria the appellant seeks. The ministry explains that:

> The [ministry] … contracts with nine regional service providers (transfer payment agencies) to deliver the Autism Intervention Program according to the ministry's Autism Intervention Program Guidelines …
>
> It is the responsibility of regional programs to determine whether … IBI therapy is effective for each individual child based on clinical judgment and the individual goals for each child. … Regional programs are responsible for using best practice tools to assess eligibility for the program as well as intensity, setting and duration of therapy. These clinical decisions are made independent of the ministry.
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> In 2004, the nine regional autism service providers formed the Regional Autism Providers of Ontario Network (RAPON) as a forum to share knowledge, training, and clinical best practices in the delivery of the Autism Intervention Program.
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> The RAPON Clinical Directors developed and endorsed "Clinical Continuation Criteria" in 2006, and re-issued the criteria again in 2009. These criteria were meant to serve as best practice for clinical decision-making for IBI programming and continuation. Clinical directors recommended the use of the criteria across the province for consistency in decision-making and RAPON made the criteria publically available. The ministry never approved or implemented these criteria.

[28] The ministry emphasizes that it was not involved in the development or approval of the criteria and did not initially have a copy of the re-issued 2009 criteria in its custody. Rather, the ministry explains that in response to the request, it provided the appellant with the address for the public website where he could access the responsive

[11] Issued by Adjudicator Stephanie Haly in January and June 2012, respectively.

record. The ministry concedes that the record is in its physical custody, along with the three later versions of the clinical continuation criteria, which were provided by RAPON to the ministry after it processed the appellant's request.[12] However, the ministry states that due to the public availability of the 2009 RAPON criteria document, the issue of control was not examined. In closing, the ministry maintains that in the particular circumstances of this appeal, there is no real issue with custody or control under the *Act.*

[29] The appellant's submissions on the custody or control issue are premised on what he views as the ministry's ultimate responsibility for the Autism Intervention Program under the "*Child and Youth Services Act,*"[13] the AIP Guidelines and the RFP issued in 1999.[14] He submits that:

> The RFP and the 2000 Guidelines clearly establishes ownership and control by defining all the key requirements for the AIP. Both the RFP and AIP Guidelines clearly define the services to be performed, an accountability structure, staffing requirements, training needs, entrance and discharge criteria, and funding, and not to forget the elements of assessments.

[30] The appellant submits that since the "only RFP that exists is the aforementioned original document," it provides the foundation for all contractual agreements between the ministry and the regional service providers. The appellant states that according to the AIP Guidelines, three different elements determine what constitutes a "clinical decision: research, clinical expertise, and assessment." The appellant contends that because these three elements are all addressed in the AIP Guidelines, which he considers to be "ministerial policy," the discharge criteria are the sole responsibility of the Minister of Children and Youth Services. He submits, in turn, that given the ministry's responsibility in this respect, the custody and control of the responsive records is thereby established, and I should order the ministry to request the record, which includes the Acquisition of Learning Targets, from the nine regional service providers.

Analysis and findings

[31] To begin, I agree with the ministry that the circumstances of Orders PO-3036 and PO-3083-R are distinguishable from those before me in this appeal. Both appeals address requests for records related to IBI therapy under the auspices of the ministry's AIP. However, the request in that appeal was for "the number of clients and number of

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[12] These versions consisted of the September 2012, October 2012 and March 2013 RAPON clinical continuation criteria ("Clinical Decision-Making Guidelines for Continuation in Intensive Behavioural Intervention"), which fall outside the time period specified by the appellant.
[13] I take this reference to mean the *Child and Family Services Act,* R.S.O. 1990, c. C.11.
[14] See footnote 4.

hours approved for each client receiving … IBI service under the Directing Funding Option …," payment-related records that Adjudicator Stephanie Haly concluded were in the ministry's custody or control. In this appeal, there is no dispute that the ministry is responsible for the AIP. However, notwithstanding the ministry's "ownership" of the program, "access and control over the responsive records" does not necessarily follow, as the appellant alleges.

[32] I accept the ministry's submission that the issue of custody or control over responsive records in this appeal is effectively moot. The ministry correctly points out that under section 10(1) of the *Act*, both custody and control of a responsive record are not required. With specific reference to my findings on the scope of the request above, I accept the ministry's acknowledgement that it would have custody of a directive responsive to the request's first part, *if one existed*. I also note the ministry's concession that it has custody of the 2009 RAPON Clinical Continuation Criteria because the record is publicly available. In this context, the determination of control over such records is not required.

[33] Importantly, the issue of custody or control does not arise respecting "phantom," or not-yet-identified, records.[15] There must be records identified as responsive and a claim by the institution that such records are not in its custody or under its control. In the present appeal, the ministry argues that no more responsive records exist. Therefore, to the extent that the appellant alleges that there ought to be additional responsive records related to the IBI clinical management criteria, including measures such as the targets discussed above, I am satisfied that this matter is properly considered under the issue of search.

C. Did the ministry conduct a reasonable search for records?

[34] The appellant believes that more records related to the discharge criteria for the IBI program should exist. As outlined in many past orders of this office, 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 of the *Act.*[16] 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.

[35] 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.[17] To be responsive, a record must be "reasonably

[15] See Order MO-2559 for a similar discussion regarding records created by an external consultant that had not been located, and which the appellant argued were in the City of Hamilton's custody or control.
[16] Orders P-85, P-221 and PO-1954-I.
[17] Orders M-909, PO-2469 and PO-2592.

related" to the request.[18] The *Act* does not require the ministry to prove with absolute certainty that further records do not exist. However, the ministry must provide sufficient evidence to show that a reasonable effort to identify and locate responsive records has been made.[19] Additionally, 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.[20]

Representations

[36] In challenging the adequacy of the searches for the directive and the discharge criteria conducted by the ministry, the appellant's concerns included the following:

- the ministry's directive must exist because it was referred to by the Clinical Director of the Central West Autism Intervention Services in the identified HPARB decision;

- even if the directive was communicated verbally, a note or memo must exist, identifying "when this was communicated, by whom and to whom;"

- if the ministry does not have the directive or the criteria, the ministry should obtain the directive and discharge criteria from the regional service providers, based on the ministry's oversight of the IBI program and based also on IPC Order PO-3036 and Reconsideration Order PO-3083-R.

- with respect to the discharge criteria, it is not sufficient for the ministry to refer to a third party website that is not controlled by either the ministry or RAPON because it is not possible to authenticate the validity of the documents posted on this website.

[37] In response to the appellant's position, the ministry submits that its searches were complete and thorough. According to the ministry, the searches were conducted by employees knowledgeable in the subject matter and were based on discussions between the Freedom of Information and Protection of Privacy Unit (FIPP Unit) and senior staff, managers and directors in the appropriate program areas.

[38] The ministry's representations included affidavits from three staff members involved in the searches. The ministry submits that after receiving the appellant's "detailed and clear" request, its FIPP Unit first contacted the manager of the Autism Policy Unit (APU), a part of the ministry's Specialized Services and Supports Branch of the Policy Development and Program Design Division. As the unit responsible for establishing policies and guidelines regarding the AIP, which provides the IBI, the APU

[18] Order PO-2554.
[19] Orders P-624 and PO-2559.
[20] Order MO-2246.

was considered to be the unit which would have responsive records in its record holdings.

[39] The FIPP Unit also contacted senior staff in the Assistant Deputy Minister's office of the Policy Development and Program Design Division, to discuss the request and the necessary searches. Within the APU, the manager took responsibility for directing staff in the Specialized Services and Supports Branch to search for records responsive to the request. In doing so, she consulted with her director and with the FIPP Unit. According to the manager's affidavit, the "thorough searches for potentially responsive records" included manual searches through hard copy files, a search of the shared drive for electronic files and an Internet-based search. The initial search for records responsive to the second part of the request for "the clinical management criteria developed by the directors of Ontario's nine regional programs…" did not identify any potentially responsive records. However, staff advised the manager that their Internet search located a document called "Clinical Continuation Criteria," dated February 2009, which had been developed by RAPON. The manager submits that she advised the FIPP Unit of this record's existence and its public availability, including providing the website address for the appellant.

[40] The ministry submits that the APU manager advised that searches within the Specialized Services and Supports Branch failed to identify any records responsive to the first part of the request which refer to the "directive", but suggested that the FIPP Unit contact staff in the Client Services Branch. According to the ministry, this branch provides oversight for child and youth services funded by the ministry to support more effective service delivery and better outcomes. Consequently, the FIPP Unit contacted the Client Services Branch, which deals with the nine regional offices that administer and deliver IBI therapy through the AIP, among other services to children and youth. The executive assistant responsible for administering the AIP provided an affidavit. She indicates that after she received the request and discussed it with the FIPP Unit, she consulted with senior staff "with historical knowledge of the ministry's [AIP]," as well as the Director of the Client Services Branch. She states that the branch's shared (computer) drive was searched but no responsive records were located. The executive assistant submits that after consulting with senior staff, they determined that no "directive" existed.

[41] The ministry maintains that it was not necessary to contact the regional offices with respect to the search for responsive records. Regarding the first part of the request, the ministry relies on the advice of relevant staff "with knowledge of the program area [who] confirmed that such a directive does not exist." The ministry also argues that the appellant has not provided a reasonable basis for concluding that such a record exists and submits that the HPARB decision provided by the appellant, when read in its entirety, suggests that a directive does not exist. The ministry outlines additional portions of the HPARB reasons, including paragraph 37, which states, in part:

> … the Minister, Ms Mary Anne Chambers, who replied, "this ministry has not issued a directive regarding clinical management criteria developed by the clinical directors of the nine regional programs responsible for the delivery of the [AIP]."

[42] Respecting the second part of the request, the ministry emphasizes that it does not develop, issue or approve clinical criteria related to the delivery of the AIP and reiterates that the criteria are "based on clinical decisions made solely by regional providers, independent of the ministry, as stated in the [AIP] Guidelines." However, the ministry notes that it identified the responsive record and confirmed that, since it was publicly available, the search did not have to be extended to the nine regional autism service providers.

[43] The appellant contends that because the document that is responsive to the second part of his request is the "Acquisition of Learning Targets," rather than the 2009 RAPON-approved criteria record disclosed to him, the ministry has not yet conducted a reasonable search. In support of this assertion, the appellant relies on the April 2011 ministry correspondence that refers to the regional service provider "using the Acquisition of Learning [T]argets consistently with all families since 2006." In further support of his belief that the Acquisition of Learning Targets document and a related directive exist, the appellant provides an excerpt from what he claims is an HPARB decision. The excerpt, as set out by the appellant, appears to suggest that a directive of the type described did exist. In the appellant's view, the regional service providers and the ministry must have collaborated to develop the Targets and the ministry's search should have identified such a record for the time frame specified in his request.

[44] In reply, the ministry affirms its position that adequate searches were conducted and demonstrated that no ministry directive responsive to the appellant's request exists. Further, the ministry maintains that the RAPON criteria disclosed to the appellant is "clearly responsive" to his request. The ministry maintains that it has discharged its obligation to search for records responsive to the appellant's clearly worded request.

Analysis and findings

[45] As previously stated, in appeals involving a claim that additional records exist, the issue to be decided is whether an institution has conducted a reasonable search for responsive records as required by section 24 of the *Act*. The ministry was required to provide sufficient evidence to show that a reasonable effort to identify and locate responsive records has been made.[21]

[46] Based on the evidence and the overall circumstances of this appeal, I find that the ministry made a reasonable effort to identify and locate any existing records that

[21] Orders P-624 and PO-2559.

are responsive to the appellant's request. I accept that relevant and appropriate ministry staff conducted searches and that they were aware of what records should exist. I am satisfied that reasonable efforts were made to search for, and identify, the directive and the discharge criteria the appellant was seeking.

[47] While I acknowledge the appellant's concern that the RAPON document disclosed to him is not responsive and that there ought to be another discharge criteria record, I found previously that the 2009 RAPON criteria document was, in fact, the responsive record. This record was provided to the appellant.

[48] In support of his argument that it is, in fact, a separate Learning Targets document that ought to have been located, the appellant relies on the letter written by an AIP program supervisor that refers to something called the "… Acquisition of Learning [T]argets ...". I concluded above, under the scope issue, that the clinical management criteria could possibly include other measures such as these targets. Although the appellant narrowed the time period of his request, the ministry provided him with later versions of the 2009 RAPON clinical management criteria. On my review of them, I note that these 2012 and 2013 criteria documents contain a section titled "Required targets." Categorization into each of the five levels is based on achieving certain functional skills and/or results on standardized testing, as applicable to each level. I note that the 2009 RAPON criteria document contains a section that resembles the "Required targets" section in the 2012 and 2013 versions, but it refers to the targets as "markers." In this context, I am not persuaded that there is a reasonable basis for believing that a separate Acquisition of Learning Targets record ought to exist.

[49] As for the ministry directive that the appellant suggests prevented the sharing of these criteria with the College of Psychologists, I find the ministry's evidence to be persuasive. In particular, I note that I have read the HPARB decision, in its entirety. As the ministry points out, at paragraph 37 of this decision,[22] the former Minister of Children and Youth Services advised that "this ministry has not issued a directive regarding clinical management criteria developed by the clinical directors of the nine regional programs responsible for the delivery of the [AIP]." The appellant has not provided evidence that contradicts this statement. Although the appellant quoted from what he claimed was an HPARB decision in support of his belief that a directive exists, the excerpt provided is actually from an April 2013 decision of the Inquiries, Complaints and Reports (ICR) Committee of the College of Psychologists of Ontario, which the appellant also provided. Further, while the appellant submits that the ICR Committee's reasons suggest that a directive did exist, the reasons actually state that the directive, if it existed, was verbal. Accordingly, I accept the ministry's evidence that it expended a reasonable effort to locate records which were reasonably related to this part of the appellant's request.

[22] RJS v JDG, 2011 CanLII 35003 (ON HPARB).

[50] In sum, I find that the appellant has not provided a reasonable basis upon which I could conclude that additional records responsive to his request exist. Therefore, I find that the ministry's search for records was reasonable for the purposes of section 24 of the *Act*, and I dismiss this part of the appeal.

ORDER:

I dismiss this appeal.

Original signed by: July 16, 2014
Daphne Loukidelis
Adjudicator