

Information and Privacy Commissioner,
Ontario, Canada



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

INTERIM ORDER PO-3487-I

Appeal PA13-232

Ministry of Community Safety and Correctional Services

April 30, 2015

Summary: The requester, the human rights organization Amnesty International, submitted a multi-part access request under the *Freedom of Information and Protection of Privacy Act* for records related to the actions of the Ontario Provincial Police (OPP) in response to Mohawk protest and occupation activities in 2007 and 2008. Only one remaining aspect of the ministry's decision in Appeal PA13-232 is addressed by this order: the adequacy of the ministry's search for two audio/video recordings of an identified individual's cell at two different OPP detachments. In this interim order, the adjudicator finds that the ministry's search was not reasonable, and she orders the ministry to conduct additional searches.

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

OVERVIEW:

[1] This order relates to one of the appeals resulting from a 49-part access request submitted by the appellant on behalf of the human rights organization, Amnesty International (Amnesty or the appellant), to the Ministry of Community Safety and Correctional Services (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The request seeks records relating to the actions of the Ontario

Provincial Police (OPP) in response to Mohawk protest and occupation activities that occurred in June 2007 and April 2008 near Tyendinaga.¹

[2] This interim order respecting Appeal PA13-232 addresses only part 45 of the December 2008 request, which sought:

Any videos of the cells, booking area and interview areas at the Odessa OPP detachment² on April 25 and 26, 2008 and the Napanee OPP detachment on April 26 and 27, 2008 with respect to [a named individual].³

[3] In the initial access decision of March 18, 2009, the ministry denied access to the requested information, relying on the exclusion in section 65(5.2) (ongoing prosecution) of the *Act*.⁴ When the appellant appealed this decision, this office put the matter on hold pending completion of the prosecutions. In January 2011, after the ministry advised this office that the prosecutions were complete, the appeal was re-activated. An adjudicator formerly assigned to the appeal wrote a letter requiring the ministry to issue a revised decision within 30 days.

[4] On July 31, 2012, the appellant appealed to this office because the ministry had not issued a decision in accordance with the adjudicator's direction. In Order PO-3166, issued on February 22, 2013, Analyst Jessica Leinwand ordered the ministry to issue a decision by April 15, 2013. On April 15, the ministry issued a decision denying access to the responsive recordings, claiming various parts of the discretionary law enforcement exemption in section 14 of the *Act*.⁵

[5] The appellant appealed the ministry's revised decision and a mediator was appointed to explore resolution. During mediation, the ministry advised that they did not have video recordings of the booking area; however, since the appellant did not challenge this point, the appeal was narrowed to the video footage of the cells and the interview area. Once the mediator reviewed the videos produced by the ministry, it was clear they did not include the interview of the individual named in the request. The ministry subsequently located this video and provided a copy to this office. The appellant was not satisfied that a reasonable search had been conducted because he believes that additional videos exist. Accordingly, reasonable search was added as an issue in this appeal.

¹ Tyendinaga Mohawk Territory is located near Deseronto, Ontario.

² The Odessa OPP Detachment is also known as the Loyalist Detachment.

³ Amnesty International obtained this individual's written consent to the disclosure of his personal information to Amnesty International. The validity of this consent has been affirmed by this office in a written decision issued by Adjudicator Colin Bhattacharjee on May 31, 2012.

⁴ Section 65(5.2) provides that "This *Act* does not apply to a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed."

⁵ The ministry relied on sections 14(1)(e), 14(1)(i), 14(1)(j), and 14(1)(l).

[6] As a mediated resolution of the appeal was not possible, it was transferred to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry. The adjudicator formerly assigned to the appeal provided the ministry with an opportunity to provide representations. On June 17, 2014, the ministry issued a supplementary decision letter granting partial access to the recordings, denying access under the mandatory personal privacy exemption in section 21(1), together with the presumption in section 21(3)(b) (investigation into a possible violation of law). At the same time, the ministry advised that it was no longer relying on section 14(1) to deny access.

[7] The appellant requested that the appeal be placed on hold to permit him an opportunity to review the disclosed recordings. Having done so, the appellant advised this office that he believes further video recordings exist. The appeal was taken off hold to continue an inquiry into the reasonableness of the ministry's search for the following video/audio recordings:

- A recording of the named individual in a cell at the Odessa OPP Detachment from 5:08 p.m. on April 25, 2008 until 7:25 a.m. on April 26, 2008; and
- A recording of the named individual in a cell at the Napanee OPP Detachment from 8:02 a.m. until 12:20 p.m. on April 26, 2008.

[8] The adjudicator formerly assigned to this appeal sent a revised Notice of Inquiry to the ministry to seek representations, which she received. Next, the appellant was provided with a complete copy of the ministry's representations and invited to respond to the ministry's submissions. The appellant submitted representations. In these representations, Amnesty confirms that it no longer takes issue with the severances made by the ministry under section 21(1) to the audio/video recording of the named individual's interview at the Odessa OPP Detachment on April 25, 2008 or the ministry's denial of access to the audio component of the named individual's cell video from the Napanee OPP Detachment on April 25, 2008. The appellant's position on these aspects of the ministry's access decision means that the section 21(1) personal privacy exemption is no longer at issue in this appeal.

[9] This appeal was then transferred to me. After reviewing the parties' representations, I concluded that I ought to address the single remaining issue of search through an interim order.

[10] In this decision, I find that the searches conducted to date are not reasonable, and I order the ministry to carry out further searches in accordance with this interim order.

ISSUE:

[11] The sole issue before me is whether the ministry conducted a reasonable search for specific records identified by the appellant.

DISCUSSION:

[12] In reviewing an appellant's claim 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 that are responsive to the request, as required by section 24 of the *Act*.⁶

[13] If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If an institution does not satisfactorily demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control, I may order further searches.⁷

[14] The *Act* does not require the institution to prove with absolute certainty that the records do not exist. However, in order to properly discharge its obligations under the *Act*, the institution is required to provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request.⁸

[15] Furthermore, although an appellant will rarely be in a position to indicate precisely which records the institution has not identified, he or she must still provide a reasonable basis for concluding that such records might exist. In circumstances where an appellant provides sufficient detail about the records sought, it is my responsibility to ensure that the institution has conducted a reasonable search to identify those responsive records or to establish that they may not exist.

Representations

[16] For the purposes of this order, it is unnecessary for me to outline the ministry's representations on the withholding of information from the cell and interview recordings under the personal privacy exemption.

[17] Respecting the searches conducted, the ministry submits that it was not necessary to seek additional clarification from the appellant because the request was specific in nature and "it was possible to respond literally" to it. The ministry identifies the records requested as recordings for the cells, booking and interview areas of the

⁶ Orders P-85, P-221 and PO-1954-I.

⁷ Order MO-2185.

⁸ Orders P-624 and PO-2559.

Napanee and Odessa OPP detachments on three specific days with respect to a named individual.

[18] The ministry indicates that in response to the request, two videos were identified: one for the cells and one of the named individual's interview by the OPP. The ministry acknowledges that the (former) adjudicator requested documentation of the searches undertaken for the two specific videos of the named individual's cell at the Napanee and Odessa OPP detachments that the appellant believes should exist. An affidavit was provided by an OPP provincial constable with the Napanee Detachment, who explains that at the time the request was made in December 2008, he was a detective constable and criminal investigator with 20 years' experience.

[19] The constable states that at the request of the ministry's FOI area in January 2009, he searched for any responsive records in the OPP's custody or control, including the videotaped footage of the interview with the named individual in the detachment's interview areas. The affiant explains that "all files related to this case are stored in a central Major Case Management site at the Kaladar Detachment, which is part of the Napanee OPP Detachment cluster, which includes the Loyalist Detachment in Odessa." He adds that:

My initial search for records was completed electronically in Major Case Management file control. Original tapes that were found required the VHS tapes to be converted to DVD. This was completed under the direction of [a named] Detective Constable ..., the file control officer. The tapes were subsequently copied and the DVD copies were forwarded back to her and then into our file boxes. They were then copied and delivered by [the named] Detective Constable to the FOI and Privacy Office. Also, as a point of clarification, this investigation was under the command of [named] D/Insp. ... and not a specific investigation under my command. [The named] D/Insp. ... and [the named] D/Cst. ... were consulted on the matter and reported they did not identify an[y] additional records.

I conducted a second, manual search of all videos and hard copy files.

I have advised the FOI liaison officer that this is all the records that I have on the matter. I can confirm that the original VHS and a copy thereof are in the investigative boxes stored at the Kaladar OPP Detachment.

[20] Amnesty remains unconvinced of the reasonableness of the ministry's search for the audio and video records of the named individual's detention at the Odessa OPP Detachment on April 25 and 26, 2008 and the Napanee OPP Detachment on April 26, 2008. To contextualize the records sought, the appellant provides an outline of the sequence of events following the named individual's arrest on April 25, 2008:

First of all, he was detained in cell #3 at the Napanee OPP Detachment from about 2:15 p.m. until approximately 4:50 p.m. [He] was then transferred to the Odessa OPP Detachment. He was detained in cell #3 at the Odessa OPP Detachment from approximately 5:10 p.m. on April 25 until about 7:30 a.m. on April 26. [He] was then transferred back to the Napanee OPP Detachment. He was lodged in cell #3 at the Napanee OPP Detachment from about 8:00 a.m. until 12:20 p.m. when he was transferred to [a named detention centre.]

[21] Amnesty explains that the additional videos are being sought in an effort to corroborate allegations made by the named individual respecting mistreatment and inappropriate conduct on the part of members of the OPP during his time in-custody at the Odessa and Napanee OPP Detachments on April 25 and 26, 2008. The mistreatment that is alleged by the named individual includes food tampering, actions designed to interfere with sleep and verbal abuse. The specific details of the named individual's allegations were outlined in an affidavit provided to Amnesty, which was attached as an appendix to its representations. The contents of the affidavit are not outlined in this order because it is not directly relevant to the search issue before me. However, it can be said that Amnesty's position is that records that were disclosed through other parts of this multi-part request tend to corroborate the named individual's allegations.

[22] The basis of Amnesty's belief that additional records may exist (but have not been located) is explained as follows:⁹

1. Prisoner Security Check Forms for the named individual were disclosed through Appeal PA12-583. The forms confirm that he was held in cell #3 at the Odessa Detachment from 5:08 p.m. on April 25, 2008 to 7:25 a.m. on April 26, 2008 and in cell #3 at the Napanee Detachment on April 26, 2008 from 8:02 a.m. until 12:20 p.m.
2. Officer's notes concerning the named individual's arrest and detention on April 25, 2008 were obtained through Appeal PA13-224 and show that the officer started the audio/video recording at the Odessa OPP Detachment within a few minutes of placing the named individual in his cell. The officer reports that she (and another OPP officer) transported the named individual from the Napanee Detachment to the Odessa Detachment. Her notes further indicate: "1708 – [named individual] placed in cell / 1714 – tapes of cell placed on record. Note – had to rewind tape." Her disclosed witness statement also indicates that "at approx 1708 hrs subject [named individual] was placed in cell. At approx 1714 hrs placed tapes on record for cell area."

⁹ Amnesty provided copies of the paper records relied upon in advancing its search position as appendices to its representations.

3. The fact that it is standard OPP procedure for there to be audio/video recordings of cells in which individuals are detained is demonstrated by two video recordings that were disclosed: one of the named individual in cell #3 of the Napanee Detachment from 3:27 p.m. to 5:54 p.m.¹⁰ on April 25, 2008, which was released in this appeal; and one of another arrested individual who was held in cell #3 of the Napanee Detachment from 6:30 p.m. to 9:12 p.m. and from 11:36 p.m. to 11:45 a.m. on April 25, 2008, which was disclosed in Appeal PA12-231. The appellant also refers to cell video footage taken of cells #1 and #2 at the Napanee Detachment on April 25 and 26, 2008, which was released in Appeal PA12-231. The video record of cell #2 of the Napanee Detachment "covers the same time period when [the named individual] was back in cell #3 at the Napanee OPP Detachment."

[23] The appellant expresses doubt that no recording exists for cell #3 at the Napanee Detachment on the morning of April 26, 2008, when recordings exist for that same cell for two different individuals from the day before and also exist for the adjacent cell (#2) on the morning of April 26. In the appellant's opinion,

This then leaves four possible conclusions. All are of concern to Amnesty. The first is that the missing records have been lost. The second is that the missing records have been destroyed. The third is that the records in fact still exist but have not yet been located by the OPP. The fourth is that the records in fact still exist but have not been disclosed to us by the ministry.

[24] Amnesty describes its "community-based" Tyendinaga Research Project and explains why it is in the public interest to determine whether or not OPP officers mistreated the named individual.¹¹ Amnesty submits that given the possible corroboration of the named individual's allegations that is suggested by the information disclosed through other appeals:

... it is clearly in the public interest for the ministry and the OPP to avoid any perception of a cover-up by clearly demonstrating a thorough and credible effort to locate and release these records. In our view, failure to

¹⁰ The appellant adds, "according to the timer displayed on the video record" because there appears to be a discrepancy between the time on some of the disclosed video footage and the time indicated by other sources.

¹¹ Amnesty also provides additional submissions about the social and political context of the events of 2007 and 2008 near the Tyendinaga Mohawk Territory, namely land rights activities, including occupation and protest actions by the Mohawk "defenders of the land." Further, "Amnesty has been troubled that the police response may have been in some way politicized or influenced by public opinion or individual officers' own feelings about the activists or about [the named individual] in particular. Amnesty directs my attention to discussion of "individual and corporate racism in the OPP" in the 2008 *Report of the Ipperwash Inquiry* by Mr. Justice Sidney Linden.

do so risks bringing the administration of justice into disrepute, especially among Mohawk land rights activists.

[25] In this context, Amnesty challenges perceived gaps or lack of clarity in the evidence provided, stating that even after reviewing the ministry's search affidavit, it is still not clear whether the ministry itself believes that the disclosed records "represent all the video recordings that were made **or** those that still exist **or** those that it has been able to locate through what it considers reasonable efforts [emphasis added]." The appellant questions why the incompleteness of the recordings of the named individual's time spent in a cell on April 25 and 26, 2008 is not addressed by the ministry.

[26] Noting that the detective inspector and detective constable who were consulted about the search were responsible for a separate criminal investigation against the named individual at the time in question, Amnesty suggests that the Odessa and Napanee recordings would not be "part of the criminal investigation conducted by these officers, and therefore they may not have had particular knowledge of the extent or location of such records."¹² The appellant questions why the officers responsible for the named individual's care in custody or civilian guards "who may have been better placed to affirm whether or not video recordings were made of the entire period in which [the named individual] was in custody" were apparently not consulted.

[27] With regard to the ministry's submission that "all files related to this case" are stored at the Major Case Management File control site at the Kaladar detachment, the appellant submits that the Odessa and Napanee recordings may yet be found at the respective OPP detachments because they are irrelevant to the case (criminal investigation). Amnesty explains that:

It is not clear that all cell videos would have been included in the file boxes for the criminal investigation since, apart from the recorded interview between [a named detective sergeant] and [the named individual] at the Odessa OPP Detachment on April 25, 2008 which has been released to us in redacted form, such recordings would likely not be germane or relevant to the criminal investigation of the charges against [the named individual.] ... At a minimum, clarification should be provided as to whether any remaining cell videos may have been stored elsewhere.

¹² Amnesty also expresses concern about an "apprehension of a possible conflict of interest" regarding the constable who conducted the search and swore the affidavit, as well as other OPP officers identified in the ministry's evidence respecting search. According to the appellant, these OPP officers/personnel were all involved, in some manner, in criminal investigations regarding the named individual's involvement in other land claims incidents in 2006, 2007, 2008 and 2014.

[28] The appellant points out that the ministry did not answer the records management questions posed in the Notice of Inquiry or provide evidence of its policies and practices. In this context, Amnesty submits that it is impossible to determine if the Odessa and Napanee recordings may have been destroyed in accordance with records retention or maintenance policies and practices. The appellant adds that no information was provided about "the OPP policy with respect to the filing, storage, retention and destruction of *cell* video records as distinct from *police interview* video records." Amnesty notes that it conveyed concern about records retention and destruction in discussions with the IPC in September 2013 because it was troubled by the prospect that "the records which we have been seeking since 2008 ... may have already been destroyed or will have been destroyed by the time that we obtain the overdue decision letters and resolve the various appeals."

Analysis and findings

[29] Based on the evidence and the circumstances of this appeal, I find that the ministry's search was not reasonable. In particular, I find that the appellant has provided a reasonable basis for believing that the following records related to the named individual's time in custody may exist, but have not yet been located by the ministry: the video/audio recording for cell #3 at the Odessa OPP Detachment from approximately 5:10 p.m. on April 25, 2008 until about 7:30 a.m. on April 26; and the video/audio recording for cell #3 at the Napanee OPP Detachment from about 8:00 a.m. until 12:20 p.m. on April 26, 2008. These records are referred to simply as the "Odessa recording" or "Napanee recording" in these reasons.

[30] I share the appellant's concern about the lack of a satisfactory explanation for why the two identified recordings of the named individual's cell have not been located or may not exist. Amnesty's representations identify missing or incongruous information in the ministry's evidence that I accept is relevant or necessary in reviewing the propriety of the searches conducted. I highlight below the aspects of Amnesty's evidence that persuade me of the reasonableness of its belief that the Odessa and Napanee recordings might be thought to exist, but have not been found.

[31] To begin, I accept that it is standard OPP practice and procedure to make recordings of cells when individuals are being held in custody at its detachments. The making of recordings appears to be standard practice generally, in that recordings are also made of interviews with subject individuals. Two other recordings featuring the named individual's interview by OPP officers and his time in cell #3 at the Napanee OPP Detachment on April 25, 2008 were located and partially disclosed by the ministry. On this basis alone, I would be willing to conclude that the sought-after Odessa and Napanee recordings should also have been created as a matter of course following the named individual's arrest on April 25, 2008. However, there is more support for Amnesty's reasonable belief.

[32] With regard to the missing footage from cell #3 at the Odessa OPP Detachment, two records already disclosed to Amnesty support the assertion that the Odessa recording ought reasonably to exist. The notes of one of the officers who transported the named individual from the Napanee OPP Detachment to the Odessa OPP Detachment around 5 p.m. on April 25, 2008 suggest as much. Her disclosed officer's notes also appear to indicate that after she placed the named individual in cell #3 at 5:08 p.m., she also started the "tapes of cell" at 5:14 p.m. The officer's disclosed witness statement conveys essentially similar information.

[33] In my view, the evidentiary gap respecting the Napanee recording is also striking, given that recordings of the *same* cell were located and disclosed. The recording for the named individual's time in cell #3 at the Napanee OPP Detachment from 2:15 p.m. to 4:50 p.m. on April 25, 2008 has already been disclosed in this appeal. Two different recordings for another individual who was held in the same cell on the same day as the named individual (while he was at the Odessa OPP Detachment overnight) were disclosed in Appeal PA13-231. Recordings for cells #1 and #2 during this time period were also disclosed in Appeal PA13-224, including a recording for cell #2 on the morning of April 26, a cell which was adjacent to cell #3, where the named individual was being held contemporaneously.

[34] As indicated, in reviewing the reasonableness of an institution's search, previous orders have established that 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.¹³ To some extent, I am satisfied that relevant, reasonably informed OPP personnel were consulted to identify responsive records in this appeal. However, I conclude that the ministry's search was under inclusive because other individuals who would be expected to have direct knowledge of the missing cell recordings were not consulted. I find Amnesty's evidence on this point to be persuasive. Specifically, Amnesty identified by name several additional OPP personnel (officers and civilian staff) who were "responsible for the named individual's care in custody" as people who might have information relevant to the ministry's search for the missing Odessa and Napanee recordings. In the circumstances, I accept that these other individuals "may have been better placed to affirm whether or not video recordings were made of the entire period in which [the named individual] was in custody." In my view, it would have been reasonable to make further enquiries with the guards or other officers when the Odessa and Napanee recordings could not be located.

[35] As for where the missing Odessa and Napanee recordings might be located, I find that the ministry's evidence respecting records management, generally, and the possible fate of the recordings, more specifically, lacks sufficient detail. Amnesty raises some doubt regarding the relevance of these recordings to any criminal investigation or

¹³ Orders M-909, PO-2469, PO-2592 and PO-2831-F.

case involving the named individual. This makes clarification of OPP records management practices with respect to interview recordings and cell recordings desirable. I cannot discern from the evidence submitted in this appeal if the ministry (or OPP) distinguishes between interview and cell recordings in terms of filing, storage, retention and destruction. Are these practices determined by virtue of a record's relation to a single individual or incident, as suggested by the ministry's submissions, or is there variation based on the category (or sub-category) of record? Further elaboration from the ministry may offer a plausible explanation for why the Odessa and Napanee recordings have not yet been located by the ministry.

[36] In sum, I conclude that the ministry's evidence has not rebutted the reasonable basis established for Amnesty's belief that the Odessa and Napanee recordings may exist. The ministry's affidavit does not adequately serve the purpose of substantiating the steps followed, or avenues taken, to locate the two cell recordings, especially when recordings of the same type for the named individual and other individuals were found. No explanation for not locating the two records is offered, such as whether they may have been accidentally destroyed by being erased or recorded over.¹⁴ I find, therefore, that the evidence submitted does not satisfy the ministry's obligation to provide sufficient evidence to establish that a reasonable search for the named individual's Odessa and Napanee recordings has been conducted. Accordingly, I will order the ministry to conduct additional searches for these records and to provide evidence as to the record maintenance policies and practices (including retention schedules) in place at OPP detachments.

[37] I acknowledge the appellant's concerns about possible bias against the named individual on the part of the OPP officers involved in the searches. I also appreciate that Amnesty has concerns in particular about potential bias by the OPP officer who swore the search affidavit. As part of the representations provided in this appeal, Amnesty proposes certain search provisions to remedy the perceived bias issue. It is evident from these suggested provisions that Amnesty is aware of the jurisdictional limits of an inquiry under the *Act*; i.e., that it is not constituted to provide a forum for review of bias, either in relation to specific employees or of an institutional nature.¹⁵ Given the realities of the OPP's policing responsibilities in smaller Ontario communities, I do not think that the ministry can be held to a standard that precludes the involvement of personnel who may have had previous involvement with the individual named in a request in selecting "relevant, reasonably informed" staff to conduct searches.

¹⁴ The ministry was previously reminded by this office (in 2012 and 2013) to maintain their files and any responsive records until further notice.

¹⁵ This office is sometimes called upon to address matters of bias (or conflict of interest) on the part of the head or *decision-maker*. See, for example, Orders M-457 and M-524 discussing the following: "It is a well-established principle of natural justice that a decision-maker must not be biased as 'no one shall be a judge in his own cause'. In other words, an individual with a personal interest in the disclosure or non-disclosure of a record must not be the decision-maker who makes the determination with respect to disclosure."

Nonetheless, the order provisions below will hopefully guide a more comprehensive search for the missing Odessa and Napanee recordings.

ORDER:

1. I order the ministry to conduct further searches for the following records related to the individual named in part 45 of Amnesty's December 2008 access request: the video/audio recording for cell #3 at the Odessa OPP Detachment from approximately 5:10 p.m. on April 25, 2008 until about 7:30 a.m. on April 26; and the video/audio recording for cell #3 at the Napanee OPP Detachment from about 8:00 a.m. until 12:20 p.m. on April 26, 2008.
2. In conducting the required searches, I order the ministry to consult with the seven OPP officers and/or guards identified in the correspondence accompanying this order, whose names appear in records previously disclosed in this appeal and other related ones.

With regard to provisions 1 and 2, I order the ministry to provide me with affidavits sworn by the individuals who conduct the searches. At a minimum, the affidavit should include information relating to the following:

- a) information about the employee(s) swearing the affidavit describing his or her qualifications, position and responsibilities;
- b) a statement describing the employee's knowledge and understanding of the subject matter of the request;
- c) the date(s) the person conducted the search and the names and positions of any other individuals who were consulted;
- d) information about the knowledge of the affiant (or individual consulted) regarding the Odessa recording or the Napanee recording, as described above, and as relevant to that individual, including (but not limited to): their knowledge of whether such a recording was made; where it would be expected to be found; what happened to it, if it is not where expected; and any alternate steps that might be taken to search for it;
- e) the results of the search;

- f) if as a result of the further searches it appears that responsive records existed but no longer exist, details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.
3. I order the ministry to review the existing VHS format recordings that were located to determine if they contain footage matching the description of the Odessa and Napanee recordings, above, that was not previously identified and/or transferred to DVD format. The details of that review are to be included in the required affidavit evidence.
 4. If the Odessa or Napanee recordings are located as a result of the searches referred to in Provisions 1, 2 or 3, I order the ministry to provide a decision letter to the appellant regarding access to those records in accordance with the provisions of the *Act*, considering the date of this order as the date of the request. **The ministry must provide a copy of any new decision letter to me.**
 5. The affidavit(s) referred to in Provision 2 (and 3) should be sent to my attention, and may be shared with the appellant, unless there is an overriding confidentiality concern.
 6. I remain seized of this appeal in order to deal with any other outstanding issues arising from this order.

Original Signed by: _____
Daphne Loukidelis
Adjudicator

_____ April 30, 2015