

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-3500

Appeal PA13-225

Ministry of Community Safety and Correctional Services

June 16, 2015

**Summary:** The sole issue in this appeal is whether the ministry conducted a reasonable search in response to an access request. The request was made for records relating to the actions of the Ontario Provincial Police (the OPP) during Mohawk protests that occurred during a specified time period. During the mediation of the appeal, the issues were narrowed to the reasonableness of the ministry's search for all written notes (including daily journal records and binders for the purpose of taking notes), written statements and RMS (Record Management System) computer reports from two named OPP officers. In this order, the adjudicator finds that the ministry's search was reasonable, and dismisses the appeal.

**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 disposes of the sole issue raised as a result of an appeal from a decision made by the Ministry of Community Safety and Correctional Services (the ministry) in response to an access request. The request was made under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to the actions of the Ontario Provincial Police (the OPP) during Mohawk protests that occurred during a specified time period. In particular, the request was for all written notes (including daily journal records and binders for the purpose of taking notes), written statements

and RMS (Record Management System) computer reports from certain named OPP officers.

[2] The ministry issued a decision to the requester, advising that access to the responsive records was denied. The ministry claimed the application of the exclusion in section 65(5.2) (ongoing prosecution) of the *Act*. The requester (now the appellant) appealed that decision to this office. However, that appeal was put on hold pending the completion of the related prosecutions. Once the prosecutions were completed, the adjudicator with carriage of the appeal directed the ministry to issue a new decision letter to the appellant.

[3] In response, the ministry issued a new decision letter to the appellant, granting partial access to the responsive records. Access to the withheld portions of the records was denied pursuant to sections 14(1)(g) (interfering with the gathering of or reveal law enforcement intelligence information), 14(1)(l) (facilitate the commission of an unlawful act or hamper the control of crime), 20 (danger to health or safety) and 21(1) (personal privacy) of the *Act*. In addition, the ministry advised the appellant that some information was withheld as it was not relevant to the request. The appellant subsequently appealed the ministry's new decision to this office, and a new appeal file was opened.

[4] After the mediation of the appeal, only one issue remains unresolved; whether the ministry conducted a reasonable search for the witness statements of two named OPP officers. The appeal was then moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry. The adjudicator assigned to the appeal sought representations from the ministry and the appellant. The ministry provided representations, which were shared with the appellant in accordance with this office's *Practice Direction 7*. The appellant did not provide representations to this office.

[5] For the reasons that follow, I find that the ministry's search was reasonable and I dismiss the appeal.

## **DISCUSSION:**

[6] The sole issue in this appeal is whether the ministry conducted a reasonable search for records.

[7] 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.<sup>1</sup> If I am satisfied that the

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<sup>1</sup> Orders P-85, P-221 and PO-1954-I.

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.

[8] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.<sup>2</sup> To be responsive, a record must be "reasonably related" to the request.<sup>3</sup>

[9] 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.<sup>4</sup> A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.<sup>5</sup>

[10] 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.<sup>6</sup>

[11] The ministry provided evidence regarding its search for records by way of affidavit evidence from an officer with the OPP detachment in Napanee. The affiant states that he has over twenty five years of policing experience and that at the time of the request, his duties and responsibilities were that of Court Officer. He submits that he has knowledge of the facts of this request. He states that he was contacted by the ministry's FOI office regarding the request and that he searched for responsive records in electronic format in the custody and control of the OPP's Napanee detachment. In particular, the affiant states that he searched for any "Officer Statements" of two named OPP officers, but that no responsive records were located. In addition, he went to the OPP detachment in Kaladar, where hard copy records are stored. He states that he conducted a search of file boxes, looking for hard copy records, but that no responsive records were located. As previously stated, the appellant did not provide representations to this office.

[12] On my review of the representations provided by the ministry, I am satisfied that it has conducted a reasonable search for responsive records, taking into account all of the circumstances of this appeal. A reasonable search is one in which an experienced employee expends a reasonable amount of effort to locate records which are reasonably related to the request.<sup>7</sup> The ministry has provided affidavit evidence explaining the nature and extent of the searches conducted for both electronic and hard

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<sup>2</sup> Orders P-624 and PO-2559.

<sup>3</sup> Order PO-2554.

<sup>4</sup> Orders M-909, PO-2469 and PO-2592.

<sup>5</sup> Order MO-2185.

<sup>6</sup> Order MO-2246.

<sup>7</sup> Order M-909.

copy records in response to the request. These searches were conducted by an individual at two regional OPP detachments, which are the nearest locations to where the protests took place. As such, any responsive records would reasonably be expected to be located in these locations. Although the searches did not uncover information relating to the two named OPP officers, I am satisfied that these searches were reasonable in the circumstances. In addition, as the appellant did not provide representations in this inquiry, he has not provided sufficient evidence to establish a reasonable basis for concluding that the ministry's search was inadequate, or that further records exist.

**ORDER:**

I find that the ministry's search was reasonable. The appeal is dismissed.

Original signed by: \_\_\_\_\_  
Cathy Hamilton  
Adjudicator

\_\_\_\_\_ June 16, 2015