

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3596

Appeal PA13-469

Ministry of Community Safety and Correctional Services

April 11, 2016

Summary: The sole issue in this appeal is whether the Ministry of Community Safety and Correctional Services (the ministry) conducted a reasonable search for records responsive to the appellant's access request. The ministry conducted three searches for records in two electronic databases and two storage facilities. While the appellant provided evidence to establish a reasonable basis for concluding that further records should exist based on the ministry's records retention standards, the adjudicator found that given the extent and nature of the searches conducted, there would be no useful purpose in ordering further searches. The adjudicator upholds the ministry's searches as being reasonable.

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 of a decision made by the Ministry of Community Safety and Correctional Services (the ministry) in response to an access request the appellant made under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The appellant's¹ request was for Ontario Provincial Police (OPP) records relating to a named individual over a specified time period.

[2] The OPP issued a decision letter to the appellant, advising that it had conducted

¹ The appellant has a representative. For ease of reference, I shall refer to the appellant's representative as the appellant.

a search for records responsive to the request, but did not locate any. The appellant filed an appeal of the ministry's decision to this office. During the intake stage of the appeals process, the appellant provided the ministry with a record relating to the named individual from the OPP's Anti-Rackets Branch. The ministry conducted a second search for responsive records, and again advised the appellant that no responsive records had been located.

[3] During the mediation of the appeal, the appellant provided an additional 21 pages of records to the ministry to support her position that additional records should exist. The appellant specifically noted that some of the records were less than 15 years old. In response, the ministry conducted a third search for records, but did not locate responsive records. The ministry advised the mediator and the appellant that it had searched several internal OPP databases, as well as long-term storage lockers for responsive records. In addition, the ministry stated that it had searched the notebook entries of a particular Detective Sergeant. The ministry further stated that it is unknown if any responsive records were stored in an alternative location by the officer, or purged or misplaced. Lastly, the ministry advised that the records may have formed part of the Crown brief and may have been destroyed once court proceedings had concluded.

[4] The appeal then moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*. The ministry and the appellant provided representations, which were shared in accordance with this office's *Code of Procedure and Practice Direction 7*.

[5] For the reasons that follow, I uphold the ministry's searches as being reasonable and I dismiss the appeal.

DISCUSSION:

[6] As previously stated, the sole issue in this appeal is whether the ministry's search for responsive records was reasonable. 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 as required by section 24.² 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.

[7] 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.³ To be responsive, a record must be "reasonably related" to the request.⁴ 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

² Orders P-85, P-221 and PO-1954-I.

³ Orders P-624 and PO-2559.

⁴ Order PO-2554.

to the request.⁵

[8] 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.⁶

[9] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester must still provide a reasonable basis for concluding that such records exist.⁷

[10] The ministry provided its evidence regarding its search efforts by way of affidavit. The affiant is a Detective Sergeant from the OPP's Anti-Rackets Branch. The ministry submits that the affiant is experienced in the Anti-Rackets Branch and that he is knowledgeable in the search matter of the request.

[11] The affiant swears that:

- He has lengthy experience with the Anti-Rackets Branch of the OPP and is knowledgeable of the requirements and procedures for responding to access requests;
- As a result of his work experience, he is familiar with the record holdings of the OPP that were searched in response to the request;
- He was notified of the request by the ministry's freedom of information office and commenced the initial search the same day;
- He searched the OMPACC database, which is an OPP information retrieval system that is no longer in use;
- He also searched the RMS database, which is a similar record keeping system as the OMPACC, but is currently in use;
- Another Detective Sergeant of the OPP searched the long-term storage facility where older records are archived;
- The first search yielded no results;
- He subsequently conducted a second search of the OMPACC and RMS databases;
- The manager of the OPP's long-term storage facility advised him that he had conducted a further search for records at the facility, including the notes of a retired officer who had been the

⁵ Orders M-909, PO-2469 and PO-2592.

⁶ Order MO-2185.

⁷ Order MO-2246.

investigating officer in connection with a past matter involving the individual who is the subject of the access request;

- An OPP Staff Sergeant searched a second storage facility in another location in the province where records may have been located;
- The second search yielded no results; and
- The affiant believes that there are no responsive records, and that records may have been destroyed, as the standard retention period is 15 years for these types of records.

[12] The appellant states that the ministry's affidavit evidence refers to only two searches for records and not three searches, as it indicated it conducted during the mediation of the appeal. Further, the appellant submits that if no records can be located by the OPP, then the ministry should provide a "Proof of Destruction" as evidence that the records did exist at one time.

[13] The appellant also submits that she has a number of records in her possession that the ministry had not identified or located that are less than 15 years old from the date of the request. The appellant provided copies of these records to this office, which were obtained from the ministry in response to a previous access request.⁸

[14] In reply, the ministry provided a revised affidavit sworn by the same affiant as the first affidavit. The affiant advised that a third search for records was, in fact conducted, but yielded no responsive records. In particular, the affiant stated that he sent an email to the retired Detective referred to above, and asked him to search for documentation regarding the named individual that may be in his possession. The retired Detective advised the affiant that he did not have any records in his possession relating to the named individual and that if there were any records, he would have left them with the Anti-Rackets Branch when he retired. The affiant also stated that the OPP's OPS File Control Coordinator of the long-term storage facility conducted another search for records relating to the named individual, but did not find responsive records.

[15] Lastly, the ministry advised that it does not have a proof of destruction document to indicate that the records no longer exist. However, the ministry submits that it is satisfied that it has conducted reasonable searches for the records.

[16] As previously stated, 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.⁹ Based on the ministry's representations, I am satisfied that this is the case. The ministry has provided affidavit evidence explaining the nature and the extent of the three searches it conducted in response to the request and the appeal. These searches were conducted by an experienced Detective/Sergeant

⁸ The first access request was made 11 years prior to the request that is the subject matter of this appeal.

⁹ See note 5.

with the OPP's Anti-Rackets Branch, and also involved other employees such as the manager of the long-term storage facility and a second Detective/Sergeant, as well as the retired Detective who was the investigating officer of a matter involving the individual named in the request. In addition, according to the evidence provided by the ministry, it searched for records in two electronic databases as well as two storage facilities.

[17] However, the appellant has provided this office with copies of records she received as part of a previous access request. I note that these records would have been less than 15 years old at the time of the request. The ministry has advised that the standard retention period for records of this nature is 15 years. The ministry's explanation is that responsive records may have been destroyed.

[18] In my view, the appellant has provided sufficient evidence that further records should exist. Nevertheless, I accept the ministry's explanation that the records may have been destroyed. Further, given the fact that the ministry has conducted three comprehensive searches, I find that there would be no useful purpose in ordering the ministry to conduct any further searches. Consequently, I dismiss the appeal.

ORDER:

I uphold the ministry's searches as being reasonable and dismiss the appeal.

Original Signed By: _____
Cathy Hamilton
Adjudicator

_____ April 11, 2016