

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3569

Appeals PA14-299 and PA14-378

Ministry of Community and Social Services

January 20, 2016

Summary: The appellant made three related requests for access to records held by the ministry pertaining to her. This order deals with two of the requests. The third request is the subject of another appeal. The ministry identified records responsive to the two requests and granted access to them. The appellant took issue with the reasonableness of the ministry's search for responsive records, alleging that other responsive records ought to exist. This order upholds the reasonableness of the ministry's searches.

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

OVERVIEW:

[1] The Ministry of Community and Social Services (the ministry) received three related access requests from the appellant under the *Freedom of Information and Protection of Privacy Act* (the *Act* or *FIPPA*), in relation to records held by the ministry pertaining to her.

[2] In request TRO-609-14, which is the subject of Appeal PA14-299, the appellant sought access to:

... my complete ODSP [Ontario Disability Support Plan] file under the *Freedom of Information and Protection of Privacy Act (FIPPA)*, payment history with all ODSP payment records which were sent to my home

address, and my Bank address, with my endorsing signature and bank stamp or ODSP payments from 1993 to 2014.

[3] The appellant ultimately narrowed request TRO-609-14 to be for:

A complete copy of the [requester's] Ontario Disability Support Program (ODSP) file, restricted to payment records for the period 1994 to present.

[4] The ministry located records that were responsive to request TRO-609-14 and granted access to them, in full.

[5] In request TRO-709-14, which is the subject of Appeal PA14-378, the appellant sought access to:

... my ODSP/FBA Program file under the Freedom of Information and Protection of Privacy Act (FIPPA).

...

I am in dispute with payment records under my old name and I am asking for payment history records from 1994 to 2010 when I turned 65 years old, which were sent to my Home or Bank address, with my endorsing signature or bank stamp for each payment, to determine Where, How and Why were those payments established and subsequently paid out from 1994 to 2010 under my identity?

[6] The ministry located records that were responsive to request TRO-709-14 and granted access to them, in full.

[7] In request TRO-1028-14, which is the subject of Appeal PA15-83, the appellant sought access to:

My complete copy of my ODSP file, relating to my three names: [specific name #1] and [specific name #2] aka [current requester's name], and FBA File under my former names from 1994 to 1997 and 1998.

[8] After granting a fee waiver request, the ministry issued its access decision letter pertaining to request TRO-1028-14 advising the appellant that:

Since all applicable FBA records were recently released to you as part of an earlier access request (our file numbers TRO-609-14 and TRO-709-14), we concentrated our search on ODSP records. Please note that upon our initial search we have been able to locate the attached file. Please be aware that there may be additional records for you, and we will continue to search until they have been located.

[9] The ministry granted partial access to the records it located that were responsive to request TRO-1028-14, relying on the discretionary exemption at section 49(b) (personal privacy) of the *Act* to deny access to the portion it withheld. The appellant appealed this decision and asserted that additional records ought to exist. Accordingly, appeal file PA15-83 was opened.¹

[10] The appellant also appealed the ministry's decisions in relation to requests TRO-609-14 and TRO-709-14, asserting that additional records ought to exist. Accordingly, appeal files PA14-299 and PA14-378 were opened. These are the appeals that are addressed in this order.

[11] Mediation did not resolve Appeals PA14-299 and PA14-378 and they were moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*.

[12] I commenced my inquiry in the appeals by sending the ministry Notices of Inquiry setting out the facts and issues in the appeal. The ministry provided responding representations. I then sent Notices of Inquiry to the appellant along with a copy of the ministry's representations. The appellant provided responding representations.

[13] In this order, I uphold the ministry's decision in appeals PA14-299 and PA14-378.

SEARCH FOR RESPONSIVE RECORDS

[14] 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 24.² 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.

[15] 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

[16] 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

¹ Although because of the nature of the searches, I will be considering some of the ministry's submissions in relation to its search for records responsive to request TRO-1028-14, that request (and associated appeal) will be addressed in a separate order.

² Orders P-85, P-221 and PO-1954-I.

³ Orders P-624 and PO-2559.

⁴ Order PO-2554.

are reasonably related to the request.⁵

[17] 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

[18] 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.⁷

[19] In its representations, the ministry submits that the appellant's three requests should not be looked at in isolation:

.... Collectively, the ministry has now disclosed to the appellant every record maintained by the ministry in connection with the administration of the appellant's social assistance file (that being provided by the FBA [*Family Benefits Act*⁸] and the ODSPA [*Ontario Disability Support Act*⁹]). In light of this ... the ministry submits that an additional search would not assist the appellant.

[20] The ministry further submits that the searches were conducted by an experienced employee knowledgeable in the subject matter of the requests who expended a reasonable effort to locate records reasonably related to the request. The ministry then explains in detail the steps it took to locate records reasonably related to each of the three requests made by the appellant.

[21] The ministry submits:

Given the manner in which the ministry maintains social assistance files (files generated and maintained by the ministry in the administration of the ODSP and the predecessor FBA program), there are four locations that would contain responsive records: (1) the appellant's paper ODSP file; (2) the appellant's paper FBA file; (3) the SDMT¹⁰; and (4) the CIMS¹¹. All

⁵ Orders M-909, PO-2469 and PO-2592.

⁶ Order MO-2185.

⁷ Order MO-2246.

⁸ *Family Benefits Act*, R.S.O. 1990, c. F.2, now revoked. The *Family Benefits Act* was discontinued when the *Ontario Disability Support Program Act*, 1997, S.O. 1997, c. 25, Sched. B came into effect.

⁹ *Ontario Disability Support Program Act*, 1997, S.O. 1997, c. 25, Sched. B.

¹⁰ The deponent of the affidavit provided by the ministry explains that the ministry's Service Delivery Model Technology (SDMT) is an electronic case management system previously used by ODSP staff to administer the program.

¹¹ The deponent of the affidavit provided by the ministry explains that the Comprehensive Income Maintenance System (CIMS), which is also no longer in use, was the predecessor system to SDMT.

information contained in these four locations have been compiled, reviewed for *FIPPA* exemptions and provided to the appellant.

The ministry submits that it has provided the appellant with all records collected and maintained by the ministry in respect of the appellant's social assistance from the period of 1994 to 2010 (when the appellant's file was closed). Although the appellant may feel that there is information that ought to be reflected in the records that have been provided to her, the ministry submits that it has done everything that it can to respond to the appellant's requests and ensure that she has every single record relating to the administration of her social assistance file, subject to the *FIPPA* exemptions that were applied.

The ministry submits that any defects in the individual searches (although the ministry maintains that each search is reasonable within the meaning of section 24 of the *Act*), has been remedied when viewed collectively. The ministry has made its best efforts to ensure that the appellant has, subject to the exemptions claimed by the ministry, every record respecting the administration of the appellant's social assistance in its custody.

[22] The ministry provided an affidavit of its Freedom of Information Lead for the Toronto Region in support of its position that it conducted a reasonable search for responsive records. As set out in the affidavit, the efforts were extensive and involved discussions with the appellant.

[23] He explains in general that:

Client level information collected by the ministry for the purposes of providing social assistance services is maintained in client files. The ministry maintains files for ODSP clients in paper and electronic format. The paper file and the electronic file, however, do not contain the same information. For example, the paper file contains any documents received by the ministry in the administration of social assistance including any correspondence sent to or from the ministry in relation to the administration of social assistance. The electronic file includes notes generated by ODSP caseworkers and detailed breakdowns of benefits issues [sic] to social assistance clients. These files are organized by the name of the recipient to which they relate. FBA files were also maintained both in paper and electronic format and were organized by the name of the recipient to which they relate.

[24] With respect to request TRO-609-14, the deponent of the affidavit states:

In order to respond to this request, [the then Freedom of Information Lead for the Toronto Region] reviewed the ministry's records which indicated that there was an ODSP file for a [appellant's name] with the same Member ID and SIN provided by the appellant. A review indicates that her ODSP file was opened on October 1, 2008 and closed on December 1, 2010.

In order to respond to the request, [the then Freedom of Information Lead for the Toronto Region] reviewed the electronic file available on the ministry's Service Delivery Model Technology (SDMT). SDMT is an electronic case management system that was used by ODSP staff to administer the program. A new system has since been implemented in November 2014. However, SDMT would contain any responsive records, given that [the appellant's] file was opened in 2008 and closed in 2010. SDMT captures information from September, 2001 through to the end of October, 2014.

[The then Freedom of Information Lead for the Toronto Region] reviewed SDMT for responsive records and proceeded to print off all payment lists available on SDMT in respect of [the appellant's] file. Payments would have been generated automatically by SDMT. The payment lists identified as responsive would contain a list of all social assistance payments made to the appellant, or other individuals on her behalf (where applicable), a breakdown of those payments, a description of how the payment was delivered to the client or other individual and the address on file for the client at the time of the payments.

As payments are generated automatically by SDMT, the SDMT payment screens represent a comprehensive list of all social assistance payments made in respect of a particular file. Therefore, the payment lists available through SDMT would capture every payment made by ODSP in respect of [the appellant's] file. No FBA records were located under the name of [the appellant].

These payment lists were provided to the appellant

[25] With respect to request TRO-709-14, the deponent of the affidavit states:

The ministry interpreted this request as a request for payment records under the names [specific name #1] or [specific name #2] from 1994 to 2010.

As the ministry had previously provided the appellant with all payment records related to her ODSP file, the ministry focused its search on any FBA records that may be responsive to the request.

In order to respond to this request, I searched the Comprehensive Income Maintenance System (CIMS) using all three names provided by the appellant. CIMS is a predecessor system to SDMT, and was in use prior to the discontinuation of the FBA program. Though CIMS is no longer operational, it is possible to retrieve monthly summary pages for clients who were on FBA. This functionality is accessed through a portal within SDMT. In order to search for records, the user needs to have the clients FBA ID, which is composed of the first five letters of a client's last name, six digits of the date of birth and a zero. Each summary page gives a snapshot of one specific month, showing the client's monthly entitlement, address, overpayments, and any spouse or dependents active on the benefit unit. Using SDMT, the ministry located CIMS records pertaining to the name [specific name #1]. The records related to the period from 1994 to 1997 and constituted all CIMS records relating to the appellant. No other records were located by the CIMS search using all three names provided by the appellant.

On [specified date], the ministry provided the responsive records to the appellant. These consisted of the records that were pulled from CIMS, given that the appellant had previously been provided with all payment screens from her ODSP file that were available on SDMT....

[26] With respect to request TRO-1028-14, which is the subject of appeal PA15-83, the deponent of the affidavit states:

... after discussions with staff at the Information and Privacy Commissioner, I proposed to the appellant that she make a request for copies of her complete ODSP file from 2008-2010. This is because all CIMS records had been provided in response to TRO-709-14. As well, up until [specified date]..., I had been operating under the assumption that the paper FBA file had been destroyed in accordance with relevant records retention schedules, ...

On [specified date], the ministry received a request for the appellant's complete ODSP/FBA file (FBA file from 1994-1997 and 1998) under the names of [specific name #1], [specific name #2] or [appellant's name].

Once the access request was received from the appellant, I requested the paper ODSP file from the ministry's offsite storage facility. As the file had been inactive since 2010, it had been moved off-site.

On [specified date], I received a portion of the appellant's paper ODSP file; the rest of the file arrived approximately a week later. At that point, I discovered that the appellant's paper ODSP file also contained her paper FBA file that had been terminated in 1997.

In addition to the paper files that were retrieved, in order to respond to this request, copies of all SDMT notes (not simply financial as previously provided) were also produced. CIMS was not searched again as the entirety of the available CIMS notes had previously been provided to the appellant.

The ministry reviewed the appellant's ODSP and FBA file, including SDMT printouts, applied certain exemptions and provided the appellant with a copy. As the paper file arrived in two parts from the offsite storage facility, the records were provided to the appellant on two separate occasions, The responsive records were provided to the appellant on [specified dates]

[27] The deponent concludes his affidavit by stating:

The appellant has now been provided with a complete copy of her ODSP file (both paper records and electronic (SDMT records), her paper FBA file and copies of all CIMS notes in the ministry's custody under the names of [specific name #1] and [appellant's name]. Searches for records under the name of [specific name #2] did not produce any results. As a result, to the best of my knowledge, the appellant has been provided with copies of every record maintained by the ministry in respect of the administration of her social assistance file, either under the FBA or the ODSPA.

[28] In response, the appellant provided wide-ranging representations detailing her physical condition, her interactions with legal aid, her experience relating to the administration of her social assistance file, her dealings with individuals to whom she says she gave power of attorney, her family law proceedings and her dealings with FRO. Her representations conclude with a series of questions about these various matters organized under sub-headings. She requests that a new search be conducted for all documentation in her name.

[29] While the appellant takes issue with a number of matters in which she was involved, I find that she does not provide sufficient evidence to challenge the reasonableness of the ministry's search for records that are responsive to the requests at issue.

[30] As set out above, the *Act* does not require the institution to prove with absolute certainty that further responsive 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. Based on the evidence before me, I am satisfied that a search was conducted by an experienced employee of the ministry knowledgeable in the subject matter of the request, who expended a reasonable effort to locate records, which are reasonably related to the requests at issue.

[31] I am satisfied that, in all the circumstances, the ministry conducted a reasonable search for records responsive to the requests resulting in appeals PA14-299 and PA14-378.

ORDER:

I uphold the reasonableness of the ministry's searches for responsive records.

Original Signed by: _____
Steven Faughnan
Adjudicator

_____ January 20, 2016