

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## ORDER PO-3912-F

Appeals PA14-245 and PA14-245-2

Ministry of Community Safety and Correctional Services

December 18, 2018

**Summary:** This final order follows Interim Order PO-3791-I and Reconsideration Order PO-3829-R. The appellant sought access under the *Act* to records relating to a search executed by the Ontario Provincial Police (the OPP) at his residence on a specified date. The ministry granted the appellant partial access to the records, claiming the application of a number of exemptions in the *Act*. The appellant appealed the ministry's exemption claims and argued that additional responsive records ought to exist. In Interim Order PO-3791-I, the adjudicator upheld the ministry's decision, in part. Regarding the ministry's search for responsive records, the adjudicator upheld the ministry's search as reasonable with the exception of three records and ordered the ministry to conduct another search for those three records.

Both the ministry and the appellant requested a reconsideration of Interim Order PO-3791-I with respect to the findings on reasonable search. In Reconsideration Order PO-3829-R, the adjudicator denied both requests for reconsideration of Interim Order PO-3791-I. The ministry then conducted another search and located two of the three records.

In this final order, the adjudicator finds that the ministry conducted a reasonable search for responsive records 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.

**Orders and Investigation Reports Considered:** Orders PO-3791-I and PO-3829-R.

## **OVERVIEW:**

[1] This final order disposes of the remaining issue from Interim Order PO-3791-I, specifically whether the Ministry of Community Safety and Correctional Services (the ministry) has conducted a reasonable search for records, as required by section 24 of the *Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] The appellant made a broad access request to the ministry under the *Act* for records relating to a search executed by the Ontario Provincial Police (the OPP) at his client's residence on an identified date. In Order PO-3791-I, I referred to the appellant and his client as the appellant because the appellant filed the request on his client's behalf and provided his client's consent to obtain access to his personal information. I will also refer to the appellant and his client as the appellant in this final order.

[3] The ministry located a number of responsive records and issued a decision letter to the appellant granting him partial access to them. The ministry advised the appellant it applied a number of exemptions to withhold portions of the records.

[4] The appellant appealed the ministry's decision and the IPC opened appeal file PA14-245. In his appeal letter, the appellant challenged the ministry's application of the exemptions and claimed that additional responsive records ought to exist.

[5] During the inquiry stage of Appeal PA14-245, the ministry conducted another search and located additional responsive records, specifically officers' notebook entries. The ministry issued a supplementary access decision granting the appellant partial access to the officers' notes. The ministry claimed the application of a number of exemptions to withhold portions of the records.

[6] The appellant appealed the ministry's supplementary decision and appeal file PA14-245-2 was opened. The appellant challenged the ministry's exemption claims and continued to take issue with the ministry's search for responsive records.

[7] During the mediation stage of Appeal PA14-245-2, the appellant confirmed he was satisfied with the ministry's search for officers' notes. However, the appellant continued to take issue with the ministry's search for the other types of records identified in his representations for PA14-245.

[8] Following an inquiry, I issued Interim Order PO-3791-I upholding the ministry's search for responsive records as reasonable, with the exception of its search for three records. I ordered the ministry to conduct another search for these records and to provide an affidavit sworn by the individual who conducts the search.

[9] The appellant and the ministry sought a reconsideration of this aspect of Interim Order PO-3791-I. I sought representations from both parties, but found that neither established any basis upon which I should reconsider Interim Order PO-3791-I. Accordingly, I issued Reconsideration Order PO-3829-R, denying the ministry and the appellant's reconsideration requests.

[10] In response to Interim Order PO-3791-I and Reconsideration Order PO-3829-R, the ministry conducted a further search for responsive records. The ministry identified two of the three records it was ordered to search for in Interim Order PO-3791-I and issued a supplementary access decision to the appellant, granting him partial access to the records. The ministry also provided the IPC with an affidavit describing its search efforts, which I shared with the appellant in accordance with this office's *Code of Procedure* and Practice Direction Number 7. The appellant provided representations in response. I then sought and received reply representations from the ministry and, subsequently, further sur-reply representations from the appellant.

[11] In this final order, I conclude that the ministry has conducted a reasonable search for responsive records. I dismiss the appeal.

## **DISCUSSION:**

[12] Where a requester claims additional responsive records exist beyond those identified by the institution, the issue to be decided is whether the institution conducted a reasonable search for records as required by section 24 of the *Act*.<sup>1</sup> If, after conducting an inquiry, the adjudicator is satisfied the institution carried out a reasonable search in the circumstances, the adjudicator will uphold the institution's search. If the adjudicator is not satisfied, the adjudicator may order further searches.

[13] The *Act* does not require an institution to prove with absolute certainty that further records do not exist. However, the ministry must provide sufficient evidence to show it 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>

[14] 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 reasonably related to the request.<sup>4</sup> An adjudicator will order a further search if the institution does not provide sufficient evidence to demonstrate it made a reasonable effort to identify and locate all of the responsive records within its custody or control.<sup>5</sup>

[15] Although the 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.<sup>6</sup>

### **Interim Order PO-3791-I**

[16] The appellant took issue with the ministry's search for records responsive to his

---

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

<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.

original request. During the inquiry, the ministry was invited to submit representations in response to a Notice of Inquiry. The ministry submitted representations. The appellant was then invited to make representations in response to the Notice of Inquiry and the ministry's representations. In his representations, the appellant identified a number of concerns regarding the ministry's search and described the types of records he believed ought to exist. I shared the appellant's representations on search with the ministry and the ministry submitted representations in reply. The ministry also conducted another search for responsive records and located additional records, specifically officers' notes.

[17] I upheld the ministry's search as reasonable, in part, in Interim Order PO-3791-I. I reviewed the parties' evidence and found that the ministry conducted a reasonable search for records responsive to the appellant's request, with one exception. Specifically, at paragraph 116 of the order, I stated,

In his representations, the appellant identifies three records that he submits ought to exist. The appellant described these records as follows:

1. The "briefing package" detailing the search of the appellant's residence referred to in page 11 of the records.
2. The "summary of activity" prepared by the OPP officer for the purposes of briefing other OPP officers referred to in page 15 of the records.
3. The "report in relation to this investigation" prepared on February 22, 2007 referred to in page 15 of the records.

The ministry did not address the existence or non-existence of these specifically identified records in its representations. I reviewed the records at issue. I find there is a reasonable basis to believe that these three reports ought to exist. In the absence of any representations from the ministry addressing these reports, I find the ministry did not conduct a reasonable search for these records. Therefore, I will order it to conduct another search for these specific reports identified in the records.

[18] At paragraph 117, I stated, with respect to the remainder of the ministry's search, "I reviewed all of the appellant's submissions on search and find they do not establish a reasonable basis to believe additional responsive records ought to exist." I proceeded by identifying the different categories or types of records the appellant identified in his submissions and made a finding for each category. I will not reproduce my analysis and findings in this final order. The parties may refer to paragraphs 118 to 127 of Interim Order PO-3791-I.

### **Reconsideration Order PO-3829-R**

[19] Both the appellant and the ministry filed reconsideration requests of Interim

Order PO-3791-I in relation to my findings on the ministry's search for responsive records. Specifically, the appellant and the ministry submitted there was a fundamental defect in the adjudication process<sup>7</sup>. The appellant also claimed the application of section 18.01(c) of the IPC's *Code of Procedure*. The appellant argued that I failed to consider all relevant evidence before me on the issue of search and should have ordered the ministry to search for more than the three records identified in the order. The ministry, in turn, claimed that the order "does not contain a logical rationale, which justifies ordering the ministry to conduct a further search."

[20] I shared the ministry's and appellant's reconsideration requests with each other, with the parties' consent. Both parties submitted additional comments.

[21] In Reconsideration Order PO-3829-R, I found that neither party established any basis upon which I should reconsider Interim Order PO-3791-I. Accordingly, I dismissed both reconsideration requests.

### **The ministry's search and parties' representations**

[22] In response to Interim Order PO-3791-I, the ministry conducted further searches for responsive records. The ministry identified two of the three records it was ordered to locate, specifically, the "summary of activity" prepared by the OPP officer for the purposes of briefing other OPP officers referred to in page 15 of the records and the "report in relation to this investigation" prepared on February 22, 2007. The ministry advised the appellant that the "report in relation to this investigation" was identified as part of the original request and was disposed of in the interim decision. However, the ministry located the "summary of activity" and disclosed it to the appellant, in part, claiming the application of the exemption in section 49(a), read with sections 14(1)(c) (reveal investigative techniques and procedures) and (l) (facilitate commission of an unlawful act).

[23] The ministry also provided the IPC and the appellant with an affidavit sworn by an OPP officer regarding the searches conducted. In his affidavit, the officer stated he has been employed with the OPP for over 29 years and has been serving as the Case Manager for the records pursuant to an investigation for the past 10 years. The officer confirmed he is familiar with the records. The officer advised he conducted his search for the three records identified in Interim Order PO-3791-I on April 3, 4, and 10, 2018. He confirmed he contacted an individual who was the Detective Sergeant at the time the records were created (the former Detective Sergeant). The officer confirmed the former Detective Sergeant is the author of the "summary of activity" prepared for the purposes of briefing other OPP officers referred to in page 15 of the records and the "report in relation to this investigation." The former Detective Sergeant confirmed he had copies of the records and provided them to the officer who, in turn, provided them to the ministry.

[24] The former Detective Sergeant confirmed he did not have the "briefing package"

---

<sup>7</sup> Referring to section 18.01(a) of the IPC's *Code of Procedure*.

referred to in page 11 of the records. The former Detective Sergeant advised the officer that this record was created as part of a joint forces investigation between the OPP and the Workplace Safety and Insurance Board (WSIB). However, as the WSIB had control over the records pursuant to the joint forces investigation, the former Detective Sergeant advised that the record would, if it exists, be stored in the WSIB Major Case Management System, now that the investigation is closed. The officer confirmed the OPP does not have custody or control over records in the WSIB Major Case Management System.

[25] The officer advised he looked elsewhere for the "briefing package." The officer confirmed the "briefing package" is not contained in the criminal brief created as part of the OPP's investigation, which is where it could be expected to be located if the OPP had a copy of it. The officer also searched his own personal file, which he maintained for the purpose of his investigation.

[26] The appellant confirmed he does not pursue access to the information withheld from disclosure in the "summary of activity". Therefore, the ministry's exemption claim is not at issue in this final order.

[27] However, the appellant maintains his belief that the "briefing package" detailing the search of his residence referred to in page 11 of the records ought to exist. The appellant takes issue with the affidavit provided by the ministry. Specifically, the appellant submits the officer should not have limited his search to speaking with the former Detective Sergeant, the criminal brief and his own files. The appellant submits the ministry should have searched the OPP's electronic databases as well as the electronic hyperlinked version of the report which contains a hyperlink to the briefing package. The appellant submits I should order the ministry to search the OPP's electronic databases and to click the hyperlink contained in the electronic version of the report prepared by the former Detective Sergeant.

[28] In response, the ministry submits that the appellant's allegations are baseless. The ministry confirms it conducted "extensive searches" for all requested records in the OPP's electronic databases, where it believed records would be located. The ministry confirmed it searched the OPP's electronic databases for records that may have formed part of the "briefing package" and these searches were described in the representations it provided during the original inquiry. The ministry reminds the appellant it conducted searches of the Major Case Management (MCM) system and Records Management System (RMS), both of which are electronic databases. The ministry also states that any hyperlink from page 11 to the "briefing package", if one existed, is no longer operational. The ministry confirms the page no longer hyperlinks to any briefing package, if it ever did, which the ministry states is not clear. The ministry states the record was created over 11 years ago for an investigation that is no longer active. The ministry states it is reasonable that any hyperlink that may have been created for the investigation would no longer be active.

[29] The ministry submits the "briefing package" describes a combination of records that was prepared a significant time ago for a particular purpose that no longer exists

(i.e. a specific investigation). Accordingly, it is not possible for it to locate a "briefing package" unless it is "actually somehow identifiable as such, and indeed it is not."

[30] In response to the ministry's submissions, the appellant submits the ministry ought to have conducted another search of its electronic databases for the "briefing package" pursuant to Interim Order PO-3791-I. The appellant submits that the ministry's failure to do so was unreasonable. In addition, the appellant takes issue with the ministry's submissions regarding the hyperlink in the report to the "briefing package." The appellant submits the ministry did not provide sufficient evidence to show it made a reasonable effort to identify and locate responsive records. The appellant contends that the requirement that the ministry made a "reasonable effort" to locate the record cannot be supplanted by "speculation" that the hyperlink may no longer be active.

[31] The appellant also takes issue with the ministry's claim that the "briefing package" might not be a record itself, but rather a combination of records that may no longer exist. The appellant submits the "briefing package" should be a record within the meaning of section 2(1) of the *Act*.

[32] Finally, the appellant submits that the ministry's suggestion that it contact the WSIB for a copy of the "briefing package" is irrelevant to this inquiry. The appellant submits that the issue in this inquiry is whether the ministry conducted a reasonable search for records. In this case, the appellant contends the ministry did not conduct a reasonable search for the "briefing package" that remains outstanding.

## **Findings**

[33] For the reasons that follow, I am satisfied the ministry has conducted a reasonable search for responsive records pursuant to Interim Order PO-3791-I. I am satisfied the ministry's further search demonstrates it made a reasonable effort to locate responsive records in fulfillment of its obligations under the *Act*. I am not persuaded by the appellant's arguments that the ministry failed to conduct a reasonable search for records responsive to his request.

[34] Based on my review of the ministry's affidavit, I am satisfied an experienced employee knowledgeable in the subject matter of the request expended a reasonable effort to locate the "briefing package" that remains outstanding. The affiant is clearly an experienced employee knowledgeable in the type of investigation that is the subject of the request. Furthermore, the affiant contacted the author of the report that contains the reference to the "briefing package" for more information. The author is clearly also an "experienced employee knowledgeable in the subject matter of the request." In addition, I am satisfied the affiant expended a reasonable effort to locate the "briefing package".

[35] The appellant takes the position that the ministry ought to search all of the relevant electronic databases for the "briefing package" again. It submits the ministry had a duty to search these databases again pursuant to Interim Order PO-3791-I. I

disagree. In Interim Order PO-3791-I, I considered the ministry's search of its electronic databases and found as follows:

The appellant also takes issue with the ministry's decision to search "only" its MCM system, the RMS system and the email accounts of certain OPP officers. The appellant submits the ministry did not provide any evidence to demonstrate the MCM file was the only place that could reasonably be expected to hold the responsive records. However, based on my review of the ministry's submissions, I am satisfied it searched the relevant locations for responsive records. The ministry confirmed the OPP and other Ontario law enforcement agencies use the MCM in conducting major investigations. The ministry asserted that **all relevant records** relating to the investigation are stored in the MCM file. In any case, the ministry conducted a search of the MCM file, the RMS system and contacted a number of OPP officers for additional responsive records. I reviewed the appellant's representations and find they do not demonstrate there is a reasonable basis for his belief that additional responsive records exist elsewhere.<sup>8</sup> [Emphasis added]

In Interim Order PO-3791-I, I was satisfied the ministry's searches of its electronic databases, including the MCM and RMS systems and the OPP officers' email accounts, was reasonable. I also accepted the ministry's claim that "all relevant records", which may include the same documents that formed part of the "briefing package", were located in its search of the electronic databases. Given these circumstances, I find the ministry was not required to conduct another search of its electronic databases pursuant to Interim Order PO-3791-I.

[36] With regard to the issue of the hyperlink in the original report, the ministry states the record is over 11 years old and confirmed the report does not hyperlink to any briefing package. Based on my review of the record itself and the ministry's representations, I am satisfied the ministry expended a reasonable effort to locate the "briefing package" by confirming that the record no longer hyperlinks to any briefing package. While the appellant may believe the hyperlink should still be active, I am satisfied by the ministry's representations that it is not. Therefore, I am satisfied the ministry provided sufficient evidence to demonstrate it conducted a reasonable search for responsive records in this regard.

[37] In its representations, the ministry notes that the "briefing package" is not a "record per se" because it describes a combination of records. Regardless of whether the "briefing package" contains a single record or multiple records, the record(s) that make up the "briefing package" may be a *record* within the meaning of section 2(1)<sup>9</sup> of

---

<sup>8</sup> Interim Order PO-3791-I at para 122.

<sup>9</sup> Section 2(1) of the *Act* defines *record* as:

(a) correspondence, memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a



the *Act*. It is also reasonable to assume the "briefing package" would have been filed or prepared as a single package as it was referred to as such on page 11 of the records. In any case, I am satisfied the ministry provided sufficient evidence to demonstrate it conducted a reasonable search for the "briefing package".

[38] Finally, I note the ministry states that the WSIB may have a copy of the "briefing package" and advises the appellant to contact the WSIB. The appellant states the fact that another institution may have the record is irrelevant to the inquiry. I agree. However, given that I have found that the ministry has submitted sufficient evidence to demonstrate it conducted a reasonable search for the responsive record, it may be helpful to the appellant to contact the WSIB and make a request for a copy of the "briefing package."

[39] In conclusion, I find that the ministry has now conducted a reasonable search for records, as required by section 24 of the *Act*.

**ORDER:**

I uphold the ministry's further search and dismiss the appeal.

Original signed by \_\_\_\_\_

Justine Wai  
Adjudicator

December 18, 2018 \_\_\_\_\_

---

videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and  
(b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution...