

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3964

Appeal PA17-404-2

Ministry of Natural Resources and Forestry

June 6, 2019

Summary: The ministry received a request for records relating to a conservation officer's visit to the homes of the requester and another individual. The ministry located records and disclosed them to the requester. The requester appealed, asserting that more records should exist. In this order, the adjudicator upholds the ministry's search for records as 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 17.

OVERVIEW:

[1] The Ministry of Natural Resources and Forestry (the ministry) received an access request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for the following records:

Any and all records which relate to [named Conservation Officer's] visit to the homes of [the requester and another individual] on June 7, 2017 and his telephone conversation to [a third named individual] on June 16, 2017. Specifically any records which discuss the purpose of these interactions and what were the outcomes.

As well, I would like to request any and all records pertaining to direction on future engagements with [five named individuals].

Time period Sept 1, 2016 – July 6, 2017

[2] The ministry initially issued a decision refusing to confirm or deny the existence of records responsive to the request, pursuant to the law enforcement exemption at section 14(3) of the *Act*. The requester, now the appellant, appealed that decision, and the ministry subsequently issued a revised decision in which it granted full access to some records and partial access to other records. The ministry denied access to the redacted portions of the records in reliance on the law enforcement exemption in section 14 of the *Act*. Some information in the records was also withheld on the basis that it was not responsive to the request.

[3] Given the issuing of the revised decision confirming the existence of responsive records, the initial appeal file closed.

[4] The appellant then appealed the revised decision and this office appointed a mediator to explore the possibility of settlement. The appellant informed the mediator that she was not seeking access to the information the ministry withheld. However, the appellant told the mediator that she believed additional email correspondence exists involving a particular ministry employee.

[5] The ministry provided additional information regarding the search that it had conducted for that employee's emails. The ministry also stated that it had followed up with the named employee regarding the search. The mediator conveyed this information to the appellant. The appellant advised the mediator of her continued view that the ministry has additional records responsive to her request.

[6] Further mediation was not possible, and the appeal proceeded to the adjudication stage, where I conducted an inquiry on the sole issue of whether the ministry had conducted a reasonable search for records responsive to the appellant's request.

[7] I began my inquiry by inviting representations from the ministry. The ministry submitted representations that were then shared with the appellant. I then sought representations from the appellant, but none were provided.

[8] In this order, I uphold the ministry's search as reasonable, and dismiss the appeal.

DISCUSSION:

[9] The sole remaining issue in this appeal is whether the ministry conducted a reasonable search for records responsive to the request.

The ministry's representations

[10] The ministry provided representations explaining the searches it conducted in response to the appellant's access request. It states that, since the request related to

an enforcement matter within a provincial park, two searches took place: one in the local ministry enforcement branch in Guelph, and one in the Ontario Parks offices.

[11] At the enforcement branch, the ministry assigned a conservation officer to coordinate the search. This officer searched the notebooks and emails of the conservation officer named in the appellant's request, along with paper files at the enforcement office. He also contacted the conservation officer in question as well as the Acting Enforcement Manager at the branch to discuss the request.

[12] The ministry also assigned an employee to manage the search of the Ontario Parks office. This search included the electronic files of three named employees, who were also contacted as part of the search.

[13] The ministry notes that the appellant asserted during mediation that records of a particular named employee (one of the three employees whose electronic files were searched) should exist, given the contents of a particular email that had been disclosed to the appellant. The ministry contacted the named employee (who, by then, worked for a different ministry) concerning the email. The ministry submits that this employee explained the context of the email and confirmed that there were no related emails. This information was conveyed to the appellant at mediation.

[14] The ministry submits that the searches of its two relevant offices resulted in disclosure of approximately 88 pages of records and a video¹ to the appellant. In the absence of any particulars from the appellant, the ministry submitted that it is not able to identify types of further records that the appellant alleges it may have missed during its searches.

[15] As noted above, the appellant did not provide representations when I invited her to do so, despite being given extensions of time in which to do so.

Analysis and finding

[16] The sole remaining issue in this appeal is whether the ministry conducted a reasonable search of its record holdings for records responsive to the appellant's request.

[17] Where a requester claims that additional records exist beyond those identified by the institution, the adjudicator must decide whether the institution has conducted a reasonable search for records as required by section 17 of the *Act*.²

¹ Upon receipt of the ministry's representations, the appellant stated that she never received a video. The ministry then sent/resent it to her.

² Orders P-85, P-221 and PO-1954-I.

[18] The ministry is not required to prove with absolute certainty that further records do not exist. However, it must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.³ Responsive records are those which are "reasonably related" to the request.⁴

[19] A reasonable search occurs where an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records that are reasonably related to the request.⁵

[20] A further search will be ordered if the ministry 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

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

[22] The ministry conducted searches in two offices, as described above. In my view, the two offices searched – the Enforcement Branch and the Parks Office – were the two relevant areas in which to search given the nature of the access request. Moreover, I am satisfied that the personnel enlisted by the ministry to coordinate the two searches were experienced in the relevant subject matter of the request and expended a reasonable effort to locate responsive records. These searches included searches of the records of the ministry staff involved in the incident in question, as well as consultation with these individuals. I am satisfied that the ministry expended a reasonable effort to locate responsive records.

[23] The appellant, having not filed representations, has not satisfied me that there is a reasonable basis for believing that further responsive records may exist in relation to the incident in question, nor does my review of the records disclosed to her provide a reasonable basis for believing more records exist. Specifically, I accept the ministry's evidence on whether it is reasonable to believe that any further emails of the particular ministry employee should exist. As part of its search, the ministry searched the electronic files of that employee. The ministry also took the step of contacting the employee, who by then was no longer with the ministry, and she advised the ministry that there were no related emails. The appellant did not file representations to challenge this.

³ Orders P-624 and PO-2559.

⁴ Order PO-2554.

⁵ Orders M-909, PO-2469 and PO-2592.

⁶ Order MO-2185.

⁷ Order MO-2246.

[24] For these reasons, I find that the ministry has conducted a reasonable search for records responsive to the appellant's access request.

ORDER:

I uphold the ministry's search for responsive records as reasonable. I dismiss the appeal.

Original Signed By: _____
Gillian Shaw
Senior Adjudicator

_____ June 6, 2019