Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3928

Appeal PA17-119

Royal Ottawa Mental Health Centre

February 19, 2019

Summary: The Royal Ottawa Mental Health Centre (the Royal Ottawa) received a three-part request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records related to Electroconvulsive Therapy (ECT). After the Royal Ottawa issued a fee estimate and interim access decision, the appellant appealed the decision and narrowed his request. The Royal Ottawa did not locate any records responsive to the narrowed request and issued a decision informing the appellant that these records do not exist. The appellant claimed that responsive records should exist, or could be produced from existing records. This order upholds the Royal Ottawa's search as reasonable and finds that the Royal Ottawa does not have an obligation to create a record.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 17 and 24.

Orders and Investigation Reports Considered: Order MO-2129.

OVERVIEW:

[1] The Royal Ottawa Mental Health Centre[1] (the Royal Ottawa) received a three-part request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to Electroconvulsive Therapy (ECT). The part of the

[1] Identified as part of the Royal Ottawa Health Care Group.

request that remains relevant for the purposes of this order sought access to:

> 3. Data on Electro-Convulsive Therapy Treatment carried out at the Royal Ottawa as follows:
>
> a. number of ECT treatments conducted at the Royal between January 2012 and December 2016;
>
> b. percentage of occasions where ECT treatment decision was made by Substitute Decision Maker at some point in patient's treatment regime;
>
> c. average frequency per week and average total treatments distinguishing unilateral and bilateral treatment;
>
> d. metrics used to determine level of success of ECT treatments;
>
> e. number (or percentage) of ECT treated patients who were discharged but ultimately returned to care.

[2] The Royal Ottawa initially issued a decision indicating that it was granting partial access to responsive records. It granted access to records identified as responsive to item 3(a), but denied access to items 3(b), (c), (d) and (e). The requester, now the appellant, appealed the decision to this office.

[3] On May 25, 2017, the Royal Ottawa issued a revised decision on items 3(b), (c), (d) and (e) with a fee estimate of $19,275, requesting payment of a 50% deposit of $9,682.50, before it would continue processing the request. The revised decision and fee estimate also advised the appellant that:

> As we have not yet completed the search and reviewed all of the records in detail, no final decision has been made regarding the request. Based on the review of the representative sample, I estimate that partial access to the records will be granted.

[4] Following receipt of this decision, the appellant narrowed the request and advised the Royal Ottawa that he is now seeking access only to the following information:

> Metrics used to determine the level of success of ECT treatment. By metrics, I am referring to ALL measures that are used to determine the success of ALL ECT treatment forms (unilateral and bilateral treatment) at the Royal. By success, I mean effectiveness in rectifying the issues for which the treatment was prescribed. In other words, how are physicians at the Royal able to say that ECT is the "gold standard" treatment based

> on outcomes of the treatment at that institution? As always, I am happy to explain this further if clarification is required.

[5] In response, the Royal Ottawa issued a decision stating:

> The information does not exist. As stated in the letter of May 25, 2017 a final decision had not been made, based on the representative sample I estimated partial access to the records.

[6] Further discussions followed, including a teleconference, where each party maintained their position. As no further mediation was possible, the appeal proceeded to the adjudication stage, where an adjudicator conducts an inquiry under the *Act*. The adjudicator formerly assigned to this appeal sought and received representations from both parties, and these were shared with the other party in accordance with IPC *Practice Direction Number 7*. After the conclusion of the inquiry at sur-reply, the appellant also submitted additional correspondence on several occasions.

[7] Subsequently, the appeal was transferred to me. In this order, I find that the Royal Ottawa conducted a reasonable search for records responsive to the appellant's narrowed request. Additionally, I find that the Royal Ottawa is not obliged to create a record to respond to the appellant's narrowed request.

ISSUES:

A. What is the scope of the request? What records are responsive to the request?

B. Did the Royal Ottawa conduct a reasonable search for records? Is it obliged to create a record to respond to the appellant's narrowed request?

DISCUSSION:

[8] Since all three issues are interrelated, I will set out the parties' arguments on all issues before moving onto my analysis of the issues. I have reviewed and considered all of the representations made by the parties in this appeal. However, I have only summarized those portions I found relevant to my determination below.

Representations of the Royal Ottawa

[9] The Royal Ottawa submits that in order to properly respond to the appellant's narrowed request it broke it down into two parts:

> **Part 1:** "Metrics used to determine the level of success of ECT treatment. By metrics, I am referring to ALL measures that are used to determine the success of ALL ECT treatment forms (unilateral and bilateral treatment) at

> the Royal. By success, I mean effectiveness in rectifying the issues for which the treatment was prescribed."
>
> **Part 2:** "In other words, how are physicians at the Royal able to say that ECT is the "gold standard" treatment based on outcomes of the treatment at that institution? As always, I am happy to explain this further if clarification is required."

[10] With respect to Part 1, the Royal Ottawa submits that the scope of the request is not clear. The Royal Ottawa submits that the appellant's request seeks information instead of records, i.e. "metrics to determine the level of success of ECT . . ." The Royal Ottawa submits that the request does not identify the type of record(s) sought or the type of record(s) believed to contain the requested information. It further submits that what the appellant means by "success" is not clear.

[11] The Royal Ottawa submits that despite the lack of clarity, it interpreted the request liberally. Nonetheless, the Royal Ottawa maintains that these records do not exist, because it does not use metrics to determine the efficacy or "success" of ECT.

[12] With respect to Part 2 of the request, the Royal Ottawa submits that the appellant is not seeking a record, but is simply asking a question, which does not require a response from the Royal Ottawa under the *Act.* However, the Royal Ottawa points to the explanation provided in the Affidavit of its Clinical Lead for ECT as a response to the appellant's question. The Royal Ottawa notes that the choice of treatment is a physician's responsibility.

[13] The Royal Ottawa submits that Order MO-2129, which was provided to the parties during the inquiry stage of this appeal, states that the *Act* gives a requester the right (subject to exemptions) to the "raw material" which would be responsive to a request. However, the Royal Ottawa submits that in this appeal, there is no "raw material" that is responsive to the request, which is why responsive records do not exist. More specifically, the Royal Ottawa argues that the *Act* does not require it, as an institution, to create a new record which cannot be extracted from existing records.

[14] In response to the appellant's argument that "metrics" could be extracted from patient files, the Royal Ottawa submits there are many factors involved in whether a treatment is successful, and a patient's file would not provide information with respect to the metrics used to determine the efficacy of ECT compared to other treatments. The Royal Ottawa further submits that there is nothing in the *Act* that requires it, as an institution, to review each and every patient file, and conduct an analysis of the treating psychiatrist's clinical assessment.

[15] The Royal Ottawa submits that based on the two affidavits filed, there is no basis for concluding the Royal Ottawa conducted anything other than a complete and reasonable search for responsive records.

Affidavit of Royal Ottawa's Clinical Lead for ECT

[16] In support of its position that no records responsive to Part 1 of the request exist, because it does not use metrics to determine the level of efficacy of ECT, the Royal Ottawa submitted an affidavit by one of its psychiatrists, who is the Clinical Lead for ECT (the Affidavit). In the Affidavit, the doctor describes ECT as a medical procedure which treats specific types of mental disorders. The doctor states that ECT is more effective than pharmacotherapy in the treatment of depression and is useful for treatment resistant schizophrenia, which is why it is sometimes referred to as the "gold standard" in treatment. However, the doctor states that the determination of "gold standard" comes from global scientific literature and is not determined by local quality improvement data of hospitals or individual physicians.

[17] The doctor further states that in order to determine the efficacy of ECT for an individual patient, the patient's treating psychiatrist would interview and evaluate the patient (with or without a structured rating scale) to make a clinical assessment of the efficacy of ECT for that particular patient.

[18] The doctor states that the Royal Ottawa has not conducted any studies into the effectiveness or success of ECT. However, the doctor states that the Royal Ottawa has been collecting data for a period of two years (from 2016 to 2018) for quality improvement and research purposes. This data includes information on the diagnosis, number of treatments, rating scale scores (if available) and side effects. However, the doctor indicates that the data does not provide information on the efficacy of ECT compared to other treatments, and has not yet been analysed.

The Affidavit of Royal Ottawa's Chief Privacy Officer

[19] The Royal Ottawa submits that it conducted a complete and reasonable search for all records responsive to the appellant's request. In support of this assertion, the Royal Ottawa submits an affidavit from the Director of Clinical Records and Chief Privacy Officer (CPO) at the Royal Ottawa (the Search Affidavit), which outlines all steps taken to respond to the request. The CPO, who the Royal Ottawa submits is an experienced individual, personally responded to the request, and conducted the search for responsive records.

[20] In the Search Affidavit, the CPO states that several staff members of the ECT Unit, who have knowledge of the activities that take place within the unit, were contacted to inquire whether metrics used to measure the level of success of ECT treatments existed. The CPO was informed that these metrics do not exist. However, the CPO was advised that the ECT Unit does keep track of the number of patients who attended ECT.

[21] The CPO also attests that she met with a psychiatrist and the Clinical Director for the Mood and Anxiety Program at the Royal Ottawa, who explained that ECT is the first line of treatment for depression with psychosis per professional and medical guidelines.

The CPO also met with the Director of Professional Practice at the Royal Ottawa and the Director of Nursing, who both informed her that metrics used to measure the level of success of ECT treatments do not exist. The CPO concludes by stating that she has not been able to locate any responsive records to the appellant's narrowed request.

The Representations of the Appellant

[22] The appellant submits that he has made many offers, prior to and during the appeal process, to clarify his request if it was unclear to the Royal Ottawa what he was requesting. However, the appellant submits that despite his many offers, the Royal Ottawa did not reach out to clarify his request and made submissions in this appeal that the scope of his request is unclear. The appellant further submits that the Royal Ottawa did not indicate that it required further clarification prior to its submissions and it did not offer to assist him in reformulating his request.

[23] In response to the Royal Ottawa's assertion that the appellant's request does not identify the type of records sought, the appellant submits that he cannot identify the type of records, because he does not know what types of records the Royal Ottawa keeps. Therefore, the appellant submits that he opted to describe the records he is seeking instead.

[24] The appellant notes that while he used the word "success" in his request, which the Royal Ottawa states is "unclear", the Royal Ottawa opted to use the word "efficacy" instead. The appellant submits that he is willing to accept the measures of "efficacy" of ECT treatment in place of "success", since this is the term with which the individuals cited in the Royal Ottawa's representations are most comfortable.

[25] The appellant notes he received a letter from the Royal Ottawa dated May 25, 2017, which indicated there were approximately 2,570 records responsive to his request for data on ECT treatments carried out between January 2012 and December 2016, and the total fee to process his request would amount to just under $20,000. The letter further noted that partial access to the records would be granted. The appellant notes that this led to the narrowed request in this appeal. However, the appellant further notes that after his narrowed request, the number of responsive records went from over 2,500 to 0. The appellant questions how this is possible.

[26] The appellant submits that he does not accept the Royal Ottawa's explanation that it does not use metrics to determine the efficacy of ECT and thus, no responsive records exist. The appellant argues that the Royal Ottawa must use some metric to measure the efficacy of ECT; otherwise, the Royal Ottawa would not be able to measure the effectiveness of ECT and recommend it to their patients. In support of his argument, the appellant points to his son's experience with a psychiatrist at the Royal Ottawa. The appellant notes that in his son's case, the psychiatrist used the Hamilton Depression rating scale (HDRS) to determine improvement. The appellant argues the scale is clearly one metric by which the Royal Ottawa measures the efficacy of ECT and, therefore, metrics used to measure the efficacy of ECT do exist.

[27] The appellant points to two other examples of metrics that can be used to measure the efficacy of ECT. The first is an optional feedback survey completed by patients and family members, which is used to investigate complaints and prepare a quarterly report to identify trends and systemic issues. The appellant argues that the information collected in these feedback surveys could be used to measure the efficacy of ECT, at least qualitatively by laypersons.

[28] The second metric the appellant points to is the readmission rates of patients to the Royal Ottawa's Mood and Anxiety Unit. The appellant argues that unit readmission rates can be cross-referenced with data about patients who have received ECT as a partial measure of the effectiveness of ECT, since readmission may be seen as an indication that the treatment did not have the desired effect.

[29] The appellant argues that despite the existence of the "metrics" he cited above, the Royal Ottawa still maintains the position that metrics to measure the efficacy of ECT do not exist. The appellant quotes the number of ECT treatments conducted at the Royal Ottawa in support of his argument that the Royal Ottawa has a significant sample through which it could gauge the efficacy of ECT. The appellant argues that since the Royal Ottawa had a significant sample through which it could gauge the efficacy of this type of treatment within its facility, it should have done so.

[30] The appellant made submissions with respect to Order MO-2129, which was provided to the parties in this appeal. The appellant submits that, according to this order, for something to be considered a record, responsive information must be capable of being produced from an existing record. The appellant further submits that in this appeal, the information that could be used to compile a list of metrics exists in both paper and electronic format.

[31] Moreover, the appellant submits that the technology exists to extract the metrics used from existing patient files. The appellant argues that the metrics would have to be readily available for access at the Royal Ottawa, otherwise, their psychiatrists could not assess patient needs for treatment. Therefore, the appellant argues that there must be a central repository available, so that time and money is not spent looking through individual patient files for a particular assessment metric each time it is needed.

[32] With respect to Part 2 of the request, the appellant concedes that he is asking a question. However, he claims that he referenced "gold standard" in his request as evidence that the Royal Ottawa does measure the efficacy of ECT against a standard. The appellant notes that two psychiatrists from the Royal Ottawa, one of whom had previously treated his son with ECT, made very positive comments about the efficacy of ECT which appeared to stem from personal experience. Therefore, the appellant submits that the Royal Ottawa must somehow measure the efficacy of ECT locally, otherwise the comments of these two psychiatrists are unsupported because large scale results of the efficacy of ECT cannot reliably be equated with local outcomes.

Reply and Sur-Reply Representations

[33] The Royal Ottawa notes that the appellant refers to its letter dated May 25, 2017 stating that it indicates there are responsive records to his narrowed request for metrics. The Royal Ottawa clarifies that the letter provided "partial access" to some of the information the appellant requested in his original request, not documents responsive to his narrowed request. The Royal Ottawa further clarifies that the fee estimate in that interim decision is associated with the appellant's original request and relates to the extensive work required to compile the information responsive to the appellant's original request.

[34] The Royal Ottawa notes that the appellant refers to the HDRS as a metric for measuring the efficacy of ECT. The Royal Ottawa explains that the HDRS is an assessment scale used to evaluate and assess symptoms experienced by a particular patient and to evaluate progress. The Royal Ottawa notes it is not an ECT-specific tool, nor is it a metric used to evaluate the efficacy of ECT at the Royal Ottawa.

[35] The Royal Ottawa notes that the monitoring of the effectiveness of ECT is at the discretion of the treating psychiatrist and there is no standard scale or tool used to determine the efficacy of ECT. The Royal Ottawa further notes that some psychiatrists use symptom rating scales, such as the HDRS, as a guide while others rely solely on their clinical assessments, interviews and judgment. The Royal Ottawa explains that in each situation, the clinical team must interpret the results of any scales used, and the Royal Ottawa does not collect or compile the results from any structured scales.

[36] The Royal Ottawa notes that the appellant assumes that data exists with respect to readmission rates for patients who received ECT. The Royal Ottawa explains that ECT is not provided on an in-patient basis and it does not collect data or cross-reference readmission rates from its units with patients who have received ECT. The Royal Ottawa maintains that this information does not exist.

[37] The Royal Ottawa notes that the feedback surveys the appellant refers to are not a metric used to measure the efficacy of ECT. The Royal Ottawa submits that the feedback collected is subjective and it does not contain any medical opinions, or data on whether specific treatment was successful. The Royal Ottawa explains that it is merely a tool for patients and family members to provide their input. The Royal Ottawa further explains that the feedback is gathered and compiled into an annual report to improve the quality of care, not to measure the success of clinical treatment.

[38] In response to the appellant's submission that the Royal Ottawa has not provided any explanation as to how it is possible to not have any metrics to measure the efficacy of ECT, the Royal Ottawa argues that this is a question that it is not required to answer. The Royal Ottawa argues it is only required to undertake a reasonable search for responsive records and to indicate if they exist, which it has done. The Royal Ottawa maintains its position that no records exist in response to the appellant's narrowed request.

[39] The appellant notes that, by definition, a clinical assessment is based on a physical examination and lab exams, along with a patient's medical history, which suggests there should be a checklist or some manner of ensuring consistency of assessment. The appellant argues that if each psychiatrist is using a different method of determining a patient's state prior to, during, and following a treatment, there would be no way to state with any certainty the overall cause-effect relationship between treatment and outcome. The appellant submits that if an instrument is used during clinical assessments at the Royal Ottawa, he is asking for the instrument(s) used as a method of measuring.

[40] The appellant notes that the Royal Ottawa contradicts itself by stating that the HDRS is not a metric to evaluate the success of ECT, yet also submits that some psychiatrists use symptom rating scales. The appellant argues that when the Royal Ottawa asserts that no instruments or tools exist to measure the efficacy of ECT, this is concerning because it calls the Royal Ottawa's credibility into question.

[41] The appellant states that he is not debating that the monitoring of ECT is at the discretion of the treating psychiatrist, but submits that, if called upon, the psychiatrist would have to provide reasons for the actions taken. Therefore, the appellant argues, whether through subjective or objective means, the psychiatrist must be able to measure the efficacy of the treatment in order to make decisions. The appellant reiterates that he is seeking all methods used in this process.

[42] The appellant notes that in response to his previous request, the Royal Ottawa required payment of $20,000 for data that would help indicate the efficacy of ECT at the Royal Ottawa. The appellant argues that the reason for the cost is that the information would have to be extracted from patient files in order to be analysed. However, the appellant concedes he is not willing to pay the cost at this time. The appellant argues that since there is a finite number of patients undergoing ECT along with a finite number of psychiatrists prescribing this treatment, there must be a finite number of instruments that are used to determine the efficacy of ECT at the Royal Ottawa. The appellant notes that through its representations, the Royal Ottawa has already indicated that tools used to determine the efficacy of ECT include subjective evaluation by the treating psychiatrist and two scales. The appellant submits that he is seeking a complete list of these tools.

[43] The appellant submits that compiling information is the first step in the research process, so the $20,000 cost sought by the Royal Ottawa for his original request should fund ECT research, at least in part. He states that it is alarming that the Royal Ottawa has not found it necessary to gather and analyse the data on a treatment performed so frequently. He submits that even if he accepts the Royal Ottawa's position that it has not previously analysed this data, the Royal Ottawa should undertake this analysis to inform the work of its psychiatrists; if they did so, there would be no need for the Royal Ottawa to request that he pay for this work.

[44] The appellant notes in his sur-reply representations that a lot of points and

questions in his initial representations went unanswered by the Royal Ottawa and he reiterates some of those questions and points, which will not be repeated here. The appellant also outlines various examples of alleged incompetence on the part of the ECT treatment teams at the Royal Ottawa, which are not described in this order.

Issue A: What is the scope of the request? What records are responsive to the request?

[45] Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

> 1. A person seeking access to a record shall,
>
> a. make a request in writing to the institution that the person believes has custody or control of the record;
>
> b. provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;
>
> 2. If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[46] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.[2] To be considered responsive to the request, records must "reasonably relate" to the request.[3]

Analysis and findings

[47] The appellant conceded that Part 2 of his request asks a question and indicated that he only referenced this "gold standard" as evidence that the Royal Ottawa does measure the efficacy of ECT against a standard. In this context, I am satisfied that it is only necessary for me to decide the issues in this appeal as they pertain to Part 1 of the narrowed request, not Part 2. Furthermore, the appellant has accepted the substitution of the word "efficacy" for "success" in his request. Therefore, in this decision, I will use the word "efficacy" instead of "success" in reference to the appellant's request.

[48] In his representations, the appellant poses quite a few questions directed at the

---

[2] Orders P-134 and P-880.
[3] Orders P-880 and PO-2661.

Royal Ottawa regarding their practices with respect to ECT. The appellant also outlines various examples of alleged incompetence on the part of the ECT teams at the Royal Ottawa. However, in this appeal under the *Act*, I have no authority to review or assess the Royal Ottawa's ECT practice, nor are these allegations relevant to my determination of the issues in this appeal. Accordingly, I will not comment further on them.

[49] It is clear from his narrowed request and his representations in this appeal that the appellant is not seeking any specific records; he is merely seeking a list of all metrics used to measure the efficacy of ECT at the Royal Ottawa. I accept the Royal Ottawa's submission that it interpreted the scope of appellant's request liberally. Based on its representations, I find that the Royal Ottawa correctly interpreted the scope of the appellant's request.

Issue B: Did the Royal Ottawa conduct a reasonable search for records? Is it obliged to create a record to respond to the appellant's narrowed request?

[50] Where a requester claims 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 17.[4] If I am satisfied 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.

[51] 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 it has made a reasonable effort to identify and locate responsive records.[5] To be responsive, a record must be "reasonably related" to the request.[6]

[52] 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.[7]

[53] 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 such records exist.[8]

Analysis and findings

[54] The Royal Ottawa submits that there are no records responsive to the appellant's

---

[4] Orders P-85, P-221 and PO-1954-I.
[5] Orders P-624 and PO-2559.
[6] Order PO-2554.
[7] Orders M-909, PO-2469 and PO-2592.
[8] Order MO-2246.

narrowed request because it does not measure the efficacy of ECT. The Royal Ottawa further submits that it has conducted a reasonable search for responsive records. While the appellant does not specifically make any arguments on the reasonableness of the search conducted by the Royal Ottawa, he maintains the position that records responsive to his request must exist and points to examples of "metrics" he alleges the Royal Ottawa does/could use to determine the efficacy of ECT.

[55] Despite the appellant's assertion that there are "metrics" that could be used to measure the efficacy of ECT, I am not persuaded by his argument. Instead, I accept the Royal Ottawa's argument that the "metrics" quoted by the appellant in his representations are not used to measure the efficacy of ECT. For example, the appellant points to the Hamilton Depression rating scale (HDRS) as a "metric" used to measure the efficacy of ECT. However, the name of the scale clearly indicates what the scale is used for. The HDRS is a scale that is used to rate the level of depression, not the effectiveness of ECT.

[56] Furthermore, with respect to the feedback survey, I accept the Royal Ottawa's explanation that it is a tool to improve patient care quality, and contains no medical information or information regarding the efficacy of any treatment. Even the appellant concedes that the feedback survey would only provide qualitative assessments by laypersons, which I do not accept as a "metric" used to measure the efficacy of ECT.

[57] As noted above, while 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 such records exist. While the appellant provided extensive representations on why he believes the Royal Ottawa does, or should, measure the efficacy of ECT, I do not accept that the "metrics" cited by the appellant are used in measuring the efficacy of ECT. Therefore, these submissions do not persuade me that there is a reasonable basis for the appellant's belief that responsive records exist.

[58] It is evident the appellant has strong opinions about the operation of the ECT unit at the Royal Ottawa and how the Royal Ottawa should be managing its ECT practice. However, these opinions are not relevant to my determination of whether or not the Royal Ottawa has conducted a reasonable search for responsive records.

[59] The Royal Ottawa has provided an adequate explanation of the steps it has taken to locate records responsive to the request as detailed in the Affidavit of its CPO, and I accept that evidence. Based on the information it has provided, and in the absence of sufficient evidence from the appellant to establish a reasonable basis for concluding that additional records exist, but have not yet been located, I am satisfied that the Royal Ottawa's search for responsive records was reasonable.

[60] While I accept that the Royal Ottawa's search was reasonable and records responsive to the appellant's narrowed request do not exist, the appellant argues that the Royal Ottawa could create a record from information that already exists. Since I

have accepted that metrics used to measure the efficacy of ECT do not exist, the Royal Ottawa is not in a position to create a record. Nevertheless, since this issue was raised during the course of the inquiry, and the parties were asked to review Order MO-2129 and provide representations on whether the Royal Ottawa may be obliged to create a record, I will briefly address that issue here.

[61] It has been established and recognized in previous orders that section 24 of the *Act* does not, as a rule, oblige an institution to create a record where one does not currently exist.[9]

[62] In Order MO-2129, the Toronto Police Services Board (the police) received a three-part request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for statistical information with respect to parking enforcement. The police issued a decision letter stating that access could not be provided, because the records requested did not exist. The police argued that it is not within their mandate to create a record in response to a request. The decision was appealed to this office on the issue of reasonable search.

[63] During the inquiry into that appeal, the police acknowledged that both paper and electronic records exist which could be used to create a record in response to the appellant's request. In reviewing the institution's obligations in such circumstances, the adjudicator considered Order P-50 which sets out the following definition of a record in section 2(1) of the *Act*:

> "record" means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,
>
> > a. correspondence, a 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 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 by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution; ("document")

[64] The adjudicator in Order MO-2129 noted that Commissioner Linden in Order P-50 concluded that "the duty of an institution differs according to which part of the

---

[9] Orders P-50, MO-1381, MO-1442, MO-2129, MO-2130, PO-2237, PO-2256 and MO-2829.

definition of 'record' applies," and found that if the information requested exists in a format different than the format requested ("raw material" form), an institution has dual obligations.

[65] First, if the information falls within paragraph (a) of the definition of a record under the *Act*, the institution has a duty to identify and advise the requester of the existence of these related records. However, the institution is not required to create a record from these records in the format asked for by the requester.

[66] Second, if the information falls within paragraph (b) of the definition of a record under the *Act*, the institution has a duty to provide it in the requested format, if it can be produced from an existing machine readable record by means of computer hardware and software, or any other information storage equipment and technical expertise normally used by the institution, and doing so would not unreasonably interfere with the operations of the institution.

[67] In Order MO-2129, the institution acknowledged that there were records that could be used to create a record that would be responsive to the appellant's request. In other words, in Order MO-2129, information that would be responsive to the request existed in "raw material" form. In my view, the same does not hold true here.

[68] In this appeal, the Royal Ottawa submits that it does not measure the efficacy of ECT and, specifically, that it does not have a standard measure to determine the efficacy of ECT. The Royal Ottawa submits, therefore, that it does not have a list of metrics used to measure the efficacy of ECT. I accept this evidence.

[69] As noted above, while the appellant provided extensive representations on why he believes the Royal Ottawa does, or should, measure the efficacy of ECT, I do not accept that the "metrics" cited by the appellant are used by the Royal Ottawa in measuring the efficacy of ECT. It follows that these submissions do not persuade me that information responsive to the narrowed request exists in "raw material" form.

[70] I accept that the Royal Ottawa does not measure the efficacy of ECT in the manner contemplated by this narrowed request and I find that the information the appellant is seeking does not exist in "raw material" form. Having considered the requirements of section 24 of the *Act* and the reasoning in Order MO-2129, which I accept, I find that the Royal Ottawa does not have an obligation to create a record in response to the appellant's narrowed request. Accordingly, I dismiss this appeal.

ORDER:

1. I uphold the Royal Ottawa's search for records responsive to the appellant's narrowed request as reasonable.

2. I find that the Royal Ottawa does not have an obligation to create a record to respond to the appellant's narrowed request, and I dismiss the appeal.

Original signed by
Anna Truong
Adjudicator

February 19, 2019