Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4042

Appeal PA19-00139

Hotel Dieu Grace Healthcare

May 12, 2020

Summary: Hotel Dieu Grace Healthcare (the hospital) received a three-part access request under the *Freedom of Information and Protection of Privacy Act* (the *Act*), seeking access to the emails of seven named employees, specified resolutions of the hospital's Board of Directors, and an agreement between the hospital and another hospital. The hospital refused to process the part of the request for employees' emails on the basis that it was frivolous or vexatious pursuant to section 10(1)(b) of the *Act*; however, it did process the parts of the request relating to board resolutions and the identified agreement. In doing so, the hospital disclosed the requested agreement, and advised that, after conducting a search, it concluded that no records exist that are responsive to the part of the request seeking specific board resolutions.

The requester filed an appeal with this office with respect to the hospital's handling of his request for employees' emails and the hospital board's resolutions. In particular, the appellant objects to the hospital's decision that the part of his request relating to emails is frivolous or vexatious, and maintains that there should be board resolutions that are responsive to his request. In this order, the adjudicator finds that the appellant's request for emails is not frivolous or vexatious, and orders the hospital to issue an access decision relating to that part of the request. The adjudicator also finds that the hospital has conducted a reasonable search for records responsive to the appellant's request for specific board resolutions, and dismisses that aspect of the appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F31, as amended, sections 10(1)(b) and 17; and section 5.1 of Regulation 460.

Orders and Investigation Reports Considered: Orders 81, M-1071, and PO-4035.

OVERVIEW:

[1] Hotel Dieu Grace Healthcare (the hospital) received a three-part request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following records:

1. All emails (inbox, sent, delete, all subfolders, etc.) from January 1, 2010 until present January 29, 2019 for the following: [seven named individuals]. [Part 1].

2. [The hospital's] Board of Director Resolutions regarding the "Renal Campus" or "CDPM Model"[1] at 2480 Ouellette Avenue from the years 2011, 2012 and 2013. [Part 2]

3. The Windsor Regional Hospital/Hotel-Dieu Grace Hospital Re- Alignment Agreement (formal title – Program Transfer Agreement, July, 2013). [Part 3]

[2] The hospital issued a decision responding to the request. With respect to part 1, the hospital denied access to the records on the basis that the request was frivolous or vexatious. With respect to part 2, the hospital advised that: "Access cannot be provided as the records do not exist." With respect to part 3, the hospital granted full access to the responsive record after it notified a third party and received no objections to disclosure.

[3] The requester appealed the hospital's decision to this office.

[4] During the mediation stage of the appeal process, the hospital maintained that part 1 of the appellant's request was frivolous or vexatious pursuant to section 10(1)(b) of the *Act* and section 5.1 of Regulation 460. Accordingly, the question of whether the request for the emails of seven individuals between January 1, 2010, and January 29, 2019, is frivolous or vexatious, is an issue for determination in this appeal.

[5] The hospital conducted another search for records responsive to the request for specific board resolutions, but did not locate any. Following a teleconference between the parties and the mediator, a third search was conducted, which generated one record; however, the appellant advised that it was not the record that he was seeking. The appellant continues to believe that the hospital has records responsive to part 2 of his request that have not yet been located. Accordingly, the issue of whether the hospital has conducted a reasonable search must also be decided.

[6] The parties confirmed that the hospital's response to part 3 of the request was

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[1] It is my understanding that the acronym CDPM stands for "Chronic Disease Prevention and Management," although it is not specifically defined in the appellant's request or in the parties' submissions.

not at issue.

[7] As no further mediation was possible, the appeal was moved to the adjudication stage of the appeal process, during which an adjudicator may conduct an inquiry under the *Act*. I decided to conduct an inquiry. During my inquiry, I sought and received representations from both parties, which were shared in accordance *Practice Direction Number 7* of the IPC's *Code of Procedure*.

[8] For the reasons that follow, I find that part 1 of the appellant's request is not frivolous or vexatious, and I order the hospital to issue an access decision with regard to the identified emails. I also find that the hospital has conducted a reasonable search for records responsive to part 2 of the appellant's request, and I dismiss that aspect of the appeal.

ISSUES:

A. Is part 1 of the appellant's request frivolous or vexatious within the meaning of section 10(1)(b) of the *Act*?

B. Did the hospital conduct a reasonable search for records responsive to part 2 of the appellant's request?

DISCUSSION:

Issue A: Is part 1 of the appellant's request frivolous or vexatious within the meaning of section 10(1)(b) of the *Act*?

[9] Section 10(1)(b) of the *Act* states:

> Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless,
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> > the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.

[10] This section provides institutions with a summary mechanism to deal with frivolous or vexatious requests. This discretionary power should not be exercised lightly, as it can have serious implications on the ability of a requester to obtain information under the *Act*.[2] The hospital has the burden of proof to substantiate its decision to

[2] Order M-850.

declare part one of the appellant's request frivolous or vexatious.[3]

[11] Where a request is found to be frivolous or vexatious, this office will uphold the institution's decision. In addition, this office may impose conditions such as limiting the number of active requests and appeals the appellant may have in relation to a particular institution.[4]

Grounds for a frivolous or vexatious claim

[12] Section 5.1 of Regulation 460 under the *Act* elaborates on the meaning of the terms "frivolous" and "vexatious":

> A head of an institution that receives a request for access to a record or personal information shall conclude that the request is frivolous or vexatious if,
>
> > (a) the head is of the opinion on reasonable grounds that the request is part of a pattern of conduct that amounts to an abuse of the right of access or would interfere with the operations of the institution; or
> >
> > (b) the head is of the opinion on reasonable grounds that the request is made in bad faith or for a purpose other than to obtain access.

[13] The hospital takes the position that the grounds described in both sections 5.1(a) and 5.1(b) are satisfied in this case.[5]

Pattern of conduct that amounts to an abuse of the right of access or would interfere with the hospital's operations

[14] Section 5.1(a) of Regulation 460 provides that a request is frivolous or vexatious if it is part of a "pattern of conduct that amounts to an abuse of the right of access or would interfere with the operations of the institution." Previous orders have explored the meaning of the phrase "pattern of conduct." In Order M-850, for example, former Assistant Commissioner Tom Mitchinson stated:

> [I]n my view, a "pattern of conduct" requires recurring incidents of related or similar requests on the part of the requester (or with which the requester is connected in some material way).

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[3] Order M-850.
[4] Order MO-1782.
[5] The hospital's representations address the various exemptions, exclusions, and fees that the hospital submits are likely to apply if it is to process part 1 of the appellant's request. Given that that the only issue before me with respect to that aspect of the appellant's request is whether it is frivolous or vexatious, I have not summarized this portion of the hospital's submissions in this order.

[15] To determine whether part 1 of the appellant's request forms part of a pattern of conduct that amounts to "an abuse of the right of access", a number of factors can be considered, such as the cumulative effect of the number, nature, scope, purpose, and timing of the request.[6]

[16] To find that the appellant's request forms part of a pattern of conduct that "would interfere with the operations of the hospital", I must be satisfied that the appellant's conduct obstructs or hinders the range or effectiveness of the hospital's activities.[7] Interference is a relative concept that must be judged on the basis of the circumstances a particular institution faces. For example, it may take less of a pattern of conduct to interfere with the operations of a small municipality than with the operations of a large provincial government ministry, and the evidentiary onus on the institution would vary accordingly.[8]

The hospital's representations

[17] As background, the hospital explains that its relationship with the appellant is "strained" as a result of a civil proceeding that the appellant has commenced against it, and members of its administration and management teams.[9]

[18] The hospital maintains that when the appellant was asked to clarify his request, he added to it, rather than clarifying it, by submitting additional requests. For example, the hospital says that the appellant also sought access to the hospital's email retention policy as well as information regarding whether a third party service provider backs up the hospital's email accounts. According to the hospital, this behaviour amounts to a "pattern of conduct" as contemplated by section 5.1(a) of the regulation.

[19] In support of its position that the appellant's pattern of conduct is such that it amounts to an abuse of his right of access, the hospital says that part 1 of the appellant's request should be considered a seven-part request because it relates to seven individuals' email accounts. The hospital maintains that this aspect of the request, which spans a ten- year period,[10] is excessively broad and will produce an unknown number of records.

[20] Although the appellant has not specified the purpose of his request for the named individuals' emails, the hospital submits that it is "necessary and appropriate" to draw inferences from the appellant's behaviour. The hospital says that it is clear, given the relationship between the parties, that the appellant is engaged in a "fishing

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[6] Orders M-618, M-850, and MO-1782.
[7] Order M-850.
[8] Order M-850.
[9] The hospital also refers to various civil proceedings between the appellant and another hospital.
[10] In fact, part 1 of the appellant's request spans a period of approximately nine years and one month.

expedition" for emails to use in his other proceedings. According to this hospital, the appellant's request is "premature" considering the disclosure process that will occur through the appellant's various civil proceedings. The hospital also expresses its belief that the request has been made with the intent to harass or intimidate the named individuals.

[21] The hospital notes that the appellant's request was made during a "lull" in the appellant's civil proceedings, during which he did not have any other means of obtaining disclosures from the hospital. The hospital says that although this factor may be insignificant in isolation, when it is considered with the other facts of this appeal, it supports the hospital's position that the request is frivolous or vexatious.

[22] The hospital maintains that, in addition to amounting to an abuse of the right or access, the appellant's pattern of conduct will unreasonably interfere with its operations. In support of this position, the hospital says that responding to part 1 of the request would require "more time and resources than what is usually needed to respond to an average freedom of information request."

The appellant's representations

[23] The appellant's representations do not address whether part 1 of his request forms part of a pattern of conduct that amounts to an abuse of his right of access or that would interfere with the hospital's operations. Rather, he says that he has concerns about the hospital misleading the public, and he hopes that, through his request and this appeal, accountability and transparency to the public will be ensured.

Analysis and findings

[24] For the following reasons, I find that the evidence does not establish that the appellant's behaviour demonstrates a pattern of conduct that amounts to an abuse of his right of access or that would interfere with the hospital's operations under section 5.1(a) of Regulation 460.

[25] In order for the grounds in section 5.1(a) of the regulation to be established, it must first be shown that the appellant has engaged in a "pattern of conduct." As mentioned above, in order to find that pattern of conduct exists, there must be recurring incidents of related or similar requests on the part of the requester (or with which the requester is connected in some material way).[11] The cumulative nature and effect of a requester's behaviour may also guide the determination of the existence of a "pattern of conduct."

[26] In the context of this appeal, the hospital has provided evidence to demonstrate

[11] Order M-850.

that the appellant has submitted the three-part request at issue in this appeal, as well as two subsequent requests, which arose when the hospital sought clarification from the appellant about his initial request. According to the hospital, the appellant's various requests were all made within a few weeks of each other. The hospital also submits that it received all of the above-mentioned requests before it issued its decision refusing to process part 1 of the appellant's request at issue on the basis that it is frivolous or vexatious.

[27] I am satisfied that part 1 of the request at issue and some of the appellant's subsequent requests may be related, insofar as they pertain to the hospital's emails. In particular, the portion of the request at issue seeks access to individuals' emails, and I understand, based on the hospital's evidence, that the appellant also requested access to records pertaining to the hospital's email retention policy and a third party service provider that provides email back-up services. In my view, however, these requests are not duplicative, repetitive, or similar to the point that they amount to a pattern of conduct. Even if I were satisfied that the appellant did exhibit a pattern of conduct, for the reasons to follow, I find that it would not amount to an abuse of his right or access, nor would it interfere with the operations of the hospital.

[28] Previous orders of this office have determined that the "abuse of the right of access" described by the regulation refers only to the access process under the *Act*, and is not intended to include proceedings in other forums.[12] I acknowledge that the hospital may be required to dedicate resources to civil proceeding(s) filed by the appellant; however, the only proceeding that is considered for the purpose of my analysis under section 5.1(a) is this appeal, which, based on the evidence before me, is the only proceeding arising between these parties under the *Act*.

[29] Part 1 of the appellant's request seeks access to the emails of seven individuals for a nine-year period. I accept that this part of his request is broad in nature; however, a broad request on its own does not amount to an abuse of the right of access. In my view, the fact that the appellant has provided specific parameters, including dates, the type of records that he seeks access to (emails), and the names of individuals whose emails he is interested in, will assist the hospital in locating responsive records.

[30] The hospital maintains that the timing of the appellant's request is suspect, because it was made during a "lull" in the appellant's various civil proceedings, during which he is otherwise unable to obtain records from the hospital. I am not satisfied, however, that the timing of his request suggests an abuse of his right of access. As I stated in Order PO-4035, "the fact that the appellant made his request [during a lull in his civil proceedings], suggests that he has assessed the evidence that he has already amassed and determined what additional documentation he may require to support his

[12] Orders M-906, M-1066, M-1071, MO-1519, and P-1534.

position on the issues[in those proceedings]." In other words, even if the hospital's supposition about the timing of the appellant's request occurring during a "lull" in his other civil proceedings is accurate, I do not find this to be persuasive evidence that the appellant's request for emails under the *Act* amounts to an abuse of the right of access.

[31] Therefore, having considered the number, scope, nature, and timing of part 1 of the appellant's request, and the two requests the appellant made following the three-part request at issue here, I am not persuaded that the cumulative effect of the appellant's conduct amounts to an abuse of his right of access under the *Act*.

[32] I am also not satisfied that the hospital has demonstrated that processing part 1 of the appellant's request would obstruct or hinder the range or effectiveness of its operations simply because it would require "more time and resources than what is usually needed to respond to an average freedom of information request." There are a number of mechanisms under the *Act* that provide relief for an institution burdened by a potentially onerous request.[13] For example, the time to respond to a request can be extended under section 27(1) of the *Act*, and fees can be charged for access to records under section 57(1) and Regulation 460. In addition, as noted in Order M-1071, with reference to Order 81, this office's jurisprudence provides additional relief mechanisms, such as allowing an institution to issue an interim access decision requiring payment of a deposit, as described in a fee estimate, before processing a request. It is open to the hospital to rely on these relief mechanisms in responding to part 1 of the appellant's request. Accordingly, I am not satisfied that the hospital has demonstrated that responding to the request would hinder or interfere with its operations.

[33] Therefore, I find that the hospital has not established that the appellant has engaged in a pattern of conduct that amounts to an abuse of the right of access or that would interfere with the hospital's operations as contemplated by section 5.1(a) of Regulation 460. Next, I will consider the grounds for finding that a request is frivolous or vexatious under section 5.1(b).

Request made in bad faith or for an improper purpose

[34] Under section 5.1(b) of Regulation 460, a request can be found to be frivolous or vexatious for the purposes of the *Act* if it was made in bad faith or for a purpose other than to obtain access. Where this is the case, the institution need not demonstrate a "pattern of conduct."[14]

[35] "Bad faith" has been defined as:

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[13] Orders M-1701, PO-4035.
[14] Order M-850.

> The opposite of "good faith", generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfil some duty or other contractual obligation, not prompted by an honest mistake as to one's rights, but by some interested or sinister motive. ... "bad faith" is not simply bad judgement or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; it is different from the negative idea of negligence in that it contemplates a state of mind affirmatively operating with furtive design or ill will.[15]

[36] A request is made for a purpose other than to obtain access if the requester is motivated not by a desire to obtain access, but by some other objective.[16]

The hospital's representations

[37] The hospital maintains that it has reasonable grounds to conclude that the appellant has an illegitimate objective for requesting access to the named individuals' email records. The hospital believes that the appellant is using the request as a means to intimidate the individuals.

The appellant's representations

[38] The appellant explains that he has "opposed [the hospital's] planned public hospital system" for many years, and has raised concerns about the hospital misleading the public in the past. He maintains that the requested emails should be released so that appropriate public scrutiny can occur, as there is "a lot at stake for the community."

Analysis and findings

[39] For the following reasons, I find that the evidence does not establish that part 1 of the appellant's request was made in bad faith or for an improper purpose under section 5.1(b) of Regulation 460.

[40] As set out above, this office has interpreted "bad faith" as implying "the conscious doing of a wrong because of dishonest purpose or moral obliquity." Bad faith is different from negligence "in that it contemplates a state of mind affirmatively operating with furtive design or ill will."[17]

[41] The term "for a purpose other than to obtain access" has been described as

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[15] Order M-850.
[16] Order M-850.
[17] Order M-850.

requiring an improper objective above and beyond a collateral intention to use the information in some legitimate manner.[18] Previous orders have found that an intention by the requester to take issue with a decision made by an institution, or to take action against an institution, is not sufficient to support a finding that the request is "frivolous or vexatious."[19]

[42] In support of its position that the appellant's request for emails is frivolous or vexatious, the hospital submits that the request is intended to intimidate the named individuals. The hospital also claims that the request is nothing more than a "fishing expedition" aimed at accessing documents that the appellant was, at the time of his request, unable to obtain immediately through his various civil proceedings. In my view, however, the hospital's submissions in this regard amount to mere speculation. While I acknowledge that the relationships between the parties is strained, I am not satisfied that the appellant has consciously exercised his access rights under the *Act* for a dishonest purpose or with furtive design or ill will, as those terms have been interpreted in past orders addressing this issue.[20] Similarly, I am not persuaded that the appellant has a purpose other than to obtain access to the requested information.

[43] As a result, I find that the hospital has failed to establish that part 1 of the appellant's request meets the requirements for finding that it is frivolous or vexatious under section 5.1(b) of Regulation 460.

Conclusion

[44] The tests under section 5.1 of Regulation 460 set a high threshold that, in my view, has not been met in the circumstances of this appeal. I find, based on the analysis above, that the hospital has not established reasonable grounds for finding that part 1 of the appellant's request is frivolous or vexatious within the meaning of section 10(1)(b) of the *Act*. As a result, I will order the hospital to issue an access decision responding to this part of the appellant's request.

Issue B: Did the hospital conduct a reasonable search for records responsive to part 2 of the appellant's request?

[45] 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.[21] 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.

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[18] Order MO-1924.
[19] Orders MO-1168-I and MO-2390.
[20] Order M-850.
[21] Orders P-85, P-221 and PO-1954-I.

[46] 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.[22] To be responsive, a record must be "reasonably related" to the request.[23]

[47] 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.[24] 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.[25]

[48] 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.[26] A requester's lack of diligence in pursuing a request by not responding to requests from the institution for clarification may result in a finding that all steps taken by the institution to respond to the request were reasonable.[27]

Representations

[49] The hospital maintains that it has conducted a reasonable search for records responsive to part 2 of the appellant's request, in accordance with its obligations under the *Act*. In support of this position, the hospital's Governance Coordinator, and former Senior Executive Assistant (the coordinator), provided affidavit evidence attesting to the hospital's search efforts.

[50] The coordinator advises that she has held her position since 2014 and that her role includes, among other things, arranging meetings for the hospital's Board of Directors, taking minutes at board meetings, distributing meeting materials, and maintaining all records related to the board. The coordinator explains that all board and Executive Committee meeting minutes are maintained for "the life of the hospital plus five years," which she says is in accordance with the requirements set out in the *Corporations Ac*t.[28] According to the coordinator, all board documents are maintained on a particular shared drive, which is accessible to all Executive Leadership Team Executive Assistants.

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[22] Orders P-624 and PO-2559.
[23] Order PO-2554.
[24] Orders M-909, PO-2469 and PO-2592.
[25] Order MO-2185.
[26] Order MO-2246.
[27] Order MO-2213.
[28] RSO 1990, c C38.

[51] The coordinator provided a copy of her search log, documenting the efforts of her search. The log shows that the coordinator searched all board minutes from meetings held in 2011, 2012, and 2013 (including, for example, open meetings, *in camera* meetings, special *in camera* meetings, and advisory *in camera* meetings). The coordinator explains that she searched these records, which were all stored electronically on the shared drive, using the keywords "renal campus", "renal", and "CDPM" model. The coordinator also asked other hospital employees who provided administrative support to the board or board committees during the relevant time to search their records for anything responsive to the request, in case they had saved something to their personal drives. According to the coordinator, no responsive records were located as a result of these search efforts.

[52] The coordinator also attests to conducting a secondary search during the mediation stage of the appeal process. In conducting the secondary search, the coordinator looked for resolutions that involved two individuals whose names were provided to the mediator by the appellant. According to the coordinator, this search also did not locate any responsive records.

[53] The hospital provided representations to supplement the coordinator's affidavit evidence. In its representations, the hospital submits that all board resolutions (including the actual text of the resolutions) are contained within board minutes. Accordingly, any responsive records would be located by searching board minutes for the relevant time period (2011 to 2013).

[54] The hospital also explains that following a teleconference with the IPC mediator and the appellant, minutes from a meeting of the Executive Board of the hospital's foundation (the foundation board) were located, which refer to a discussion regarding the flow of funds to support a particular foundation (the foundation board minutes). The appellant advised the mediator that the identified foundation board minutes were not what he was looking for, but he sent the hospital an email requesting a copy of them anyway. The hospital says it agreed to provide the appellant with a copy of the foundation board minutes, notwithstanding that, in the hospital's opinion, they are outside the scope of the appellant's request.

[55] The hospital maintains that it has conducted a thorough search for records responsive to part 2 of the appellant's request, and has determined that none exist. The hospital expresses its belief that, at this point, the appellant is no longer seeking access to a board resolution, but rather to a record from the foundation board.

[56] The appellant's submissions in response to the Notice of Inquiry did not specifically set out his reasons for believing that records exist that are responsive to part 2 of his request, but have not yet been located.

Analysis and findings

[57] Based on the evidence before me, I accept that the hospital had discussions with

the appellant in which the scope of the appellant's request was clarified. I accept that as a result of those discussions, the hospital was able to confirm that the appellant was seeking a board resolution. I also accept, based on the hospital's submissions, that board resolutions are documented in the minutes of board meetings, thereby making board minutes the appropriate records to search for information responsive to the appellant's request. With this information, the hospital was able to focus its search efforts on a shared drive that contains all of the hospital board's documents, including board minutes.

[58] Clarifying the request also allowed the hospital to use a variety of keywords to help locate records responsive to the request. The keywords included those mentioned in the request itself, such as "renal", "renal campus", "CDPM model", as well as those that were provided by the appellant during subsequent discussions, including the names of two individuals. Accordingly, I find that the request had been clarified in a manner that would permit the hospital to identify the locations and key information that should be included in its search for responsive records.

[59] Considering the affidavit evidence before me, I am also satisfied that the hospital's search was coordinated and carried out by an employee who was knowledgeable in the subject matter of the request. In particular, I am satisfied that the coordinator is knowledgeable in the hospital board's record management practices, and that she was able to identify the relevant shared drive and search all board minutes from the specified time period (2011 to 2013). I also accept that in conducting multiple searches, and asking other hospital employees who provided administrative support to the board or board committees during the relevant time to search their own files, the coordinator expended a reasonable effort to locate records that are reasonably related to the appellant's request.

[60] Accordingly, I find that an experienced hospital employee, who is knowledgeable in the subject matter of the request, expended a reasonable effort to locate records that are reasonably related to part 2 of the appellant's request.[29]

[61] Since the appellant objects to the adequacy of the hospital's search, he was required to provide a reasonable basis for concluding that responsive records exist.[30] In this case, I find that the appellant has not done so. Because the appellant's representations did not explain his reasons for believing that responsive records do, in fact, exist, but were not found by the hospital, the only information before me in support of the appellant's position is the hospital's and mediator's summaries of the appellant's position at earlier stages of this appeal.

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[29] Orders M-909, PO-2469, and PO-2592.
[30] Order MO-2246.

[62] In the absence of persuasive evidence from the appellant about what additional responsive records might reasonably be thought to exist or where such records may be located, I find that there is no reasonable basis for concluding that any such responsive records exist but have not yet been identified by the hospital. Therefore, I find that the hospital has conducted a reasonable search for records responsive to part 2 of the appellant's request, as required by section 17 of the *Act*.

ORDER:

1. I do not uphold the hospital's decision that part 1 of the appellant's request is frivolous or vexatious.

2. I order the hospital to issue an access decision responding to part 1 of the appellant's request in accordance with the *Act*, without relying on the frivolous or vexatious provisions of the *Act*. For the purposes of section 26, 29, and 30 of the *Act*, the date of this order shall be deemed to be the date of the request.

3. The timeline noted in order provision 2 may be extended if the hospital is unable to comply in light of the current COVID-19 situation. I remain seized of the appeal to address any such requests.

4. I uphold the hospital's search for records responsive to part 2 of the appellant's request as reasonable, and dismiss that aspect of the appeal.

Original signed by | May 12, 2020

Jaime Cardy
Adjudicator