

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-4129

Appeal PA20-00093

Ministry of the Solicitor General

March 29, 2021

**Summary:** The appellant alleges that the Ministry of the Solicitor General (the ministry) failed to conduct a reasonable search for a video surveillance recording at a specified date and time in a location at a named Ontario Provincial Police detachment that he sought access to. The ministry issued a decision indicating that access could not be granted to the requested video surveillance record because the record did not exist. The adjudicator finds that there were no active cameras in the area during the specified time in the request and thus no records exist. Accordingly, he finds that the ministry conducted a reasonable search for responsive records.

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

### OVERVIEW:

[1] The Ministry of the Solicitor General (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act* or *FIPPA*), for access to a video surveillance recording at a specified date and time in a location at a named Ontario Provincial Police (O.P.P.) detachment as well as an identified police occurrence report.

[2] The ministry issued a decision indicating that access could not be granted to the requested video surveillance record because the record did not exist, and relied upon section 65(5.2) (records relating to a prosecution) of the *Act* to deny access to the identified occurrence report.

[3] The requester (now the appellant) appealed the ministry's access decision.

[4] During mediation, the appellant informed the mediator that he had obtained a copy of the identified occurrence report. As a result, access to the identified occurrence report and the possible application of section 65(5.2) of the *Act*, is no longer at issue in the appeal.

[5] Accordingly, the only matter at issue in the appeal is the reasonableness of the ministry's search for a video surveillance recording at a specified date and time in a location at a named O.P.P. detachment.

[6] Mediation did not resolve the appeal and it was moved to the adjudication stage of the appeals process where an adjudicator may conduct an inquiry under the *Act*.

[7] I commenced my inquiry by sending the ministry a Notice of Inquiry setting out the facts and issues in the appeal. In response, the ministry provided confidential representations that it asked not to be shared due to confidentiality concerns. In summary however, the ministry's position is that there were no active cameras in the area during the specified time in the request and thus no records exist.

[8] I then sent a Notice of Inquiry to the appellant setting out the facts and issues in the appeal as well as the ministry's position. The appellant provided responding representations. He also asked that his representations not be shared. I have summarized his representations below.

[9] In this order, I find that the ministry has demonstrated that its search for responsive records is in compliance with its obligations under the *Act*. Accordingly, I conclude that the ministry conducted a reasonable search for responsive records.

## **DISCUSSION:**

[10] 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.<sup>1</sup> 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.

[11] 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.<sup>2</sup> To

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

<sup>2</sup> Orders P-624 and PO-2559.

be responsive, a record must be “reasonably related” to the request.<sup>3</sup>

[12] 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.<sup>4</sup>

[13] 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.<sup>5</sup>

[14] 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.<sup>6</sup>

### **The positions of the parties**

[15] The ministry provided confidential representations that it asked not to be shared due to confidentiality concerns. As set out above, the ministry’s position is that there were no active cameras in the area during the specified time in the request and thus no records exist.

[16] The appellant also asked that his representations not be shared. In summary, however, they include him questioning why there are no visible public indications regarding the status of any video surveillance camera in the lobby, whether video footage once existed but has since been destroyed and his views of the failure of the ministry to explain why no records exist.

### **Analysis and finding**

[17] Although the appellant takes issue with the reasonableness of the ministry’s search for responsive records, in my view he has failed to provide sufficient evidence to challenge the position of the ministry that there were no active cameras in the area during the specified time in the request and thus no records exist.

[18] In all the circumstances, I am satisfied that the ministry has demonstrated that its search for responsive records is in compliance with its obligations under the *Act*. Accordingly, I conclude that the ministry conducted a reasonable search for responsive records.

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<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.

**ORDER:**

1. The appeal is dismissed.

Original signed by: \_\_\_\_\_  
Steven Faughnan  
Adjudicator

March 29, 2021 \_\_\_\_\_