

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-4163

Appeal PA19-00340

Ministry of Children, Community and Social Services

July 7, 2021

**Summary:** The requester sought access to the details about an overpayment listed on a cheque he received from the Ministry of Children, Community, and Social Services (the ministry). The ministry provided the appellant with records in response. The appellant believed that additional responsive records existed and appealed the ministry's decision to the IPC.

In this order, the adjudicator upholds the ministry's search 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 24.

### OVERVIEW:

[1] The requester received a cheque from the Ontario Disability Support Program (the ODSP) that contained an overpayment note. He wanted an explanation of this overpayment. Therefore, the requester made a request to the Ministry of Children, Community, and Social Services (MCCSS or the ministry)<sup>1</sup> under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) for:

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<sup>1</sup> The ODSP is part of the ministry.

...details regarding the overpayment listed in the amount of \$2,330.84 on the cheque sent to us dated March 19, 2019.

[2] In response to the request, the ministry issued a decision granting access to records in full. After receiving the decision, the requester spoke with ministry staff and raised concerns regarding whether additional records exist. The ministry conducted a further search but did not locate any additional records.

[3] The requester, now the appellant, appealed the decision of the ministry to the Information and Privacy Commissioner of Ontario (the IPC). A mediator was appointed to explore the possibility of resolving the appeal.

[4] During the course of mediation, the ministry advised that they were successful in extracting additional information from the Social Assistance Maintenance System (SAMS) and issued a supplemental decision to the appellant, disclosing the new records to the appellant in full.

[5] After reviewing the records, the appellant advised the mediator that he believed additional records existed and that he wished to proceed to the adjudication stage, where an adjudicator may conduct an inquiry.

[6] Accordingly, the appeal proceeded to adjudication, where I decided to conduct an inquiry into the sole issue of whether the ministry conducted a reasonable search for responsive records. The parties' representations were exchanged between them in accordance with the IPC's *Code of Procedure* and *Practice Direction 7*.

[7] In this order, I uphold the ministry's search as reasonable.

## **DISCUSSION:**

### **Did the institution conduct a reasonable search for records?**

[8] The appellant received disclosure of records from the ministry. The appellant believes that additional responsive records exist. I sought representations from the ministry and the appellant on their position as to the existence of additional responsive records.

#### ***Representations***

[9] The ministry submits that it performed reasonable searches for responsive records in the appellant's ODSP file and in SAMS, the ministry's social assistance database.

[10] The ministry provided an affidavit of a manager with the ODSP (the manager), detailing its search efforts. This manager is responsible for overseeing a team of caseworkers and administrative support clerks whose roles include responding to *FIPPA* requests with respect to ODSP client files and information and notes captured in SAMS.

[11] The ministry states that the appellant's request relates to information that would be contained in his ODSP file.

[12] The manager in her affidavit explains that:

Self-employed recipients on ODSP are expected to report their self-employment income and expenses on a monthly or an annual basis. The information provided by them is reviewed by their caseworker and input into an excel document referred to as a "self-employment review form" which includes the person's monthly declared gross income less monthly approved expenses. This excel program adds the monthly gross income, subtracts the approved expenses, and finds the monthly net amount which is then input into SAMS, which calculates any overpayments or arrears.

[13] The ministry states that, in response to the appellant's request, an email was sent to the ODSP office requesting that the information related to that request be gathered by the caseworker from the appellant's file in SAMS and also his master file and be uploaded by an administrative support clerk.

[14] The ministry further states that the appellant's and his spouse's review forms for 2013, as well as a copy of all SAMS notes related to the review of the appellant's 2013 self-employment income, were retrieved and disclosed to the appellant, with some redactions.

[15] In his response to the ministry's representations, the appellant refers to the ministry's November 1, 2019 letter to him, which reads:

I am writing in response to your access request made under the Freedom of Information and Protection of Privacy Act (the Act). You requested access to the following information:

...details regarding the overpayment listed in the amount of \$2,330.84 on the cheque sent to us dated March 19, 2019...

Through [name of IPC intake analyst], we discussed providing additional information about the financial transactions attributed to March 2019 in your SAMS record. SAMS has limited capabilities for printing information on financial transactions, and there are some formatting issues that we were unfortunately not able to fully rectify. We were, however, able to pull the information that does exist.

There are 98 items that are returned upon a search of March 2019 transactions. SAMS displays a maximum of 15 transactions per page, and each transaction can be expanded. In order to organize the responses, we have provided a printout of each page of the transaction list (seven pages in total), followed by the expanded items from that page.

Again, I would like to reiterate that your caseworker is the best source of information regarding your ODSP benefits, and she remains willing to discuss your concerns...

[16] The appellant states that he contacted his caseworker for more information as was suggested by the ministry in its decision letter. The appellant states that he has an outstanding Social Benefits Tribunal (SBT) matter that is unrelated to the March 2019 cheque. He was told by the caseworker that he was not going to provide additional information to him as this information relates to his SBT appeal.

[17] The appellant submits that he should not be limited in accessing his own information due to the outstanding SBT appeal when the information should have been made available at the time the March 19, 2019 cheque was issued. He submits that additional information exists and the ODSP has refused to disclose this information to him.

[18] In reply, the ministry states that the records represent the documents showing the basis on which the March 2019 cheque was generated. It states that the numbers from the four-page self-employment review record were input into SAMS to generate the calculations regarding the overpayment at issue. The ministry submits that the self-employment review forms (with notes) and the 135-page record from SAMS were the only records the local office found that directly pertain to the amounts on the March 19, 2019 cheque.

[19] The ministry states that it advised the appellant that it could only locate existing records. It also advised the appellant that the actual calculations that take place to generate overpayments and arrears are conducted within the SAMS system and could not be accessed directly as a record. The ministry states that it provided the information that it could generate from the SAMS system with its disclosure of the 135-page record disclosed during the mediation of the appeal.

[20] In response, the appellant states that he does not have a fully itemized list of amounts that matches the amount of the overpayment. He states that there was a partial itemized list on the cheque. He states that the information he is seeking is saved in SAMS, as SAMS contains the itemized list of amounts and each entry must have an accompanying description.

### ***Analysis/Findings***

[21] 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>2</sup> If I am satisfied that the

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<sup>2</sup> Orders P-85, P-221 and PO-1954-I.

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.

[22] 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>3</sup> To be responsive, a record must be "reasonably related" to the request.<sup>4</sup>

[23] 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>5</sup>

[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.<sup>6</sup>

[25] 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>7</sup>

[26] In his request, the appellant has sought access to details regarding a \$2,330.84 overpayment listed on a cheque dated March 19, 2019.

[27] The ministry issued three decision letters dated May 28, June 28, and November 1, 2019, the last one being issued after the appellant appealed to the IPC.

[28] In the May 28, 2019 decision letter, the ministry disclosed a four-page record consisting of two self-employment review forms and two pages of notes about these forms, which were generated from SAMS.

[29] On June 5, 2019, the appellant told the FOI<sup>8</sup> analyst at the ministry that he did not believe that all responsive records had been disclosed to him. The ministry's ODSP program area was then asked to do a further search to locate any additional records.

[30] On June 28, 2019, the ministry issued a second decision letter to the appellant and advised him that all responsive records have been released him and that the appellant should contact his ODSP caseworker to answer any further questions he had.

[31] I accept that the ministry was able to extract the information that does exist

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<sup>3</sup> Orders P-624 and PO-2559.

<sup>4</sup> Order PO-2554.

<sup>5</sup> Orders M-909, PO-2469 and PO-2592.

<sup>6</sup> Order MO-2185.

<sup>7</sup> Order MO-2246.

<sup>8</sup> Freedom of Information.

from SAMS. In the November 1, 2019 decision letter, the appellant was advised that 98 items were located upon a search of March 2019 transactions by the ministry. The ministry provided the appellant with a 135-page printout showing each transaction list, as well as the expanded items from these transactions.

[32] The ministry conducted a number of searches for responsive records and provided the appellant with access to two packages of records totaling 139 pages. I have reviewed these records. I note that they contain significant details about the appellant's ODSP payments in March 2019.

[33] I find that the ministry has conducted a reasonable search to identify and locate responsive records. It has located two types of records. I have reviewed these records and note that they consist of:

- A four-page record comprising two self-employment review forms and two pages of notes about these forms generated from SAMS. The appellant's monthly net amount was calculated from this record. This information was inputted into SAMS, which calculated the overpayment at issue; and,
- A 135-page SAMS printout showing each March 2019 transaction with detailed calculations underlying each transaction.

[34] These records contain details regarding an overpayment listed in the amount of \$2,330.84 on a cheque dated March 19, 2019. Although the appellant may wish to receive access to further records explaining the overpayment, I am satisfied that the ministry asked the manager, an experienced employee knowledgeable in the subject matter of the request, to conduct the searches and that she expended a reasonable effort to locate records that are reasonably related to the request. I am also satisfied that the ministry took reasonable steps to locate the responsive information about the overpayment at issue from its record holdings, including from its SAMS computer system.

[35] In making this finding, I have considered that the appellant has indicated that the ODSP caseworker did not provide him with additional information about his ODSP file as he had a pending SBT appeal. The appellant has indicated that the SBT appeal is unrelated to the March 2019 cheque at issue. Based on my review of the appellant's representations, I find that the SBT appeal and any information the caseworker may have about it, is unrelated to whether any additional responsive records exist in this appeal.

[36] As stated above, although a requester will rarely be in a position to indicate precisely which responsive records the institution has not yet identified, the requester still must provide a reasonable basis for concluding that such records exist. I find that the appellant has not provided a reasonable basis for me to conclude that additional responsive records exist.

[37] Accordingly, I uphold the ministry's search for responsive records.

**ORDER:**

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

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

Diane Smith  
Adjudicator

\_\_\_\_\_ July 7, 2021