

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-4182

Appeal PA19-00313

Ministry of the Solicitor General

August 31, 2021

**Summary:** The appellant submitted a request under the *Freedom of Information and Protection of Privacy Act* to the ministry for access to victim reports related to her. In this matter, the victim reports were completed by police officers. In response, the ministry granted the appellant partial access to the victim reports it located. The appellant appealed the ministry's decision raising concerns about the adequacy of its search. In this order, the adjudicator finds that the ministry's search for responsive records was reasonable and dismisses the appeal.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F31, as amended, section 24.

### OVERVIEW:

[1] This order addresses the reasonableness of a search for records conducted by the Ministry of the Solicitor General (the ministry). The appellant filed a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the ministry for copies of any victim reports relating to her that were created by the Ontario Provincial Police (OPP) for the time-period of March 2017 to April 2019.

[2] In response to the access request, the ministry conducted a search for responsive records and issued a decision letter to the appellant stating:

In response to your request for access to information under the [*Act*], please be advised that partial access is granted to your request for the Ontario Provincial Police Victim Reports involving yourself.

[3] The ministry claimed that disclosure of the withheld portions of the records would constitute an unjustified invasion of personal privacy under the discretionary personal privacy exemption in section 49(b), in conjunction with sections 21(2)(f) and 21(3)(b). The ministry also claimed that the withheld police code information qualified for exemption under section 49(a) (discretion to refuse requester's own personal information) in conjunction with section 14(1)(l) (law enforcement). Finally, the ministry indicated that some of the withheld information was not responsive to the request.

[4] The appellant appealed the ministry's decision to this office and a mediator was appointed to explore settlement with the parties. At the end of the mediation, the appellant confirmed that she was not seeking access to any of the withheld information. However, the appellant took the position that additional responsive records should exist.

[5] No further mediation was possible and the file was transferred to the adjudication stage of the appeals process in which an adjudicator may conduct an inquiry. I decided to commence an inquiry and invited the parties to make written representations in support of their positions. The non-confidential portions of their representations were exchanged in accordance with the IPC's *Code of Procedure and Practice Direction 7*.

[6] In this order, I find that the ministry's search for responsive records was reasonable and dismiss the appeal.

## **DISCUSSION:**

[7] The sole issue in this appeal is whether the ministry conducted a reasonable search for responsive records. The access request filed by the appellant stated:

ALL Victim Reports from March 2017 – April 2019 only for [name of the appellant and date of birth]

\*(All victim reports created by the OPP) in any area. [Emphasis in Original]

[8] The ministry takes the position that it conducted a reasonable search of its record holdings for victim reports from March 2017 to April 2019. The appellant argues that the ministry's search for only victim reports failed to locate other records that would respond to her request. The appellant also appears to take the position that a victim report should have been created each time an officer makes a referral to victim services on her behalf.

[9] The Victim Crisis Assistance and Referral Service (VCARS) is a community response program providing immediate, on-site assistance to victims of crime or disaster, 24 hours a day, seven days a week. For the remainder of this order, I will use to term "victim services" instead of VCARS. I note that the parties use the two terms

interchangeably in their representations.

[10] In support of its position that it conducted a reasonable search, the ministry provided an affidavit from its Freedom of Information Coordinator (the coordinator) who coordinated the ministry's search. The coordinator describes the steps taken to identify responsive records upon receipt of the access request.

[11] First, the coordinator says the appellant's name was entered in the Niche RMS<sup>1</sup> which narrowed the search for records relating to complaints filed by the appellant to two specified OPP detachments. The coordinator then contacted administrative personnel at the detachments and directed that all victim reports related to the occurrences be printed and sent to the freedom of information office.

[12] The appellant believes that additional victim reports exist other than those that have been located and provided to her. The appellant argues that if a victim report cannot be located for a specific occurrence, then another record created by an OPP officer should exist which would contain information regarding the officer's decision to refer her to victim services. In support of her position, the appellant states:

In any normal situation if the police officer who took the report had any concern for my safety or well being [they] should have initiated a victim notification to victim services who are equipped to provide referral and or services specifically related to responding to victim needs and this would also to my knowledge create a victim report.

[13] The appellant provided copies of occurrence reports and other documents along with her representations and says these were provided to her outside the present access request. It is not clear whether these records were provided to the appellant as the result of a previous access request or some other access regime. One of the documents the appellant provided with her representations is a one-page computer generated form on OPP letterhead entitled "Ontario Victim Services NOTIFICATION". I sought clarification from the ministry who confirmed that the notification is not a victim report.

[14] The ministry clarified that:

The Ontario Victim Services Notification is used by the OPP to notify victim services agencies across the province when their services are required to assist a victim of crime. In contrast, an Ontario Provincial Police Victim Report is generated for law enforcement purposes, and records information about victims of crime.

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<sup>1</sup> The ministry say that all OPP incident records are stored in the Niche RMS, which is a police database widely used by Canadian police agencies.

[15] The ministry also provided a blank copy of the victim report and screen shot of the notification along with its explanation. I have reviewed these documents and note that the victim report appears to capture information about the name of the victim, event time, most serious violation, injury level, weapon, along with information of whether the victim and alleged perpetrator are known to each other and/or residing together. Also recorded on the victim report is information as to whether victim services was notified and whether victim services was accepted. With its clarification, the ministry indicated that "not all victim reports are uploaded to Violent Crime Linkage Analysis System (VICLAS)<sup>2</sup>. The purpose of a victim report is to obtain data about victims for law enforcement purposes."

[16] The appellant says that the documents she provided with her representations establish that additional victim reports should exist. The appellant argues that victim reports or other victim information should exist relating to five specific complaints she filed with the OPP. In support of this position, the appellant submits that:

- an OPP officer contacted her to collect personal information from her relating to a sexual assault complaint that she understands was entered into the VICLAS. She says she was told that this information needed to be put on file for victim identification purposes. However, no responsive records relating to the collection of this information were located;
- she has a 2020 email from legal counsel employed by the ministry that indicates that a named officer made a "request to victim services" but that the officer did not have a specific recollection of when the referral was made. Counsel indicates that the referral was probably made by email but that the officer confirmed that his emails for the relevant time-period have already been deleted. The appellant also provided a severed copy of a one-page 2019 Supplementary Occurrence Report she says relates to the same complaint matter that contains a note referencing that a second referral to victim services was made by a different officer. The appellant submits that responsive records relating to these referrals concerning this complaint matter should exist;
- she received a telephone call from victim services regarding a harassment complaint she filed but did not receive responsive records regarding the referral that was made;
- she was told by the investigating officer in a lengthy investigation that a referral to victim services was made after her repeated requests for victim support. However, the ministry's search did not locate responsive records relating to this referral; and

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<sup>2</sup> VICLAS is a national crime database managed by the Royal Canadian Mounted Police (RCMP).

- although she can not recall whether victim services contacted her in response to a specific complaint she filed with police, an incident number was created and she argues that responsive records should exist given the seriousness of the complaint.

[17] The appellant acknowledges in her representations that her “initial access request was for victim reports only” but argues that “any material generated by the OPP that identified victimization and required a notification to victim services which is a separate entity from the OPP” would be responsive. The appellant argues that the documents she provided with her representations “should provide enough evidence to support [her] claim there ‘should’ be further records the OPP have not disclosed as to victim reports and information in the broad sense.”

[18] The appellant also argues that she is a “private citizen” and used the term “victim report” broadly in her request. She says that in addition to any information regarding referrals OPP officers made to victim services on her behalf, she is entitled to access any “victim” information OPP officers collected from her.

[19] In conclusion, the appellant argues that additional victim reports, notifications, referrals and occurrence reports should exist given the seriousness and circumstances of the complaints she filed with the police.

[20] The ministry argues that the appellant has sought to “significantly” expand the scope of her request to include records other than victim reports and states:

If the appellant had wanted all these additional records (e.g., victim services notifications, supplementary reports, occurrence reports, etc), we submit the appellant should have included them as part of [her] original request.

We note that this matter proceeded to mediation. At no point was the Ministry made to understand either before or after mediation that a request for victim reports was intended to include all kinds of other records. Nor is this understanding reflected in the Mediator’s Report or the Notice of Inquiry. In the circumstances, we submit that any records that are not victim reports must, as a result, be considered non-responsive.

[21] The ministry explains that investigating police officers determine when a victim report is created. The ministry submits that if a less serious offence is allegedly committed or if the officer believes that no offence has been committed at all, no victim report is created. In addition, the ministry says that the length of an investigation has no bearing on whether a victim report is created. The ministry states that three of five of the incidents the appellant refers to in her representations did not result in victim reports being created. The ministry does not take the position that other records related to the five complaints referred to by the appellant, such as VICLAS entries, victim services referrals, officer notes, occurrence reports or other records in which the appellant is identified as a victim or complainant, may exist. Instead, the ministry

argues that such records are not responsive to the request before me.

[22] The ministry submits that its search for victim reports was reasonable and that all victim reports relating to the appellant were located and disclosed to her. The ministry concludes that any other information the appellant seeks to access in its record holdings amounts to an expansion of the scope of the original request and thus, does not respond to the request.

[23] The appellant submitted sur-reply representations in response to the ministry's reply representations. However, her evidence repeats the arguments already made in her representations, namely, that her request for victim reports should also include any records that contain information about her as a victim. The appellant argues that she "used a broad term to encapsulate everything to do with the police officers reporting of a victim in need to [access] support services."

### **Decision and Analysis**

[24] Given the differing positions of the appellant and the ministry as to what records would be responsive to the appellant's request, I will begin by addressing the scope of the request. This is a necessary step before determining whether the ministry's search for responsive records was reasonable.

#### ***Scope of Request***

[25] 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).

[26] 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.<sup>3</sup> To be considered responsive to the request, records must "reasonably relate" to the request.<sup>4</sup>

[27] In this matter, the appellant submits that the ministry failed to locate responsive records and as a result, its search is deficient. The ministry argues that the appellant's request for records other than victim reports significantly expands the scope of her original request. The ministry argues, and I accept, that the request sufficiently described the type of records the appellant sought – victim reports. Accordingly, I am satisfied that upon its receipt of the request, the ministry was entitled to respond literally to the request and not make further inquiries to the appellant aimed at clarifying it. In addition, I am satisfied that the ministry defining the scope of the request to be for victim reports only was reasonable, given that there is no evidence that the appellant communicated with the ministry during the request stage that she was also seeking access to other records that would contain information about her. In addition, a plain reading of the request itself supports the ministry's approach to the request. I find that there was no ambiguity in the request and that the request sought access to victim reports only.

[28] I do not agree with the appellant that any record containing information identifying her as a victim or complainant is reasonably related to her request for victim reports. I note that the copies of the victim reports the appellant provided with her representations contain limited information identifying the occurrence number, date of alleged offence, and the *Criminal Code* offence, along with her name and contact information as the victim.

[29] In my view, some of the information that the appellant says she is seeking access to would not be captured in a victim report. Accordingly, should the appellant continue to seek access to records that contain such information, she will have to file a new access request under the *Act*.

[30] I will go on to determine whether the ministry conducted a reasonable search for victim reports.

### ***Reasonable Search***

[31] 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>5</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.

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<sup>3</sup> Orders P-134 and P-880.

<sup>4</sup> Orders P-880 and PO-2661.

<sup>5</sup> Orders P-85, P-221 and PO-1954-I.

[32] 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>6</sup> To be responsive, a record must be "reasonably related" to the request.<sup>7</sup>

[33] 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>8</sup>

[34] 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>9</sup>

[35] 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>10</sup>

[36] I have reviewed the appellant's evidence but am not satisfied that she has provided a reasonable basis to conclude that additional victim reports exist. As noted above, I do not agree with the appellant that any record containing information identifying her as a victim or complainant is reasonably related to her request for victim reports.

[37] I find that the appellant's evidence falls short of establishing a reasonable basis for believing that additional victim reports should exist. The appellant's arguments hinge on her belief that the responding police officers should have created a victim report for each incident referenced in her representations. I find that the ministry has provided a reasonable explanation of why this is not the case, namely that victim reports are created at the discretion of the officer and as a result, were not created in response to all of the complaints mentioned by the appellant in her representations.

[38] In addition, the appellant argues the fact that her personal information was entered into the VICLAS support her position that additional victim reports exist. However, I accept the ministry's evidence that a VICLAS entry can exist without the creation of a victim report and vice versa.

[39] I also reviewed the appellant's evidence that ministry counsel wrote to her and confirmed that an officer made a request to victim services on her behalf. However, I am satisfied that the email itself provides an explanation as to why the corresponding

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<sup>6</sup> Orders P-624 and PO-2559.

<sup>7</sup> Order PO-2554.

<sup>8</sup> Orders M-909, PO-2469 and PO-2592.

<sup>9</sup> Order MO-2185.

<sup>10</sup> Order MO-2246.



victim report, if created, could not be located by the ministry in response to the access request before me. It appears that the ministry searched its record holdings on more than one occasion for the victim report relating to this specific complaint, including the direct inquiries ministry's counsel made to a named officer about the retention of email records.

[40] Finally, I find that the notation in the Supplementary Occurrence Report provided by the appellant that a second referral was made to victim services falls short of establishing a reasonable basis that the officer created a victim report. I accept the ministry evidence that police officers exercise their discretion in determining whether to create victim reports each time they decide, or are requested, to refer victims or complainants to victim services.

[41] Having regard to the above, I find that the appellant's evidence falls short of demonstrating a reasonable basis to conclude that additional victim reports exist, but have not yet been located by the ministry.

[42] On the other hand, I am satisfied that the ministry has provided sufficient evidence demonstrating that it made a reasonable effort to identify and locate the requested victim reports. I am also satisfied that the individual coordinating the ministry's search is an experienced employee knowledgeable about the subject matter of the request. I find that the ministry has adequately explained the steps it took in response to the appellant's request. As noted above, the *Act* does not require the ministry to prove with absolute certainty that further responsive records do not exist. Based on the evidence presented by the parties, I am satisfied that the ministry has provided sufficient evidence to show that it has made a reasonable effort to identify and locate victim reports within its record holdings.

[43] Having regard to the above, I find that the ministry's search for victim reports responsive to the appellant's request was reasonable and dismiss the appeal.

**ORDER:**

I find that the ministry's search for victim reports was reasonable and dismiss the appeal.

Original Signed by: \_\_\_\_\_  
Jennifer James  
Adjudicator

\_\_\_\_\_ August 31, 2021