

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4270

Appeal PA19-00214

Ministry of the Solicitor General

June 27, 2022

Summary: The appellant sought access to a firearms prohibition order against him from the Chief Firearms Office (overseen by the Ministry of the Solicitor General). The ministry denied access to the record on the basis that no records exist relating to the appellant's request. The appellant appealed the ministry's decision claiming that responsive records should exist. In this decision, the adjudicator upholds the ministry's decision as reasonable and dismisses the appeal.

Statute Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.F.31, section 24.

OVERVIEW:

[1] The appellant made a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of the Solicitor General (the ministry) for access to the following:

I am seeking a copy of the firearms prohibition order against me, [of specified date] at the Ontario Court Justice Criminal court (Brampton Court).

I have contacted the court and they cannot find the file. (specified file number)

However, during a recent application for firearms license, the firearms officer reviewing my application said that he had a copy on file.

I called that office today asking for a copy of that prohibition order, but was told I must request it under the FOI programme.

I am asking that your office contact the Ontario Firearms Office and provide me with a copy of my prohibition order in its entirety and legible.

Copies may also be available through the Canadian Firearms Information System or Firearms Interest Police.

[2] The ministry denied access to the requested records on the basis that no responsive records exist. The ministry's decision stated:

Experienced staff familiar with the record holdings of the ministry conducted a records search at the Chief Firearms Office (CFO) and no responsive records were located. The CFO advised our office that the 1996 firearms prohibition order predates the start of the Canadian Firearms Program which came into effect in 1998.

[3] The appellant appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (the IPC). During mediation, the appellant submitted a follow-up request to the ministry for a copy of his complete Canadian Firearms Information System file. Upon receiving this information, the appellant advised that he still believes that additional records ought to exist – specifically the prohibition firearms order.

[4] As mediation did not resolve the appeal the file was moved to the adjudication stage of the appeals process where an adjudicator may conduct an inquiry under the *Act*. I decided to conduct an inquiry and sought and received representations from both the ministry and the appellant. Representations were shared between the parties in accordance with the IPC's *Code of Procedure* and Practice Direction 7.

[5] In this order, I find the ministry has conducted a reasonable search and dismiss the appeal.

DISCUSSION:

[6] The sole issue in this appeal is whether the ministry conducted a reasonable search for the prohibition firearms order relating to the appellant.

[7] 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 24.¹ 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.

[8] 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.² To be responsive, a record must be "reasonably related" to the request.³

[9] 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.⁴

[10] 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.⁵

[11] 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.⁶

Representations

Ministry's representations

[12] The ministry submits that it was asked to submit representations regarding the Chief Firearms Office's (CFO's) search for a firearms prohibition order issued in June 1998 that relates to the appellant. The ministry provided representations an affidavit in support of its position that its search was reasonable.

[13] The ministry surmises that the main reason why the CFO may not be able to find the firearms prohibition order is because that it most likely does not have it due to its age. The ministry notes that the record was created before the *Firearms Act* came into force on December 1, 1998. The ministry notes that the *Firearms Act* provides the regulatory framework which prescribes the mandate for the CFO and creates the regime under which it would collect records like the firearms prohibition order which is the subject matter of this appeal.

[14] The ministry's affidavit is from a firearms officer employed by the CFO. The firearms officer notes that she was tasked with conducting the search for the 1998

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Order PO-2554.

⁴ Orders M-909, PO-2469 and PO-2592.

⁵ Order MO-2185.

⁶ Order MO-2246.

firearms prohibition order because of her knowledge of the CFO's record holdings and her work experience at the CFO.

[15] The firearms officer states that the CFO was created to oversee firearms licences and registrations and to support the legislative regime set up in the *Firearms Act*. The CFO is responsible for ensuring that individuals who apply for firearms licenses are eligible to hold them. The firearms officer affirms, "Since the close of 1998, we receive and keep copies of firearms prohibition orders as part of our mandate."

[16] The firearms officer notes that she became aware of the appellant's request on June 25, 2019 and knew that if a firearm prohibition order did exist it would be on the CFO's computer drive where such orders are stored. The firearms officer conducted her search for the prohibition order on the same day she got notice of the request but was unable to locate any firearms prohibition order relating to the appellant.

[17] The firearms officer notes that it is her understanding that the appellant has reason to believe of the existence of the prohibition order against him because of a recent discussion the appellant had with a firearms officer who reviewed the appellant's most recent firearms license application.

[18] The firearms officer then spoke to the firearms officer who dealt with the appellant and states the following:

[Named firearms officer] advised that what is on record is a print out of a search conducted on the Canadian Police Information Centre (CPIC) database, which is a shared police records data base. My search of the Canadian Firearms Information System (CFIS) yielded a print out, which indicates that the appellant brought a copy of the order to the Hamilton Police Service when the appellant applied for a license on January 24, 2003.

[19] The firearms officer submits that this record would be a responsive record but it does not mean that the CFO would have been provided with a copy of the prohibition order issued by the court. The firearms officer states that the printout indicates that the Hamilton Police Service would have a copy of the prohibition order if it had kept it.

[20] The firearms officer submits that it is her belief that the CFO does not have a copy of the order due to its age. She states that the order was issued on June 12, 1998 and the *Firearms Act* did not come in to force until December 1, 1998. The firearms officer spoke with the CFO manager who was familiar with the beginnings of the CFO. That manager advises that the first firearms officers were hired and trained in or about September 1, 1998 to coincide with the *Firearms Act* coming into force. As such, it is the firearms officer's belief that there was no system in place for the CFO to receive the order relating to the appellant when that order was issued.

Appellant's representations

[21] Upon receiving the ministry's representations, the appellant sought to make a request for both printouts referenced in the firearms officer's affidavit: the CPIC print out and the CFIS print out. The appellant also provided the background surrounding his 2003 application for a firearms license. I do not set those details out here as they contain confidential information relating to the appellant. The appellant agrees that there is no way that the CFO would have a copy of the prohibition order as it predates the *Firearms Act*. However, the appellant submits that the CFO is deciding his firearms license application on the basis of the prohibition order that it does not have in its record holdings. The appellant agreed to contact the Hamilton Police Services to see if they had a copy of the prohibition order referenced in the ministry's affidavit.

Ministry's reply representations

[22] The ministry was asked to respond to the appellant's representations including the appellant's request for the printouts referenced in the ministry's affidavit. The ministry responded and noted that the printouts originated with the third party police forces and suggested that the appellant make a request to both Hamilton and Peel police forces for a copy of the printouts. The ministry's response was shared with the appellant.

Appellant's follow-up submissions

[23] The appellant was not asked to provide follow-up submissions but he kept the IPC apprised of his additional requests for access to information from the Peel and Hamilton Police services.

[24] The appellant notes that he received a copy of the prohibition order from the Peel Police but that the police note that for a "full copy of the prohibition order" he should contact the CFO. The appellant also noted other information on the prohibition order and in CPIC were incorrect.

[25] The appellant also notes that following his decision from the Peel Police, he received a letter from the CFO. The details of the CFO's letter do not relate to the prohibition order and I do not set them out here as they contain personal information relating to the appellant. However, what is pertinent to this appeal is that the CFO informed the appellant that it had received a copy of the prohibition order from the Peel Police.

Analysis and Finding

[26] Based on my review of the parties' representations and the circumstances in this appeal, I am satisfied that the ministry, specifically the CFO, conducted a reasonable search for the firearms prohibition order relating to the appellant.

[27] The appellant confirmed in his representations that he accepts the CFO's explanation as to why they do not have a copy of the firearms prohibition order issued in June 1998. I too accept the CFO's explanation as to why this record does not exist in its record holdings.

[28] The appellant continues to take issue with the handling of his firearms license application and the corrections that need to be made to the prohibition order but does not appear to dispute the CFO's explanation as to why no responsive records existed relating to his request (as noted above, the CFO now has a copy of the prohibition order that the Peel Police provided to the appellant).

[29] However, the CFO now has a copy of the prohibition order and has provided a decision to the appellant about his firearm license application.

ORDER:

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

Original Signed by: _____

June 27, 2022 _____

Stephanie Haly
Adjudicator