

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4418

Appeal PA20-00706

Liquor Control Board of Ontario

July 17, 2023

Summary: The appellant sought access to records about himself from the LCBO. The LCBO located over 1200 pages of records responsive to the appellant's request, however, the appellant asserted that additional records should exist. In this order, the adjudicator finds that the LCBO's affidavit evidence establishes that the LCBO conducted a reasonable search for records responsive to the appellant's request. She dismisses the appeal.

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

OVERVIEW:

[1] The appellant submitted a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Liquor Control Board of Ontario (the LCBO) for access to all records about himself from March 2020 to April 15, 2020. In his access request, the appellant specified that he sought all emails, notes and correspondence – from all LCBO email accounts belonging to LCBO executives (including the CEO), media and marketing personnel – that contained his name, email and/or telephone number. The appellant subsequently specified that he expected the responsive records to include information about a named LCBO director and another LCBO employee who spoke to a specific police service about him.

[2] The LCBO located over 300 records (totaling more than 1200 pages) responsive to the request and issued a decision letter granting the appellant partial access to them,

relying on various exemptions to withhold some information. The appellant was dissatisfied with the LCBO's decision and appealed it to the Information and Privacy Commissioner of Ontario (the IPC).

[3] The IPC attempted to mediate the appeal. During mediation, the appellant asserted that additional responsive records should exist beyond those that the LCBO disclosed to him. The appellant's specific points about records he believes should exist were shared with the LCBO. The issue of whether the LCBO conducted a reasonable search for responsive records was then added to the appeal. At the end of mediation, the appellant confirmed that the search issue was the only one he wished to pursue. Accordingly, the LCBO's decision to withhold information under various exemptions under the *Act* is not an issue in this appeal.

[4] A mediated resolution was not possible and the appeal was moved to the adjudication stage of the appeal process, in which an adjudicator may conduct an inquiry. I conducted an inquiry and invited representations from the LCBO. The LCBO provided representations and an affidavit about its search.

[5] I shared the non-confidential representations of the LCBO with the appellant and invited him to provide representations in response. The appellant did not provide representations in response to the Notice of Inquiry that I sent him, or in response to the non-confidential representations of the LCBO. The appellant advised that he had nothing to add, that he deferred to my judgment and that the appeal could proceed.

[6] In this order, I uphold the reasonableness of the LCBO's search for records responsive to the appellant's request and I dismiss the appeal.

DISCUSSION:

[7] The sole issue in this appeal is whether the LCBO conducted a reasonable search for records responsive to the appellant's request, as required by section 24 of the *Act*.¹ Previous IPC orders have consistently found that a reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are reasonably related to the request.² The *Act* does not require the LCBO to prove with certainty that additional records do not exist. However, the LCBO must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;³ that is, records that are "reasonably related" to the request.⁴

[8] Previous IPC orders have also consistently found that a requester claiming that

¹ Orders P-85, P-221 and PO-1954-I.

² Orders M-909, PO-2469 and PO-2592.

³ Orders P-624 and PO-2559.

⁴ Order PO-2554.

additional records exist must provide a reasonable basis for concluding that such records exist.⁵ Although the appellant challenged the reasonableness of the LCBO's search for responsive records during the inquiry, he did not provide representations addressing it when I invited him to do so. The appellant's position on this issue is that additional records should exist.

[9] Having reviewed the LCBO's complete representations, including its confidential representations, I am satisfied that it provides adequate evidence that the LCBO conducted a reasonable search. The representations include an affidavit, sworn by the LCBO's Senior Freedom of Information & Privacy Advisor who conducted the search, which establishes that an experienced employee knowledgeable in the subject matter of the request made a reasonable effort to locate records that are reasonably related to the request. The affidavit recounts the steps taken to search for responsive records within the email accounts and files of the executive, media, corporate and other LCBO staff. I am satisfied that the particulars of the search set out in the affidavit – the dates of the various searches, the names of the individuals whose files and email accounts were searched, and confirmation that the searches conducted were for all records containing the appellant's name, email and phone number during the time period specified in the request – establish that the affiant expended a reasonable effort to locate records that are reasonably related to the request for all information about the appellant.

[10] The appellant provides no representations and no reasonable basis for me to conclude that additional responsive records exist.

[11] I accept the LCBO's affidavit evidence. I find that the LCBO made a reasonable effort to identify and locate records responsive to the appellant's request. As a result, I uphold the reasonableness of the LCBO's search for responsive records.

ORDER:

I dismiss the appeal.

Original Signed by: _____
Stella Ball
Adjudicator

July 17, 2023 _____

⁵ Order MO-2246.