

Information and Privacy Commissioner,  
Ontario, Canada



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

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## INTERIM ORDER PO-4489-I

Appeal PA22-00054

Ministry of the Solicitor General

February 23, 2024

**Summary:** The requester made an access request to the Ministry of the Solicitor General (the ministry) under the *Act* for records about herself. The ministry located responsive records and disclosed them in part to the requester. The requester appealed the ministry's decision on the basis that she believes that the ministry has not conducted a reasonable search for these records.

In this interim order, the adjudicator orders the ministry to conduct further searches for certain records identified by the appellant as not yet having been located.

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

### OVERVIEW:

[1] The requester had several interactions with the Ontario Provincial Police (the OPP)<sup>1</sup> and sought access to records about these interactions. This order considers whether the Ministry of the Solicitor General (the ministry), conducted a reasonable search for those records.

[2] The requester made an access request to the ministry under the *Freedom of Information and Protection of Privacy Act* (the *Act*), for the following:

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<sup>1</sup> The OPP is part of the Ministry of the Solicitor General.

All records, reports, notes, video, phone call logs, documents accessible to or in the possession of Ontario Provincial Police [OPP], books, letters, accessible to or in possession or power of access containing any entry, memorandum or minute related to myself or my contact with OPP including but not limited to calls for service or complaints by others to OPP regarding my current address or myself. Logs of OPP records, data electronically or manually about myself including but not limited to accessing my personal info including access in person, by phone, electronic access or any electronic medium by any employee or representative of the OPP including but not limited to my previous employment or medical records with OPP for the time period herein. Any designated, tangible thing or electronic stored info stored in any medium containing any of my personal information for which I am permitted a copy. Any communications I've made to or with any person employed by OPP or they communicated to me.

Time period January 1, 2018 – August 25, 2021

[3] The ministry issued a decision granting partial access to the responsive records.<sup>2</sup>

[4] The requester, now the appellant, appealed the ministry's decision to the Information and Privacy Commissioner (the IPC) and a mediator was assigned to attempt a resolution of this appeal.

[5] During mediation, the appellant told the mediator that she was not pursuing the redacted information, or the information withheld as non-responsive, however she believed further records should exist, including electronic communications and records relating to numerous other interactions she had with the OPP.

[6] The ministry agreed to conduct another search and issued a revised decision disclosing, in part, additional records located during that search.<sup>3</sup>

[7] Upon receipt of the revised decision, the appellant confirmed that she continues to believe that further records should exist.

[8] The appeal was transferred to adjudication where and adjudicator may conduct an inquiry. I decided to conduct an inquiry and I sought the representations of the parties, which were exchanged between them in accordance with the IPC's *Practice Direction 7*.

[9] In this interim order, I order the ministry to conduct further searches for certain records identified by the appellant as not yet having been located.

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<sup>2</sup> The ministry made severances to the records pursuant to sections 49(a) (discretion to refuse requester's own information), read with section 14(1)(l) (facilitate commission of an unlawful act), and 49(b) (personal privacy) of the *Act*. The ministry also severed some information as non-responsive to the request.

<sup>3</sup> Again, the ministry severed the newly located records pursuant to sections 49(a), read with section 14(1)(l), and 49(b) of the *Act*.

## **DISCUSSION:**

[10] The sole issue to be decided in this appeal is whether the ministry conducted a reasonable search for records responsive to the appellant's request.

[11] If a requester claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 24 of the *Act*.<sup>4</sup> If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision. Otherwise, it may order the institution to conduct another search for records.

[12] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.<sup>5</sup>

[13] The *Act* does not require the institution to prove with certainty that further records do not exist. However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;<sup>6</sup> that is, records that are "reasonably related" to the request.<sup>7</sup>

[14] 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.<sup>8</sup> The IPC will order a further search if the institution does not provide enough evidence to show that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.<sup>9</sup>

### **Representations**

[15] In its representations, the ministry submits that it conducted multiple searches for the records responsive to the appellant's request, including for the additional records identified by the appellant at mediation.<sup>10</sup> It submits that these searches were performed by experienced administrative staff.

[16] The ministry provided affidavits from OPP staff who conducted the searches, two Detachment Administrative Clerks (the clerks) with the Police Records Collection Unit of the OPP. The affidavits describe the efforts they made to retrieve responsive records.

[17] The first clerk states that she searched for records by inputting the appellant's

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<sup>4</sup> Orders P-85, P-221 and PO-1954-I.

<sup>5</sup> Order MO-2246.

<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> The additional records identified by the appellant at mediation include additional occurrence reports, officer logs, letters and a video that was allegedly submitted by the appellant to the OPP.

name, date of birth and address, and the time frame for the search provided by the appellant into Niche RMS (record management system), the OPP records data base, where all incident records are stored.

[18] The first clerk states that she also contacted the OPP officers who she knew from her search would have produced responsive notes and requested and received these notes. She further states that she does not know if any records were destroyed, although it is conceivably possible that records may have been destroyed if they were collected by an OPP officer and stored on a detachment cell phone, not transferred to Niche RMS, and the cell phone was subsequently destroyed.

[19] The second clerk states that she reviewed the search results of the first clerk, and she also searched for records by inputting into Niche RMS the appellant's name, date of birth and address, and the time frame for the search provided by the appellant. She also states that she conducted a separate search of the dates of the occurrences where the appellant indicated records should exist.

[20] The second clerk states that she also contacted an OPP officer, who the appellant had indicated should have responsive notes. She confirms that she obtained their notes. She also states that she contacted other OPP officers who might have notes, but they did not locate any.

[21] The second clerk also states that she searched for and located the 911 audios that the appellant claims existed. She states that she does not know if any responsive records were destroyed but has no indication that this may have occurred.

[22] The appellant provided 41 pages of representations covering a wide range of matters. In my view, her representations did not respond to the ministry's representations on the actual search parameters and methodology used in the searches. From her representations, I could not identify the records the appellant believes had not yet been located by the ministry.

[23] I then asked the appellant to provide me with a list of records that she believes that the ministry should have located in their searches. The appellant provided a three-page list of 12 paragraphs identifying each type of record she believes should exist.

[24] I sent the list to the ministry, and, in reply, it responded to each paragraph of the appellant's three-page list, as follows:

- Paragraph 1 - The appellant states that there should be a record of an incoming call from members of the OPP [for June 3, 2021]. However, records of phone calls are not generated if someone calls from an OPP Detachment.
- Paragraph 2 - The appellant states they have not been provided records related to a specified incident number. Please be advised that we did disclose to the appellant

responsive officers' notes, and reports. Unfortunately, we cannot follow up with [named OPP sergeant], ... as she is currently on leave from the OPP.

- Paragraph 3 - The appellant claims that they do not have original versions of mostly unspecified records the appellant claims they provided to the OPP. We have searched for all responsive records, and we have not located anything further.
- Paragraph 4 - The appellant alleges there should be a specified note or report regarding a neighbour that was prepared by a specified OPP Constable [on March 5, 2021]. We have searched for responsive records, and we have found none. Records related to a neighbour appear to be non-responsive, in any event, because they are about a third-party.
- Paragraph 5 - The appellant claims there are responsive records regarding a complaint [on August 28, 2020] against a named OPP officer. These records, if they exist, appear to be non-responsive, as they relate to a third-party.
- Paragraph 6 - The appellant is requesting responsive records related to a specific incident number. Please be advised the appellant already received these records in response to an earlier Freedom of Information request filed by the appellant and that was submitted in 2021.
- Paragraph 7 - The appellant is requesting responsive records related to a specified OPP Constable on [August 17, 2021]. Please be advised that we confirm that the Constable was conducting follow-up to a previous attendance [on August 15, 2021] by the same Constable on the appellant's property, and the follow-up attendance did not result in any new records being created.
- Paragraph 8 - The appellant is requesting responsive records related to a specific report. Please be advised that no responsive records have been located.
- Paragraph 9 - The appellant claims they were contacted by phone on a specific date [February 1 or 2, 2021], but no records have been disclosed. We advise that we did not find any responsive records. As the appellant did not indicate who contacted them, we cannot follow up with that person, and find out if they know of any responsive records.
- Paragraphs 10-12 - The appellant is alleging that there are emails missing that were sent or received from several identified Constables. We confirm that there are no responsive emails that we have located.

### ***Findings***

[25] For the reasons below, I find that the appellant has provided a reasonable basis to conclude that additional records responsive to her request should exist.

[26] As set out above, the appellant provided a 12 paragraph numbered list of records she believes should exist but were not located by the ministry. I will consider the appellant's claims individually.

*Paragraph 1*

[27] The appellant submits that additional records relating to an internal OPP call should exist. I am satisfied that the OPP does not have records of these types of calls. I accept the ministry's submission that records of internal OPP phone calls are not generated.

[28] The appellant also submits that a police report and/or notes from a June 3, 2021, OPP visit to the appellant's property (where they interviewed witnesses), should exist. The ministry did not provide any explanation about these records, including whether it conducted a search for them. I will order the ministry to conduct another search for these records as I do not accept that the ministry has provided sufficient evidence to demonstrate that it conducted a reasonable search for these records. Additionally, the appellant has satisfied me that further responsive records should exist regarding the OPP's June 3, 2021, attendance at her property.

*Paragraph 2*

[29] The appellant submits that the ministry should have located a report or notes related to her letters of August 15 and 22, 2021 to a named OPP sergeant. The ministry asked this sergeant for her notes and provided notes to the appellant; however, these notes are undated.<sup>11</sup>

[30] The ministry advised in its reply representations that it could not follow up about these records as the named sergeant is on leave. It did not indicate why it could not search the OPP record holdings in any event or when this sergeant would be available to conduct a search of their records. I accept that the appellant has provided a reasonable basis to conclude that records related to her letters might exist and I have not been provided with sufficient evidence to conclude that the ministry conducted a reasonable search for these records. I will order the ministry to conduct a search for any records responsive to the appellant's August 15, and 22, 2021 letters to the OPP.

*Paragraph 3*

[31] The appellant submits that certain records that she provided to the OPP were not located. She says that these records include, at least four pages of Purolator label printouts, a proof of delivery from her, a photo of a handwritten letter, and documents to or from the Town of Essex taken by a named constable from the appellant. The ministry advised that it searched for all responsive records, and did not locate anything further, however, it did not indicate that it contacted the named constable to conduct a search of

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<sup>11</sup> This sergeant is the only OPP officer named by the ministry in its affidavits as having been contacted by it to search their records.

their records. I will order the ministry to conduct a search for responsive records of the named constable, as the appellant has provided a reasonable basis for me to conclude that records of this nature should exist.

*Paragraph 4*

[32] The appellant alleges there should be notes or reports about her March 25, 2021, complaint to a named OPP constable regarding her neighbour. The ministry submits that it searched for all responsive records, and did not locate anything further, however, it did not indicate whether it contacted this constable or specifically searched for the records of this constable. I will order the ministry to conduct a search for responsive records of the named constable.

*Paragraph 5*

[33] The appellant submits that records relating to a complaint dated August 28, 2020, that she made to a named sergeant regarding a named OPP officer should exist. The ministry does not indicate that it searched for these records, instead from its representations, it appears that it has predetermined that if any records of this type exist, they would be non-responsive or excluded from the scope of the *Act*. I accept that the appellant has provided a reasonable basis to conclude that records of this type should exist and I do not accept that the ministry has demonstrated that it has conducted a reasonable search for these records. I will order it to conduct a search for records about the complaint regarding the named OPP officer.

*Paragraph 6*

[34] The appellant submits that additional records related to a specified occurrence report should exist. The ministry states that the appellant already received these records in response to an earlier access request filed by the appellant that was submitted in 2021. The appellant subsequently advised that she located these records; therefore, records responsive to this paragraph are no longer at issue.

*Paragraph 7*

[35] The appellant submits that additional records regarding the August 17, 2021, visit to her property by a named officer, where he called a Town of Essex inspector in the appellant's presence about the appellant's property, should exist. The ministry advised that, as this was a follow up visit, no records for August 17, 2021 were created. I do not accept the ministry's explanation as there should be records if an OPP officer is conducting an investigation and contacting outside parties. I agree with the appellant that there should be responsive records about the officer's call to the inspector on August 17, 2021. I will order the ministry to search for these records.

*Paragraph 8*

[36] The appellant submits that records relating to the OPP's August 15, 2021, visit to both her and her neighbour's properties, should exist. The ministry advises that no responsive records related to a specific report have been located, however, it has not addressed whether other records about this OPP visit on August 15, 2021 at the appellant's and her neighbour's properties might exist. Therefore, I will order the ministry to search for responsive records about this visit.

*Paragraph 9*

[37] The appellant submits that additional records regarding the call made to her by the OPP on February 1 or 2, 2021 should exist. The ministry advises that it did not find any responsive records and that, as the appellant could not identify the OPP officer of staff member who contacted her, it cannot follow up with that individual to search for any responsive records. As the ministry has not indicated whether it conducted any searches of its databases to locate external phone calls to the appellant for these dates, I will order the ministry to search for these call records.

*Paragraphs 10 to 12*

[38] The appellant submits that additional emails related to those that she sent to various OPP constables, as well as emails exchanged between a named constable and two specific Town of Essex Clerk officials about her should exist. The ministry advises that no responsive emails were located. As the ministry has not provided any further information with respect to searches conducted for emails described by the appellant in paragraphs 10 to 12 of her list, I find that it has not conducted a reasonable search for responsive emails of the identified constables. I accept that the appellant has provided a reasonable basis that records related to the constables named in these paragraphs should exist and I will order the ministry to search for these records.

[39] The appellant also submits that she had an interaction with the OPP on May 16, 2021, where she was asked about sensitive personal information about herself. I accept that there is a reasonable basis upon which to conclude that records in relation to this interaction might exist. As the ministry did not respond as to whether it searched for records related to this interaction, I will order them to do so.

**Conclusion**

[40] For the reasons set out above, I am satisfied that the appellant has provided a reasonable basis for me to conclude that there are certain records responsive to paragraphs 1 to 5 and 7 to 12 of the appellant's 12 paragraph list that should exist but that were not located by the ministry in their searches. Additionally, I find that the ministry has not provided enough evidence to show that it has made a reasonable effort to identify and locate responsive records related to these paragraphs. Accordingly, I will order the ministry to conduct further searches for records in accordance with my findings



above.

[41] In making this finding, I have taken into account the searches conducted by the ministry thus far as set out in its representations and two affidavits.

[42] For the sake of clarity, in summary<sup>12</sup> I have found above that the ministry has not conducted a reasonable search for:

- Paragraph 1 - records of the OPP's June 3, 2021, attendance at the appellant's property.
- Paragraph 2 - records related to the appellant's August 15, and 22, 2021 letters to the OPP, including those of a named sergeant.
- Paragraph 3 - records of a named constable, including those related to the Town of Essex documents taken by this constable from the appellant.
- Paragraph 4 - records of a named constable related to the appellant and her neighbour.
- Paragraph 5 - records relating to a complaint dated August 28, 2020, that the appellant made to a named sergeant regarding a named officer.
- Paragraph 7 - records about a named officer's call to a Town of Essex inspector on August 17, 2021.
- Paragraph 8 – records (other than the already located police report) related to the OPP's August 15, 2021, visit to both the appellant and her next door neighbour's properties.
- Paragraph 9 – records of external OPP calls to the appellant on February 1 or 2, 2021.
- Paragraphs 10 to 12 - emails of the constables referred to in these paragraphs, as well as records related to the appellant's May 16, 2021, interaction with the OPP.

## **ORDER:**

1. I order the ministry to conduct further searches for records responsive to the appellant's request, in accordance with the findings in this order, treating the date of this order as the date of the request for the purposes of the procedural requirements of the *Act*.

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<sup>12</sup> More details set out above and in the appellant's 12 paragraph list.

2. I order the ministry to provide me with affidavit evidence describing its search efforts, by **March 25, 2024**. At a minimum, the affidavit(s) should include the following:
  - The name(s) and position(s) of the individual(s) who conducted the search(es) and their knowledge and understanding of the subject matter and the scope of the request;
  - The date(s) the search(es) took place and the steps taken in conducting the search(es), including information about the type of files searched, the nature and location of the search(es), and the steps taken in conducting the search(es);
  - If it appears that no further responsive records exist after further searches, a reasonable explanation for why further records do not exist.

The ministry's affidavit will be shared with the appellant unless there is an overriding confidentiality concern. The procedure for submitting and sharing representations is set out in *Practice Direction Number 7*, which is available on the IPC's website. The ministry should indicate whether it consents to the sharing of its affidavit with the appellant.

3. If the ministry locates additional records as a result of its further search(es), or if it does not locate such records, I order it to issue an access decision to the appellant, with a copy to the IPC, in accordance with the requirements of the *Act*, treating the date of this interim order as the date of the request for the purpose of the procedural requirements of the *Act*.
4. I remain seized of this appeal to deal with issues arising from order provisions 1, 2, and 3.
5. In order to verify compliance with this interim order, I reserve the right to require the ministry to provide me with a copy of any records disclosed with the access decision referred to in order provision 3.

Original Signed By: \_\_\_\_\_  
Diane Smith  
Adjudicator

February 23, 2024 \_\_\_\_\_