

Information and Privacy Commissioner,  
Ontario, Canada



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

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## FINAL ORDER PO-4586-F

Appeal PA22-00054

Ministry of the Solicitor General

January 13, 2025

**Summary:** This final order disposes of the outstanding issue of the reasonableness of a search conducted by the Ministry of the Solicitor General (the ministry) for records relating to the appellant's interactions with the Ontario Provincial Police.

In Interim Order PO-4489-I, the adjudicator did not uphold the ministry's search for responsive records and ordered it to conduct further searches for certain records identified by the appellant as not yet having been located.

In this final order, the adjudicator finds the ministry's further searches conducted in accordance with Interim Order PO-4489-I to be reasonable. She upholds the ministry's search for records responsive to the appellant's request and dismisses the appeal.

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

**Orders Considered:** Order PO-4489-I.

### OVERVIEW:

[1] This final order disposes of the outstanding search issue arising from Interim Order PO-4489-I. Interim Order PO-4489-I ordered the Ministry of Solicitor General (the ministry) to conduct a further search for records responsive to a request made under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all records and communications related to the appellant's interactions with the Ontario Provincial

Police (the OPP).<sup>1</sup>

[2] In response to the request, the ministry issued a decision granting partial access to the responsive records.<sup>2</sup>

[3] 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.

[4] At the conclusion of mediation, despite the ministry having agreed to conduct an additional search for responsive records, the appellant continued to believe that additional records responsive to her request should exist. I conducted an inquiry on the sole issue of whether the ministry conducted a reasonable search for responsive records.

[5] In Interim Order PO-4489-I (the interim order), I found that ministry had not fully met its search obligations under section 24 of the *Act*, and I ordered it to conduct a further search for certain records identified by the appellant as not yet having been located.

[6] In compliance with the interim order, the ministry conducted a further search and issued a supplemental decision disclosing additional records. It also provided me with an affidavit, as ordered in the interim order, describing its search efforts. The appellant provided representations in response to the ministry's affidavit.

[7] In this final order, I find that ministry has now conducted a reasonable search as required by section 24 of the *Act*. I uphold the ministry's searches for records responsive to the appellant's request.

## **DISCUSSION:**

[8] The sole issue to be decided in this appeal is whether the ministry conducted a reasonable search for responsive records.

[9] 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>3</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.

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

<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. The information that was withheld from the records is not at issue in this appeal.

<sup>3</sup> Orders P-85, P-221 and PO-1954-I.

[10] 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>4</sup>

[11] 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>5</sup> that is, records that are "reasonably related" to the request.<sup>6</sup>

[12] 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>7</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>8</sup>

### **Interim Order PO-4489-I**

[13] In the interim order, I found that the appellant had provided a reasonable basis to conclude that additional records responsive to her request might exist.

[14] As set out in detail in the interim order, I reviewed the appellant's 12-paragraph list of records that had not been located by the ministry and ordered the ministry to conduct further searches for the following records. It was accepted by the parties before the issuance of the interim order that the appellant had received the records referred to in paragraph 6 of her list. Therefore, records responsive to paragraph 6 are no longer at issue:

- 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.

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<sup>4</sup> Order MO-2246.

<sup>5</sup> Orders P-624 and PO-2559.

<sup>6</sup> Order PO-2554.

<sup>7</sup> Orders M-909, PO-2469 and PO-2592.

<sup>8</sup> Order MO-2185.

- 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.<sup>9</sup>
- 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.

### **Ministry response to Interim Order PO-4489-I**

[15] In accordance with the interim order, the ministry conducted additional searches for records remaining at issue from the appellant's 12 paragraph list. It issued a supplemental decision letter advising the appellant that it had located additional responsive records and that it was granting partial access to those records, numbered pages 74 to 79. The ministry also advised that the additional records that were located included an occurrence report and notes of a named constable for June 3, 2021, and the notes of a named officer for August 17, 2021.

[16] Also, in accordance with the interim order, the ministry provided me with a detailed affidavit setting out the steps taken in its further searches. The affidavit was sworn by the Detachment Administration Clerk, whose responsibilities since 2009 include working with the Police Records Collection Unit of the OPP.

[17] Together with its affidavit, the ministry provided an explanation regarding why it did not locate certain records identified in the appellant's 12 paragraph list:

Records responsive to paragraphs 5 and 8 have already been provided to the appellant. We have indicated in the attached affidavit which page numbers are responsive to these paragraphs...

Records responsive to paragraphs 1 and 7 were provided by the OPP to the previous FOI [freedom of information] analyst assigned to this appeal. Unfortunately, it appears that due to an administrative error, the previous FOI analyst in part did not disclose some of these records to the appellant. These records are now being fully disclosed to the appellant...

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<sup>9</sup> The appellant located the notes responsive to paragraph 9, therefore, this paragraph is no longer at issue.

Logs of phone call records are not recorded by the OPP, unless the call was placed to or from the Provincial Communications Centre (e.g., a 911 call). Therefore, there are no log records of phone calls placed to or from an officer's cell phone or to or from a detachment. We therefore cannot search for these records.

[18] The appellant responded to the ministry's affidavit and explanation with voluminous representations. At my request, the appellant also provided me with a summary of the records that she continues to believe had not been located by the ministry, despite its further searches conducted in accordance with the interim order.

**Analysis and finding on the ministry's searches conducted in accordance with Interim Order PO-4489-I**

[19] As indicated above, in the interim order required the ministry to conduct further searches for certain records described in a 12-paragraph list set out by the appellant. The following discussion sets out the parties' positions and my findings with respect the ministry's further searches for the records described in each of the paragraphs identified in the interim order.

***Paragraph 1 - records of the OPP's June 3, 2021, attendance at the appellant's property.***

[20] The ministry states that the records responsive to the visit by OPP officers to the appellant's property on June 3, 2021, were previously provided to the appellant, and are numbered pages 52 and 53. However, it submits that some additional records, including notes for a named constable, were inadvertently not provided. The ministry submits that these records have now been disclosed to the appellant by the ministry pursuant to its supplemental decision.

[21] The appellant responds that officers' notes from the OPP's attendance at her property on June 3, 2021, were not located by the ministry. She submits that she was not granted access to any notes that explain how officers were summoned to her address, that indicate what time the officers arrived at her property, that describe what the call was for or explain what the issue was.

[22] Based on my review of the records that were disclosed to the appellant by the ministry, both originally and as a result of its supplemental decision, I find that the ministry granted the appellant access to information about the OPP's attendance at the appellant's property on June 3, 2021. I also find that the appellant has not provided a reasonable basis for why additional records beyond those that have already been located might exist. Accordingly, I find that the ministry search for records responsive to paragraph 1 is reasonable.

***Paragraph 2 - records related to the appellant's August 15, and 22, 2021 letters to the OPP, including those of a named sergeant.***

[23] The ministry provided details of the additional searches it conducted for records responsive to paragraph 2, records related to two letters from the appellant to the OPP. The ministry submits that despite these additional searches, it was unable to find any further responsive records.

[24] The appellant indicates that she has not received a specific occurrence report dated August 15, 2021, however the records disclosed to her contain this report. The appellant also indicates that she has not received from the ministry a copy of her letters dated August 15, and 22, 2021 which she gave to the OPP. However, as she did not raise the issue of these letters not being located by the ministry in her initial appeal, they are not at issue in this final order and I will not order the ministry to conduct another search for them.

[25] In my view, the ministry has conducted a reasonable search for records related to the appellant's August 15, and 22, 2021 letters.

***Paragraph 3 - records of a named constable, including those related to the Town of Essex documents taken by this constable from the appellant.***

[26] The ministry submits that it searched for records about the named constable by asking the constable if she had provided it with records responsive to this paragraph. The ministry submits that the constable assured the ministry that she did not have these records.

[27] The appellant continues to state that she has not received documents provided to the OPP from the Town of Essex. She refers to a note made by the named constable that states: "provided to documents from Town of Essex." She submits that this note demonstrates that records related to the Town of Essex as described in this paragraph should exist.

[28] From my review of the note referred to by the appellant, it appears to me that these records were provided to the officer by the appellant. Although these records were not located by the ministry, I accept that its search for records of this type was reasonable and I will not order the ministry to conduct another search for them.

***Paragraph 4 - records of a named constable related to a complaint between the appellant and her neighbour on March 25, 2021.***

[29] The ministry states that it searched for records of a named constable related to the appellant's March 25, 2021, complaint by searching the police records database, known as NICHE and going through all occurrence reports from this date, both with respect to the named constable and any other officers who reported for work at this detachment on that date. The ministry submits that it did not locate any responsive

records, even though it searched all locations where responsive records could be expected to exist.

[30] The appellant argues that the ministry should have located a report prepared by the named constable about the complaint of March 25, 2021 and it has not searched the named constable's notebook for the report detailing the complaint.

[31] Although, the appellant is seeking a specific report prepared by a named constable dated March 25, 2021, I find that she has not provided a reasonable basis to conclude that such report exists. I note that the ministry has provided the appellant with all responsive notebook entries of the named constable related to the complaint identified by the appellant and there is no reference to a report in these notes. Moreover, I find that the ministry's search for this report was reasonable, and I will not order it to conduct another search for the report.

***Paragraph 5 - records relating to a complaint dated August 28, 2020, that the appellant made to a named sergeant regarding a named officer.***

[32] The ministry submits that notebook entries of a named sergeant relating to a complaint dated August 28, 2020, were disclosed to the appellant by way of a supplemental decision letter, dated December 6, 2022 (pages 56 to 60 of the records).

[33] The appellant acknowledges that she received these notebook entries but wonders if there are additional records related to a follow up from these notes.

[34] Based on my review of the notes at pages 56 to 60 of the records, I find that there is no reasonable basis to conclude that any follow up records would have been generated following this complaint. Accordingly, I uphold the ministry's search for records responsive to paragraph 5 of the appellant's 12-paragraph list.

***Paragraph 7 - records about a named officer's call to a Town of Essex inspector on August 17, 2021.***

[35] The ministry states that it did not locate any phone log records related to a call placed by an OPP officer to a municipal inspector at the Town of Essex on August 17, 2021, as the OPP does not record or retain phone log records unless they go through the Provincial Communications Centre (e.g., 911 calls). The ministry submits that phone calls placed by an OPP officer using their cell phone are not recorded or retained by the OPP. The ministry submits that officers' notes related to this call were disclosed to the appellant pursuant to its supplemental decision issued following the interim order.

[36] In response, the appellant indicated that she did not receive records relating to the officer's call to the Town of Essex inspector on August 17, 2021.

[37] I have reviewed the ministry's supplemental decision letter issued after the interim order and the records that it disclosed to the appellant pursuant to that decision letter. I

find that the ministry granted the appellant partial access to records relating to an officer's call to a municipal inspector on August 17, 2021. With respect to the appellant's position that cell phone logs of OPP officers should exist, I find that the evidence before me is that the ministry does not have these logs, and the appellant has not provided me with a reasonable basis to conclude that they do. Accordingly, I uphold the ministry's search for records responsive to paragraph 7 of the appellant's list.

***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.***

[38] The ministry states that records related to the OPP's August 15, 2021, visit to the appellant and her next-door neighbour's properties have already been provided to the appellant. The ministry identifies these records as pages 10 to 12 of the records disclosed to the appellant.

[39] The appellant responds that the ministry should have located additional records of this type, including notes of two other unknown officers and phone logs. I have reviewed the notes at pages 10 to 12 of the records and find that there is no indication that other notes would have been generated at the time these notes were made. As well, I am satisfied that the ministry has searched for all responsive call logs. Therefore, I uphold the ministry's search for records responsive to this paragraph.

***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.***

[40] The ministry states that it searched for emails that the appellant claims she sent to various OPP constables, as well as emails exchanged between a constable and Town of Essex officials. It submits that it contacted these constables, who advised that they have no responsive emails. It explains that emails would not be saved if they were transitory, for example, if they were attached to a record such as a video. The ministry submits that may be the reason why no emails of the type described in paragraphs 10 to 12 were located.

[41] The ministry submits that it also searched for any records related to an interaction that the appellant had with OPP officers on May 16, 2021. It submits that the officers advised that all responsive records of this type have already been provided to the appellant and identified them as pages 1-4 of the records.

[42] In response, the appellant indicates that there must be more records of the type identified in paragraphs 10 to 12 of her list because on May 16, 2021, a constable asked her about her job.

[43] Based on my review of the appellant's representations, I do not accept the appellant's position that the fact that a constable asked her about her job provides a



reasonable basis to conclude that additional records of the type described in these paragraphs should exist.

[44] I find that the ministry has conducted a reasonable search for emails of the constables referred to in paragraphs 10 to 12, as well as records related to the appellant's May 16, 2021, interaction with the OPP. Therefore, I uphold the ministry's search for records responsive to paragraphs 10 to 12.

**Conclusion**

[45] In response to the interim order, the ministry conducted additional searches for the records described in the relevant portions of the 12-paragraph list of records, identified in the interim order. For the reasons set out above, I have found that the ministry has conducted a reasonable search for the records set out in that list and the appellant has not provided me with a reasonable basis to conclude that additional records of the types identified in each paragraph might exist. Therefore, I uphold the ministry's searches for records responsive to the appellant's request as reasonable and I dismiss the appeal.

**ORDER:**

I uphold the ministry's search for responsive records as reasonable and I dismiss the appeal.

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

\_\_\_\_\_ January 13, 2025