

Information and Privacy Commissioner,
Ontario, Canada



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

INTERIM ORDER PO-4603-I

Appeal PA23-00629

Ministry of the Solicitor

General February 5, 2025

Summary: An appellant sought access to a copy of his video interview with the Ontario Provincial Police (the OPP) under *Freedom of Information and Protection of Privacy Act*. The Ministry of the Solicitor General (the ministry) did not locate the responsive video interview.

In this interim order, the adjudicator orders the ministry to conduct another search for the video interview of the appellant.

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

OVERVIEW:

[1] A requester made an access request to the Ministry of the Solicitor General (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all records about himself involving matters that were reported to the Ontario Provincial Police (OPP)¹ about him from September 2018 until February 2023.

[2] The requester indicated that he would like everything related to himself held by the OPP and specifically the video interview where he reported an assault by a specific individual on January 18, 2020 to a named OPP officer.

¹ The OPP is part of the ministry.

[3] The ministry responded granting partial access to the records that were located and denied access to certain information in the records.² The records and information to which the ministry granted access were released to the requester.

[4] The requester (now appellant) appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (the IPC).

[5] During mediation, the appellant informed the mediator he was not appealing the ministry's decision to deny access to the information in the records. Accordingly, the ministry's claim to deny access to information from the records and deem certain information non-responsive is not at issue.

[6] The appellant advised that he was appealing the reasonableness of the ministry's search (section 24) for responsive records as he believes that a video recording of the appellant's statement involving an alleged assault made to an OPP officer should have been located. Although the ministry agreed to conduct a further search, the video recording could not be located.

[7] The appellant informed the mediator that he was not satisfied that the ministry's additional search did not locate the video recording and he wished to pursue the issue of the reasonableness of the ministry's search at adjudication. Accordingly, section 24 is the only issue remaining at issue on appeal.

[8] The appeal was transferred to the adjudication stage where an adjudicator may conduct an inquiry.

[9] I commenced an inquiry into this appeal, I sought and received representations from the ministry and the appellant. Those representations were shared in accordance with the IPC's *Code of Procedure*.

[10] During my inquiry, I confirmed that the record at issue is a video taken of the appellant's statement made at the OPP detachment and not a body camera video as it was originally described. I also clarified that the video statement that the appellant is seeking was made in January 2021, not January 2020 as set out in the request.

[11] In this interim order, I find that the ministry did not conduct a reasonable search for the January 19, 2021, video interview of the appellant and order it to conduct another search.

² The ministry denied access to some information under the discretionary exemptions at section 49(a) (discretion to refuse requester's own information) read with section 14(1) (law enforcement) and section 19 (solicitor-client privilege), and section 49(b) (personal privacy). The ministry also claimed that some information was excluded from the scope of the *Act* under section 65(5.2) (ongoing prosecution) of the *Act*. Finally, the ministry deemed some information in the records non-responsive to the request.

DISCUSSION:

[12] The sole issue to be determined in this appeal is whether the ministry conducted a reasonable search for a video statement the appellant made at an OPP detachment in January 2021 regarding an alleged assault.

[13] 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*.³ 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.

[14] 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.⁴

[15] 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;⁵ that is, records that are "reasonably related" to the request.⁶

[16] 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.⁷ 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.⁸

Representations

[17] Before it became clear that the video interview took place in January 2021, not January 2020, the ministry provided representations, in which it states provided the steps taken in its search for a 2020 video interview.

[18] The ministry provided an affidavit from an OPP Detachment Administrative Clerk (the clerk) who is familiar with the record holdings of the OPP that were searched pursuant to this appeal. In this affidavit, the clerk stated that she searched for a video interview resulting from an assault that the appellant reported in 2020. The assault led to an investigation and charges being laid.

[19] The clerk checked the share drive on the computer and the vault, a storage area

³ Orders P-85, P-221 and PO-1954-I.

⁴ Order MO-2246.

⁵ Orders P-624 and PO-2559.

⁶ Order PO-2554.

⁷ Orders M-909, PO-2469 and PO-2592.

⁸ Order MO-2185.

in the detachment where video records are stored. She did not find the responsive record. She then went to see the Court officer to find a brief that was prepared in relation to charges that were associated with the assault. She went through and watched all three DVDs that were part of the brief. She did not find the responsive record in the DVDs or elsewhere in the brief.

[20] The clerk also spoke to the OPP officer who was responsible for investigating the assault. He said he has no recollection of the video statement.

[21] The clerk did not locate a responsive video despite searching where she believed the video would be found, if it existed. She does not believe that the record, if it existed, was destroyed.

[22] In response, the appellant advised that despite the wording of his request, the video interview that he is seeking access to is from January 2021, not January 2020. He stated that on January 19, 2021, he gave a video testimony which he believes should have led to the arrest of a named person for assault. He described the video as approximately 30 minutes in length and stated that the interview was documented in a copy of the OPP officer's handwritten notes that he had received from the ministry.

[23] The appellant submits that in the officer handwritten notes (the officer's notes), the OPP officer states that:

[The appellant] wanted to give statement re possible assault by [name] earlier today, Begin statement [in] audio/video room. About 30 min[utes] in length. No R&PG [Reasonable and Probable Grounds] for assault. Advised [the appellant] of such.

[24] In response to the appellant's representations and the OPP officer handwritten notes provided by the appellant, the ministry advised it was relying on its previous representations detailing its search for the video interview regardless of whether the record was created in 2020 or 2021. It submits that the scope of the search that was conducted did not exclude records that may have been created in 2021.

[25] In conclusion, the ministry states that it has searched for the video information of January 19, 2021, and the fact that it was created in 2021, not 2020, does not change its representations, or require it to conduct an additional search.

Findings

[26] Based on my review of the parties' representations, including the handwritten OPP officer notes provided by the appellant, it appears that a video interview statement of the appellant was taken on January 19, 2021, by the OPP. In my view, the appellant has established a reasonable basis for me to conclude that a January 19, 2021, video exists.

[27] The ministry representations on search specifically detail that the record that was

being sought during its search was a record created in January 2020, not January 2021. The ministry has not provided me with sufficient evidence to demonstrate that the search that it conducted for a record created in January 2020 was the same search that it would have conducted for a record created in January 2021. Based on the OPP officer's notes, I find that the ministry should have conducted a specific search for the responsive video recorded on January 19, 2021.

[28] As stated above, 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.

[29] In this case, the ministry's search for the video interview was based on the incorrect date. As a result, I find that the ministry did not conduct a reasonable search for the video interview. Additionally, despite the appellant's representations that identify the officer who received the video statement given by the appellant and appear to confirm that the appellant made a video statement of approximately 30 minutes in length, the ministry has not provided any evidence to demonstrate that it searched its record holdings of the officer who took the video or specifically identifying that officer in its search parameters.

[30] I find that the ministry has not established that it conducted a reasonable search for the January 19, 2021, video statement made by the appellant at a specific OPP detachment. Instead, its evidence supports a conclusion that it searched for a video statement made on January 19, 2020, which is not the video statement sought by the appellant.

[31] Therefore, I will order the ministry to conduct another search for the video interview of the appellant of January 19, 2021.

ORDER:

1. I order the ministry to conduct another search for the January 19, 2021, video interview of the appellant.
2. I order the ministry to provide me with affidavit evidence describing its search efforts, within 30 days of the date of this order. At a minimum, the affidavit should include an explanation about the following:
 - a. The name(s) and position(s) of the individual(s) who conducts the new search(es) and their knowledge and understanding of the subject matter and scope of the appellant's request;
 - b. 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 steps taken in conducting the search(es);

- c. Whether it is possible that responsive records existed but no longer exist. If so, the ministry must provide details of when such records were destroyed, including information about record maintenance policies and practices, such as evidence of retention schedules; and
 - d. If it appears that no further responsive records exist after the new search, a reasonable explanation for why additional records do not exist.
3. In the event that the ministry locates additional records in its new search, or if it does not locate additional records, I order it to issue an access decision to the appellant, in accordance with the requirements of the *Act*, treating the date of this interim order as the date of the request.
 4. I remain seized of this appeal to deal with any issues arising from provisions 1, 2 and 3 above.
 5. In order to verify compliance with this order, I order the ministry to provide me with a copy of the access decision issued to the appellant pursuant to order provision 3 above, as well as any records disclosed with the access decision.

Original Signed by: _____
Diane Smith
Adjudicator

February 5, 2025 _____