

Information and Privacy Commissioner,
Ontario, Canada



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

INTERIM ORDER PO-4611-I

Appeal PA23-00199

Ministry of Municipal Affairs and Housing

February 20, 2025

Summary: An individual made a request to the ministry under the *Freedom of Information and Protection of Privacy Act* for records of directives from the Premier's office to the ministry regarding the removal of lands from the Greenbelt. The ministry's searches did not locate any responsive records, apart from the June 2022 mandate letter.

The individual believes that the records he is seeking ought to exist and appealed to the IPC challenging the ministry's interpretation of the scope of his request and the reasonableness of its searches.

In this interim order, the adjudicator considers the published evidence and findings about how direction was delivered to ministry officials and staff during the Greenbelt project. The adjudicator finds that the appellant has established a reasonable basis for believing that the records he is seeking exist but that the ministry has applied too narrow and literal an interpretation of his request. The adjudicator finds that the ministry conducted a reasonable search for responsive emails; however, the adjudicator orders the ministry to conduct a further search for other types of responsive records.

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

Orders Considered: Orders M-909, PO-3304, PO-4449-I and PO-4505-F.

Reports Considered: *Special Report on Changes to the Greenbelt*, Office of the Auditor General, August 2023; *Report of the Integrity Commissioner re: Minister of Municipal Affairs and Housing*,

August 2023; Standing Committee on Public Accounts' *Consideration of the Special Report on Changes to the Greenbelt*, May 6, 2024.

OVERVIEW:

[1] In June 2022, the Premier's mandate letter to the Minister of Municipal Affairs and Housing (the former minister) included direction about policy relating to Ontario's Greenbelt plan. On November 4, 2022, the government announced a proposal to remove selected parcels of land from the Greenbelt for housing development.

[2] This order considers the scope of a request for records of directives from the Premier's office to the Ministry of Municipal Affairs and Housing (the ministry) regarding the selection of land for removal from the Greenbelt (the Greenbelt project), as well as the ministry's searches in response to the request.

[3] The ministry received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for the following:

All directives sent by any official in the premier's office to any Ministry of Municipal Affairs and Housing official concerning the removal of lands from the Greenbelt, including directives sent by email, memo, text message, hard copy or other media.

Time period: June 2, 2022 to November 4, 2022

[4] The ministry conducted an initial search upon receipt of the request in February 2023 and did not locate any responsive records.

[5] The requester (now appellant) appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (IPC). Following notification of the appeal, the ministry carried out supplementary searches to locate responsive records in November 2023 and February 2024. The ministry advised the appellant that the supplementary searches did not locate any responsive records. The appellant asserts there are reasonable grounds for believing that responsive records exist. In this appeal, the appellant challenges the ministry's interpretation of the request and the reasonableness of its searches.

[6] Mediation did not resolve the issues in the appeal and the file was transferred to the adjudication stage of the appeal process.

[7] I decided to conduct an inquiry and invited and received representations from the parties. During my inquiry, the ministry issued a revised decision letter to the appellant identifying the mandate letter sent by the Premier to the former minister in June 2022 (the mandate letter) as responsive to the request. The ministry denied access to the mandate letter citing the exemption in section 12 (cabinet records). The appellant has

confirmed that he is not pursuing access to the mandate letter. Accordingly, the application of the cabinet records exemption is not at issue in this appeal.

[8] For the reasons that follow, I find that the appellant has established a reasonable basis for believing that the records he is seeking exist. I also find that the ministry has applied a narrow literal interpretation of the appellant's request. I uphold the ministry's search to the extent that it sought to locate responsive records contained in emails. However, I order the ministry to conduct a further search for other types of records, in accordance with the findings set out in this Interim Order.

ISSUES:

- A. Is there a reasonable basis for the appellant's belief that responsive records exist?
- B. What is the scope of the request for records?
- C. Did the ministry conduct a reasonable search for records?

DISCUSSION:

Issue A: Is there a reasonable basis for the appellant's belief that responsive records exist?

[9] In this appeal, the appellant claims that records exist that are responsive to his request, in addition to the mandate letter. Although a requester will rarely be in a position to indicate precisely which records an institution has not identified, they still must provide a reasonable basis for concluding that such records exist.¹

[10] The appellant's request relates to the government's decision to amend the Greenbelt plan, which it announced on November 4, 2022, and subsequently reversed. The decision-making process for the selection of land for removal from the Greenbelt has been the subject of two reports by independent officers of the Legislative Assembly of Ontario; a report of the Auditor General of Ontario² (the Auditor General's report) and a report of the Office of the Integrity Commissioner of Ontario³ (the Integrity Commissioner's Report).

[11] In addition, senior ministry officials have provided sworn testimony to the Select Committee on Public Accounts, when it considered these two reports in May 2024. This

¹ Order MO-2246.

² *Special Report on Changes to the Greenbelt* published in August 2023 following an audit pursuant to the *Auditor General Act*.

³ *Report of the Integrity Commissioner re: Minister of Municipal Affairs and Housing*, published in August 2023 following an investigation pursuant to the *Members' Integrity Act*.

testimony is published on the website of the Legislative Assembly.⁴

[12] The appellant cites these reports, together with the testimony of ministry officials and records released by the ministry in response to other access requests made under the *Act*, in support of his belief that records responsive to his request exist.

[13] In contrast, the ministry cites the reports in support of its position that no records of direction from the Premier's office to the ministry regarding the Greenbelt project exist (other than the mandate letter). The ministry states that its response to the appellant's request was informed by an understanding of how the Greenbelt project was carried out. Specifically, the ministry relies upon the details in the published reports about the project, including communications between staff in the former minister's office and the Premier's office relating to the selection of land.

[14] For the reasons set out in the analysis section below, I accept the appellant's submission that responsive records ought to exist. I am satisfied that the published evidence and findings in the reports provide a reasonable basis for the appellant's belief. Given their relevance to my determinations in this appeal, I have set out below some of the evidence and findings relied upon by the parties.

[15] This evidence is relevant to my findings regarding the reasonableness of the appellant's belief that records responsive to his request ought to exist, the scope and interpretation of the request, and the reasonableness of the ministry's searches for responsive records.

Auditor General's Report – the parties' representations

[16] The appellant makes general references to the Auditor General's report. In particular, the Auditor General's observations regarding the use of personal email by political staff to discuss the Greenbelt project and that email records were "regularly being deleted by political staff."⁵

[17] The ministry submits that the Auditor General's report describes the role of the Premier's office staff in the Greenbelt project and lists several pages in the report where this is set out.⁶ I have reviewed all the pages listed by the ministry and reproduce a selection here.

[18] The Auditor General's overall conclusion:

We found that in June 2022, the [former minister] was assigned, through a mandate letter, to "codify processes" to amend the Greenbelt. However, it

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<https://www.ola.org/en/legislative-business/committees/public-accounts/parliament-43/transcripts/committee-transcript-2024-may-06>

⁵ Auditor General's report, page 67.

⁶ Auditor General's report, pages 10, 14, 30, 32, 33, 38, 40-41 and 71-72.

was the [former minister's] Chief of Staff who identified specific land sites and provided them to the Greenbelt Project Team to assess for their expedient removal from the Greenbelt...

The [former minister] told us that although he became aware in June 2022 that there would eventually be a new codified process to amend the Greenbelt, he was not aware of how the specific land sites covered by [the proposed legislation] were identified for assessment and removal from the Greenbelt. Based on our interviews, other political public service staff in the minister's office, the Premier's Office and non-political public service staff in Cabinet Office indicated that they were similarly not aware of how specific properties were identified... The [former minister] indicated that he first became aware of the specific land sites proposed for removal on October 26 and the Premier indicated he first became aware of the specific land sites proposed for removal on November 1, prior to a Cabinet meeting on November 2.⁷

[19] The ministry lists page 32 of the Auditor General's report where the detailed observations regarding the Selection of Land Sites for Removal from the Greenbelt are set out. These include the observations that:

- The former minister's Chief of Staff was given responsibility by the Premier's office to direct a project to change the Greenbelt's boundary;
- The former minister's Chief of Staff informed the ministry that the government wished to initiate a site-specific review; and
- The former minister's Chief of Staff instructed the Deputy Minister to assemble a small team of public servants to assess land sites for possible removal from the Greenbelt.

[20] On the same page, the Auditor General records that:

During the process, the [former deputy minister] believed that the [former minister's] Chief of Staff was working under the authority of the Housing Minister and the Premier's Office. Typically, a Chief of Staff works under the authority of a minister and the Premier's Office. Consequently, the ministry's non-political public service staff believed that directions or instructions provided by the [former minister's Chief of Staff] were provided under the authority of the [former minister] and the Premier's Office.⁸

⁷ Auditor General's report, page 14.

⁸ Auditor General's report, page 32.

Integrity Commissioner's report – the parties' representations

[21] Both parties refer to the report of the Integrity Commissioner in support of their positions. The appellant submits that the Integrity Commissioner's report provides evidence of discussions between staff in the Premier's office and ministry staff in relation to the Greenbelt amendment and that this supports the existence of the records he is seeking.

[22] The appellant cites the evidence from the Integrity Commissioner's report about discussions following the former minister's receipt of the mandate letter. The appellant refers to the evidence of the former minister speaking with the Premier's former Chief of Staff and the Premier regarding the inclusion of the Greenbelt amendment item in the mandate letter;⁹ and the evidence of the Premier's former deputy Chief of Staff regarding the usual "back and forth" between a minister's office and the premier's office where the latter is the "senior partner in the relationship and the ministry will be the subject matter expert"¹⁰.

[23] The appellant submits that the evidence of these discussions or "back and forth" provide a reasonable basis for believing that records of direction from the Premier's Office to the ministry staff ought to exist.

[24] The ministry relies upon the Integrity Commissioner's report as supporting its position that no responsive records exist. Specifically, the ministry cites paragraph 170 of the report, where the Integrity Commissioner concludes:

Based on the contemporaneous notes and evidence of the ministry officials whom I interviewed I find it more likely than not that [the former minister's Chief of Staff] did say that the properties were given from the premier or the Premier's Office but, for reasons set out [below], his motive for dropping the name of the premier or the office was probably done to lend authority to his direction to the ministry public servants and not based in reality.

[25] The ministry referred me to the evidence in the report regarding possible consultation between the former minister's Chief of Staff and the Premier's Office.¹¹ This includes evidence of the political staff in the former minister's office and the Premier's office being in frequent contact during the fall of 2022 but not discussing the Greenbelt until mid-to-late October. The ministry submits that this evidence refutes the appellant's suggestions regarding direction from the Premier's Office.

⁹ Integrity Commissioner's report, paras 58 and 59.

¹⁰ Integrity Commissioner's report, para 55.

¹¹ Integrity Commissioner's report, paras 209 to 236.

Testimony to the Standing Committee on Public Accounts – the appellant’s representations

[26] The appellant refers to the sworn testimony of the former Deputy Minister and the Assistant Deputy Minister before the Standing Committee on Public Accounts, when it considered the recommendations set out in the Auditor General’s report. The appellant submits this testimony demonstrates that senior ministry officials believed that the former minister’s Chief of Staff received directives from the Premier’s office concerning the Greenbelt project.

[27] In particular, the appellant relies upon this extract from the Assistant Deputy Minister’s evidence:

[Question]: With the Integrity Commissioner’s report, on page 46, there is a statement there saying that you told the Integrity Commissioner that [the former minister’s Chief of Staff] would generally receive direction on policy details from the Premier’s office. That’s from the Integrity Commissioner’s report.^[12] So do you believe that the Premier’s office provide [sic] direction to [the former minister’s Chief of Staff] about the selection of sites for removal from the greenbelt? Given that that’s what was said to the Integrity Commissioner.

Assistant Deputy Minister: Certainly. In discussions we had with [...] who was the chief of staff at the time, he indicated that he had been in touch with the Premier’s office, but we had just his verbal recollections to go from.

[28] The appellant also refers to this extract from the testimony of the former Deputy Minister in support of his position:

[Question]: This is again a question to [the former Deputy Minister]. This also, I believe, refers to statements that you made to the Integrity Commissioner. On page 46 of the Integrity Commissioner’s report, you said that you believe the selection of sites for removal from the greenbelt “was done in some capacity with the Premier’s office.”^[13] Could you clarify what you mean by that statement? Who was talking to who?

[Former Deputy Minister]: As the secretary noted in her response to your question, the original direction in respect of removal and addition of lands from the greenbelt originates with a mandate letter, which comes from cabinet and the Premier’s office is aware of that and engaged in that.

During the course of the work during the month of October, [the former minister’s Chief of Staff] did refer to conversations with the Premier’s office,

¹² Integrity Commissioner’s report, para 161.

¹³ Integrity Commissioner’s report, para 162.

and that was the basis of my understanding, was his reference to conversations that he was having as described to me and [the Assistant Deputy Minister.]

Analysis and finding

[29] For the reasons that follow, I do not accept the ministry's submission that the evidence given to the Integrity Commissioner, reflected in the published report, demonstrates that no records of direction from the Premier's office regarding the Greenbelt project exist. From my review of the published reports and the testimony to the Standing Committee, I am satisfied that they provide a reasonable basis for the appellant's belief that records responsive to his request ought to exist.

[30] The evidence relied upon by both parties in this appeal regarding the lines of communication between the Premier's Office and the ministry during the Greenbelt project supports this conclusion. As set out above, the evidence and findings point to the former minister's Chief of Staff being given responsibility to direct the Greenbelt project¹⁴, that this individual provided direction and instruction to ministry officials¹⁵, that this instruction was delivered verbally¹⁶ and that it included reference to the Premier's office.¹⁷

[31] The ministry's position is that no directives were in fact sent from officials in the Premier's office to officials in the ministry's office. However, the evidence of senior ministry officials regarding their understanding at the time they carried out the Greenbelt project is that the instructions delivered verbally by the former minister's Chief of Staff originated in conversations with the Premier or his office. This is their sworn testimony to the Standing Committee, set out in paragraphs 27 and 28 above.

[32] The reports of the Auditor General and the Integrity Commissioner may cast doubt on whether the verbal direction received by ministry officials *actually* originated in the Premier's office or, as the Integrity Commissioner concludes, the name of the Premier or his office was used to "lend authority to his direction"¹⁸. However, the veracity of the direction delivered orally to ministry officials is not relevant to the issue of whether records of that verbal direction exist. In my view, the evidence set out above provides a reasonable basis for believing that verbal direction regarding the Greenbelt project was given to ministry officials that was, at the time it was received, understood to originate with the Premier or his office notwithstanding that the authority of that direction may subsequently have been called into question.

[33] Regarding records of verbal direction, the ministry submits that there is no basis for suggesting that they exist. The ministry states that the references in the Integrity

¹⁴ Auditor General's report, page 32.

¹⁵ Auditor General's report, page 32.

¹⁶ Testimony of the Assistant Deputy Minister to the Standing Committee.

¹⁷ Integrity Commissioner's report, para 170.

¹⁸ Integrity Commissioner's report, para 170.

Commissioner's report cited by the appellant are of meetings, discussions and face to face "chats" between staff in the Premier's office and the minister's office. The ministry's position is that there is nothing in these references to suggest that records of these interactions exist. The ministry submits that if there were such records, they would have been provided to the Auditor General and the Integrity Commissioner and would be reflected in their reports.

[34] I find that the ministry's submission fails to acknowledge the Integrity Commissioner's conclusion about how the former minister's Chief of Staff delivered direction, mentioning the Premier or his office, to ministry officials. I am satisfied that the report supports the existence of records relating to verbal direction delivered in staff meetings. It is also evident from the report that some records of meeting notes were provided to the Integrity Commissioner.

[35] For example, in the extract from the report cited by the ministry, the Integrity Commissioner states that his finding regarding mention of the name of the Premier or his office is based in part upon *contemporaneous notes*. The contemporaneous notes in the report include notes made by ministry officials and staff in meetings with the former minister's Chief of Staff.¹⁹

[36] The contemporaneous meeting notes made by ministry staff are discussed in the following extract:

[219] On the evening of October 17, 2022, [the former minister's Chief of Staff] emailed [political staff in the Premier's office] and asked for a time to review a project he has been working on. [The Premier's Chief of Staff] responded to all the same evening, stating that this is timely and critical and suggested a date a few days later.

[220] It is unclear precisely when the next meeting with Premier's Office staff was held, but [the former minister's Chief of Staff] said it was shortly thereafter that he started briefing them about the project details. After October 17, 2022, the typed meeting notes taken by ministry staff at their meetings with [the former minister's Chief of Staff] also begin to contain multiple references to him consulting with the Premier's Office.

[221] For example, on October 19, 2022, there is a note "[the former minister's Chief of Staff] – meeting with PO at 330" and on October 21, 2022, with respect to the areas of land to be added to the Greenbelt in the Paris Galt Moraine area, there is a note "[former minister's Chief of Staff] – presented options to PO..." [...]

¹⁹ Integrity Commissioner's report, para 200.

[222] As set out in paragraph 200, the October 21, 2022 typed notes of one ministry official also reference [the former minister's Chief of Staff] speaking with representatives of the Premier's Office.

[223] The other set of typed notes made by another ministry official at this October 21, 2022 meeting contain no specific references to the Premier's Office but one reference to "discussing with P," which is reviewed in detail [below].

[37] The Integrity Commissioner explains that the references in the notes to "PO"²⁰ is short form for the Premier's office²¹ and "P" is short form for the Premier.²²

[38] These meeting notes are referenced throughout the report.²³ The Integrity Commissioner specifically refers to contemporaneous notes of direction in these typed notes of ministry officials, which had been saved under a file named "MO direction – Notes from meetings,"²⁴ where MO is short form for the minister's office.²⁵

[39] For these reasons and in light of the evidence of senior ministry officials, the observations and conclusions in the published reports and the references to the contemporaneous meeting notes reviewed by the Integrity Commissioner as part of his office's investigation, I find the appellant has provided a reasonable basis for believing that records responsive to his request exist.

Issue B: What is the scope of the request for records?

[40] The appellant's position is that the ministry has narrowly interpreted his request so that it failed to locate the responsive records that he believes exist.

[41] Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. Section 24(1) states that a person seeking access to a record shall provide sufficient detail to enable an experienced employee of the institution, upon reasonable effort, to identify the record. When responding to a request, an institution interprets the request to ascertain its scope and identify records that are "responsive" to the request in its searches. To be considered responsive to the request, records must "reasonably relate" to the request.²⁶

[42] Section 24(2) of the *Act* provides that if a request does not sufficiently describe the record, or records, being sought, an institution should inform the requester of the

²⁰ Integrity Commissioner's report, paras 220 to 222

²¹ Integrity Commissioner's report, para 164.

²² Integrity Commissioner's report, paras 223 and 231.

²³ For example, Integrity Commissioner's report, paras 118, 119, 164, 170, 183, 199, 200, 208, 241, 460 and 522.

²⁴ Integrity Commissioner report, para 208.

²⁵ Integrity Commissioner's report, para 207

²⁶ Orders PO-881 and PO-2661.

defect and offer assistance in reformulating the request so as to comply with section 24(1).

[43] Institutions should interpret requests generously, to best serve the purpose and spirit of the *Act*. Generally, if a request is unclear, the institution should interpret it broadly rather than restrictively.²⁷

Ministry's representations

[44] The ministry's position is that it has accurately defined the scope of the appellant's request and fulfilled its obligations under section 24 of the *Act*.

[45] The ministry submits that the request provides sufficient detail to identify responsive records. The ministry states that the request unambiguously identified the types of records sought, as well as the relevant organisations, employees and time periods.

[46] Regarding the definition of the word "directives," the ministry submits that this word has a clear and unambiguous meaning. In the context of the operations of government, the ministry states that "a directive signals an official and final instruction issued by a person or entity with authority that requires certain actions be taken." The ministry states that this is the meaning it adopted in its original search for records responsive to the request. Accordingly, the ministry submits it initially considered that records of the policy priorities for the new government were beyond the scope of the request.

[47] The ministry acknowledges that where there is ambiguity in the language of a request, it should be resolved in the requester's favour. However, the ministry's position is that the language of the appellant's request is unambiguous.

[48] The ministry states that during mediation, it learned that the appellant interpreted the word directive to mean "something that serves to direct, guide and usually impel toward an action or goal."

[49] The ministry states that it conducted supplementary searches using the appellant's preferred definition to locate records containing "direction, instructions or guidance."

[50] The ministry submits that it has neither unilaterally defined the scope of the appellant's request, nor has it chosen to respond literally. The ministry states that it interpreted the scope of the request to include any email, memo, text message, hard copy or other media, that directed, instructed or guided the removal of lands from the Greenbelt sent from an official in the Premier's office to a ministry official in the specified time period.

²⁷ Orders P-134 and P-880.

[51] The ministry states that the supplementary searches, which took place in November 2023 and February 2024, located no responsive records other than the mandate letter which it decided to withhold. As noted above, the appellant is not pursuing access to the mandate letter in this appeal.

Appellant's representations

[52] The appellant's position is that the ministry has too narrowly interpreted his request.

[53] The appellant cites Order PO-3304 in which Former Commissioner Brian Beamish stated that institutions should adopt a liberal interpretation of a request to best serve the purpose and spirit of the *Act* and, generally, ambiguity in a request should be resolved in the requester's favour.

[54] The appellant submits that it was unreasonable of the ministry to interpret his request literally to only include records of "directive" or "directives" but excluding records of "direction."

[55] The appellant further submits that it was unreasonable for the ministry to conclude that the term "directive" has the same meaning within the ministry as it does to someone "outside government." It is the appellant's position that the ministry had an obligation to seek clarity from him about the scope of the request and it failed to do so.

[56] The appellant states that the Merriam-Webster dictionary defines the term "directive" as "something that serves to direct, guide and usually impel toward an action or goal". The appellant submits that this definition provides a reasonable interpretation of "directive" in his request. The appellant provided this definition to the ministry, which it used in its supplementary searches. Nonetheless, the appellant submits that "there are grounds to fear the ministry may still be using unreasonably narrow search terms."

Analysis and findings

[57] For the reasons that follow, I find that the ministry has adopted too narrow an interpretation of the appellant's request and failed to acknowledge how direction regarding the Greenbelt project was communicated to ministry officials and staff.

[58] Clarifying the scope of a request to identify responsive records or information is a fundamental first step in responding to an access request under the *Act*. If an institution fails in its obligation to seek clarification regarding the scope of a request, it cannot rely on a narrow interpretation of the scope of the request on appeal.²⁸

²⁸ Order P-134.

Clarifying the scope of the request

[59] The duty under section 24(2) of the *Act* to seek clarification arises where a request lacks sufficient detail to enable the institution to identify the records sought in its searches.

[60] It is apparent that the parties initially adopted different interpretations of the term "directive." Words may have different meanings in different contexts. However, in the context of the appellant's request, I find that the term "directive" is not so unclear that the ministry was obliged to seek clarification before conducting its initial search for responsive records.

[61] In any event, if there was any ambiguity in the request regarding the meaning of the term "directive", the ministry resolved it in the appellant's favour. I accept the ministry's submission that in its supplementary searches, it adopted the appellant's preferred definition of the term "directive" taken from the Merriam-Webster dictionary. I also accept that when it adopted the appellant's preferred definition, it interpreted "directive" to include "direction, instruction or guidance".

Ministry's interpretation of the request

[62] Notwithstanding my finding that the ministry was not obliged to seek clarification of the request, I find that it interpreted the scope of the request narrowly. In light of the evidence before me regarding how direction was communicated to ministry officials during the Greenbelt project, I find that the ministry failed to interpret the request to include records of the verbal direction delivered to ministry officials and staff that referenced the Premier or his office.

[63] The ministry submits that the types of records sought in the request is clearly stated as directives concerning the removal of land from the Greenbelt "whether sent by email, memo, text message, hard copy or other media." I agree that the appellant's request expressly includes records containing directives in these formats. However, I find that the ministry narrowly interpreted the request by limiting its response to these types of records only.

[64] I find that the ministry's interpretation of the request, informed by the knowledge of its staff about how the Greenbelt project was undertaken, should reasonably have included records of the verbal instruction, direction and guidance delivered by the former minister's Chief of Staff that referred to the Premier or his office.

[65] The ministry cites Order PO-4337, in which the adjudicator stated that institutions should interpret requests generously to best serve the purpose and spirit of the *Act*. I agree with this approach. I find that the ministry's interpretation of the request, which it limited to written directives sent directly from the Premier's office to ministry staff in emails does not serve the purpose of the *Act* to provide a right of access to information that ensures transparency and accountability of government decision making.

[66] In summary, I find that the scope of the request includes contemporaneous records of verbal direction relayed by the former minister's Chief of Staff to ministry staff apparently from the Premier or his office.

Issue C: Did the ministry conduct a reasonable search for records?

[67] The ministry's position is that it has conducted reasonable searches and has not located any records responsive to the appellant's request, other than the mandate letter. The appellant's position is that responsive records exist.

[68] When a requester claims that additional records exist beyond those found by the institution, the issue on appeal is whether the institution has conducted a reasonable search for records as required by section 24 of the *Act*.²⁹ 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.

[69] 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.³⁰ 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.³¹

Ministry's representations and evidence

[70] The ministry states that its Freedom of Information office (FOI office) received the appellant's request in February 2023. The FOI office notified staff in the Business Management Division, Planning and Growth Division, Legal Services Branch, Communications Branch, the Deputy Minister's Office and the Minister's Office, of the request.

[71] The ministry states that staff in each of these divisions are experienced employees knowledgeable about the withdrawal of lands from the Greenbelt because they were involved in the Greenbelt project. The ministry submits that staff in the Planning and Growth Division and Legal Services Branch conducted the initial searches in response to the request.

[72] The ministry submits that the staff who conducted the initial searches were also involved in gathering records as part of the Auditor General's audit and the Integrity Commissioner's investigation and other searches for records in response to the many requests made to the ministry under the *Act* relating to the Greenbelt project.

[73] The ministry states that the staff who conducted these searches informed the FOI

²⁹ Orders P-85, P-221 and PO-1954-I.

³⁰ Orders M-909, PO-2469 and PO-2592.

³¹ Order MO-2185.

office that no responsive records were located.

[74] The ministry states that after it received notice of this appeal, it conducted two supplementary searches for records. The Director of the ministry's Corporate Services Branch (the Director) conducted these supplementary searches, which are described in an affidavit and summarised below. The ministry submits that the supplementary searches, using the appellant's preferred broader definition of the term "directive," did not locate any responsive records.

[75] The ministry refers to Orders PO-4449-I and PO-4505-F in which the IPC considered the measures the ministry has put in place to preserve records relating to the Greenbelt project. The ministry submits that the findings in these orders demonstrate that it has a "regularized and managed system" for records relating to the Greenbelt project. The ministry cites Order PO-1943 in which the IPC held that an institution's ability to conduct a reasonable search is contingent on it maintaining records in a "regularized and managed system."

Director's evidence: experience and knowledge

[76] In her affidavit, the Director explains that she has worked in the Ontario public service for nearly two decades and during this time she has been employed at Cabinet Office where she worked with staff in the Premier's office. The Director also explains that she has worked closely with the minister's office staff when she was Special Advisor to the deputy minister in relation to land use planning files. From this experience, the Director states that she understood that any direction or guidance from the Premier's office would be sent to the minister or senior staff in the minister's office and not directly to non-political public servants in the ministry. Accordingly, the Director states that she focused her searches on the email accounts of the former minister, the former minister's Chief of Staff and deputy Chief of Staff.

[77] The Director explains that through her experience in the ministry, she has a strong understanding of land use planning matters and matters related to the Greenbelt. The Director states that since the announcement to amend the Greenbelt in November 2022, the ministry has received over 100 access requests under the *Act* for records relating to the decision-making concerning the removal of lands from the Greenbelt. In addition, the Director explains how records relating to the Greenbelt amendment were provided to the offices of the Auditor General and the Integrity Commissioner as part of their respective audit and investigation. The Director states that she has been involved in the searches and collection of Greenbelt records for these external processes. The Director states that this work included searches of the email accounts of the former minister and the former minister's office staff, review of records and document-collection processes. The Director states that she has an extensive familiarity with and knowledge of the ministry's records related to the Greenbelt project.

Director's evidence: supplementary searches

[78] The Director states that for two days in November 2023, she conducted a search for records responsive to two other requests under the *Act* seeking access to records related to the Greenbelt amendment. The Director states that she used these searches to locate records that are responsive to the appellant's request.

[79] In conducting this search, the Director states that she reviewed the email accounts of political staff that the Ministry of Public and Business Service Delivery's Infrastructure Technology Services (ITS) retrieved as part of the Auditor General's audit.

[80] The Director explains that the ministry stored the retrieved data on a secured hard drive for the purposes of preserving these records and facilitating the ministry's response to access requests made under the *Act*.

[81] The Director states that when she conducted the search on the secured drive, she used the keywords "Greenbelt", "GB" and "Special Project." In addition, the Director states that this supplementary search included the Ontario.ca data files belonging to the former minister's Chief of Staff and Deputy Chief of Staff from the period specified in the appellant's request. The Director states that this supplementary search did not locate any records responsive to the appellant's request.

[82] The Director states that for two days in February 2024, she conducted a further supplementary search for responsive records and devoted these searches entirely to the appellant's request and using the appellant's preferred definition of the term "directive."

[83] The Director states that she was granted access to the full email accounts of the former minister's Chief of Staff and Deputy Chief of Staff. The Director states that she searched these accounts for records responsive to the appellant's request using the search terms "OPO", which is found in email addresses of all staff in the Premier's office, and "Greenbelt". The Director states that this search located many records, which she manually reviewed to determine their responsiveness to the appellant's request.

[84] The Director states that her review did not locate any responsive records. She states that no records contained direction from officials in the Premier's office to ministry officials impelling the removal of lands from the Greenbelt. The Director states that to the best of her knowledge the ministry has searched all locations where responsive records could exist. While she states that she is unable to comment on whether it is possible that responsive records that may have at one time existed are no longer available, the Director submits that the ministry's record retention schedules have been developed in accordance with the requirements of the *Archives and Recordkeeping Act*, 2006.

Appellant's representations

[85] The appellant's position is that the ministry's original search was unreasonable

because of its interpretation of the term “directive.” I have addressed the ministry’s interpretation of the request above. Regarding the supplementary searches, the appellant submits that the ministry has not provided adequate details about its “revised search methodology” or indicated the search terms used to conduct these searches.

Individuals with direct knowledge of responsive records

[86] The appellant submits that there is no evidence that the ministry consulted employees with direct experience of the Greenbelt project or employees with knowledge of directives from the Premier’s office. The appellant submits that information concerning the Greenbelt project was “tightly controlled within the ministry.” The appellant states that several specific employees would have knowledge about how to locate records that are responsive to his request.

[87] Referring to the testimony of the former Deputy Minister and Assistant Deputy Minister given to the Standing Committee on Public Accounts,³² the appellant submits that the ministry should have consulted these individuals to “verify” that its search methodology was reasonably likely to capture all responsive records.

Use of code terms and deletion of Greenbelt records

[88] The appellant states that in records received from the ministry in response to other access requests, it is evident that those involved in the Greenbelt project used code terms when referring to this work.

[89] The appellant submits that the use of code terms and the Auditor General’s published observations that personal email accounts were used to conduct government business, and the deletion of records mean that “special efforts” are required to conduct a reasonable search in response to his request.

Ministry’s failure to search all relevant accounts

[90] Finally, the appellant submits that the ministry has failed to search all relevant email accounts for responsive records. The appellant states that while the ministry has searched the Ontario.ca email accounts of the officials who would normally have received directives from the Premier’s office, the processes adopted by those responsible for the Greenbelt project were unusual. The appellant submits that it is unreasonable for the ministry to rely on standard search methods to locate records created in decision-making processes that departed from normal ministry practices.

Ministry’s reply representations

[91] The ministry reiterates its position regarding its searches, the methodology and the search terms used. The ministry disputes the appellant’s assertion that the individuals

³² [Standing Committee on Public Accounts on May 6, 2024](#)

who conducted the searches lack the requisite experience with the Greenbelt project. As already noted, the ministry submits that the published reports set out in detail the decision-making process for the Greenbelt amendment and the channels of communication between staff in the minister's office and the Premier's office.

[92] The ministry submits that there was no need to consult with the three current and former ministry employees identified by the appellant as having direct knowledge of the Greenbelt project. The ministry states that two of these employees no longer work in the positions they held during the relevant time. Accordingly, the ministry submits that their knowledge and familiarity with the Greenbelt records is not as recent as that of the Director who conducted the searches. The ministry states that the third employee identified by the appellant, the Assistant Deputy Minister, did participate in its response to the request.

[93] In response to the appellant's submission that the ministry ought to have searched the personal email accounts of former employees, the ministry states that the Director has searched for email records that originated from or were sent to, former employees' personal email accounts. The ministry also states that it has taken steps on two occasions to attempt to retrieve any records related to government business that may be contained in the personal email or messaging accounts of a former employee. It states that it has not retrieved any additional records.

[94] The ministry relies on Order PO-4505-F, which sets out the measures it has taken to secure the preservation of responsive records for the purposes of processing access requests made under the *Act*.

Analysis and findings

[95] For the reasons that follow, I uphold the ministry's search in part. However, I find that the ministry's response to the appellant's request was based upon its normal practice regarding the communication of direction from the Premier's office. I am not satisfied that the ministry's searches were informed by the knowledge of its employees about how the Greenbelt project was undertaken.

[96] I find some aspects of the ministry's searches were reasonable. In its searches for responsive records contained in emails, I am satisfied that the ministry used reasonable efforts to search its preserved Greenbelt records for emails of political staff, searched for "code names" and took steps to locate records originating in or sent to personal emails and to recover deleted records.

[97] Before I consider the reasonableness of the ministry's searches, I address the appellant's submission that the subject matter of his request requires "special efforts" to locate responsive records.

Special efforts

[98] The appellant's position is that the subject matter of his request requires "special efforts" by the ministry to locate responsive records. The appellant provides three reasons why special efforts are necessary. First, the appellant states that the Auditor General's report and records released in response to other access requests reveal that those working on the Greenbelt amendment used code terms in an attempt to "conceal" information.

[99] Second, the appellant states that the government's decision-making process leading to the proposal to remove land from the Greenbelt is a matter of compelling public interest and has been the subject of review and investigation by the Auditor General and the Integrity Commissioner. Finally, the appellant states that the Auditor General's published observations point to the "improper" use of personal email accounts by political staff and "unlawful" deletion of email, which are contrary to the purposes of the *Act*.

[100] The IPC has consistently interpreted an institution's search obligations upon receiving an access request under the *Act*. In Order M-909, the adjudicator articulated this duty, where she stated:

In my view, an institution has met its obligations under the *Act* by providing experienced employees who expend a reasonable effort to conduct the search, in areas where the responsive records are likely to be located. In the final analysis, the identification of responsive records must rely on the experience and judgment of the individual conducting the search.

[101] I agree with this approach and adopt it in this appeal. I am not persuaded that the use of code terms, the heightened public interest in the subject matter of the request or the observations of the Auditor General place a more onerous burden upon the ministry to make "special efforts," beyond what is reasonable, to locate records responsive to the appellant's request.

[102] The *Act* does not require the ministry to prove with certainty that the records the appellant is seeking do not exist. To properly discharge its obligations under the *Act*, the ministry must provide sufficient evidence to show that it has made a reasonable effort to identify and locate any records that are responsive.³³ There is no basis for me to find that the ministry is required to expend additional efforts, over and above what is reasonable.

Employees knowledgeable in the subject matter of the request

[103] I am satisfied that the ministry's employees involved in its response to the appellant's request are knowledgeable about the Greenbelt project. I accept that initially staff in the relevant program areas were notified of the request and searches for records were carried out, including in the Deputy Minister's office and the former minister's office.

³³ Order PO-2559.

I also accept the ministry's submission that the Assistant Deputy Minister was involved in its initial searches.

[104] Regarding the supplementary searches, I accept the Director's evidence of their experience in land use planning matters and their particular knowledge of these aspects of the Greenbelt project. In addition, I find that the Director has had extensive involvement in responding to access requests made under the *Act*, at the ministry and other government departments. I note that the Director was closely involved in the collection and review of records as part of the ministry's participation in the Integrity Commissioner and Auditor General's processes.

[105] Notwithstanding that I find the Director has experience in the subject matter of the request, I find it unreasonable that their knowledge of how the Greenbelt project was undertaken did not inform the manner in which they conducted the searches.

[106] The ministry's evidence is that its searches were based upon the usual practice of sending direction and guidance from the Premier's office to a minister or senior staff in the minister's office. The ministry makes this submission to explain that the Director focussed her searches on the email accounts of the former minister and their Chief of Staff and deputy Chief of Staff.

[107] However, the evidence and findings in the Auditor General and Integrity Commissioner's reports support the appellant's submission that the processes followed in relation to the Greenbelt project departed from the ministry's normal practice. The appellant cites the sworn testimony of the former Deputy Minister and the Assistant Deputy Minister to the Standing Committee to argue that they should have been consulted to "verify" that the ministry's search methodology was reasonably likely to capture all responsive records.

[108] The ministry states that the Assistant Deputy Minister was involved in its initial searches. From my review of their testimony, I find it unreasonable that the Assistant Deputy Minister's knowledge of the Greenbelt project did not lead to searches to locate records of the direction delivered verbally by the former minister's Chief of Staff during meetings with ministry officials and staff, where the Premier or his office were mentioned. Had this been done, the ministry's searches might have located the contemporaneous meeting notes that were provided to the Integrity Commissioner referred to above.³⁴

[109] For these reasons, I find that the ministry's searches were unreasonably based on its usual practice rather than the knowledge of its employees about how the Greenbelt project was undertaken, which was a departure from normal processes.

[110] Accordingly, I will order the ministry to conduct a further search in accordance with my findings regarding responsive records in contemporaneous notes of meetings

³⁴ See paragraphs [35] and [36].

between ministry staff and the former minister's Chief of Staff.

Preserved records relating to the Greenbelt

[111] The appellant submits that in Interim Order PO-4449-I, the IPC ordered the ministry to take steps to preserve records relating to the government's proposal to amend the Greenbelt plan and that it is unclear whether these preserved records include those responsive to his request.

[112] In light of the Auditor General's published observations regarding records relating to the Greenbelt project, the IPC issued Interim Order PO-4449-I on its own initiative and on an urgent basis to address the risk that records might be irretrievably lost or destroyed.

[113] Pursuant to Interim Order PO-4449-I, the ministry provided the IPC with affidavit evidence of the measures in place to secure the preservation of Greenbelt records pending the processing of access requests made under the *Act*.

[114] In Order PO-4505-F, I considered the ministry's evidence of the steps taken to preserve Greenbelt records and made several findings. The ministry now relies on these findings to demonstrate that it has adopted a regularized and managed system for records relating to the Greenbelt project enabling it to carry out reasonable searches.

[115] In January 2023, the Integrity Commissioner and the Auditor General requested that the ministry provide information and documents to their respective offices as part of their investigation and audit of the government's processes for selecting land for removal from the Greenbelt.³⁵

[116] The ministry explained that staff established an internal SharePoint site dedicated to the collection and maintenance of records to be produced as part of the investigation and audit processes. Over a period of months, the ministry uploaded records onto the internal SharePoint site. These records included extracted copies of Ontario.ca email mailboxes of several current and former ministry staff involved in the Greenbelt project.³⁶ These steps were taken not only to preserve records as part of the Integrity Commissioner and the Auditor General's processes but also for the purpose of conducting searches in response to access requests under the *Act*.

[117] The records preserved on the ministry's internal SharePoint site include the data retrieved by ITS that is referred to by the Director in her affidavit submitted by the ministry in this appeal and shared with the appellant.

[118] From my review of the Auditor General's report, the objectives of the audit included an assessment of whether the Greenbelt amendments were made on the basis of

³⁵ Order PO-4505-F, paragraphs 29 to 35.

³⁶ Order PO-4505-F, para 38.

"objective, transparent and informed decisions"³⁷. As the ministry submits, the Auditor General's report "sets out in great detail how the project was undertaken, including communications between staff in the minister's office and the Premier's office related to the project." In my view, the scope of the audit was broader than the scope of the appellant's request.

[119] In addition, regarding the preservation of contemporaneous notes from meetings between ministry staff and the former minister's Chief of Staff, I have explained above that it is evident from the published report that these records exist and were provided to the Integrity Commissioner.

[120] For these reasons, I am satisfied that the Greenbelt records collected and maintained on the ministry's internal SharePoint site, which have been preserved as part of the Auditor General and Integrity Commissioner's processes, are likely to include records that exist that are responsive to the appellant's request, including any contemporaneous meeting notes.

Search terms and parameters

[121] In the ministry's searches for responsive records of emails containing direction from the Premier's office, I find that it reasonably used keywords that included code names adopted by those working on the Greenbelt project.

[122] The ministry states that following the release of the Integrity Commissioner's report that noted the use of code names to refer to the Greenbelt project, the Director used such code names as search terms in her supplementary searches for responsive emails. The Director explains that she used search terms that included the code names "GB" and "Special Project" in the supplementary searches for responsive records in the preserved email accounts of the former minister, the former minister's Chief of Staff and Deputy Chief of Staff. These terms were used, together with the word "Greenbelt" and the search term "OPO", which is found in the email addresses of all staff in the Premier's office.

[123] In his representations, the appellant refers to records disclosed by the ministry in response to other access requests in which code names are used to refer to the Greenbelt project. The appellant's position is that the use of code names in this manner is an attempt to "conceal information."

[124] To the extent that the ministry searched for responsive records contained in the email accounts of the former minister and political staff, I find it reasonable that it used code names as search terms to identify and locate responsive records.

[125] In addition, I accept the ministry's evidence that it has searched for responsive emails using the search term "OPO", which appears in all email addresses of staff in the

³⁷ Auditor General's report, page 27.

Premier's office. The ministry states that when it searched using this term and the code names that refer to the Greenbelt project, it located some records. I am satisfied that using these search terms to locate Greenbelt records and reviewing the content of these records for "direction, instruction or guidance", as the ministry did, would capture any responsive records contained in emails. Accordingly, I find that the ministry's use of search terms was reasonable.

[126] Finally, I note that the Integrity Commissioner reported that in the contemporaneous notes taken by ministry staff in meetings with the former minister's Chief of Staff, there are references to "PO", which is short form for Premier's Office³⁸ and "P" which is short form for Premier.³⁹ I find that "PO" and "P" are reasonable search terms to be used by the ministry to locate and identify responsive records of meeting notes in its further searches.

Searches for deleted records

[127] For the reasons that follow, I am satisfied that the ministry expended reasonable efforts to search for responsive records contained in emails that may have been deleted but remain in its custody or control. The appellant's position is that it is "unclear" whether the ministry has taken all reasonable steps to recover responsive records that may have been deleted. The appellant relies upon the observations of the Auditor General that emails were "regularly being deleted by political staff."⁴⁰

[128] In the Notice of Inquiry sent to the ministry to invite representations, I asked the ministry to explain steps taken in relation to responsive records that might have existed but no longer exist.

[129] In this regard, the Director states that she is unable to comment on whether it is possible that responsive records that may have existed at one time are no longer available. The Director refers to the ministry's record retention schedules that she states were developed in accordance with the requirements of the *Archives and Recordkeeping Act, 2006*.⁴¹

[130] I have accepted the ministry's evidence that in November 2023 and February 2024, the Director conducted supplementary searches of email records preserved on the ministry's internal SharePoint site. As noted above, the extracted data on this site includes email records from the "deleted folders" of several current and former ministry staff.

[131] I accept the Director's evidence that as part of the supplementary searches she

³⁸ Integrity Commissioner's report, paras 164, 220 to 222. Discussed in para [36] above.

³⁹ Integrity Commissioner's report, paras 223 and 231.

⁴⁰ Auditor General's report, page 67.

⁴¹ In Order PO-4505-F, at paras 58 to 65, I considered the ministry's record management policies and procedures, including adherence to its record retention schedules in relation to Greenbelt records. In light of the evidence before me in that appeal, I adopted the recommendations of the IPC's *Special Investigation Report Deleting Accountability: Records Management Practices of Political Staff*, June 2013.

searched the email accounts of the former minister's Chief of Staff and Deputy Chief of Staff. I also accept her evidence that these searches included searching the data extracted from the "deleted folders" of the former minister's Chief of Staff and Deputy Chief of Staff's email accounts.

[132] Regarding responsive records that might have existed at one time but no longer exist, in Order PO-4505-F I considered the ministry's evidence about the limitations in its ability to recover such emails.⁴² In the absence of any information about practical ways that deleted records might be recovered, I find that the ministry has expended reasonable efforts in the circumstances to locate responsive records that might exist in the "deleted folders" of preserved email accounts.

Search of personal email accounts

[133] For the reasons that follow, I am satisfied that the ministry expended reasonable efforts to locate responsive records contained in emails originating from or sent to personal email accounts of political staff. The appellant cites the Auditor General's observations about the use of personal email accounts by ministry officials to discuss the Greenbelt project.⁴³ The appellant also refers to this office's guidance regarding the use of personal email accounts by government staff⁴⁴, which indicates that records relating to an institution's business that are created, sent or received through personal email accounts are subject to the access provisions of the *Act*.

[134] The appellant submits that there is no evidence that the ministry made reasonable efforts to locate responsive records held in personal accounts. I am not persuaded that there is a reasonable basis for believing that records of verbal direction regarding the Greenbelt from the former minister's Chief of Staff to ministry officials and staff, are contained in personal email accounts.

[135] As I set out above, from my review of the published evidence and findings of the Auditor General and Integrity Commissioner, the directives the appellant seeks are likely contained in ministry staff notes from meetings with the former minister's Chief of Staff. There is no information before me, and the appellant does not assert, that non-political staff in the ministry used personal email to conduct government business.

[136] The Auditor General's observation about the use of personal email by political staff involved in the Greenbelt project is that:

During the course of our audit, we noted that political staff received emails from lobbyists and other external parties on their personal email accounts that they then forwarded to their government email. Conversely, there were

⁴² See Order PO-4505-F, paras 44 to 47.

⁴³ Auditor General's report, page 67.

⁴⁴ "Instant Messaging and Personal Email Accounts: Meeting Your Access and Privacy Obligations" IPC, June 2016.

occasions when government emails were forwarded by political staff from their government accounts to their personal email accounts.⁴⁵

[137] From my review of the ministry's evidence, I find that its searches included a search for records of responsive emails that originated from or were sent to some personal email accounts.

[138] In her affidavit evidence, the Director describes the searches of the email accounts of the former minister's Chief of Staff and Deputy Chief of Staff that were retrieved in the context of the Auditor General's audit. The Director states that these searches were carried out to locate Greenbelt records that were the subject of the other access requests. She explains that she also used these searches to locate records of direction from the Premier's office contained in those preserved emails.

[139] Based on this evidence, I am satisfied that the ministry used reasonable efforts to locate responsive records of direction from the Premier's office located in emails originating from or sent to personal email accounts.

Summary

[140] For these reasons, I uphold the ministry's search in part but will order it to conduct a further search for records responsive to the appellant's request in accordance with the findings set out in this order.

ORDER:

1. I order the ministry to conduct a new search for records responsive to the appellant's request, in accordance with the findings in this order, including but not limited to records of meetings at which verbal direction was communicated to ministry officials and staff by the former minister's Chief of Staff and where there is reference to the Premier or his office, including the use of the short form "PO" or "P".
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 how the Greenbelt project was undertaken;
 - 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

⁴⁵ Auditor General's report, page 67.

nature and location of the search(es), and steps taken in conducting the search(es);

- c. Whether it is possible that responsive records, including records of meeting notes, 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 responsive records in its new search, or if it does not locate responsive 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 reserve the right to require 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: _____
Katherine Ball
Adjudicator

February 20, 2025 _____