

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-4629

Appeal PA22-00025

Ministry of Labour, Immigration, Training and Skills Development

March 31, 2025

**Summary:** Under the *Freedom of Information and Protection of Privacy Act*, an individual asked the Ministry of Labour, Immigration, Training and Skills Development for access to specific labour data for a specified timeframe.

The ministry issued a decision stating that records responsive to the appellant's request do not exist. The individual believes more records should exist. In this order, the adjudicator determines that the ministry conducted a reasonable search for records and dismisses the appeal.

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

### OVERVIEW:

[1] A request was submitted to the Ministry of Labour, Immigration, Training and Skills Development (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to specific labour data for a specified timeframe, including wage rate and work stoppage data.

[2] The ministry issued a decision granting partial access to the responsive records. The ministry withheld information from a responsive spreadsheet, which contains settlement information from 2013 to present, under section 17(1)(d) (third party information) of the *Act*.

[3] The ministry advised that data prior to 2013 is no longer accessible as the data was not migrated to the current database system, because the records retention schedule permits the deletion of this data, if there is no longer an operational need for it.

[4] With respect to the requested work stoppage information, the ministry advised that information on individual settlement level data is not reported, and only aggregate level information is reported.

[5] The appellant appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (IPC) and a mediator was appointed to explore resolution.

[6] During mediation, the appellant confirmed he is pursuing access to the withheld portions of the spreadsheet and advised that he believes additional records should exist.

[7] As a mediated resolution was not possible, the appeal was transferred to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. I commenced an inquiry and sought and received representations from the parties about the issues in the appeal.<sup>1</sup>

[8] During the inquiry, the ministry issued revised decisions disclosing the spreadsheet at issue and the work stoppage data to the appellant in full. Accordingly, the application of section 17(1)(d) is no longer at issue in this appeal. The only issue remaining for me to consider is reasonable search related to the pre-2013 data.

[9] In this order, I uphold the ministry's search as reasonable and dismiss the appeal.

## **DISCUSSION:**

[10] The sole issue remaining in this appeal is whether the ministry conducted a reasonable search for responsive records. Where a requester claims additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24.<sup>2</sup> If I am satisfied the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[11] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show it has made a reasonable effort to identify and locate responsive records.<sup>3</sup> A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably

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<sup>1</sup> Portions of the appellant's representations were withheld in accordance with the confidentiality criteria in IPC Practice Direction 7 and section 7 of the IPC's *Code of Procedure*.

<sup>2</sup> Orders P-85, P-221 and PO-1954-I.

<sup>3</sup> Orders P-624 and PO-2559.

related (responsive) to the request.<sup>4</sup>

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

### **Representations, analysis and findings**

[13] For the reasons that follow, I find that the ministry has conducted a reasonable search for responsive records.

[14] The ministry submits that it conducted a reasonable search for records containing the requested labour data and no responsive records were located. In support of its position, the ministry provided an affidavit from its Director of Dispute Resolution Services, a branch of the ministry's Labour Relations Solutions Division. The ministry's representations and affidavit describe where it searched, the results of the searches, and the staff involved in the searches. The ministry states that because of a change in database systems, the pre-2013 data sought by the appellant was no longer available. The ministry states that it confirmed this fact with the relevant staff and communicated this to the appellant.

[15] The appellant's representations provide a lot of background information about his request. I will only summarize the portions most relevant to the issue of reasonable search.

[16] The appellant submits that the ministry did not conduct a reasonable search for responsive records. He states that while the ministry claims that the pre-2013 data is no longer accessible due to it being migrated to the current database system, he disputes this for three main reasons.

[17] First, the appellant submits that he had previously obtained historical data from the ministry between 2012-2015, after the new system had already been implemented. He states that he interacted with ministry staff who were able to extract historical data from the current database system during this period, demonstrating that this data was still accessible. He provides email exchanges between him and the ministry to support his claim.

[18] Second, the appellant states that a former employee of the ministry confirmed to him that the historical data was migrated to the new database system and, while it could not be altered, it could still be accessed. He states that this supports the position that the data is not lost or deleted as the ministry claims. He further states that if the data had been indeed migrated to the new database system, it would be illogical for the ministry to delete it afterwards, further undermining the ministry's claim that the data is lost or

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<sup>4</sup> Orders M-909, PO-2469 and PO-2592.

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

irretrievable.

[19] Third, the appellant submits that the ministry has misrepresented and misinterpreted the nature of his request from the beginning, focusing on the irrelevant retention schedules instead of considering the historical data that should have been migrated to the new database system. He states that experienced ministry staff should have known the requested data would be found in the electronic database system. The appellant submits that the ministry's own statements regarding transparency and open data aligns with the request's purpose (academic research on labour relations). He argues that the ministry has acted in bad faith, creating a pattern of hindering access to the requested data, which leads him unconvinced that the ministry has conducted a reasonable search for the data he is seeking.

[20] In response to the appellant's representations, the ministry submits that it has consistently advised the appellant that the pre-2013 data is no longer available. The ministry provided an email from the former Director of the Ministry Engagement and Advisory Branch, Labour and Transportation Information and Information Technology Cluster, confirming that the pre-2013 data is no longer accessible and provides additional background information about the migration of the database systems and the results of the searches for the relevant information on the current database system. The ministry submits that the old database system was decommissioned on October 31, 2013, and information that it contained is no longer accessible.

[21] The appellant submits that while the ministry claims the old database system was not migrated to the current database system, this is not accurate. He states that he received historical data even after the old database system was decommissioned. He also references past communications that suggest the data was migrated and accessible. He also emphasizes previous requests, including those made during his time as a graduate student, were fulfilled with data from the new database system, which also supports that historical data was migrated and accessible.

[22] The appellant states that he finds it hard to believe that the ministry would delete historical data, especially given its use in academic research and publications, and he suggests that if such a deletion did happen, it would be notable and warrant media attention.

[23] The ministry has described where it searched, the results of the searches, and the staff involved in the searches. I am satisfied that the ministry carried out a search involving experienced employees knowledgeable in the subject matter of the request and that those employees expended a reasonable effort to locate records which are reasonably related to the request.<sup>6</sup> I am satisfied that the ministry's search was sufficiently thorough, and it has provided sufficient evidence to establish the

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<sup>6</sup> Orders M-909, PO-2469 and PO-2592.

reasonableness of its efforts.

[24] As noted above, although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding such records exist.<sup>7</sup> Based on my review of the representations of the parties, I find that there is insufficient evidence before me to establish a reasonable basis to conclude that the specific records the appellant believes should exist, exist in the ministry's record holdings but have not yet been located by the ministry through its searches. I acknowledge that the appellant has received other historical data from the ministry after the old database system was decommissioned. However, this does not establish that the specific data he is seeking is still accessible. Given that the ministry has consistently maintained that the pre-2013 data is no longer accessible, and this data was not migrated to the current database system, I am not persuaded that ordering the ministry to conduct another search will locate these records that the appellant claims should exist.

[25] Even if I found the ministry did not conduct a reasonable search, which I do not, I can only order the ministry to conduct a further search. I acknowledge that the appellant believes that the ministry should have access to the pre-2013 data. However, the *Act* does not require the ministry to prove with absolute certainty that further records do not exist. The ministry must provide sufficient evidence to show it has made a reasonable effort to identify and locate responsive records.<sup>8</sup> The ministry provided an email with data migration details from the former Director of the Ministry Engagement and Advisory Branch, Labour and Transportation Information and Information Technology Cluster, stating that the pre-2013 data is no longer accessible because of the change in database systems. The *Act* does not demand perfection. I must only be satisfied that sufficient evidence has been provided to establish that a reasonable search has been conducted; and I find that the ministry has provided sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the appellant's request in its record holdings.

[26] For all the reasons set out above, I find that the ministry conducted a reasonable search for responsive records containing the requested labour data.

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<sup>7</sup> Order MO-2246.

<sup>8</sup> Orders P-624 and PO-2559.

**ORDER:**

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

Original Signed by: \_\_\_\_\_  
Anna Truong  
Adjudicator

March 31, 2025 \_\_\_\_\_