

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4654

Appeal PA22-00516

Ministry of the Solicitor General

May 7, 2025

Summary: The sole issue in this appeal is whether the Ministry of the Solicitor General conducted a reasonable search for records responsive to the appellant's request under the *Freedom of Information and Protection of Privacy Act*.

In this order, the adjudicator finds that the ministry conducted a reasonable search and dismisses the appeal.

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

OVERVIEW:

[1] The appellant submitted a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of the Solicitor General (the ministry) for,

... disclosure of documentation obtained by the Ontario Racing Commission which was subsequently disclosed to the College of Veterinarians of Ontario. As well, I am requesting disclosure of the Memorandum of Understanding between the Ontario Racing Commission and the College of Veterinarians of Ontario.

[2] The ministry issued a decision¹ advising that it had already disclosed to the appellant records relating to his request, including those submitted to the College of Veterinarians of Ontario (the college) by the Ontario Provincial Police (OPP).²

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

[4] During mediation, the appellant claimed additional responsive records should exist; specifically, the appellant referred to a crown brief and an index of records from the college to the Ontario Racing Commission (the ORC) or the OPP. The ministry maintained its decision.

[5] As mediation did not resolve the appeal it was transferred to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry. The adjudicator originally assigned to this appeal began the inquiry by inviting the ministry to submit representations.

[6] Before submitting representations, the ministry issued two revised decisions and ultimately granted the appellant partial access to two additional records. The ministry submitted representations and an affidavit explaining the details of its search. The appellant was then invited to submit representations in response and did so. The file was assigned to me to continue the adjudication of the appeal. I determined that it was not necessary for me to seek further representations from the parties.

[7] For the reasons that follow, I find that the ministry conducted a reasonable search for records responsive to the appellant's request, in compliance with its obligations under section 24 of the *Act*. I dismiss the appeal.

DISCUSSION:

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

[9] If a requester claims that additional records exist beyond those found by the

¹ Initially, the ministry issued a decision denying the appellant's request as frivolous and vexatious pursuant to section 10(1) of the *Act*. The appellant appealed this decision to the Information and Privacy Commissioner of Ontario (the IPC) and Appeal PA20-00734 was opened. In Order PO-4313, the IPC found the appellant's request was not frivolous or vexatious within the meaning of the *Act* and ordered the ministry to issue a decision to the appellant. The ministry then issued a decision in compliance with Order PO-4313. It is this decision that is the subject of the present appeal.

² In Appeal PA17-300, the appellant made a similar request to the Alcohol and Gaming Commission of Ontario (AGCO), including for access to "documentation obtained by the Ontario Racing Commission which was subsequently disclosed to [the college]" (para 10). The Ministry of the Attorney General (MAG) responded to the request as it is responsible for requests submitted to the AGCO. In Interim Order PO-4067-I, MAG explained that the ORC merged with the AGCO, and that Ontario Provincial Police officers seconded to the AGCO's Investigative Unit conducted an investigation into the appellant (para 30).

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.

[10] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.⁴

[11] The *Act* does not require the institution to prove with certainty that further records do not exist.⁵ However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;⁶ that is, records that are "reasonably related" to the request.⁷

[12] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are reasonably related to the request.⁸ 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.⁹

Representations, analysis and findings

[13] The ministry submits that it conducted a reasonable search for records related to the request as required by section 24 of the *Act*.

[14] Along with its representations, the ministry submits an affidavit sworn by a staff sergeant (the sergeant), with the Investigation Enforcement Bureau of the OPP. The sergeant attests that, as a result of her experience with the OPP since 1995, she is knowledgeable in the requirements and procedures in responding to requests under the *Act*. She specifies that she is also familiar with the OPP record holdings searched in the context of this appeal.

[15] The ministry conducted multiple searches and partially disclosed two records during the course of the appeal.

[16] In its initial decision letter, the ministry notes that "[e]xperienced staff familiar with the record holdings of the Ministry conducted a records search at the Freedom of Information and Protection of Privacy Office and the Ontario Provincial Police and no

³ Orders P-85, P-221 and PO-1954-I.

⁴ Order MO-2246.

⁵ *Youbi-Misaac v. Information and Privacy Commissioner of Ontario*, 2024 ONSC 5049 at para 9.

⁶ Orders P-624 and PO-2559.

⁷ Order PO-2554.

⁸ Orders M-909, PO-2469 and PO-2592.

⁹ Order MO-2185.

responsive records were located.”

[17] During the inquiry, the ministry explained in a letter to the IPC that it had located a responsive record further to an additional search. It then issued a revised decision to the appellant and partially disclosed an index to an exhibit brief from the college (the college index).

[18] Later in the inquiry, the ministry issued a second revised decision to the appellant and partially disclosed a table of contents from the OPP (the OPP table of contents).

[19] The details of the ministry’s third search are laid out in the sergeant’s affidavit. The sergeant explains that she first searched the appellant’s name in the OPP’s records database, and the results indicated responsive records were held at the Criminal Investigation Bureau vault at General Headquarters in Orillia. She attests that she and an OPP inspector carried out their search in person and identified five boxes of responsive records. They also identified 12 accompanying boxes containing miscellaneous exhibits, however, the sergeant confirms that these did not contain records.

[20] The sergeant adds that she was advised that all of the responsive records in the five boxes had already been disclosed to the appellant, subject to applicable severances.¹⁰ She attests that she has no reason to believe that any responsive records were destroyed.

[21] The appellant submits that the ministry failed to conduct a reasonable search, and to produce a number of specified records.

[22] The appellant explains that his request consists of two parts: the disclosure obtained by the ORC (which he refers to as the “investigative file”) and the subset that was subsequently disclosed to the college.

[23] I have reviewed all of the appellant’s representations and attachments, and below I summarize the portions that are most relevant to reasonable search, the only issue in this appeal.

[24] The appellant enumerates “three possible authorized routes by which the material from the investigative file could have been produced to the [college].” According to the appellant, the college would have had to do one of the following: submit an access request, submit a Wagg application through the court, or get the authorization of the Chief of Police.¹¹ He also raises the possibility that a named OPP officer disclosed evidence to the college.¹²

[25] The appellant submits that the ministry’s search was not reasonable because it did

¹⁰ The Ministry states in its representations that these records were responsive in this appeal as well as Appeal PA17-334-2.

¹¹ The appellant cites sections 1.1 and 1.2 of the *Police Services Act*, RSO 1990, c P.15

¹² The appellant notes that this was submitted in representations made in the context of appeal PA17-300.

not search for documents related to these possible avenues of disclosure from the ORC or OPP to the college, nor did it search a named OPP officer's computer, notes and emails. According to the appellant, knowledgeable employees would have been aware of these disclosure mechanisms and searched for evidence of such mechanisms. Consequently, the employees who carried out the search failed to focus on disclosure to the college and "demonstrate[d] a lack of experience."

[26] The appellant also refers to two "McNeil reports" mentioned in Order PO-4037 that he states are associated with the investigative file, which is the first part of his request. He states that the ministry and the employees who searched did not identify these reports, which "may or may not be part of the investigative files previously noted but...may appear in other police files." As I understand the appellant's argument, he claims that the search was unreasonable because the ministry did not identify these reports and carry out searches in relation to them.

[27] Lastly, the appellant argues that the ministry "failed to make a reasonable effort to identify the documents disclosed to the [college]" either by using documents and information at its disposal or by communicating with the college directly.

[28] In the appellant's view, the ministry did not conduct a reasonable search because it failed to investigate several possible sources of records and failed to make reasonable efforts to identify the subset of documents disclosed to the college. He also claims that the "OPP officers who conducted the search in this appeal had no previous experience with this file or related files" and questions their experience and knowledge. I do not agree with the appellant.

[29] I am satisfied that the sergeant is an experienced employee, knowledgeable in the subject matter of the request, given her decades of experience with the OPP and the access to information process, and her familiarity with the record holdings in this appeal, which she attests to in her affidavit. I am not persuaded that she lacks experience and knowledge for not searching in the manner the appellant describes.

[30] I am also satisfied that the ministry made reasonable efforts to locate records responsive to the appellant's request.

[31] The appellant enumerates different ways the ministry could have searched for responsive records, and determined what records were shared with the college. He also submits that the ministry should have conducted searches in relation to two McNeil reports, which he states may or may not have been part of the investigative file.

[32] As noted above, the *Act* does not require the institution to prove with certainty that further records do not exist in order to satisfy its duty under the *Act*.¹³ The ministry is held to a standard of reasonableness. In this case, the ministry carried out three searches and disclosed a number of records to the appellant as a result. The third search,

¹³ *Youbi-Misaac v. Information and Privacy Commissioner of Ontario*, 2024 ONSC 5049 at para 9.

which began with a records database search, led to an in-person search and yielded five boxes of responsive records, which the ministry confirms were previously disclosed under another appeal. Two additional records were identified and partially disclosed to the appellant during the inquiry stage of the present appeal. In light of the above, I find that the ministry has met its duty under the *Act*.

[33] The appellant submits several documents with his representations, including two memos from the college in support of his view that the following specified records exist.

Crown Brief

[34] The appellant submits that the ministry failed to produce a crown brief and an associated table of contents. He submits a 2013 memo from a college investigator as evidence of the existence of these records. The memo refers to a document entitled "Crown Brief" as part of ORC/OPP disclosure shared with the college.

[35] The ministry and sergeant both state that five boxes of responsive records were previously disclosed to the appellant, subject to applicable severances. The ministry submits that "the records that form part of the Crown Brief are the records that were contained in the five boxes of records that have been searched, as documented in the attached affidavit."

[36] The ministry notes that it had previously identified a table of contents as part of an earlier search. As mentioned above, the ministry then disclosed the OPP table of contents to the appellant during the inquiry.

[37] Based on the evidence before me, I am satisfied that the ministry searched for and located records that would have been contained in the crown brief and the OPP table of contents and provided these to the appellant as part of this appeal or a previous one.

Disclosure Brief

[38] The appellant submits that the ministry also failed to produce a disclosure brief and an associated index. He submits a 2014 memo from the same college investigator, which refers to disclosure briefs from both the college and ORC/OPP, in the college's possession.

[39] In response, the ministry states that "[t]o the extent that [these] records ...were provided to the Ministry, they are in any event part of the five boxes that were searched." As I understand the ministry's submission, it states that if it had such records in its possession, they would have been found in the five boxes that were searched.

[40] Based on the evidence before me, I am satisfied that the ministry made reasonable efforts to search for records that would have been contained in the disclosure brief and its index. As noted above, the ministry is not required to prove with certainty that further records do not exist, only that it made a reasonable effort to identify and locate records

reasonably related to the request.

[41] I have reviewed the ministry's decisions, the records partially disclosed during the inquiry, and the ministry's representations and affidavit. Based on all of the evidence before me, I find that an experienced employee knowledgeable in the subject matter of the request, conducted a reasonable search and located records responsive to the appellant's request. The appellant identifies several records he submits should exist. I note that some were located and disclosed to him. With regards to the other records, I am not persuaded that further searches would yield additional responsive records given the ministry's search efforts to date.

[42] In light of the above, I find that the ministry has met its obligations under Section 24. I therefore dismiss the appeal.

ORDER:

I uphold the reasonableness of the ministry's search for responsive records and dismiss the appeal.

Original Signed by: _____
Hannah Wizman-Cartier
Adjudicator

May 7, 2025 _____