

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-4671

Appeal PA25-00224

Ministry of the Solicitor General

June 24, 2025

**Summary:** A public interest group asked the Ministry of the Solicitor General for records following a complaint about the well-being of animals housed at a zoo in Ontario. The ministry denied access to responsive records citing the ongoing prosecution exclusion under section 65(5.2) of the *Act*. The appellant appealed the ministry's decision because it was unaware of an ongoing prosecution related to this matter. The decision-maker finds that the ministry has failed to discharge its burden to establish that the exclusion under section 65(5.2) applies to responsive records because the ministry did not submit any representations during the inquiry. In this order, the decision-maker orders the ministry to issue an access decision to the appellant with respect to responsive records, in accordance with the procedure set out in the *Act*.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 65(5.2).

**Orders Considered:** MO-2439, MO-3294-I and MO-3316.

### BACKGROUND:

[1] On October 11, 2024, a public interest group asked the Ministry of the Solicitor General (the ministry) for access under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to records about animals housed at a zoo in Ontario following a complaint filed in 2024 with Animal Welfare Services.

[2] On February 27, 2025, the ministry issued a decision denying access to responsive

records, claiming an ongoing prosecution exclusion under section 65(5.2) of the *Act*.

[3] On March 27, 2025, the appellant appealed to the Information and Privacy Commissioner of Ontario (the IPC) because it was unaware of any ongoing prosecution related to this matter.

[4] On April 8, 2025, I asked the ministry to confirm the status of the ongoing prosecution and whether the responsive records had some connection to it. The ministry did not reply to my email.

[5] On April 16, 2025 and April 28, 2025, I again asked the ministry to verify the nature of the responsive records, or I would issue a Notice of Expedited Inquiry. I did not receive a response to either email from the ministry.

[6] On May 6, 2025, I decided to conduct an expedited inquiry and issued a Notice of Expedited Inquiry, seeking representations from the ministry. I asked specific questions about whether the appellant's access request was subject to an ongoing prosecution. I did not receive any representations from the ministry.

[7] On June 3, 2025, the ministry committed to providing its representations by June 10, 2025. I did not receive any representations from the ministry. I determined that I did not require representations from the appellant.

[8] In this order, I find that the ministry has failed to discharge its burden to establish that the exclusion under section 65(5.2) of the *Act* applies to responsive records. I order the ministry to issue an access decision to the appellant with respect to responsive records, in accordance with the procedure set out in the *Act*.

## **DISCUSSION:**

[9] The only issue in this appeal is whether responsive records are excluded from the scope of the *Act* because of the operation of the ongoing prosecution exclusion at section 65(5.2) of the *Act*.

[10] Section 65(5.2) of the *Act* excludes records relating to an ongoing prosecution from the *Act*. As a result, the *Act*'s access scheme does not apply to them. This section states:

This Act does not apply to a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed.

[11] The purposes of section 65(5.2) include maintaining the integrity of the criminal justice system, ensuring that the accused and the Crown's right to a fair trial is not infringed, protecting solicitor-client privilege and litigation privilege, and controlling the

sharing and publication of records relating to an ongoing prosecution.<sup>1</sup>

### **Analysis and Findings**

[12] For the reasons below, I find that the ministry has failed to discharge its burden to establish that the exclusion under section 65(5.2) applies to responsive records.

[13] The ministry bears the onus of proof to establish that the exclusion applies.<sup>2</sup> The ministry must establish that: there is a prosecution; there is some connection between the records and the prosecution; and the prosecution is ongoing.

[14] Despite numerous attempts to obtain information from the ministry about the ongoing prosecution and its connection to responsive records, the ministry has not responded, nor has it provided me with any representations in response to the Notice of Expedited Inquiry. Considering the lack of representations, I am unable to conclude that there is an ongoing prosecution and that there is some connection between responsive records and this prosecution. Accordingly, I find that the ministry has not met its burden to establish that the prosecution exclusion applies to responsive records and it is unable to rely on this exclusion.

[15] Given my conclusion, the general right of access in section 10(1) applies to the responsive records. I will order the ministry to issue an access decision to the appellant with respect to responsive records, in accordance with the procedure set out in the *Act* and without relying on the section 65(5.2) exclusion.

### **ORDER:**

1. I do not uphold the ministry's decision to apply the exclusion at section 65(5.2) of the *Act* to responsive records.
2. I order the ministry to provide the appellant with an access decision under the *Act* without relying on the section 65(5.2) exclusion. For the purposes of the procedural requirements for access decisions under the *Act*, the ministry is to treat the date of this order as the date of the request.
3. In order to verify compliance with order provision 2, I reserve the right to require the ministry to provide me with a copy of the access decision provided to the appellant.

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<sup>1</sup> *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991, March 26, 2010, Tor. Doc. 34/91 (Div. Ct.).

<sup>2</sup> Orders MO-3316, MO-2439, and MO-3294-I.

Original Signed by:

Kelley Sherwood

Case Lead

June 24, 2025