

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4676

Appeal PA24-00433

Ministry of the Solicitor General

July 11, 2025

Summary: An individual asked the Ministry of the Solicitor General for access to records held by a firearms instructor organization. The ministry issued a decision, stating no responsive records were located. The individual appealed the ministry's decision because they believe responsive records exist. In this order, the decision-maker finds that the ministry has not conducted a reasonable search. She orders the ministry to obtain the additional responsive records from the organization and issue an access decision for them.

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

BACKGROUND:

[1] The appellant asked the Ministry of the Solicitor General (the ministry) for access under the Freedom of Information and Protection of Privacy Act (the Act) to specified records held by the Firearms Safety Education Services of Ontario (FSESO)¹ for the period of January 1, 2001 to May 22, 2024.

[2] In the request, the appellant stated that the FSESO was subject to the Act through a Memorandum of Understanding (MOU) with the Chief Firearms Officer of Ontario (CFO).

¹ The FSESO is a not-for-profit organization of firearms safety instructors, who are designated by the Chief Firearms Officer of Ontario to teach, examine and manage the delivery of the Canadian Firearms Safety Course (CFSC) and the Canadian Restricted Firearms Safety Course (CRFSC) in Ontario.

The ministry is responsible for processing freedom of information requests for records held by the CFO.

[3] The ministry issued a decision stating that access to the requested records could not be granted. It advised that experienced staff familiar with the record holdings of the ministry conducted a search with the CFO and no responsive records were located. It also advised that the ministry only processes requests for records in its custody and control and if access to records from other agencies, federal or municipal governments was required, the appellant was advised to contact them directly.

[4] The appellant appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (IPC), challenging the reasonableness of the ministry's search. Appeal PA24-00433 was opened to address this matter, and I was assigned as the case lead.

[5] During informal dispute resolution, the ministry conducted a secondary search for records and issued a supplementary decision, releasing two pages of responsive records to the appellant. In response to the supplemental decision, the appellant maintained their position that additional responsive records existed with the FSESO because of the MOU.

[6] I decided to conduct an expedited inquiry and issued a Notice of Expedited Inquiry to the ministry, seeking its representations. I determined that it was not necessary to seek representations from the appellant.

[7] In this order, I find that the ministry has not conducted a reasonable search for responsive records. I order the ministry to obtain the additional responsive records from the FSESO and issue an access decision to the appellant for these responsive records, in accordance with the procedure set out in the Act.

DISCUSSION:

[8] The sole issue in this order is whether the ministry conducted a reasonable search for responsive records.

[9] Where a requester claims that additional records exist beyond those identified by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 24 of the Act.² 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

² Orders P-85, P-221 and PO-1954-I.

that such records exist.³

[11] The Act does not require the institution to prove with certainty that further records do not exist.⁴ However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;⁵ that is, records that are "reasonably related" to the request.⁶

[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.⁷ The IPC will order a further search if the institution does not provide enough evidence to show that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.⁸

The ministry's representations

[13] The ministry submits that it conducted a reasonable search for responsive records. In support, it provides an affidavit sworn by the Deputy Director of the CFO (the deputy director), who completed the search for responsive records.

[14] The deputy director affirms that a search was completed of the following:

- the CFO database using the name of the appellant specifically, File Series - 8676 OPP/8676 46 Firearm Instructors and Examiners/name of the appellant,
- the CFO electronic retention file for the FSESO for any additional records that were requested, specifically File Series - 8676 OPP/8676 45 Firearms Safety Education Program (retention file - Z-drive) as well as its P-drive, and
- their own personal email folders, personal drive on their computer and the CFO shared drive. The search for the records was conducted in its retention and current drives (Z and P).

[15] The deputy director affirms that the search identified responsive records, which were provided to the ministry's freedom of information office.

[16] The deputy director affirms that on February 26, 2025, she was advised that the MOU between the CFO and the FSESO contained provisions that would require the FSESO to provide the ministry with records to respond to an access request. She confirms that on that date, the FSESO Executive Manager was informed of this, and the request was redirected to the FSESO President and the FSESO Program Administrator (the program

³ Order MO-2246.

⁴ *Youbi-Misaac v. Information and Privacy Commissioner of Ontario*, 2024 ONSC 5049 at para 9.

⁵ Orders P-624 and PO-2559.

⁶ Order PO-2554.

⁷ Orders M-909, PO-2469 and PO-2592.

⁸ Order MO-2185.

administrator).

[17] The deputy director affirms that on March 5, 2025, the program administrator advised that most records sought were paper-based, and that the FSESO conducted a search of its database and audited financial statements using its accounting software.

[18] The deputy director affirms that some responsive records may have been destroyed prior to receiving the request, in accordance with legislative retention schedules, as well as FSESO internal retention policies, noting that she had no reason to believe that any of the responsive records have been destroyed since the request was received.

[19] Finally, the deputy director affirms that the searches the CFO and the FSESO conducted were “diligent and thorough” with searches being conducted in locations where responsive records would be found if they existed.

[20] The ministry submits that by way of the MOU, the FSESO agreed to maintain records and comply with applicable provincial privacy legislation, and pursuant to the direction of the CFO in relation to information-sharing, use and/or disclosure of all information and material. It also submits that the MOU allows the CFO to access all FSESO records, and to make copies of such records as the CFO deems necessary.

[21] The ministry submits that its staff responding to the request and appeal were unaware of the MOU and its provisions. It states that upon receipt of the Notice of Expedited Inquiry, it determined that the CFO had the authority, pursuant to the MOU, to ask the FSESO to search for the responsive records and to provide them to the ministry for the purpose of responding to this request.

[22] The ministry notes that a retention period was not set out in the MOU. It explains that some responsive records may no longer exist as they may have been destroyed in accordance with legislative retention schedules and FSESO internal retention policies.

[23] The ministry advises that the FSESO was in the process of copying the responsive records to provide them to the ministry so that the ministry could review the records and apply any exemptions to them before releasing them to the appellant.

The ministry’s subsequent position

[24] The ministry subsequently advised that:

- while there is a MOU, at law a MOU is not a legally binding instrument and despite there being language in the MOU that the FSESO is to provide the CFO with all “records” as defined under the *Act*, the ministry has no legal mechanism to enforce this or compel the FSESO to provide records;
- searching for records is interrupting the business operations of the FSESO;

- individuals named in the request are independent contractors to the FSESO, which would require the ministry to claim the section 17 (third party information) exemption; and
- pursuant to the expedited notice of inquiry, and the ministry's representations, a reasonable search was conducted, and the appeal should be dismissed.

Analysis and findings

[25] I have reviewed the ministry's representations, including the affidavit of the deputy director. While the ministry submits that it conducted a reasonable search for responsive records, I disagree.

[26] I find that the affidavit evidence establishes more than a reasonable basis to believe that additional responsive records exist – it confirms that additional records do, in fact, exist. The affidavit evidence of the deputy director is that, upon being advised of the MOU, the CFO determined that it had the authority to ask the FSESO to search for responsive records and to provide them to the ministry for the purpose of responding to this request. The affidavit confirms that, upon request of the CFO, the FSESO searched for and located responsive records, and was in the process of copying them to provide them to the ministry. The affidavit also confirms that the ministry was awaiting receipt of the additional responsive records found by FSESO to review and issue a decision on them.

[27] I accept this affidavit evidence, and I rely on it to make my findings in this order. I do not rely on the ministry's subsequent position, which is not persuasive considering the affidavit evidence that additional records exist and the ministry is in the process of completing its search by obtaining copies of these additional records. The issue of whether the MOU is legally binding is not at issue in this appeal.

[28] Accordingly, I find that the ministry has not conducted a reasonable search for responsive records and has not issued a decision to the appellant for these additional responsive records. I will order the ministry to obtain these additional responsive records from the FSESO and issue an access decision for them.

ORDER:

1. I order the ministry to obtain responsive records from the FSESO and issue a final access decision to the appellant on these records, without claiming that the request is frivolous or vexatious and without recourse to a time extension, in accordance with the requirements of sections 26, 28, 29, and 57 of the *Act*. For the purposes of the procedural requirements under the *Act*, the ministry is to treat the date of this order as the date of the request.
2. To verify compliance with order provision 2, I reserve the right to require the ministry provide me a copy of the final access decision provided to the appellant.

Original Signed by: _____
Asma Mayat
Case Lead

July 11, 2025 _____