

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4705-F

Appeal PA21-00530

Ministry of the Solicitor General

August 20, 2025

Summary: This final order follows Interim Order PO-4581-I, in which the adjudicator ordered the Ministry of the Solicitor General to conduct a further search for records relating to queries made about and access to a specified OPP file. In that interim order, the adjudicator found that there was insufficient information for her to find that the ministry had made reasonable efforts to locate the records that the appellant is seeking and she ordered it to conduct a further search.

In this final order, the adjudicator finds that the ministry has failed to comply with its duty under the *Freedom of Information and Protection of Privacy Act* to conduct a reasonable search for responsive records. In addition, the evidence raises the possibility that responsive records that once existed might no longer exist. However, as the ministry has issued a revised access decision identifying additional responsive records, the adjudicator finds there is no useful purpose served by ordering further searches. The adjudicator orders the ministry to take steps in relation to the additional responsive records that it has identified and to fulfil its obligations under section 25 of the *Act*, in the event that it determines that responsive records are in the custody or control of another institution.

Statute Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, sections 24 and 25.

Order Considered: Interim Order PO-4581-I.

OVERVIEW:

[1] This final order considers whether the steps taken by the Ministry of the Solicitor General (the ministry) to conduct further searches as required by Interim Order PO-4581-I were reasonable under section 24 of the *Freedom of Information and Protection of Privacy Act* (the *Act*).

Background prior to Interim Order PO-4581-I

[2] As set out in Interim Order PO-4581-I, the appellant seeks access under the *Act* to logs of queries made about or accesses to a specified OPP file. The ministry initially issued a decision refusing to confirm or deny the existence of the requested records pursuant to section 14(3) of the *Act*.¹ The appellant appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (IPC).

[3] During the appeal, the ministry revised its position and granted the appellant partial access to one responsive record comprising a four-page printout of a log of OPP access to the specified file. The appellant believes that additional records exist and claims that the ministry has failed to search for records of agencies, other than the OPP, that have queried or accessed the OPP file.

[4] In Interim Order PO-4581-I, I found that there was insufficient evidence for me to determine whether the ministry had expended reasonable efforts to locate the records the appellant is seeking. The ministry did not provide me with any evidence about the searches that it had conducted to locate the one responsive record. From the information available, I was satisfied that the ministry's search had been limited to locating records of accesses made to the specified file by the OPP only. The search did not include searches for records of access or queries made by other agencies. I found that the ministry had not adequately explained whether it had access to the additional records the appellant is seeking.

[5] Accordingly, in Interim Order PO-4581-I, I ordered the ministry to conduct a new search for records responsive to the appellant's request, including records of emails or other communications from other agencies about the specified file and to provide me with affidavit evidence of that search.

Following Interim Order PO-4581-I

[6] Following the issuance of Interim Order PO-4581-I, the ministry provided me with a letter from counsel, an affidavit from the Sergeant of Records Management at the OPP regarding its efforts to comply with Interim Order PO-4581-I and a revised access decision issued to the appellant addressing the results of the search it conducted in compliance with the interim order.

¹ Section 14(3) permits an institution to refuse to confirm or deny the existence of a record to which one or more of the law enforcement exemptions in section 14(1) or (2) would apply.

[7] In the revised access decision, the ministry states that it “identified additional records” responsive to the appellant’s request and decided to deny access pursuant to section 14(1) (law enforcement) of the *Act*.

[8] I shared the ministry’s letter and affidavit with the appellant. The appellant provided representations in response, which I shared with the ministry.

[9] In its letter, the ministry raised concern about the time that it had been given to consult with third party law enforcement agencies in relation to any additional responsive records that may exist. Accordingly, and before issuing this order, I invited the ministry to explain *any* steps it had taken regarding records of emails or other communications from other agencies. The ministry provided me with a further letter from counsel.

[10] For the reasons that follow, I find that the ministry has again not demonstrated that it has expended reasonable efforts to search for responsive records in accordance with section 24 of the *Act* and I do not uphold its searches as reasonable. However, as the ministry has issued a revised access decision indicating that it has identified additional responsive records and the steps to be taken in respect of those records, I will order the ministry to make the necessary inquiries of third party law enforcement agencies in respect of the additional records.

DISCUSSION:

[11] The sole remaining issue in this appeal is the reasonableness of the ministry’s searches for records of access and queries made to the OPP regarding the file specified in the appellant’s request.

[12] Throughout this appeal, the appellant has maintained that records ought to exist in addition to the one record located by the ministry. In its submissions, the ministry initially took the position that it does not have “access” to the additional records the appellant is seeking and that, if they do exist, it does not have custody or control of them. The ministry now takes the position that it has identified additional responsive records. However, notwithstanding this revised position, it is unclear that any substantive efforts have been made to search for and locate the additional responsive records.

[13] In addition, the ministry now raises the possibility that another institution may have a greater interest in the records that the appellant is seeking or that there might be responsive records in another institution’s custody or control. It is not clear that the ministry has made the necessary inquiries in this regard as required by section 25 of the *Act*.

Ministry's representations

[14] Following Interim Order PO-4581-I, ministry counsel states that in compliance with the order, the ministry conducted a search for records and documented the search efforts in an affidavit. Counsel states that the ministry has "identified responsive records belonging to third-party law enforcement agencies relating to which members in those agencies queried the name and/or Ontario file specified in the request" and that "there may be additional responsive records but we would not know about them as we do not have access to the queries that all law enforcement agencies may have made".

[15] Counsel states that:

The ministry submits that it does not have the requisite custody or control over any of the responsive records. Our reason for stating so is that third-party law enforcement agencies created the records, and they may have a legitimate law enforcement interest in withholding them, for reasons they would know about, and we do not (e.g. an ongoing law enforcement investigation). It is our policy not to disclose these types of responsive records with requesters unless and until we have had an opportunity to consult with third-party law enforcement agencies, and to obtain their consent. The ministry has not been provided with sufficient time to consult with third party law enforcement agencies. The Interim Order was issued immediately prior to the holiday period, and it has taken us time to determine if we have responsive records. As such, the ministry has therefore applied section 14(1) [of the *Act*] in exempting the records in full, which is set out in the attached supplemental decision letter. We are prepared to revisit our position if we are provided with sufficient opportunity to consult with third-party law enforcement agencies, and if they consent to the disclosure of the responsive records.

[16] Counsel stated that in compliance with Interim Order PO-4581-I, the ministry documented its search efforts in an affidavit. The ministry provided me with an affidavit from the Sergeant of Records Management at the OPP (the Sergeant). In this affidavit the Sergeant explains that the search for responsive records consisted of speaking with OPP staff who have expertise in the police records databases to which the OPP has access. The Sergeant confirms that:

- The OPP cannot identify all the different law enforcement agencies and its members that queried the specified file;
- The only responsive records that the OPP has access to are those law enforcement agencies that are members of Ontario Police Technology and Information Cooperative (OPTIC);

- At the meeting with staff in January 2025, he learned that there are records that are responsive to the request because they contain information about which files or names were queried by a law enforcement agency that is a member of OPTIC; and
- Records generated through OPTIC are kept for 4 years.

[17] The Sergeant states that they do not believe that any responsive records existed but no longer exist because “at the time we did the original search, in 2021, responsive records would still be subject to retention.”

Appellant’s representations

[18] The appellant maintains that the ministry has not reasonably responded to his request. The appellant submits that he is not satisfied with the affidavit evidence provided by the ministry from individuals with expertise on police records databases. In particular, he states that the affidavit evidence of the Sergeant regarding the additional searches performed in response to Interim Order PO-4581-I is based upon conversations only.

[19] The appellant states that no physical search for records appears to have been carried out and there is no explanation of how the responsive records referred to in the access decision have been identified or any steps taken to locate them.

[20] The appellant reiterates their disbelief that the police records management system has no means of determining who has accessed a police file. The appellant maintains that the police record management systems should be able to track which agency and/or individual has accessed its files, even from outside the OPTIC network.

[21] The appellant submits that the new search required by Interim Order PO-4581-I included a search for emails requesting or querying access to the specified file and that based on the evidence provided by the ministry, no efforts to locate additional records of this type appear to have been made.

[22] The appellant states that the original response to their request was that no responsive records existed. They state that the original file specified in the request was opened in 2018 and there is therefore a possibility that some of the records they are seeking have been purged as it is now beyond the four-year retention period referred to in the Sergeant’s affidavit.

[23] The appellant submits that they are confident that there are no ongoing law enforcement matters that would exempt responsive records from being disclosed. However, the appellant agrees to provide the ministry with additional time to obtain the consent of the third party law enforcement agencies for release of the responsive records.

Ministry's further representations

[24] I shared the appellant's representations with the ministry and asked it to address the appellant's concern regarding whether any steps had been taken to search for records of emails requesting or querying access to the specified file, as required in provision 1 of Interim Order PO-4581-I.

[25] In a further letter, counsel states that "the search conducted was for all responsive records, but these records did not identify any responsive emails or other communications."

[26] Counsel states that the ministry does have access to records for the law enforcement agencies that are members of OPTIC but that these are not records over which the ministry has the requisite custody or control.

[27] In addition, counsel states:

It is our view on further consideration that as we lack the requisite custody or control of any records to which we have access (records belonging to other members of the OPTIC network) any further request for records should be provided directly to members of the OPTIC network. We believe that this position is most consistent with the principles of the Act.

Analysis and findings

[28] From my review of the ministry's correspondence and affidavit, I find that the ministry has not demonstrated that it has conducted a reasonable search for responsive records.

[29] The appellant submitted their request for access to records of logs relating to the specified OPP file in August 2021. In its initial decision, the ministry decided to neither confirm nor deny the existence of responsive records.

[30] As set out in Interim Order PO-4581-I, the ministry revised its position in the early stages of the appeal and issued a revised decision granting the appellant partial access to one record. The ministry has been asked to provide evidence of its searches that located the one responsive record and has not done so. Notwithstanding that the member of staff who conducted the initial search is no longer employed with the OPP, the ministry has not provided any information about the *type* of search undertaken.

[31] After ordering a new search in Interim Order PO-4581-I, the evidence before me is that the only step taken by the ministry in compliance with that order is a conversation involving OPP staff with expertise in the police records database. Counsel submits that there was insufficient time for steps to be taken to notify third party law enforcement agencies and to seek consent for the release of responsive records.

However, notwithstanding the passage of time since Interim Order PO-4581-I was issued, there is no information before me that the ministry has done anything to identify and/or notify any third party law enforcement agencies.

[32] Ultimately, the ministry has not explained how it has identified the additional responsive records that it references in its revised access decision of January 20, 2025.

[33] I find it concerning that the ministry's position in its representations is at odds with its access decisions. The ministry has not issued a decision to the appellant indicating that the records the appellant is seeking are not within its custody or control. Most recently, in its revised access decision of January 20, 2025, the ministry has apparently identified additional responsive records and has denied access based on the law enforcement exemption in section 14(1). The ministry appears to take this position on behalf of unspecified third party law enforcement agencies and with reference to speculative ongoing law enforcement investigations.

[34] It is unclear how counsel can state that a search has been conducted for all responsive records, including emails. There is no evidence before me that this is the case. As already noted, the individual who conducted the original search is no longer employed at the OPP and there has been no evidence about that search provided to me during my inquiry or of a new search following Interim Order PO-4581-I.

[35] I accept the appellant's submission that the original OPP file specified in the request was opened in 2018. I agree that there is a concerning possibility that responsive records have been purged in light of the Sergeant's evidence that the relevant retention period for the file is four years.

[36] I do not accept counsel's submission that the ministry's position is consistent with the principles of the *Act*. On the contrary, the ministry's failure to take steps to locate responsive records and to make any inquiries of third party law enforcement agencies has delayed the appellant's exercise of their right to access the records.

[37] For these reasons, I am not satisfied that the ministry has expended reasonable efforts to search for records responsive to the appellant's request, as required by section 24 of the *Act*.

[38] As the ministry has issued a revised access decision identifying additional records that are responsive to the appellant's request, I have decided that there is no useful purpose to be served in ordering further searches. Notwithstanding the ministry's ongoing delay in responding substantively with the appellant's request, the appellant has agreed to provide the ministry with additional time to obtain the consent of third party law enforcement agencies for release of the responsive records. In the event that the third party law enforcement agency consents to the release of the responsive records, the ministry should issue a further revised access decision to this effect.

[39] During this appeal, the appellant has suggested that the ministry inform him of

the other government agencies that would be able to provide the information that he is requesting. Counsel submits that the *Act* does not support the appellant's suggestion. In Interim Order PO-4581-I, without making a finding on the application of section 25 of the *Act* to the circumstances of this appeal, I reminded the ministry of its obligations under that section. Section 25 applies when an institution receives a request for access to records that it does not have in its custody or control. In these circumstances, an institution is required to make all necessary inquiries to determine whether another institution has custody or control of the records or a greater interest in the records and to forward or transfer the request accordingly.

[40] For these reasons, I will order the ministry to take the steps it states are necessary in relation to the third party law enforcement agencies, who are members of OPTIC, whose accesses/queries of the specified OPP file can be accessed by the ministry. In the event that the ministry determines that third party law enforcement agencies that are institutions have custody or control of the records the appellant is seeking, the ministry is ordered to transfer the appellant's request, in accordance with section 25 of the *Act*.

ORDER:

1. I order the ministry to take the steps outlined in counsel's letter of January 20, 2025, in respect of the additional responsive records identified in the ministry's supplemental access decision of January 20, 2025. These steps include consulting with third party law enforcement agencies who created the responsive records and seeking their consent for them to be identified and released to the appellant.
2. I order the ministry to take the steps outlined in provision 1 within **September 22, 2025**. In the event that the third party law enforcement agencies provide consent for the release of the responsive records, the ministry is to issue a revised access decision to that effect by **October 1, 2025**.
3. I order the ministry to consult with third party law enforcement agencies to confirm whether any responsive records created in 2018 may have existed but no longer exist, in light of the evidence regarding the relevant four-year retention period.
4. I order the ministry to take the steps outlined in provision 3 within **September 22, 2025**. In the event that the third party law enforcement agencies confirm that responsive records no longer exist, the ministry is to issue an access decision to the appellant to that effect by **October 1, 2025**.

5. I order the ministry to advise the appellant in writing of the steps taken to comply with provisions 1 and 3 above by **October 1, 2025**. At minimum, the ministry is to advise the appellant of the following:
 - a. Its consultations with third party law enforcement agencies and any response received; and
 - b. Where it is possible that responsive records existed but no longer exist, details about when such records were destroyed, including information about record maintenance policies and practices, such as evidence of retention schedules.
6. In the event that the ministry determines that another institution has custody or control of the records the appellant is seeking, including another law enforcement agency, whether a member of OPTIC or not, I order the ministry to forward the appellant's request in accordance with section 25 of the *Act*, giving the requisite notice to the appellant. The parties are to treat the date of this order as the date of the request for the purposes of section 25.
7. The parties are to treat this order as the date of the appellant's request.
8. In order to verify compliance with this order, I reserve the right to require the ministry to provide me with any revised access decisions issued pursuant to provisions 2 and 4 above and its written advice to the appellant pursuant to provision 5 above.

Original Signed By: _____

Katherine Ball
Adjudicator

August 20, 2025