

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4709-F

Appeal PA22-00443

Ministry of Infrastructure

August 22, 2025

Summary: This final order determines whether the Ministry of Infrastructure conducted a reasonable search in response to Interim Order PO-4626-I, which is about an individual's request under the *Freedom of Information and Protection of Privacy Act* for access to records relating to a specific investigation.

In Interim Order PO-4626-I, the adjudicator determined that the ministry had not conducted a reasonable search for part 2 of the individual's request and ordered it to conduct a further search for responsive records. In this final order the adjudicator finds that the ministry has now conducted a reasonable search for responsive records, and she dismisses the appeal.

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

Orders Considered: Order PO-4626-I.

OVERVIEW:

[1] This final order addresses the reasonableness of the Ministry of Infrastructure's (the ministry) search for responsive records relating to a specific investigation after having been ordered to conduct a further search in Interim Order PO-4626-I.

[2] By way of background, the ministry received a four-part request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records

relating to a specific investigation into serious allegations of misconduct.

[3] The ministry issued a decision advising that parts 1, 3, and 4 of the request were transferred to Infrastructure Ontario (IO) under section 25(1) of the *Act*.¹

[4] Part 2 of the appellant's request is for:

All reports from the third party adviser(s) appointed by the ministry in relation to the same matters, as referenced in the same response by the minister on September 29, 2015. (During the meeting of the Legislature's Standing Committee on Estimates on November 17, 2015, [the identified minister] identified the third party adviser as [an identified individual]).

[5] With respect to part 2 of the request, the ministry stated:

Please be advised that Ministry staff conducted a search for responsive records and no records were located.

Based on this, we believe that the work undertaken by the third party advisor was for the Minister and/or Minister's Office staff only. As such, any records related to this would be a part of previous administration's records.

Upon change in the administration, the records of the previous administration are transferred to Archives of Ontario.

[6] The ministry suggested the appellant connect with the FOI office at the Archives of Ontario (the archives) for the records of the previous administration.²

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

[8] Following mediation, only the ministry's search relating to part 2 of the appellant's request remained at issue for me to consider. In Interim Order PO-4626-I, I found that the ministry had not conducted a reasonable search for reports from the third party adviser and ordered the ministry to conduct a further search. The ministry conducted a further search and located a new responsive record. The ministry then issued a new access decision and submitted representations and an affidavit outlining its new search. These were shared with the appellant who submitted representations in response.

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

¹ IO responded to parts 1, 3, and 4 of the appellant's request and located responsive records.

² The appellant made a request for the same information from the archives and that request was considered in Order PO-4625.

DISCUSSION:

[10] The sole issue for me to consider in this final order is whether the ministry conducted a reasonable search for responsive records as required by Interim Order PO-4626-I.

[11] In compliance with Interim Order PO-4626-I, the ministry conducted a further search for reports from the third party advisor and provided me with representations and affidavit evidence detailing that search. As a result of its further search, the ministry located one new responsive record. Despite this, the appellant claims that further records responsive to his request should exist.

[12] 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 24.³ 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.

[13] 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.⁴ 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 related (responsive) to the request.⁵

[14] 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.⁶

Representations, analysis and findings

[15] To begin, I will address the appellant's arguments with respect to the new responsive record (new record) located by the ministry after conducting the search I ordered in Interim Order PO-4626-I. After conducting the further search, the ministry located a new record responsive to part 2 of the appellant's request. It issued an access decision with respect to that record and claimed the section 19 solicitor-client privilege exemption applies to it. The appellant argues that section 19 does not apply to the new record and requests that I add section 19 as an issue in this current appeal.

[16] The only issue in this current appeal is reasonable search. The ministry has issued a new access decision with respect to the new record. If the appellant wishes to contest

³ Orders P-85, P-221 and PO-1954-I.

⁴ Orders P-624 and PO-2559.

⁵ Orders M-909, PO-2469 and PO-2592.

⁶ Order MO-2246.

the ministry's exemption claim, the appropriate course of action is for the appellant to appeal the ministry's new access decision. Therefore, I will not add section 19 as an issue in this appeal.

[17] The appellant also argues that the ministry should have conducted a reasonable search for all parts of his request, not just part 2 of his request. The appellant's original request was four parts and parts 1, 3, and 4 were transferred to IO by the ministry. Only the ministry's search in relation to part 2 of his request remained at issue⁷ and were considered in Interim Order PO-4626-I, and I determined that the ministry had not conducted a reasonable search for reports from the third party adviser.

[18] I understand that the appellant is not satisfied with the results of his IO appeal.⁸ However, it would not be appropriate for me to address parts 1, 3, and 4 of the appellant's request when they were not at issue in the appeal that resulted in Interim Order PO-4626-I.

[19] Based on the parties' representations, I am satisfied that the ministry conducted a reasonable search for records responsive to part 2 of the appellant's request.

[20] In support of its position that it conducted a reasonable search, the ministry provided the affidavits⁹ of its Senior Corporate Advisor, whose responsibilities include processing access requests. The ministry's representations and affidavits described the staff involved in the search, where they searched, and the results of the search.

[21] 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.¹⁰ The ministry has described the staff involved in the search, where they searched, and the results of the search. I am satisfied that the ministry has provided sufficient evidence to establish the reasonableness of its search efforts.

[22] The appellant submits that the ministry has not conducted a reasonable search, and it has not fully complied with Interim Order PO-4626-I. He submits that the ministry failed to provide complete information about the nature and location of the search. The appellant submits that the ministry did not provide information on what the specified third party adviser said about the existence or creation of any responsive record. He submits that the ministry listed four individuals who might have knowledge of these records, but the ministry did not provide testimony from these individuals about whether responsive records were or should have been created.

⁷ This was confirmed in the Notice of Inquiry sent to the appellant during the inquiry process and the appellant representations only addressed the ministry's search in relation to part 2 of his request.

⁸ Order PO-4655.

⁹ The ministry provided a second affidavit in response to the appellant's representations.

¹⁰ Orders M-909, PO-2469 and PO-2592.

[23] The appellant argues that if the archives was unable to locate the new record, but the ministry was able to obtain it from the third party adviser, this suggests that the new record most likely was not transferred by the ministry to the archives. The appellant argues that this further suggests that it is possible there are other responsive records that may have been destroyed prior to the archives transfer.

[24] The appellant submits that the ministry did not use the “necessary” search terms in its keyword search. He submits that the ministry did not use the name of the former minister and when searching for names of specified individuals, the ministry only searched using their full names and not their surnames alone.

[25] The *Act* does not require the ministry to prove with absolute certainty that further records do not exist. However, the ministry must provide sufficient evidence to show they have made a reasonable effort to identify and locate responsive records, and I find that they have done so.¹¹ The ministry reached out to the third party adviser to determine whether other responsive records were created and provided correspondence in support of its position. The third party adviser confirmed that the new record located by the ministry was the only report they provided to the ministry.

[26] 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.¹² Given that the third party adviser has confirmed that the new record is the only report he provided to the ministry, I find that there is insufficient evidence before me to establish a reasonable basis to conclude that further records responsive to part 2 of the appellant’s request exist in the ministry’s record holdings but have not yet been located through its search. At this point, the ministry has conducted several searches, and the third party adviser has confirmed that no other reports exist.

[27] For the reasons above, I find that the ministry conducted a reasonable search for responsive records.

ORDER:

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

Original Signed by: _____

Anna Truong
Adjudicator

August 22, 2025

¹¹ Orders P-624 and PO-2559.

¹² Order MO-2246.