



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER MO-2410-F**

## **Appeal MA06-333**

### **Toronto Police Services Board**



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## **NATURE OF THE APPEAL:**

This order disposes of the remaining issues from Interim Order MO-2347-I, particularly whether the Toronto Police Services Board (the Police) has conducted a reasonable search for records responsive to the appellant's access request, as required by section 17 of the *Municipal Freedom of Information and Protection of Privacy Act* (the Act). In addition, this order addresses a reconsideration request submitted by the appellant with respect to part of my decision in Interim Order MO-2347-I.

The appellant submitted an access request to the Police for records relating to domestic violence. The first part of his request was for the following information:

All information relating to domestic violence incidents including domestic related assaults, harassment, threatening, trespass. Broken out or identified by division, gender of accused, court time before final resolution, and type of final resolution.

The Police issued a decision letter to the requester granting him access to two records containing statistics relating to domestic violence. The first record is the "Domestic Violence Occurrences – Yearly Report" for 2005, which includes, for example, the total number of occurrences by gender. The second record is a chart called the "Domestic Violence Calls for Service – YTD 2004-2005," which is broken down by division.

The requester (now the appellant) appealed the Police's decision to this office. On the appeal form submitted by the appellant, he claimed that the Police have statistics on domestic violence that they have not provided and asserted that the Police "routinely, in some cases quarterly, send out Domestic Violence related statistics to government bodies and regulators."

In Interim Order MO-2347-I, I found that the Police had not conducted a reasonable search for the domestic violence statistics sought by the appellant. In particular, I stated the following:

The Police have not provided me with any evidence of searches they may have carried out for records containing such statistics. I have no evidence before me as to whether any experienced employees of the Police expended reasonable efforts to conduct searches for such records. Consequently, I will order the Police to conduct further searches. In my final order, I will determine whether these further searches conducted by the Police are reasonable.

Interim Order MO-2347-I contained the following order provisions with respect to this issue:

4. I order the Police to conduct further searches for records containing additional statistics on domestic violence that they may compile, including any statistics that are sent to municipal, provincial or federal government bodies (e.g., Statistics Canada) on a periodic basis.
5. I order the Police to submit detailed representations to this office that summarize their search efforts for additional records containing domestic violence statistics, including identifying who carried out these searches, what types of files were searched and the results of those searches. In

addition, I order the Police to provide answers to the following questions in their representations:

- (a) Do the Police have records containing statistics on domestic violence, other than the two pages of records containing statistics relating to domestic violence for 2005 that were previously provided to the appellant?
  - (b) Do the Police compile statistics on domestic violence that they provide to municipal, provincial or federal government bodies (e.g., Statistics Canada) on a periodic basis? If so, please provide details about the nature of such records.
6. I order the Police to provide me with these representations by **October 27, 2008**.
  7. In accordance with section 7.07 of the IPC's *Code of Procedure and Practice Direction Number 7*, I may share the Police's representations with the appellant. The Police should indicate whether they consent to sharing these representations with the appellant.
  8. If, as a result of these further searches, the Police identify additional records responsive to the appellant's request, I order them to provide the appellant with a decision letter regarding access to those records in accordance with sections 19, 20, 21 and 22 of the *Act*, treating the date of this order as the date of the request. I also order the Police to provide this office with a copy of any new decision letter that they issue to the appellant.

In response, the Police submitted representations to this office that outline the additional searches they conducted to locate records responsive to the appellant's request. I sent these representations to the appellant, and he provided representations in response.

## **SEARCH FOR RESPONSIVE RECORDS**

### **Summary of the parties' representations**

#### ***The Police's representations***

To comply with the order provisions listed above, the Police state that their freedom-of-information analyst contacted the following individuals:

- A constable from their Analysis Support Unit
- The Police's domestic violence coordinator in 2005

- The Police's domestic violence coordinator in 2008
- A representative from the Police's Records Management Services Unit

In response to Order Provision 4, the Police state:

Numerous consultations with the 2005 Domestic Violence Coordinator ... revealed that there are no additional statistics on domestic violence other than the two pages already released to the appellant. The compiled statistics are sent to the Toronto Police Services Board and to the Ministry of Community Safety and Correctional Services, Corporate Analysis Support. The [Police's] Domestic Violence Coordinator does not release statistical data on domestic violence to any other Municipal, Provincial or Federal body.

In response to Order Provision 5, the Police state, in part:

The [Police's] Analysis Support Unit extracts domestic violence data from the existing [Police] database which covers all policing divisions. This process is repeated on a quarterly basis and the data is forwarded directly to the [Police's] Domestic Violence Coordinator.

The Domestic Violence Coordinator is responsible for the preparation of data for dissemination to the [Board] and [the Ministry] ...

....

The TPS Records Management Unit provides an extract from the same source data to the Canadian Centre for Justice Statistics (CCJS), a division of Statistics Canada on the 15<sup>th</sup> of each month. This is an ongoing partnership through the Federal Government and the Canadian Centre for Justice Statistics. It should be noted that this extract does not capture domestic violence statistics. **All [Police] domestic violence data is captured and released to the Province via the Domestic Violence Coordinator only.** [Emphasis in original.]

Other than these avenues, no other domestic violence statistical information is available on any other [Police] database. Every reasonable effort to locate further statistical data was conducted. Consultations with the Domestic Violence Coordinator have indicated that there are no additional statistics or locations to search; therefore no further documents can be forwarded.

The Police conclude their representations by citing Orders MO-1446 and M-909 and submit that they have conducted a reasonable search for responsive records:

This institution has conducted a reasonable, even exhaustive, search for the "at issue" responsive records. There are no other locations to be searched. Every

reasonable effort has been put forth to comply with the obligations bestowed upon this institution and we are satisfied that we have released all responsive ... documents.

***The appellant's representations***

The appellant states that although the Police have provided him with "records from 2004 and greater details from 2005," they have not provided him with "more recent records."

He further submits that the Police have not conducted a reasonable search for responsive records, as required by section 17 of the *Act*:

... Although they claim to have done an exhaustive search, I find their claim to be wanting and a violation of your order. I have no doubt that additional records exist.

I would point to information from the following sources to support my belief.

The [Police] have provided me with forms, which their policy (05-04 Domestic Violence), makes mandatory. They collect and compile the information from those forms on other mandatory forms as per that policy. That policy specifies the following forms must be completed and filed:

TPS 100 Record of  
TPS 101 Supplementary Record of  
TPS 102 Domestic Violence Summary  
TPS 201 General Occurrence  
TPS 227  
TPS 428  
TPS 426 Domestic Violence Log  
TPS Domestic Violence Quality Control Report Monthly Summary

The forms collectively demand information, which is not included in the summary reports given to me such as information by Division, daily, and monthly occurrences, as well as information about the accused and victim by relationship (by current or previous marriage, or other intimate relationship, or none of the prior relationships), age, gender and location information.

The appellant also points out that the Police are one of 140 police services in Canada which provide statistical data to the CCJS:

As part of their responsibilities in submitting data, the contributors must file the Uniform Crime Reporting Survey (UCR) ... The monthly or other periodic form, and its data, which is submitted to the CCJS, has not been forwarded to me.

The appellant then provides links to several university and federal government websites (including excerpts from these websites) to illustrate the requirements of the UCR (i.e., the types of data that police services are required to provide to comply with the UCR).

### **Analysis and findings**

The issue remaining from Interim Order MO-2347-I is whether the Police have conducted a reasonable search for records containing the domestic violence statistics requested by the appellant. For the reasons that follow, I find that the Police have conducted a reasonable search for such records, as required by section 17 of the *Act*.

As noted above, the first part of the appellant's request was for the following information:

All information relating to domestic violence incidents including domestic related assaults, harassment, threatening, trespass. Broken out or identified by division, gender of accused, court time before final resolution, and type of final resolution.

In response, the Police disclosed two records to the appellant. The first record is the "Domestic Violence Occurrences – Yearly Report" for 2005 and includes various domestic violence statistics broken down by gender. The second record is a chart called the "Domestic Violence Calls for Service – YTD 2004-2005," which is broken down by division. Consequently, I find that these records are responsive to the portions of his request that ask for domestic violence statistics broken down by "gender of accused" and "division."

These records are not responsive to those portions of his request that ask for domestic violence statistics broken down by "court time before final resolution" and "type of final resolution." However, at the outset of the appeal process, the Police sent a letter to this office that suggested that the appellant was satisfied with the records provided to him:

... the requester (now the appellant) was contacted by [an analyst]. [She] offered a more comprehensive statistical record for all types of domestic violence, including a breakdown by division, gender, and what charges were laid ... To this the appellant agreed it would satisfy his request ...

However, in the appeal form that he filed with this office, the appellant disputes the Police's assertion that he is satisfied with the records that have been disclosed to him. He submits that the Police have statistics on domestic violence that they have not provided and asserts that they "routinely, in some cases quarterly, send out Domestic Violence related statistics to government bodies and regulators." In his initial representations to this office, which were considered in Interim Order MO-2347-I, he claims that the Police provide domestic violence statistics to Statistics Canada on a quarterly basis.

Where a requester claims that 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 17 of the *Act* [Orders P-85, P-221, PO-1954-I]. If I am satisfied that 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.

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 that it has made a reasonable effort to identify and locate responsive records [Order P-624]. A reasonable search would be one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request [Order M-909].

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 that such records exist.

In Interim Order MO-2347-I, I ordered the Police to conduct further searches for records containing additional statistics on domestic violence that they may compile, including any statistics that are sent to municipal, provincial or federal government bodies (e.g., Statistics Canada) on a periodic basis. In addition, I ordered them to provide details about the nature of such records.

In their representations, the Police provide a direct response to these order provisions. They acknowledge that their Records Management Unit provides an extract from their database to the CCJS, which is a division of Statistics Canada, on the 15<sup>th</sup> day of each month. However, they submit that "this extract does not capture domestic violence statistics" and state that their domestic violence coordinator only provides such statistics to the Ministry of Community Safety and Correctional Services.

In response, the appellant submits that the Police must comply with a survey called the Uniform Crime Reporting Survey (UCR) when submitting data to the CCJS. He asserts that, "the monthly or other periodic form, and its data, which is submitted to the CCJS, has not been forwarded to me."

To be considered responsive to the request, records must "reasonably relate" to the request [Order P-880]. Consequently, the Police would only be required to locate and make an access decision on the data that it provides to the CCJS if such information "reasonably relates" to the appellant's request.

As noted above, the Police submit that the extract that it provides to the CCJS on a monthly basis "does *not* capture domestic violence statistics." [Emphasis added.] Although the appellant has provided me with some excerpts from various websites to illustrate the requirements of the UCR, they do not contain sufficient evidence that would lead me to conclude that the extract the Police provide to the CCJS contains information that is responsive to his access request. Consequently, I find that this information does not reasonably relate to his request, and the Police are not required to locate and provide him with an access decision with respect to these records.

In his representations, the appellant also points to several forms that the Police fill out with respect to domestic violence incidents and submits that he has not been provided with the statistical information generated from these forms:

The forms collectively demand information, which is not included in the summary reports given to me such as information by Division, daily, and monthly occurrences, as well as information about the accused and victim by relationship (by current or previous marriage, or other intimate relationship, or none of the prior relationships), age, gender and location information.

These representations refer to additional information that was not identified in the appellant's original request. I am not prepared to include this information in my assessment of whether the Police have conducted a reasonable search for records responsive to his request. Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour [Orders P-134, P-880]. However, an institution is not required to search for additional information that a requester adds to his request during the appeal process.

As noted above, the records that the Police have disclosed to the appellant do not contain information that is responsive to those portions of his request that ask for domestic violence statistics broken down by "court time before final resolution" and "type of final resolution." However, the Police submit that they consulted with the domestic violence coordinator, who stated that no additional domestic violence statistics exist. In his representations, the appellant does not provide sufficient evidence that would establish a reasonable basis for concluding that the Police have records containing statistics broken down by "court time before final resolution" and "type of final resolution."

The appellant further submits that although the Police have provided him with "records from 2004 and greater details from 2005," they have not provided him with "more recent records." This is presumably a reference to the same two records that have already been disclosed to him, but for the years 2006, 2007 and 2008.

However, the appellant's request is dated July 27, 2006 and does not ask for continuing access for up to two years, as permitted by section 17(3) of the *Act*. Consequently, the Police are not required to provide the appellant with access to any records generated after July 27, 2006. If the appellant wishes to access subsequent versions of the two records to which the Police have already provided access, he must file a new access request for such records.

In short, I find that the Police have provided sufficient evidence to show that they have made a reasonable effort to identify and locate responsive records, as required by section 17 of the *Act*. In my view, it is clear that a freedom-of-information analyst consulted experienced employees who are responsible for managing such records, including a constable from their Analysis Support Unit, their domestic violence coordinators in 2005 and 2008, and a representative from



their Records Management Services Unit. These individuals expended reasonable efforts to locate any additional records that are responsive to the appellant's request.

## **RECONSIDERATION REQUEST**

### **Nature of request**

The appellant sent another letter to this office that amounts to a reconsideration request with respect to the part of Interim Order MO-2347-I that found that limited and specific portions of Procedure 05-04 (Domestic Violence) qualified for exemption under the discretionary exemption in section 8(1)(e) of the *Act*.

The Police had issued a decision letter to the appellant granting him partial access to Procedure 05-04. Although the Police disclosed most of Procedure 05-04 to the appellant, they withheld specific portions of this 13-page record pursuant to the discretionary exemptions in sections 8(1)(c) and (e) of the *Act*.

In Interim Order MO-2347-I, I found that most of the remaining information withheld by the Police in this record did not qualify for exemption under sections 8(1)(c) or (e) of the *Act*, and I ordered the Police to disclose these portions of the record to the appellant. As a result, the appellant has been provided with access to Procedure 05-04 almost in its entirety.

However, I found that limited and specific portions of this record qualified for exemption under section 8(1)(e) of the *Act*. This provision states:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

endanger the life or physical safety of a law enforcement officer or any other person;

The Police withheld portions of the record at issue that require their officers to take domestic violence victims to specific, named locations (pages 6 and 9) and to arrange transportation to other unnamed places of safety (page 7). I found that the former information qualified for exemption under section 8(1)(e) of the *Act*:

I am satisfied that disclosure of the named locations (pages 6 and 9) could reasonably be expected to endanger the life or physical safety of victims of domestic violence. In my view, there are safety reasons for withholding this information that are not frivolous or exaggerated ...

In his reconsideration request, the appellant states the following:

I both understand the finding and do not take issue with its principle. The location a victim of domestic violence is taken for safety reasons could become a location for further victimization should a perpetrator have access to that information. However, it is very likely that the organization providing the service [the Police] is making available to the victim is itself public information already ...

He also provides website links and two attachments to demonstrate that the contact information for some shelters is publically available. He then goes on to ask that “the order allow for [disclosure of] the names and contact information of the organizations providing shelter to victims.”

### **Analysis and findings**

#### ***Timeframe***

The timeframe for submitting a reconsideration request is set out in section 18.04 of this office’s *Code of Procedure* (the *Code*):

A reconsideration request shall be made in writing to the individual who made the decision in question. The request must be received by the IPC:

(a) where the decision specifies that an action or actions must be taken within a particular time period or periods, before the first specified date or time period has passed; or

(b) where decision does not require any action within any specified time period or periods, within 21 days after the date of the decision.

In Order Provision 2 of Interim Order MO-2347-I, I directed the Police to disclose the remaining non-exempt portions of Procedure 05-04 to the appellant by October 27, 2008. Consequently, in accordance with paragraph (a) of section 18.04 of the *Code*, both the Police and the appellant had until that date to submit a reconsideration request.

The appellant’s reconsideration request was received on December 4, 2008. Consequently, he has failed to comply with the timeframe set out in section 18.04, and I find that his reconsideration request may be dismissed on that basis alone.

***Grounds for reconsideration***

*Section 18.01 of the Code*

Although the appellant's reconsideration request was not received within the required timeframe and may be dismissed on that basis, I have decided to also consider whether his request meets the grounds for reconsideration set out in section 18.01 of the *Code*.

Section 18.01 states the following:

The IPC may reconsider an order or other decision where it is established that there is:

- (a) a fundamental defect in the adjudication process;
- (b) some other jurisdictional defect in the decision; or
- (c) a clerical error, accidental error or omission or other similar error in the decision.

The appellant's reconsideration request does not make any reference to the grounds for reconsideration set out in section 18.01 of the *Code*. In my view, he is simply attempting to present new arguments as to why certain information that I found exempt under section 8(1)(e) of the *Act* should be disclosed to him. I find that his reasons for seeking a reconsideration of Interim Order MO-2347-I do not fit within the grounds set out in section 18.01, and his reconsideration request must, therefore, be dismissed on that basis.

**ORDER:**

1. I uphold the Police's search for responsive records and dismiss the remainder of the appeal.
2. I dismiss the appellant's reconsideration request.

Original Signed by: \_\_\_\_\_  
Colin Bhattacharjee  
Adjudicator

\_\_\_\_\_ April 22, 2009