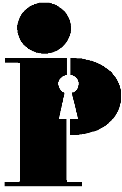

ORDER MO-2351

Appeal MA08-35

Toronto Police Services Board

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NATURE OF THE APPEAL:

The Toronto Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act)*, for access to information relating to a specified incident involving the requester. Specifically, the requester sought access to the following information:

- Please provide me with the information regarding report number [#].

- Please include any and all information under your heading "Non-Responsive" that was not requested by me.

The Police located the responsive records and granted the requester with partial access to them. Access was denied to certain information, pursuant to the exemptions in sections 8(1) (law enforcement) and 38(b) (personal privacy) of the *Act*, and to other information which had been deemed non-responsive to the request.

The requester (now the appellant) appealed the Police's decision.

During mediation, the appellant indicated that the severed information and the non-responsive portions of the records were no longer at issue. However, the appellant maintained that the disclosed records contained some "false and unprofessional information" about her mental health status, and requested that this information be removed from the records.

Upon discussion of this issue with the mediator, the Police issued a supplementary decision letter advising that no changes can be made to the "police officer's observations, noted at the time of the aforementioned incidents". The Police suggested that the appellant submit a statement of disagreement which could be appended to the reports, pursuant to section 36(2) of the *Act*.

In response, the appellant sent a letter to the mediator, requesting that the Police correct the information pertaining to her health status, and provide any documentation regarding the assessment of her health status. At the appellant's request, the mediator forwarded this letter to the Police.

Upon review of the letter, the Police advised that the decision stated remains unchanged, and that no records relating to the appellant's health status exist.

Also during mediation, the appellant claimed that the following additional records ought to exist:

- a letter of a specified date which she sent to a named Superintendent along with some photographs;

- notes of interviews conducted with the two students who lived in her basement; and,

- records of the phone calls the appellant made to a named constable.

In response, the Police advised that all the responsive records had been located and that no additional records exist.

With respect to the letter and photographs sent to the named Superintendent, the Police further advised that correspondence received from the public is purged once no further action is required.

With respect to the students' interview notes, the Police advised that the students were not interviewed and, therefore, that no records exist.

Lastly, the Police advised that phone calls made to a Police Station are not retained as a record, with the exceptions of the 911 calls.

This appeal could not be resolved at mediation as the appellant wished to pursue the issues relating to the right of correction, and the search for additional records.

The file was transferred to me to conduct an inquiry. I sent a Notice of Inquiry, setting out the facts and issues in this appeal, to the Police seeking their representations. I received representations from the Police. I sent a complete copy of the Police's representations, along with a Notice of Inquiry to the appellant, seeking her representations. I received representations from the appellant in response. The appellant did not consent to the sharing of her representations with the Police, stating that: "This presentation can be shared with the Toronto Police Service only if it would result in successfully resolving my case".

However, based on the information in the appellant's representations, I did seek additional representations from the Police on the reasonable search issue and on the personal privacy exemption in section 38(b) concerning the severed information from three police officers' notebook notes. I received representations from the Police in reply concerning these issues.

RECORDS:

The records remaining at issue consist of:

Record 1 -the information relating to the appellant's mental health status recorded on pages 22 and 30 of two occurrence reports; and,

Record 2 -excerpts from the following three police officer notebooks:

(i) Excerpt from memorandum book of police officer #1 dated 2007/03/03

(a) Page 27: Lines 9 and 12

(ii) Excerpt from memorandum book of police officer #2 dated 2006/12/09

(a) Page 10: Lines 5 to 8, 23 to 25 and 27 to 31
(b) Page 11: Lines 2, 3, 4, 6 and 9
(c) Page 12: Lines 20, 21, 23, 24 and 26 to 30
(d) Page 13: Lines 2 to 10, 23, 24 and 28
(e) Page 14: Lines 10 to 27

(iii) Expert from memorandum book of police officer #3 dated 2006/12/09

(a) Page 15: Lines 17, 19, 20, 21 and 31
(b) Page 16: Lines 2, 3, 12, 14, 15, 24 to 29, 31
(c) Page 17: Lines 3
(d) Page 18: Lines 2 to 11, 19, 22, 23, 25 and 29

DISCUSSION:

PERSONAL INFORMATION

I will first determine whether the records contain "personal information" as defined in section 2(1) and, if so, to whom it relates. That term is defined in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except where they relate to another individual,

(f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual, and

(h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

Effective April 1, 2007, the *Act* was amended by adding sections 2.1 and 2.2. These amendments apply only to appeals involving requests that were received by institutions after that date. Section 2.1 modifies the definition of the term "personal information" by excluding an individual's name, title, contact information or designation which identifies that individual in a "business, professional or official capacity". Section 2.2 further clarifies that contact information about an individual who carries out business, professional or official responsibilities from their dwelling does not qualify as "personal information" for the purposes of the definition in section 2(1).

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

Both the appellant and the Police agree that the records contain the personal information of the appellant and other identifiable individuals in their personal capacity.

CORRECTION OF PERSONAL INFORMATION

I will now determine whether the Police should correct the personal information at issue in Record 1.

Section 36(1) gives an individual a general right of access to his or her own personal information held by an institution. Section 36(2) gives the individual a right to ask the institution to correct the personal information. If the institution denies the correction request, the individual may require the institution to attach a statement of disagreement to the information. Sections 36(2)(a) and (b) read:

> Every individual who is given access under subsection (1) to personal information is entitled to,
>
> (a) request correction of the personal information where the individual believes there is an error or omission therein;
>
> (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made;

Where the institution corrects the information or attaches a statement of disagreement, under section 36(2)(c), the appellant may require the institution to give notice of the correction or statement of disagreement to any person or body to whom the personal information has been disclosed within the year before the time the correction is requested or the statement of disagreement is required.

The Police submit that:

> During mediation, the appellant requested corrections be made to the information as she was dissatisfied with how she was portrayed by the attending officers during their interaction. The institution responded with a supplementary decision letter…, outlining the process to submit a statement of disagreement. The institution also indicated that the officers' observations could not be changed via this office. Some options included speaking to the officer to see if they would make the amendments themselves or provide the suggested statement.
>
> It is a standard procedure of the Toronto Police Service to direct a requester to submit a statement of disagreement in writing to the agency if they are dissatisfied/disagree with an officer's interpretation of an incident. It is made clear in discussion with the requester that a statement of disagreement has criteria that it must fulfil. It is not a remedy if one's feelings are hurt as a result of an officer's opinion and observations during a specific situation or circumstance…
>
> During the mediation process, the appellant took issue with the observations on page 22 [of Record 1], when the officers attended a radio call placed by the appellant on [date]. This was in regards to a Break and Enter at the appellant's home address, report [#]. The attending officers recorded their observations after speaking to the appellant in person. On page 30, the attending officers again

> attended the same address, when the appellant placed a call on [date] in regards to an allegation of damage to her property, report [#]. Again the officers recorded their observations in their report after completing their investigation.
>
> It is not the place of this office to second guess what the officers observed during the two calls regarding the appellant's demeanour, but simply to release the recorded, responsive material. The officer makes a determination/judgement call on a situation. They take in the situation, the demeanour of all involved and the possible remedies.
>
> The appellant wants the institution to correct the officers' observations and opinion, to reflect her behaviour at the time in a more flattering light, as she was insulted by their interpretation. It is the institutions' contention that it is not the place of this office to second guess what these officers observed during the two calls regarding the appellant's conduct. The information the appellant would like changed is neither incorrect nor ambiguous, albeit perhaps non flattering.

The appellant provided lengthy representations, which I have considered in their entirety. With respect to the issue of the correction of her personal information in Record 1, she submits that:

> As the incorrect information reported contains my "personal information" therefore it should be corrected under section 36(2)(a) of the *Act*...
>
> [Two police officers] came to my house and I showed them the pictures …taken with my cell phone … [Police officer #1] made note of the date of the pictures from my cell-phone. When I asked them about the other reports recorded by other officers, [police officer #1] told me that the previous files were closed because they had spoken to my [family members] who had told them that I was depressed and on medication. I told them that I was frustrated but was not on any medication apparently [police officer #2] was not convinced with my answer as she asked me "aren't you on medication?"and when I replied "no", she repeated her question asking me again "aren't you on medication?" and I replied "no."
>
> The personal information provided by me to the officers was exact and completely accurate. In addition, the information and the evidence …supported my statement... Therefore, [police officer #1's] objective and incorrect statement made to support her fellow worker [name] ought to be corrected and deleted from the report. In addition, the [Police] claimed that they do not have any records of assessment or records available in support of the officers who believed that I was mentally ill at the time…
>
> Furthermore, I made the request to change of incorrect information from the [Police] through the mediator and had requested [the Police] to provide me with an official report/records pertaining to their officers' observations during "the specific situation" at the time. According to the [Police's Freedom of

> Information] Coordinator's response, no information/documentation existed to prove that the statement provide by the officers in their report were exact, correct and complete.
>
> [Four named police officer's] failed to examine the truth by making a discriminatory statement based on association and false information. As a rule of professional conduct, reports should be made based on facts and not assumptions and or bad faith...
>
> Interestingly, the first two officers [names] who responded to my first call (report [#'s]) reported my condition as "Calm, Upset." This contradicts the other officers' observation…
>
> Under section 32(a), any false personal information about me should be corrected from the incident reports. Alternatively, the incorrect information could be deleted from the records. As such, no statement of disagreement is required.

Analysis/Findings

The appellant has not requested that a statement of disagreement be attached to Record 1, therefore I find that section 36(2)(b) is not applicable in this appeal. I also find that section 36(2)(a) is not applicable as the information at issue consists of opinion information [Orders P-186, PO-2079].

I adopt the findings of Senior Adjudicator John Higgins in Order MO-2258, where he stated:

> In Order M-777, I dealt with a correction request involving a "security file" which contained incident reports and other allegations concerning the appellant in that case. The nature of the records is similar to those at issue here, in which the Police have recorded allegations and information reported to them. I stated:
>
> > … the records have common features with witness statements in other situations, such as workplace harassment investigations and criminal investigations. If I were to adopt the appellant's view of section 36(2), the ability of government institutions to maintain whole classes of records of this kind, in which individuals record their impressions of events, would be compromised in a way which the legislature cannot possibly have intended.
> >
> > In my view, records of this kind cannot be said to be "incorrect" or "in error" or "incomplete" if they simply reflect the views of the individuals whose impressions are being set out, whether or not these views are true. Therefore, in my view, the truth or falsity of these views is not an issue in this inquiry…

> In my view, the occurrence report and record of arrest in this case represent factual records of allegations received by the Police, the investigation they conducted...
>
> Accordingly, based on the interpretation of section 36(2)(a) developed in the orders cited above, I find that the records are not "inexact, incomplete or ambiguous", and I find that section 36(2)(a) does not provide any basis to order them corrected.

Conclusion

I find that the information at issue in Record 1 is the opinion information of the police officers who interviewed the appellant. This is not information that is "incorrect" or "in error" or "incomplete", as it simply reflects the views of the individuals whose impressions are being set out in Record 1. Therefore, I uphold the decision of the Police not to correct this information under section 36(2)(a) of the *Act*. However, the appellant still has the option of requiring the Police to attach a statement of disagreement as provided for in section 36(2)(b).

PERSONAL PRIVACY

The appellant disputes the Police's claim that the severances from Record 2 due to the personal privacy exemption were no longer at issue. Based on the appellant's numerous letters to me that this is still an issue for her, I sought reply representations from the Police on whether disclosure of the severed personal information in Record 2, being the information severed from the police officers' notebooks, would constitute an unjustified invasion of the personal privacy of the identifiable individuals other than the appellant referred to therein. I will now determine whether the discretionary exemption at section 38(b) applies to this personal information at issue in Record 2.

The appellant provided submissions on the severances in Record 2. She submits that:

> [T]he Toronto Police Service should have granted access to any and all existing personal information about me reported by me and/or any other individuals in a form of complaint and or statement. Based on my telephone conversation with an officer at [named] Division, the investigation on the case was completed and the case was closed.

Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would constitute an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester.

If the information falls within the scope of section 38(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the requester's right of access to his or her own personal information against the other individual's right to protection of their privacy.

Sections 14(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold under section 38(b) is met. If the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). If section 14(4) applies, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). In this appeal, the information does not fit within paragraphs (a) to (e) of section 14(1) and section 14(4) does not apply.

If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 38(b).

The Police raised the presumption in section 14(3)(b). This section reads:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> > was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

In the non-confidential portions of the Police reply representations, they submit that:

> [Record 2] contains "personal information" [relating to the appellant and other identifiable individuals]. The "personal information' has been severed as the appellant does not have their written consent to access their personal information, and is not entitled to access their personal information. The *Act* is quite clear in this regard, and to release such information to the appellant would be unjust and a violation of their personal privacy…
>
> The other involved [individuals] willingly cooperated with the Police at the time of the investigation. Release of these individuals personal information would not only undermine their confidence in the police, but also create an unwillingness in them to cooperate with the police in the future…
>
> [N]one of the information which could be considered as information relating to the appellant could be disclosed without revealing the personal information of [the other identifiable individuals]. In exercising discretion to exempt the information in favour of protecting the privacy of the [the other identifiable individuals], the following factors were considered.

a) Section 29 of the *Act* authorizes the indirect collection of personal information for the purpose of law enforcement. Section 28 introduces safeguards to the collection of personal information. In the case at issue, the balance between right of access and the protection of privacy must be given in favour of protecting the privacy of [these individuals] personal information.

b) In assessing the value of protecting the privacy interests of an individual other than the requester, one needs to consider the nature of the institution. The nature of a law enforcement institution is in great part to record information relating to unlawful activities, crime prevention activities, or activities involving members of the public who require assistance and intervention by the police. Law enforcement institution records are not simple business transaction records in which disclosure of another individual's personal information may not, on balance, be offensive.

Analysis/Findings

Both the appellant and the Police agree that the information at issue was compiled as a result of a law enforcement investigation. Upon my review of the personal information at issue in Record 2, I agree with the parties that it was compiled and is identifiable as part of an investigation by the Police into a possible violation of law as contemplated by section 14(3)(b). The already disclosed information from the record reveals that the Police were investigating whether a charge of break and enter into the appellant's home pursuant to section 348 of the *Criminal Code of Canada* should be laid against certain identifiable individuals.

The presumption in section 14(3)(b) applies to the personal information at issue even though criminal proceedings were not commenced. The presumption in section 14(3)(b) only requires that there be an investigation into a possible violation of law [Order P-242].

This presumed unjustified invasion of personal privacy under section 14(3), cannot be rebutted by one or more factors or circumstances under section 14(2) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. A presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the "public interest override" at section 16 applies. [*John Doe,* cited above]. Section 16 has not been raised by the appellant and, as stated above, section 14(4) is inapplicable in this appeal.

Accordingly, I conclude that disclosure of the severed personal information in Record 2 is presumed to constitute an unjustified invasion of the personal privacy of the identifiable individuals other than the appellant in the record.

Absurd result principle

The appellant referred to this absurd result principle in her representations. Although invited to do so, the Police did not provide representations on this principle. Based upon my review of the personal information in Record 2, I find the absurd result principle may apply to some of the information at issue. This principle may apply where the requester originally supplied the information, or the requester is otherwise aware of it, the information may be found not exempt under section 38(b), because to find otherwise would be absurd and inconsistent with the purpose of the exemption [Orders M-444, MO-1323].

The absurd result principle has been applied where, for example:

- the requester sought access to his or her own witness statement [Orders M-444, M-451]
- the requester was present when the information was provided to the institution [Orders M-444, P-1414]
- the information is clearly within the requester's knowledge [Orders MO-1196, PO-1679, MO-1755]

If disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is within the requester's knowledge [Orders M-757, MO-1323, MO-1378].

Analysis/Findings

Upon review of Record 2 and the appellant's representations, I find that the appellant is otherwise aware of some of the undisclosed personal information in this record relating to the Police investigation. In particular, the appellant provided this undisclosed information to the Police when they interviewed her. Therefore, I will order disclosure of the following information from the police officers' handwritten notes:

Page 11: Lines 2, 3, 4 and 6
Page 13: Lines 2 to 5, 23, 24 and 28
Page 16: Lines 14, 27 to 29
Page 18: Lines 22, 23, 25 and 29
Page 27: Lines 9 and 12

However, I will not order disclosure of the other severed information in Record 2 even though the appellant may have provided this information to the Police, or is otherwise aware of this information. In particular, I find that the absurd result principle is inapplicable to allow disclosure of this personal information of identifiable individuals other than the appellant

referred to in this record. In the particular circumstances of this case, I agree with the findings of Adjudicator Laurel Cropley in Order MO-1524-I, where she stated that:

> The privacy rights of individuals other than the appellant are without question of fundamental importance. One of the primary purposes of the *Act* (as set out in section 1(b)) is to protect the privacy of individuals. Indeed, there are circumstances where, because of the sensitivity of the information, a decision is made not to apply the absurd result principle (see, for example, Order PO-1759). In other cases, after careful consideration of all of the circumstances, a decision is made that there is an insufficient basis for the application of the principle (see, for example, Orders MO-1323 and MO-1449). In these situations, the privacy rights of individuals other than the requester weighed against the application of the absurd result principle.

I also adopt the findings of Adjudicator Frank DeVries in Order PO-2440, where he stated:

> I have carefully reviewed the circumstances of this appeal, including the specific records at issue, the background to the creation of the records, the unusual circumstances of this appeal, and the nature of the allegations brought against the police officer and others. I also note that the Ministry has, in the course of this appeal, disclosed certain records to the appellant. I find that, in these circumstances, there is particular sensitivity inherent in the personal information contained in the records, and that disclosure would not be consistent with the fundamental purpose of the *Act* identified by Senior Adjudicator Goodis in Order MO-1378 (namely, the protection of privacy of individuals, and the particular sensitivity inherent in records compiled in a law enforcement context). Accordingly, the absurd result principle does not apply in this appeal.

The portions of Record 2 that I have not ordered disclosed by reason of the absurd result principle contain the personal information of identifiable individuals other than the appellant. These individuals were involved in a law enforcement investigation. I find that the sensitivity of this particular personal information constitutes a compelling reason for not applying the "absurd result" principle. Disclosure of this personal information would be inconsistent with the purpose of the exemption, which must include the protection of the personal privacy of individuals in the law enforcement context.

EXERCISE OF DISCRETION

I will now determine whether the Police exercised its discretion in a proper manner under section 38(b) with respect to the information in Record 2 that I have found to be exempt by reason of section 38(b) and not subject to disclosure by reason of the absurd result principle.

The section 38(b) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations

In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 43(2)].

Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant [Orders P-344, MO-1573]:

- the purposes of the *Act*, including the principles that
  - information should be available to the public
  - individuals should have a right of access to their own personal information
  - exemptions from the right of access should be limited and specific
  - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person

- the age of the information
- the historic practice of the institution with respect to similar information

The appellant made representations concerning the Police's exercise of discretion, citing several orders of this office.

The Police submit that:

> After relevant considerations the institution took account of the relationship of the appellant and decided that the information of the [other identifiable individuals in Record 2] should not be revealed as the involved persons are not of an interest in this case. The institution also took into account the nature of the information and extent to which it is significant and/or sensitive to the institution, the requester and [these other identifiable individuals].

Analysis/Findings

I find that the Police disclosed as much of the remaining information at issue in Record 2 as could reasonably be disclosed without disclosing material which is exempt. I find that in denying access to the undisclosed portions of this record which I have found not subject to the absurd result principle, the Police exercised its discretion under section 38(b) in a proper manner, taking into account relevant factors and not taking into account irrelevant factors. I find that the Police applied the claimed exemption in the *Act* appropriately to the withheld portions of the record at issue. Any additional disclosure of information would constitute an unjustified invasion of the personal privacy of other identifiable individuals in this record. Accordingly, I find that the remaining undisclosed portions of Record 2 are exempt under section 38(b) of the *Act*.

SEARCH FOR RESPONSIVE RECORDS

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 [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].

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 the Notice of Inquiry, the Police were asked to provide a written summary of all steps taken in response to the request. In particular, the Police were asked to respond to the following questions:

1. Did the Police contact the requester for additional clarification of the request? If so, please provide details including a summary of any further information the requester provided.

2. If the Police did not contact the requester to clarify the request, did it:

   (a) choose to respond literally to the request?

   (b) choose to define the scope of the request unilaterally? If so, did the Police outline the limits of the scope of the request to the requester? If yes, for what reasons was the scope of the request defined this way? When and how did the Police inform the requester of this decision? Did the Police explain to the requester why it was narrowing the scope of the request?

3. Please provide details of any searches carried out including: by whom were they conducted, what places were searched, who was contacted in the course of the search, what types of files were searched and finally, what were the results of the searches? Please include details of any searches carried out to respond to the request.

4. Is it possible that such records existed but no longer exist? If so please provide details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.

In response to the Notice of Inquiry, the Police submit that:

> Pursuant to a discussion with the mediator, the appellant claims that the following additional records ought to exist:
>
> - a letter [date], which the appellant sent to a named Superintendent along with some photographs;
> - notes of interviews conducted with the 2 students who resided in her basement;
> - records of the phone calls the appellant made to a named constable;…

> The appellant [provided] sufficient details about the records for which she was seeking. The Toronto Police Service conducted a thorough search in their databases utilising all the information provided including the first name, last name, date of birth, location of the incident in question etc. Police collected all the incident reports and officers' memorandum books for each incident that were responsive to the request and processed the request. The information collected included the appellant's personal information and the incidents specified in her request.
>
> The appellant believes that the letter [date] and photographs should exist; however, when information is submitted to a Division, the information is updated on the system and returned to the involved party(where applicable).
>
> Conversely, once the investigation is completed, and depending on the results, originals are returned to the owner. Since the Division has a retention period of one year for incidents where no charges are laid, records not claimed would be purged and therefore these records are not longer in existence.
>
> After careful review of the officers notes, there is no indication to support the existence of two students residing in her basement. Furthermore, any students residing at the location would have been interviewed as potential witnesses/ suspects. If they were absent both evenings, their personal information would have been taken by the attending officer from the appellant for further investigation at a future date. The absence of any notes or mention of two students would normally be considered highly irregular so the Analyst followed up with a call to one of the involved officers.
>
> Pursuant to a telephone conversation with PC [name, #] (occurrence #...), she indicated that at the time of the incident, the appellant indicated that the tenants "students" had moved months prior to this incident. They were deemed to have no involvement in the incident. At no time, did the appellant provide any details to indicate that she felt the students should be viewed as suspects, so there was nothing to follow up on…
>
> It should be noted that records are not kept on calls made to local police divisions, so if indeed calls were placed, there is no way of tracking same. Unless calls are made to "911" or the police main switchboard, records are not created. Calls made to a Division are usually of an inquiring nature so to record all calls would prove exhaustive and unreasonable, thusly limiting the effectiveness of the officers.

The appellant submits that the Police did not conduct a reasonable search. She states that:

> 1. The Police did not contact me for any clarification of the request.…

2. The Toronto Police Service Board did not provide any detailed explanation indicating that their search was through, detailed, and included all their computerized data banks such as C.P.I.C., MANIX, COPS, and CNI…

3. I am certain that such records exist and the computerized data banks C.P.I.C., MANIX, COPS, and CNI may not have been searched. Or, such records existed but was purged to dismiss the invasion of privacy or unlawful practice.

In addition, the appellant submits that a responsive record should exist consisting of the following:

> Excerpt from memorandum book of [a named police officer (date) who] was not writing the report but he was listening and making notes of the dates of the pictures taken by my cell phone.

I sought reply representations from the Police on the existence of this memorandum book. In reply, the Police submit that:

> Please note that in memorandum book of [named police officer] pages 33 - 35 [of the already disclosed records this] officer did take notes of the incident presented to him. In [this] memorandum book there is no mention of any other incident as described by the appellant.

Analysis/Findings

As noted above, the appellant believes additional records should exist. The *Act* does not require the Police to prove with absolute certainty that further records do not exist. However, the Police must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records within its custody or control [Order P-624].

Although the appellant asserts that additional responsive records should exist in response to her request, I find that the appellant has not provided me with a reasonable basis for concluding that additional responsive records exist. Based on the Police's representations, I do not accept the appellant's claim that the Police did not conduct a thorough search of their databases utilising all the information provided. In addition, I accept that the Police sought and received clarification of the request from the appellant at the request stage.

Upon my review of the Police's representations, I find that the Police have provided sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624].

I conclude that the Police have provided a comprehensive description of the steps they undertook to locate records responsive to the appellant's request. Accordingly, I find that the Police have performed a reasonable search for responsive records and I dismiss that aspect of the appeal.

ORDER:

1. I order the Police to disclose to the appellant by **December 1, 2008** the following information from Record 2:

   Page 11: Lines 2, 3, 4 and 6
   Page 13: Lines 2 to 5, 23, 24 and 28
   Page 16: Lines 14, 27 to 29
   Page 18: Lines 22, 23, 25 and 29
   Page 27: Lines 9 and 12

2. In order to verify compliance with this order I reserve the right to require the Police to provide me with a copy of the information from Record 2 disclosed to the appellant pursuant to provision 1, upon my request.

3. I uphold the remainder of the Police's decision.

________________________________ October 23, 2008

Diane Smith
Adjudicator