

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-2672

Appeal MA10-270

Toronto Police Services Board

November 18, 2011

**Summary:** The appellant sought police records related to an August 2005 incident. The records identified and disclosed in part to the appellant did not include a videotaped interview the appellant claimed took place several months after the incident. The appellant appealed the adequacy of the police's search for the videotape and other responsive records. The adjudicator considered the evidence provided respecting the search for responsive records and found that the searches had been reasonable. The appeal is dismissed.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, s. 17.

### OVERVIEW:

This order addresses the adequacy of searches conducted by the Toronto Police Services Board (the police) for all records responsive to a request submitted under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The request sought access to:

... incidents, reports, memorandum book notes, emergency call to the police: times, dates, locations, 2 officers involved, [specified] Division in 2005.

[Named female] detective and a man detective on January 6 [to] 10 of 2006: report of the same incidents against me in 2005, June to August at

[a specified location]. I personally went to [the Division] to report the incidents...

Following the initial searches conducted, the police issued an access decision providing partial access to seven pages. The police withheld portions of the memorandum book notes of the attending officers (from August 2005) because the information was not responsive to the request or was exempt under the personal privacy exemption in sections 14(1) or 38(b) of the *Act*. Complete access to the ICAD report<sup>1</sup> and related Manix report was granted. The appellant decided not to pursue access to the information withheld by the police.

With respect to the named female detective's memorandum book notes for January 6-10, 2006 and the videotaped interview from that time period, the police advised the appellant that such records do not exist. The appellant was not satisfied with this part of the police's decision. Her appeal of the adequacy of the search for these particular records forms the basis of this order.

In this order, I find that the search for responsive records by the police was reasonable, and I dismiss the appeal.

## **DISCUSSION:**

### **Did the police conduct a "reasonable" search for responsive records?**

Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
  - (a) make a request in writing to the institution that the person believes has custody or control of the record;
  - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and
- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

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<sup>1</sup> Intergraph Computer Aided Dispatch - 9-1-1 transcript.

When an individual asserts that additional records responsive to a request should exist, the burden of proof lies with that individual to suggest a reasonable basis for their belief that the records should exist (see Order MO-2246). In this appeal, I decided to seek the appellant's representations in support of her belief that additional records ought to exist, first.

The appellant submits that:

The records exist because [at] the interrogative interview done by [the named female detective] and the male detective in the [specified police division], the two detectives took a full statement, videotaped and voice recorded the interview to investigate the injuries and criminal incidents [that] happened to me [during a specified time period at a certain location].

The appellant also indicated that she attended at the police division several times to try to seek assistance in determining the identity of the male detective or officer who had accompanied the female detective at her interview, but this had not been successful. The appellant's other comments respecting her attendance at the station do not directly address the search issue.

With her representations, the appellant provided additional documentation about her consultation with a legal clinic, including intake notes, correspondence and a copy of an authorization to the named female detective "to provide [the legal clinic] with any information, progress of the criminal incidents," which is signed and dated January 6, 2006.<sup>2</sup> The appellant later provided a copy of the business card of the named female detective and advised that when she was interviewed in January 2006, the identified female detective and the "male detective ... took the two letters from [the legal clinic] that I brought." The appellant states that she requires this additional information or records to support an application she has submitted to the Criminal Injuries Compensation Board.

When I sought representations from the police in response, I asked if they could conduct database searches using search terms that included the name of the legal/support services clinic referenced in the appellant's submissions and whose staff the appellant claims accompanied her to the interview. I also asked the police if it was possible that the records sought by the appellant existed at one time but no longer do. In summary, the police submit:

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<sup>2</sup> These documents contain confidential personal information relating to the appellant, which I have reviewed but will not reproduce in this order.

- Database searches were conducted using the following keywords: appellant's name (and variations), address of the incident<sup>3</sup>, and the name of the location of the incident to try to locate incident reports dated between January 1, 2005 to December 31, 2006. This search identified the two incident reports (ICAD and Manix) for August 25 and 26, 2005, respectively, which were partially disclosed to the appellant.
- The FOI (freedom of information) analyst reviewed the memo book notes for the two investigating officers for the dates in August 2005, as well as the named female detective for the week of January 6 to 10, 2006. Although responsive records were identified in the two investigating officers' notebooks, no responsive information was identified in the female detective's notebook.
- Subsequent inquiries with the female detective as to whether she had conducted the type of investigation referred to by the appellant in January 2006 were negative. The detective remembered providing the appellant with her business card. Her recollection was that the appellant sought advice, but because no complaint was laid, no investigation was conducted.
- The Video Service Unit was contacted regarding a videotape of the interview the appellant claims took place in either 2005 or 2006. The unit used the appellant's name and searched the time period of 1996 to 2010, but identified no responsive records.
- FOI staff at the police division in question, with the assistance of a detective sergeant (D/Sgt) there, also spent three hours searching for the "alleged videotaped statement," but did not locate one.
- Staff at the relevant crime unit were contacted to see if the "alleged videotape had been deposited there as part of an over-all ... investigation [into the particular crime]. The D/Sgt of [this unit] reviewed all of the case directories from 2004 to 2007 but identified no records, including a complaint by the appellant.
- Further database searches were conducted with an expanded keyword search using the name of the legal clinic, its advocates (staff) and an additional address identified by the appellant in subsequent correspondence with this office, but the results were negative.

The police submit that following a thorough search, no additional responsive records other than those already provided to the appellant were located. The police note that the appellant provided fairly specific direction as to what she was seeking. In spite of those details and the corresponding search efforts, the police indicate that nothing further could be located. The police submit that they have met their obligation to make a *reasonable* effort to identify records responsive to the request (Orders 216 and MO-1804). In conclusion, the police submit that:

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<sup>3</sup> The appellant provided a corrected address for the location of the incident. The police searched both addresses.

Based on the seriousness of the content of [the appellant's] allegations and the institution's desire to assist the appellant to provide the records in support of her Criminal Injuries Compensation application, the institution conducted a reasonable, even exhaustive, search for responsive records of every location available.

I sent a complete copy of the representations of the police to the appellant for her review and consideration. In reply, the appellant provided information about her additional efforts to obtain the name of the male detective by attending at the police division. In this correspondence, the appellant states that she was interviewed in December 2005, rather than January 2006, but could not give an exact date. According to the appellant, she provided copies of the letters from the legal clinic to the female and male detectives at that time. The appellant indicates that she was told that if she could not identify the assailants, they could not press charges or write a report and that there would be "no records, and no investigation of the crime." The appellant also expresses concerns about the nature and tone of interactions she had with the male detective and with other officers. Although I have reviewed and considered these comments fully, I am not setting them out in this order because I have concluded that they are not relevant to the issue of the adequacy of the search for responsive records.

### **Analysis and findings**

In appeals involving a claim that additional records exist, the issue to be decided is whether an institution has conducted a reasonable search for responsive records as required by section 17 of the *Act*. If I am satisfied that the searches carried out were reasonable in the circumstances, I will dismiss the appeal. If I am not satisfied, I may order further searches.

It is important to note that the *Act* does not require an institution to prove with absolute certainty that records or further records do not exist (Order PO-1954). A reasonable search is one in which an experienced employee, who is knowledgeable in the subject matter of the request, expends a reasonable effort to identify and locate records which are reasonably related to the request.<sup>4</sup>

In this appeal, the appellant has provided submissions in support of her assertion that a videotape of an interview by the named female detective and an unidentified male police officer ought to exist.

I note that in her later submissions, the appellant revised the month and year of the interview. Although she initially referred to the interview taking place during the week of January 6 to 10, 2006, her later correspondence refers to December 2005. This minor difference in the timing of the interview does not affect my finding, given that the

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<sup>4</sup> Orders M-909, PO-2469, PO-2592 and PO-2831-F.

searches conducted by the police for this videotape also included December 2005. Specifically, I accept the evidence of the police that the Video Service Unit was asked to search for an interview videotaped in either 2005 or 2006, and in fact reviewed its record (videotape) holdings as far back as 1996 and up until 2010, but identified no responsive records relating to the appellant.

I am satisfied that the relevant police staff were contacted and asked to search for responsive records from the specified time period. I accept that the staff members contacted were individuals who would have been most likely to have responsive records in their possession. Furthermore, I accept that relevant police staff conducted searches and that they were armed with knowledge of the nature of the records said to exist, at least partly because the appellant's interests were well conveyed through her request and her subsequent contact. I am also satisfied that in conducting searches of the police databases, appropriate keywords were employed in an effort to identify records in addition to those already located and disclosed to the appellant.

Specifically, I accept the evidence of the police that responsive records of the kind described by the appellant, namely a videotaped interview of her by the named female detective (with or without a male partner) in late 2005 or early 2006, or other memo book notes by the same female detective simply may not exist. Even though the appellant may be dissatisfied with the explanations provided by the police, this does not, by itself, render her belief that additional responsive records should exist a reasonable one (see Order MO-2554). Similarly, the documents provided by the appellant with her representations (from the legal/support services clinic) do not, in my view, necessarily support a finding that additional responsive records exist.

Based on the information provided and the circumstances of this appeal, I am satisfied that the police made reasonable efforts to identify and locate any existing records that are responsive to the appellant's request. Accordingly, I find that the search for responsive records was reasonable for the purposes of section 17 of the *Act*, and I dismiss the appeal.

**ORDER:**

I uphold the Police's search for records responsive to the request.

Original signed by: \_\_\_\_\_  
Daphne Loukidelis  
Adjudicator

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November 18, 2011