

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2674

Appeal MA10-19-2

Peel Regional Police Services Board

November 24, 2011

Summary: The appellant sought access to records related to her arrest. The appellant takes the position that the police did not conduct a reasonable search for records relating to video footage from a train station and the events that occurred at a specified address on two dates. The appellant also claims that her request includes information relating to the camera system at a specific police station and the identity of the police officers present at another police station. This order dismisses the appellant's appeal and upholds the police's search for responsive records. This order also determines that the information related to the camera system and the identity of police officers does not fall within the scope of the request.

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

OVERVIEW:

[1] The Peel Regional Police Services Board (the police) received a 12-part request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*), for the following information:

1. Any and all documents and things pertaining to the arrest of [named appellant] in August, 2007 and without limiting the generality of the foregoing: copies of any and all videotape footage for 21 Division of the Peel Regional Police Station from the time of arrest to the time of release without limitation in

area; any and all videotape footage for [named] Government of Ontario Train Station; a list of all police cars by vehicle identification number that responded to the scene at [named] Government of Ontario Train Station; any and all videotape footage from each of the police cars that responded to the scene at [named] Government of Ontario Train Station.

2. A copy of any and all recordings of any and all telephone communications, electronic mail communications, or other written communications passing between members of the Peel Regional Police and me or my agents, servants or employees.
3. Details of all surveillance conducted of me by the Peel Regional Police for the purposes of the Action, or for any purpose, whether you intend to reply upon it or not. Information regarding the name of the person who conducted the surveillance and the contact particulars for any such person;
4. Details of any contact between any member of the Peel Regional Police and any foreign police force regarding me pertaining to any matter, without limitation in time.
5. Any and all search warrants, wire tap authorizations and any materials used in support of obtaining same by the Peel Regional Police, without limitation as to time. Copies of any materials obtained as a result of any such interception of my communications. Copies of any communications with any member of the judiciary regarding obtaining or having such authorizations in place.
6. Information pertaining to any and all interceptions of any of my communications by the Peel Regional Police, its agents, servants or employees. Copies of any materials obtained as a result of any such interception of my communications.
7. Any and all information concerning any entry that any member of the Peel Regional Police has had into any dwelling house owned or occupied by me, without limitation in time, and without limiting the generality of the foregoing, any entry into [first stated address]; [second stated address]; [third stated address]; [fourth stated address]; and [fifth stated address].
8. All policy and procedure manuals concerning the investigation of assaults, sexual assaults; criminal harassment, aggravated

harassment, unlawful interception of private communications; break and enter activity.

9. All policy and procedure manuals concerning the investigation of complaints filed by the public with internal affairs of the Peel Regional Police as against members of the Peel Regional Police.
10. All policy and procedure manuals concerning the investigation of complaints filed against members of the Peel Regional Police with the Special Investigations Unit.
11. A complete copy of any and all information held by police force in a province-wide police database concerning me.
12. A complete copy of any and all documents and things pertaining to any investigation conducted by the Peel Regional Police regarding me, without limitation in time.

[2] On December 18, 2009, the police wrote to the requester requesting clarification on some of the requested information, and advising that until they receive further correspondence from the appellant, the request would be placed on hold.

[3] On January 10, 2010, the requester (now the appellant) filed a deemed refusal appeal with this office, and appeal MA10-19 was open. On January 21, 2010, the police issued a fee decision of \$51.80 and advised that it is anticipated that that partial access would be granted to the requested information. Appeal MA10-19 was resolved at the police's issuance of a decision on January 29, 2010. The appellant subsequently paid the requested fee and obtained copies of the records.

[4] In their decision, the police advised as follows:

With respect to item # 1 of the request, partial access has been granted to all the documentation pertaining to the appellant's arrest. Access to some portions of the records has been denied pursuant to sections 8(1)(e),(g), 14(1)(f), 14(3)(b) and 38(b) of the *Act*.

[5] The police further advised that with respect to the second part of item # 1, access could not be provided as no records existed.

[6] With respect to the third part of item # 1, access was denied to the surveillance video seized from the specified train station. The police suggested that the appellant

contact the identified institution to request a copy of the record, as they do not have control over the video.

[7] With respect to the fourth part of item # 1, access was granted to the records pertaining to the vehicle identification numbers.

[8] The police went on to advise that with respect to item # 2 of the request, further clarification was still required as the initial search failed to locate any responsive records. Access could not be granted to records responsive to items # 3, 4, 5, 6, 11 and 12 of the request, as no records existed.

[9] With respect to item # 7, the police advised that access has been granted to one incident report and that partial access had been granted to one occurrence report pertaining to a particular address. Access was denied to portions of the occurrence report pursuant to sections 38(b) (personal privacy) of the *Act*.

[10] With respect to the part of item # 7 relating to addresses outside of the Region of Peel, the police advised that no responsive records could be located. The police, however, suggested that the appellant submit a request to two identified police services for information related to addresses outside the Region of Peel.

[11] With respect to items # 8, 9, and 10, partial access was granted to the requested directives and procedures. Access was denied to some portions of certain directives, pursuant to sections 8(1) (law enforcement) of the *Act*.

[12] In response to item # 11, the police advised that access could not be provided to information held by any police force in a province-wide police database as no responsive records had been located as a result of a search of the police's records management systems. The police further advised that the records held by other police services or in any province-wide police database are not under their custody or control.

[13] With respect to item # 12, the police advised that access could not be granted as there were no other responsive records relating to the appellant other than those dealt with in the previous items of the request.

[14] The appellant appealed the police's decision and Appeal MA10-19-2 was opened.

[15] During mediation, the police advised that it was withdrawing their application of section 8(1) of the *Act* to portions of the records that have been removed as non-responsive to the request. The police further advised that these portions refer to police vehicle identification numbers that are not responsive to the request.

[16] During mediation, the appellant indicated that she is not pursuing access to the non-responsive information which had been removed from the records responsive to

the fourth part of item # 1 of the request. The appellant further indicated that the police code information which had been severed throughout the records pursuant to section 8(1)(l) of the *Act* was no longer at issue in this appeal, nor were the severed portions of the directives and procedures manuals responsive to items # 8, 9, and 10 of the request.

[17] The appellant, however, indicated that the denial of access to the video footage from the specified train station continued to be at issue in this appeal, along with the search for the video footage of her arrest at the identified police station. The appellant also took the position that additional records relating to the fourth specified address at item # 7 of the request ought to exist.

[18] During mediation, the appellant advised that she was seeking access to information pertaining to the purchase, installation and maintenance of the cameras and monitoring equipments in use at the specified police station on August 10, 2007, in addition to the name and badge number of any and all employees who were responsible for monitoring the images from the camera system.

[19] The appellant further advised that she was seeking access to information relating to the identity of all the male police officers who were physically located at the specified police station on August 10, 2007, including documentation pertaining to the security card access system identifying the male police officers who entered and exited the building.

[20] In response, the police took the position that the above requested information falls outside the scope of the appellant's original request, and recommended that the appellant submit a new request. This issue pertaining to the scope of the request could not be resolved during the mediation of this appeal.

[21] The police then issued a revised decision dated July 13, 2010, advising that with respect to the second part of item # 1 of the request pertaining to the videotape footage at the specified Division, the police provided the appellant with a one-page document from their Central Video Recording System webpage specifying when the recording system was installed and went live.

[22] With respect to the third part of item # 1, the police further advised that, access had been granted to a copy of the surveillance tape from the train station.

[23] In response, the appellant indicated that the search for additional video footage from the identified Transit System remains at issue in this appeal. With respect to the second part of item # 1, the appellant went on to advise as follows:

I am requesting copies of documentation evidencing the camera and monitoring equipment that were actually received and in use at 21

Division, on August 10, 2007, and while I am requesting all such documents, I suggest that my request includes at least a purchase order for the equipment, a shipping document indicating what was actually received by the PRP and when it was received; work orders, pertaining to the installation of the system; manuals concerning the operation of the system and its capabilities; and any maintenance and repair records for the subject equipment.

I am also requesting access to information concerning the name and badge number of any and all employees of the PRP who were responsible for monitoring the images from the camera system during my detention.

My request for access to information further includes a request for the identity of the male police officers who were physically located in 21 Division during my detention there. To that end, I am also requesting documentation pertaining to the security card access system identifying the male police officers who entered and exited the building and the times for each entry and egress. I also suggest to you that the individual officer's notes should contain entries regarding the physical location of the subject officers during that time period such that the officer's notes ought to include a notation that the male officer attended a 21 Division and it ought also to state the time of entry and exit from the building. I require any other documentation identifying these male police officers ...

[24] The appellant took the position that the above-stated information was part of her original request.

[25] Also during mediation, with respect to part of item # 7 of the request, the appellant continued to maintain that records pertaining to events that occurred at a specified address on October 31, and November 16, 2007 ought to exist.

[26] In response, the police agreed to conduct a further search for responsive records and, as a result, located additional occurrence reports pertaining to the specified address, but for the years 2004, 2005, and 2006. The police subsequently issued a supplementary decision dated August 25, 2010 advising that access to the recently located occurrence reports had been denied, pursuant to sections 14(1)(f) and 14(3)(b) of the *Act*, as these reports contained the personal information of third parties. In this decision, the police reiterated their position that any further information requested by the appellant would constitute a new request.

[27] In discussions with the mediator, the appellant indicated that she was not pursuing access to the severed and withheld occurrence and incidents reports created before 2007, and that items # 2, 3, 4, 5, 6, 8, 9, 10, 11, and 12 of the original request were no longer at issue in this appeal.

[28] The issues remaining in dispute at the end of mediation were transferred to the adjudication stage of the appeal process, in which an adjudicator conducts an inquiry under the *Act*. During the inquiry into this appeal, a Notice of Inquiry setting out the facts and issues in this appeal was sent to the parties. In response, both submitted written representations to this office. The representations were shared in accordance with section 7 of the *IPC's Code of Procedure and Practice Direction 7*.

[29] In this order I uphold the police's search for responsive records and also find that the information relating to the camera system at 21 Division and to the identity of all the male police officers present at the police station is not within the scope of the appellant's request.

ISSUES:

- A: Did the institution conduct a reasonable search for records relating to the August 10, 2007 video footage from the specified train station, and to the events that occurred at a specified address on October 31, and November 16, 2007?
- B: Does the scope of the appellant's request include information relating to the camera system at 21 Division, and to the identity of all the male police officers present at the police station?

DISCUSSION:

A: Did the institution conduct a reasonable search for records relating to the August 10, 2007 video footage from the specified train station, and to the events that occurred at a specified address on October 31, and November 16, 2007?

[30] 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 and 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.

[31] 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 [Orders P-624 and PO-2559]. To be responsive, a record must be "reasonably related" to the request [Order PO-2554].

[32] 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 to the request [Orders M-909, PO-2469, PO-2592].

[33] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control [Order MO-2185].

[34] 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 [Order MO-2246].

[35] The police were required to provide a written summary of all steps taken in response to the request. Concerning the video footage, the police submit that they provided the appellant with a copy of the videotape. The copy, although viewable, was not detailed and showed only one distant view of the parking lot of a GO Transit Station. Concerning the records relating to the specified address on October 31, and November 16, 2007, the police submit that a search was conducted and that no records exist or have ever existed for these dates.

[36] The police state that the appellant did not provide any information as to why she believes that the police attended at the specified address on these dates. The police states that a search was conducted using the address, the two names of the appellant provided by her, as well as the appellant's sister's name. Peel Regional Police changed Records Management Systems on April 2, 2008 when the Niche system was implemented. As a result of this, the Police Query Tool was used to perform a search of records in the Niche Records Management System as well as the previous Uniform Crime Reporting system. A further separate search was performed in the Uniform Crime Reporting system, which was the records management system being used at the time of the appellant's request for a search of the specified dates at the specified address.

[37] According to the police, the search was conducted by an analyst in the Information and Privacy Unit. The analyst has 22 years of records experience. The results of the search were confirmed by the Coordinator who has 32 years policing experience, 12 being Records experience.

[38] The appellant did not provide representations concerning the video footage. Concerning the events at the specified address, she submits that the sought after information can be gleaned from the incident reports that were provided to her.

[39] In reply, the police reiterated that they conducted a thorough search and no responsive records exist.

Analysis/Findings

[40] At the end of mediation, the search issue left to be adjudicated in this appeal was limited to whether the police conducted a reasonable search for the August 10, 2007 video footage from a specified train station, and to records related to events that occurred at a specified address on October 31, and November 16, 2007.

[41] The appellant has been provided with video footage from the train station. She has not provided any evidence that additional responsive video footage exists.

[42] Concerning the remainder of the information related to the search issue, I note that item # 7 of the appellant's request seeks information concerning any entry that any member of the Peel Regional Police had into a specified address in Peel Region. In her representations, the appellant is seeking information that is outside the scope of her request. At the end of mediation the search issue was limited to events that occurred at a specified address on October 31, and November 16, 2007. The appellant has provided extensive representations as to the existence of records related to police officers on duty at specific locations on specific dates. This information is outside the scope of the search issue remaining to be adjudicated upon in this appeal.

[43] With respect to the search issues that remained at the end of the adjudication of this appeal, namely, whether the police conducted a reasonable search for records relating a specific video footage and the events that occurred at a specified address on two dates, I find that the police have conducted a reasonable search for this responsive information. The appellant has not provided a reasonable basis for me to conclude that additional responsive records exist. Accordingly, I am upholding the police's search for responsive records.

B: Does the scope of the appellant's request include information relating to the camera system at 21 Division, and to the identity of all the male police officers present at the police station?

[44] 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;

. . .

- (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).

[45] 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 and P-880].

[46] To be considered responsive to the request, records must "reasonably relate" to the request [Orders P-880 and PO-2661].

[47] The police state that the appellant's request was for "copies of any and all videotape footage for 21 Division of the Peel Regional Police from the time of arrest to the time of release without limitation in area." The police state that none of the police facilities operated by the Peel Regional Police during the responsive time period in 2007 were equipped with equipment that recorded the areas referred to by the appellant. They state that the appellant was advised of this fact in the decision letter dated February 5, 2010.

[48] Furthermore, the police submit that the scope of the appellant's request does not include information relating to the camera system at 21 Division including the "manuals concerning the operation of the system and its capabilities" because it does not reasonably relate to her request.

[49] The police also state that the appellant's request also did not include specific information related to all male officers on the premises of the police station where the appellant was detained during the time she was in custody. They submit that:

A working police station can at any time involve the movement of many police officers and civilian employees. Officers working may at any time attend the police station to use the washroom, the telephone, consult with a supervisor or Detective on a police issue, take their lunch, workout etc. Officers not assigned to work may have accepted a paid duty and attended to report on or report off duty. None of these officers however would be remotely connected to the arrest of the appellant and would have no contact with her. The appellant was provided with information related to her arrest as requested.

Nothing in the appellant's request remotely suggests that the identity of officers in the police station during the period of her custody relates to her request.¹

[50] The appellant submits that she further particularized her request during this appeal when dealing with the mediator and that these further particulars reasonably relate to her original request.

[51] In reply, the police reiterate their initial representations and state that the appellant's request was detailed and specific and that they responded properly to her access request.

[52] In surreply, the appellant states that since she asked in her original request for "any and all" records pertaining to her arrest that the information regarding the camera equipment falls within the wide ambit of her request. She states that this is not a "new" request for information.

[53] Concerning the identity of police officers at the police station where she was detained, the appellant states that:

I am entitled to have access to the identity of the male officer who illegally entered the locked jail cell in which I was lodged and thereafter attacked me. I am entitled to any and all records of the police station in question that will identify the officer in question, including records that will allow me to identify him by the process of elimination. The remaining officers are potential witnesses to the multiple assaults that took place on the premises and I am entitled to know their identities as well.

The PRP [the police] have already indicated that they are busy destroying evidence pertaining to this matter by virtue of a By-Law despite knowledge of a pending civil action in this matter. The protection of any and all documentation through the release of the records to me is warranted.

The PRP incorrectly state that at no time did I indicate that I was seeking records regarding assaults upon me. I clearly requested "Any and all" records of the arrest in question, which includes records pertaining to the assault. A male officer entered the jail cell and perpetrated an assault upon me. This is not a "new" request or "unrelated" to my arrest.

Once again, the PRP contradict them selves. They state that no records exist, but that I can submit a new request.

¹ Order MO-1675.

Analysis/Findings

[54] At the end of mediation of this appeal, the mediator's report defined the outstanding issue concerning the scope of the appellant's request left to be adjudicated upon as follows:

The appellant is taking issue with the police's decision that her request for information relating to the camera system at the Division, and to the identity of all the male police officers present at the police station as described above, falls outside the scope of the request.

The appellant takes the position that this information was included in her original request.

[55] In her letter to the mediator, the appellant provided more information concerning which police officer's information she is claiming to be responsive to her request. In this letter she advises the mediator that she is:

... requesting documentation pertaining to the security card access system identifying the male police officers who entered and exited the building and the times for each entry and egress. I also suggest to you that the individual officer's notes should contain entries regarding the physical location of the subject officers during that time period such that the officer's notes ought to include a notation that the male officer attended a 21 Division and it ought also to state the time of entry and exit from the building. I require any other documentation identifying these male police officers.

[56] I have reviewed the appellant's original 12-part request. This request is quite detailed. I find that the information that the appellant is seeking is not reasonably related to her request. Neither the camera system information nor the identity of the police officers entering or exiting the police station where she was detained is responsive to her request.

[57] Concerning the camera system, the police have definitively stated that the camera system in place in their police facilities at the time of the appellant's arrest was view only and a record was not created at that time. Nevertheless, the appellant claims that she is entitled to receive the installation and capabilities information for the camera system from the date that it was ordered until the date that it purportedly went "live" to establish what, if anything, was recorded or "monitored"; and who "monitored" it.

[58] Concerning the entry and exit of police officers at the police station, as stated by the police, their officers may be in and out of a police station for many reasons including using the washrooms, telephones, consulting with a supervisor or detective,

having lunch, and for other reasons. I agree with the police that, other than the officers whose information the appellant has already received, these other officers' information would not be remotely connected to the arrest of the appellant.

[59] As the appellant's request relates to her arrest only, any information she seeks concerning the details of the police's camera system and the entry and exit of officers from police stations does not "reasonably relate" to her request and is not within the scope of the appellant's request.² Accordingly, I find that this information is not within the scope of the appellant's request.

ORDER:

I uphold the police's decision and dismiss this appeal.

Original Signed by: _____
Diane Smith
Adjudicator

November 24, 2011

² Orders P-880 and PO-2661.