Information and Privacy Commissioner,
Ontario, Canada

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

INTERIM ORDER MO-2877-I

Appeal MA11-521-2

Toronto Police Services Board

April 29, 2013

Summary: This is the second interim order addressing the Toronto Police Services Board's response to a request for records related to the decision-making process for determining eligibility for inclusion on the Toronto Police Wall of Honour. The police denied access to portions of the responsive records under sections 9(1)(d) (relations with other governments) and 14(1), with section 14(3)(b) (investigation into possible violation of law) of the *Municipal Freedom of Information and Protection of Privacy Act*. Interim Order MO-2831-I reviewed the adequacy of the police's search for records and other matters related to the appeal, including the non-provision of copies of all of the records at issue to this office. Interim Order MO-2831-I ordered the police to conduct further searches and to produce the records at issue to this office, along with a revised index of records. In this order, the adjudicator finds that the exemptions claimed do not apply and orders disclosure of the withheld information, with limited exceptions. The adjudicator also finds that the searches conducted in response to the previous interim order were not reasonable and orders additional searches.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of "personal information"), 9(1)(d), 14(1), 14(3)(b), 17(1), 38(a), 38(b).

Orders and Investigation Reports Considered: Orders MO-2831-I, MO-1581.

OVERVIEW:

[1] This order is the second interim order released to address the issues raised by an appeal of a decision by the Toronto Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The request under appeal relates to records about the Toronto Police Wall of Honour and the work of the Toronto Police Memorial Wall Committee to establish criteria and processes for the inclusion of individuals on the Wall of Honour.

[2] The first order, Interim Order MO-2831-I, was issued on January 18, 2013 to address concerns about the adequacy of the searches conducted by the police to identify responsive records. The following background to this appeal is based on the introduction provided in Interim Order MO-2831-I. As set out there, the request sought:

> [a]ll correspondence, communications, deleted emails, emails, meeting minutes, records, memorandums, notes and material…relating to or involving [two named individuals] and/or the Toronto Police Wall of Honour between May 28, 2007 – October 30, 2011.

[3] Also provided with the request was a "non-exhaustive" list of 10 individuals who might be in "possession or control" of responsive records and the dates of nine committee meetings where inclusion of the requester's father (identified by name in the initial part of the request) on the "Toronto Police Wall of Honour" may have been discussed.[1] The request also identified correspondence between the Toronto Police Association and the Chief, which was referred to in a specified email to the requester.

[4] The police responded to the request, initially, by sending the requester a decision letter that denied access to the records identified as relating to the "Memorial Wall Committee" in full because the development of the procedure and processes was ongoing. At that time, the police relied on section 11(g) of the *Act* to deny access.[2]

[5] The decision of the police was appealed to this office by legal counsel representing the requester.[3] During mediation, the adequacy of the police's search was challenged by the appellant and, consequently, was added as an issue in this appeal. The discretionary exemption in section 38(a) of the *Act* was also added, given that at least some of the records appeared to contain the personal information of the appellant. A mediated resolution of the appeal was not possible and the appeal was transferred to the adjudication stage of the appeals process in which an adjudicator conducts an inquiry.

---

[1] The meeting dates were listed as March 22 and August 31, 2010, January 4 & 24, February 2, March 4 & 28, April 27, and May 26, 2011.

[2] The discretionary exemption in section 11(g) may be claimed where disclosure could reasonably be expected to result in the premature disclosure of a pending policy decision.

[3] The appellant and her legal counsel are both referred to in this order as the appellant.

[6] During both mediation and adjudication, this office encountered difficulties in obtaining complete copies of the 136 pages of records the police had identified as responsive to the request. Some of the emails sent by the mediator did not receive a response from the police.

[7] The adjudicator formerly assigned to this appeal started her inquiry by sending a Notice of Inquiry to the police on April 12, 2012. Through this communication, Adjudicator Jennifer James sought complete copies of the records at issue, as well as the representations of the police on the discretionary exemption in section 38(a), together with section 11(g). Although several extensions were granted to the police by the adjudicator upon request, the police ultimately did not respond to this Notice of Inquiry, either by providing representations on the exemption claim or copies of all of the records at issue.

[8] Instead, the police issued a revised decision letter to the appellant on June 5, 2012 and granted partial access to pages which, at that time, were numbered 1-55. Clean copies of pages 1-55 were provided to this office with the copy of the revised decision. The police also added two exemptions to the pre-existing claim of section 11(g) to withhold information: the mandatory personal privacy exemption in section 14(1), together with the presumption against disclosure in section 14(3)(b), and the mandatory exemption for "relations with other governments" in section 9(1)(d).The decision letter did not refer to sections 38(a) or 38(b). The police's decision alluded to consultations with some of the Memorial Wall Committee stakeholders presenting a challenge due to the alleged non-application of the *Act* to the various police associations represented on the committee.

[9] Next, Adjudicator James sought clarification from the police as to whether the 55 pages represented the sum total of the records identified as responsive (rather than the 136 pages earlier indicated), as well as with respect to the severances made as part of their disclosure to the appellant. The police did not respond to these telephone inquiries. Accordingly, Adjudicator James sent a revised Notice of Inquiry to the police on June 13, 2012, inviting representations on the new exemption claims in sections 9 & 14. The police did not submit representations in response to the Notice of Inquiry, nor did they respond to the telephone messages left by this office to follow up.

[10] Adjudicator James then sent correspondence to the police FOI coordinator and analyst responsible for this appeal, outlining the unsatisfactory progress of the appeal and advising that due to concerns about delay, she was moving the appeal to the next stage to invite the appellant's representations through a Notice of Inquiry. The appellant's Notice of Inquiry was sent on the same day. The appellant submitted representations on August 1, 2012, which included copies of the severed records disclosed by the police, as well as submissions on the exemption claims and the search issue. Shortly thereafter, the adjudicator moved this appeal to the orders stage for the writing of an interim order.

Interim Order MO-2831-I

[11] As Adjudicator James was not available to write the interim order, the appeal was transferred to me to do so. In Interim Order MO-2831-I, issued January 18, 2013, I ordered the police to produce copies of all records identified as responsive to the request to this office, with the severances clearly marked. I also found that the searches conducted to date were not reasonable, and I ordered the police to carry out further searches. I did not review the exemptions relied on by the police to withhold information.

[12] The appellant subsequently contacted this office to express concern about a lack of clarity in the order provisions of Interim Order MO-2831-I, regarding the timelines imposed on the police for compliance. I responded by issuing the following clarification in correspondence sent to the police on January 31, 2013:

> I agree with the appellant that greater clarity is desirable. Pursuant to Order Provision 3, any new records identified through the further searches ordered in Order Provision 2 are to be addressed through a decision letter issued in accordance with the provisions of the *Act*. Relevant in this case is section 19, which provides for a 30 day response time.
>
> Given the history and circumstances of this appeal, it was my intention that all of the actions required in the order provisions of Interim Order MO-2831-I be completed within the 30-day period established by section 19 of the *Act*. For certainty, this 30-day timeframe applies to the production of records (including the identification, indexing and labeling) to this office required by Provision 1; the searches and affidavits required by Provision 2; and the decision letter to the appellant (copied to this office) required by Provision 3.
>
> To be clear, the compliance date for Interim Order MO-2831-I is Tuesday, February 19, 2013 [footnotes omitted].

[13] On February 21, 2013, I received complete copies of the records with the severances marked, an affidavit and a newly identified record from the police. The new record was a three-page draft Memorial Wall Procedure (dated March 29, 2011) and the police claimed no exemptions in relation to it. The following day, the police advised staff from this office that:

> … despite providing a draft copy of the Procedure for release, I have been informed that this Procedure has been revamped and forwarded up the chain to our Corporate Planning Section as per established practice. It will then go to the Chief's Office for final review and sign off before becoming a formal Service Procedure. I have been advised that this should occur

> within six weeks and will be addressing the issues of criteria and other areas outlined in the appellant's request.

[14] No new decision letter respecting the draft procedure was enclosed with the February 21st correspondence. I asked staff from this office to inquire with the police as to whether a decision letter had been issued in accordance with provision 3 of Interim Order MO-2831-I. As the requisite decision letter – and the record - had not, in fact, been sent to the appellant, police remedied this by preparing a decision letter dated March 6, 2013, through which the draft procedure was disclosed to the appellant. I received a copy of this decision letter on March 8th.[4]

[15] On March 11, 2013, I sent a letter to the appellant, seeking representations on the police's response to Interim Order MO-2831-I. For this purpose, I sent a copy of the affidavit provided to me with the police's February 20th letter, as well as a copy of the revised index of records. Although the police had not shared the revised index with the appellant, I concluded that it was not confidential and that its disclosure would not reveal the substance of records claimed by the police to be exempt. In outlining my request for representations to the appellant, I wrote:

> On review of the revised index of records, it appears that the police have withdrawn their claim for exemption under section 11(g). At this time, I am inviting supplementary representations from you on the issue of search, consequent to Interim Order MO-2831-I, and I enclose the affidavit of the police for your reference. Next, I appreciate that you have previously provided representations on the other exemption claims applied to these records, namely section 38(a) with 9(1)(d), and section 38(b), in conjunction with sections 14(1) and the presumption against disclosure in section 14(3)(b). You also tendered submissions on the exercise of discretion under sections 38(a) and 38(b). However, at this time, if you wish to add to the representations you provided in August 2012, in view of the index of records and other circumstances, please do so.

[16] I advised the police of my request for representations from the appellant in correspondence sent to the FOI coordinator that same day.

[17] Following a brief extension to the due date, I received the appellant's representations in early April. After reviewing the representations, I concluded that I ought to dispose of the exemption claims and address the search issue through another interim order.

---

[4] This decision letter repeated the information provided to this office on February 22, 2013 regarding the draft procedure being "revamped and forwarded up the chain…" for approval. The letter stated that the "sign off" was expected within the next six to eight weeks and asked the appellant to "disregard any previous letters issued in February 2013." As of the time of the writing of this interim order, inquiries respecting the approval of this procedure were ongoing.

[18] In this interim order, I uphold the police's decision respecting responsiveness, with minor exceptions. I find that the exemptions claimed to deny access to the records do not apply, with one limited exception for the personal information of individuals other than the appellant, and I order most of the withheld portions of the records disclosed to the appellant. In addition, I conclude that the search for responsive records has not been adequate, due to my rejection of the police's position on records created by Memorial Wall Committee members who are also affiliated with the various police associations. Accordingly, I order further searches for responsive records, in accordance with the provisions of this order.

RECORDS:

[19] At issue in this interim order are 136 pages of email correspondence, either in part or in full.[5]

ISSUES:

A. Preliminary matters: duplicate records, responsiveness and inconsistent exemption claims.
B. Do the records contain "personal information"?
C. Could disclosure reasonably be expected to reveal information the police received in confidence from a government agency?
D. Would disclosure of the information result in an unjustified invasion of personal privacy?
E. Did the police conduct a reasonable search for records in response to Interim Order MO-2831-I?

DISCUSSION:

A. Preliminary Matters

Duplication of records

[20] In the revised index submitted to this office following Interim Order MO-2831-I, the police identified several pages as containing duplicate copies of other pages at issue in the appeal. My own review of the records in the preparation of this order identified a number of other duplicates, which is hardly surprising; since the records consist entirely of email correspondence, much of that involves duplicated chains of discussion.

[5] The 55 pages of records partially disclosed to the appellant in the June 5, 2012 decision (and provided to this office by the appellant in August 2012) are numbered differently than the 136-page set of records submitted to this office in response to Interim Order MO-2831-I. Page 1 of the 55-page set does not correspond with page 1 of the 136-page set, and so on. For the purpose of evaluating searches and the exemption claims in this order, I address only the 136-page set of records submitted to this office in February 2013 following Interim Order MO-2831-I.

[21] I note that there is no variation in the severances applied to each duplicated email, at least insofar as the *exemptions* claimed are consistent between versions, with one exception described below. In the circumstances, therefore, I am satisfied that it is not necessary for me to review the possible application of the exemptions to each of these duplicate versions of the records. The police should consider my decision on the exemption claim(s) in relation to the first occurrence of each duplicated email record as applicable to all subsequent versions.

Responsiveness

[22] I will also address responsiveness as a preliminary matter, due to the inconsistent severances applied to the records by the police in the name of responsiveness. For example, most of the portions severed as "N/R" appear to have been withheld as non-responsive because they consist of email header or signature footer information. Headers are essentially meaningless strings of computer code, routing information and/or email addresses that are devoid of content. The signature segments consist of professional contact information and a standard confidentiality disclaimer.[6] However, while these coded headers or signatures are marked (as withheld) on some of the pages as non-responsive (e.g. pages 82 & 95), others are marked as withheld under the exemptions (e.g. pages 33 & 131). On still other pages, these coded headers or signature footers were disclosed (e.g. pages 74 & 80). There is no discernible pattern behind the approach to disclosure, or severance, of this particular information and the police have provided no explanation for it.

[23] In my view, however, it can be presumed that the appellant does not seek access to meaningless content. In this context, I am satisfied that computer coded email headers or signature footers are not responsive to the request. Devoid of substantive content as they are, I find that the email headers or signature footers are not reasonably related to the request in this appeal. Accordingly, to the extent that such information has been withheld, and not disclosed to the appellant, *either by reason of it being non-responsive or through the unexplained claim of an exemption,* I uphold the decision of the police to sever it. To be clear, where the police severed email headers or signature footers as exempt under section 9(1)(d) or "14's" (personal privacy), I find that these headers and footers are removed from the scope of the appeal as non-responsive. I will not consider the possible application of the exemptions to them. Further, and for the sake of brevity, I will not list the numerous non-responsive coded email headers or signature footers in this order.

[24] I note, too, that entire pages of this type of header or footer were withheld as non-responsive (example pages 95-99, 123, 124, 134-35), but were recorded in the index as being *partially* "N/R". However, I am satisfied that this discrepancy is the result

[6] By "standard confidentiality disclaimer," I am referring to the paragraph automatically inserted at the conclusion of an email that starts with the following language: "This electronic mail is intended only for the recipient(s) to whom it is addressed…"

of a clerical error in the preparation of the revised index, and it does not affect my finding upholding the police's decision as to the non-responsiveness of coded headers or signature footers.

[25] As suggested above, for the most part, the police only severed the coded email headers or signature footers as non-responsive. However, some information severed as non-responsive from a few other pages does contain information of some substance. However, based on my review of that information, I am satisfied that it is not reasonably related to the request in this appeal. Therefore, I uphold the decision of the police to withhold the "N/R" severances on pages 2 (bottom), 3, 36, and 134-136 because I find that the information is not responsive to the request.

[26] Additionally, there is information on page 18 that has been withheld under section 9(1)(d) and a paragraph on page 85 severed pursuant to section 14(1) which I find is, in fact, not responsive to the request. Based on my finding that this information is not responsive, I will remove it from the scope of the appeal, rather than review the application of the exemptions to it.[7] However, other information on page 18 remains subject to my review under section 9(1)(d), below.

[27] Finally, during my review of the records, I identified one portion of text that the police claimed to be non-responsive, but which I find to be responsive to the request. Accordingly, I have annotated a portion of page 9 on the copy of the records sent to the police with this order to reflect my disagreement with their assessment of its responsiveness. I have included this portion of page 9 in my consideration of the personal privacy exemptions, below.[8]

Inconsistent exemption claims

[28] In the list below, I resolve discrepancies between the revised index and the marking of exemptions or responsiveness on the records themselves:

- Page 34 appears in the index as partially withheld under section "14(1)(f), 14(3)(b)" while the actual record is marked with section 9(1)(d). The earlier occurrence of the same content at pages 30 & 31 is recorded consistently in the index and on the pages as being withheld under both exemptions. Accordingly, I will address the possible application of both exemptions to the information.[9]

---

[7] This finding results in the removal of the duplicated occurrences of the information on page 18 that appears on page 24, as well as the information on pages 89 and 91 that duplicates the content on page 85.

[8] This page does not contain correspondence from, or to, a member of any of the police associations, and I will not review the possible application of section 9(1)(d) to it.

[9] I am reviewing the exemption of pages 30 and 31 (duplicated at page 34), but refer only to the former occurrence of this content in the analysis below.

- Page 52 appears in the index as partially withheld under "14(1)(f), 14(3)(b)" while the actual record is marked "N/R." As the withheld content consists of a coded email header, I have upheld the decision of the police to withhold this information as non-responsive, above.
- Page 60 is marked in the index as exempt in its entirety, but no exemption is recorded in the index, and the record itself is unmarked. However, this page contains content equivalent to page 32, which is marked as disclosed in its entirety. As this page has already been disclosed to the appellant, in its entirety, I find that no useful purpose would be served by reviewing it in this order.
- Page 117 appears in the index as partially withheld under section "14(1)(f), 14(3)(b)" while the actual record is marked with section 9(1)(d), with the notation "14's" crossed out. Based on the content of it, I am satisfied that the police intended to claim exemption for this portion of page 117 under section 9(1)(d), and I will review it accordingly, below.

[29] I will review the exemption claims of the police following my determination of whether the records contain "personal information," according to the definition of the term in section 2(1) of the *Act*.

B. Do the records contain "personal information"?

[30] In order to determine if sections 38(a) or 38(b) apply, together with the exemptions in sections 9(1)(d) and 14(1) claimed by the police, I must first decide whether the records contain "personal information" 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 if 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 where 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;

[31] 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).

[32] Section 2(2.1) also relates to the definition of personal information and states:

> (2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

[33] 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.[10] However, 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.[11]

[34] As stated, the police provided no representations in this appeal. However, I note that the revised index of records prepared following Interim Order MO-2831-I now identifies the pages of the records that the police claim contain personal information.

[35] The appellant adopted the representations provided in August 2012 on certain issues, including this one. In these earlier submissions, the appellant submits that any information in the records that falls under one of the types of personal information listed in section 2(1) must also be about the individual in a personal, not professional or

[10] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[11] Orders P-1409, R-980015, PO-2225 and MO-2344.

official, capacity. With regard to the possibility that committee members may have been expressing opinions or views, the appellant submits that:

> … [they] were not expressing their personal opinions toward developing a policy, procedure and set of guidelines for [the] Toronto Police Wall of Honour. Further, they were not expressing their personal opinions regarding the merits of [the appellant's father's] name being placed on the Wall of Honour. Rather, these individuals were providing their professional opinions in the capacity of their employment.

Analysis and findings

[36] I have reviewed the records to determine whether they contain "personal information" and, if so, to whom it relates. Based on this review, I find that the records contain information pertaining to the appellant that qualifies as her personal information within the meaning of paragraphs (a) (age, sex, martial or family status), (c) (identifying number or other assigned particular), (d) (address or phone number), (e) (personal opinions or views), (g) (views or opinions about her), and (h) (name, with other personal information) of the definition in section 2(1) of the *Act*.

[37] Additionally, I find that there is personal information about other identifiable individuals in the records that falls under the following paragraphs of the definition: (d) (address or phone number), (e) (personal opinions or views), and (h) (names, with other personal information relating to these individuals).

[38] In summary, I find that the records contain the mixed personal information of both the appellant and other identifiable individuals. I will first review the possible application of section 38(a), in conjunction with section 9(1)(d), to the records.

C. Could disclosure reasonably be expected to reveal information the police received in confidence from a government agency?

[39] The police claim that section 9(1)(d) applies to information received from Memorial Wall Committee members who represent various police associations, such as the Toronto Police Association, the Toronto Police Amateur Athletic Association and the Toronto Police Senior Officers Association. The exemption states that:

> 9. (1) A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from,
>
> (a) the Government of Canada;

> (b) the Government of Ontario or the government of a province or territory in Canada;
>
> (c) the government of a foreign country or state;
>
> *(d) an agency of a government referred to in clause (a), (b) or (c)* [emphasis added].

[40] Although section 9(1)(d) is a mandatory exemption, the fact that these records contain the personal information of the appellant brings them under section 38(a), which gives the police a discretion to disclose or not to disclose. Section 38(a) reads:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > if section 6, 7, 8, 8.1, 8.2, **9**, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information.

[41] Section 38(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information (Order M-352).

[42] In this case, the police are relying on section 9(1)(d) to deny access to pages 15 and 21, in their entirety, and to portions of pages 18, 24, 30, 31, 33, 107, 108, 117, 125, 131, 132, and 133.

Representations

[43] In the affidavit evidence provided by the police following Interim Order MO-2831-I, the FOI analyst submits that:

> In review, it was identified that the records at issue involving members of the Committee exceed the scope of the Toronto Police Service. The involved stakeholders also included the Toronto Police Association, the Toronto Police Amateur Athletic Association and the Toronto Police Senior Officer's [sic] Association who are all not governed under the Municipal Act.[12]

[44] The police submit that the information withheld from the records consists of "emails generated by members of the third party associations who are not governed by the *Act* and the appellant's own correspondence." As noted previously, however, the

[12] This statement appears in paragraph 1 of the affidavit sworn February 20, 2013 by the Toronto Police FOI Analyst. The reference to the "Municipal Act" is presumably intended to be a reference to *MFIPPA*, and not to the *Municipal Act, 2001*, S.O. 2001, c. 25.

police did not provide representations specifically directed at the claimed application of section 9(1)(d), notwithstanding having been provided with the opportunity to do so.

[45] In representations provided during the inquiry and following Interim Order MO-2831-I, the appellant dismisses the suggestion that section 9(1)(d) of the *Act* could apply to the withheld portions of the records. The appellant submits that:

> In this case, the institution received information from itself, not an agency of government. The stakeholders on the Memorial Wall Committee represent the community of interests within the Toronto Police Service. Every single member of the Memorial Wall Committee is employed by the Toronto Police Service and sits on the Memorial Wall Committee in that capacity. There is no agency of government which furnished information to the Toronto Police Service. The Toronto Police Association and Senior Officers' Association are in essence the unions for the various Toronto Police Service Members. The Toronto Police Amateur Athletic Association was founded to promote physical fitness among members of the Toronto Police Service. None of the stakeholders are agencies of government. They are simply members of the Toronto Police Service.

[46] The appellant submits that there is no evidence that the information was transmitted in confidence, as the exemption requires. Rather, the appellant notes that the deliberations regarding the policies, procedures and guidelines for the Wall of Honour were "widely circulated, [and] there is no indication that any information was received with an express or implied understanding of confidence."

[47] Based on the disclosed emails, the appellant notes that the responsive records were sent to or from email addresses within the Toronto Police Service. In conclusion, the appellant notes that:

> … in a legal proceeding before the Human Rights Tribunal of Ontario, the Toronto Police Service has indicated that it is solely responsible for the Memorial Wall procedure and criteria. This is confirmed by counsel for the Toronto Police Association, Toronto Senior Officers Association and the Toronto Police Amateur Athletic Association. Each of the parties state that the Toronto Police Service and [the Chief] convened the Memorial Wall Committee for the Toronto Police Service to establish criteria for the Memorial Wall.

Analysis and findings

[48] In Order MO-1581, Adjudicator Sherry Liang provided a detailed review of past decisions of the Commissioner's office addressing the application of section 9(1)(d) and its equivalent in the provincial *Act.* In the following excerpt from Order MO-1581,

Adjudicator Liang described the approach to be taken and provided several examples of where the exemption had been found to apply, stating:

> The section 9(1) exemption has been applied in a variety of circumstances, including information provided to a police service from other police services (Order M-202), information provided to a municipality by the Ontario Realty Corporation (an agency of the provincial government) (Order M-1131), information provided to a police service by a ministry of the provincial government (Order MO-1569-F), and information provided to a police service by Crown Attorneys (see discussion below).
>
> In these cases, it has been said that in order for section 9(1) to apply, the institution must demonstrate that the disclosure of the record could reasonably be expected to reveal information which it received from one of the governments, agencies or organizations listed in the section and that the information was received by the institution in confidence.[13]

[49] To find that section 38(a) applies, in reliance on section 9(1)(d), I must be persuaded that disclosure of the information withheld on this basis could reasonably be expected to reveal information the police received in confidence from an agency of a government. In this appeal, I conclude that the police have failed to provide "detailed and convincing evidence" to support any of the required elements of the exemption.

[50] Specifically, there is no evidentiary basis upon which I could conclude that the police received information from one of the governments, agencies or organizations listed in the section. The police provided no explanation for their conclusion that records created as a result of the activities of the Memorial Wall Committee "exceed the scope of the Toronto Police Service." A similar paucity of evidence is available to establish that Committee stakeholders who represent various police associations are "all not governed by the Act." The argument here appears to be that these Committee members, because they represent the identified police associations which are "all not governed by the Act," are therefore *incapable* of creating records that might be subject to the *Act*. I reject this position. I agree with the appellant that the uncontroverted evidence points instead to the Memorial Wall Committee being a Toronto Police Service initiative. The Memorial Wall Committee members are all demonstrably members of the Toronto Police Service, notwithstanding other professional affiliations with the identified individual police

[13] Later in Order MO-1581, Adjudicator Liang also set out the rationale for the section 9(1)/15(b) exemption, as discussed in *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980,* vol. 2 (Toronto: Queen's Printer, 1980) (the Williams Commission), pages 306-7. The excerpt provided states, in part: "... It is our view that an Ontario freedom of information law should expressly exempt from access material or information obtained on this basis from another government. Failure to do so might result in the unwillingness of other governments to supply information that would be of assistance to the government of Ontario in the conduct of public affairs." See also Order MO-1606.

associations. I conclude that there is no reasonable basis upon which to find that the various police associations constitute "agencies" of any of the governments listed in paragraphs (a), (b) or (c) of section 9(1). As the police have failed to satisfy this basic requirement of section 9(1)(d). I find that the exemption does not apply.

[51] Furthermore, although section 9(1)(d) was claimed to deny access to some of the records[14] generated by committee members who represent the associations, I note that the language used by police on this issue draws heavily from the custody or control context. Whether responsive records would be in the custody or under the control of the police is not an issue before me because the police have not raised it as an issue. The police and the parties have not, therefore, been asked to provide representations on it as a threshold issue in this appeal. In any event, I am inclined to agree with the appellant's view that the nature of the initiative, the identities of the stakeholders, the use of police email addresses, and the overall circumstances, all point to the conclusion that records responsive to this request are in the custody or control of the Toronto Police Services Board for the purposes of the *Act.*

[52] I will now review the possible application of the personal privacy exemption in section 38(b) to the records for which it has been claimed.

D. Would disclosure of the information result in an unjustified invasion of personal privacy?

[53] The police claim that the mandatory exemption in section 14(1), together with the presumption against disclosure in section 14(3)(b), applies to portions of pages 17, 30, 31, 45, 46, 86, 103, 111 and 112.[15] As a preliminary matter, I also found that the withheld portion on page 9 ought to be included in this review. However, given my finding that the records also contain the personal information of the appellant, the relevant exemption in this appeal is section 38(b) which, like section 38(a), confers discretion upon the police to choose to disclose or not to disclose the information at issue.

[54] 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. In exercising discretion under section 38(b), the police were required to weigh the appellant's right of access to her

[14] Not all records, or portions of records, created by association-affiliated Committee members were withheld under section 9(1)(d).

[15] The following pages subject to the personal privacy exemption are duplicated: page 30 (at page 34), pages 45 & 46 (at page 49), page 86 (at pages 89, 91, 93) In addition, a portion of page 36 was withheld under the personal privacy exemption but is, in fact, non-responsive and was removed from the scope of the appeal as a preliminary matter, above.

own personal information against another individual's right to protection of their privacy.

[55] Sections 14(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold is met. 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). However, in *Grant v. Cropley* [2001] O.J. 749, the Divisional Court said the Commissioner could ". . . consider the criteria mentioned in [section 14(3)(b)] in determining, under [section 38(b)], whether disclosure . . . would constitute an unjustified invasion of [another individual's] personal privacy."

[56] Section 14(3)(b) states:

> 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;

Representations

[57] As stated, the police provided no representations in support of the application of the personal privacy exemptions.

[58] The appellant acknowledges that under section 14(1) of the *Act*, where a record contains only the personal information of an individual other than the requester, the institution must refuse to disclose it unless disclosure would not constitute an "unjustified invasion of personal privacy." However, the appellant submits that section 38(b) cannot apply to the appellant's personal information and, further, that the other information sought is not personal information, with the result being that section 14(1) cannot apply to it. The appellant also disputes the police's claim of section 14(3)(b). The appellant maintains that there is no investigation into a possible violation of law, and submits that the baseless claim of this particular exemption demonstrates disrespect to the appellant's father and to the family, generally.

[59] The appellant submits that the factors in sections 14(2)(a), (b) and (d) are relevant in considering the disclosure of any personal information of other individuals that may be contained in the records. In summary, the appellant argues that disclosure is desirable for the purpose of subjecting the activities of the police, because scrutinizing the process for determining eligibility for inclusion on the Toronto Police Wall of Honour "will lend credence to the … Wall … and will bolster public confidence" in the police. Second, the appellant submits that releasing the information may promote

public health and safety due to increased public awareness and discussion around the issue of post-traumatic stress disorder in police officers and other service personnel. Finally, the appellant submits that disclosure is necessary for a fair determination of the appellant's father's right to be considered eligible for inclusion on the Toronto Police Wall of Honour.

Analysis and findings

[60] I will address the application of section 14(3)(b) to the personal information in the records first. I note that section 38(b), along with the presumption against disclosure in section 14(3)(b), may still apply even if no criminal proceedings were commenced against any individuals, as long as there has been an investigation into a possible violation of law.[16] However, the police have not provided any evidence about what "personal information" it views as falling within the scope of the presumption, nor has it identified any investigation into a possible violation of law to justify the claim. No law or legislative provision has been identified in any of the brief materials submitted to this office. Furthermore, based on my own review of the withheld portions of the records, I see nothing to support this exemption claim. In the circumstances, I find that section 14(3)(b) does not apply.

[61] Previously in this order, I identified that certain records contained the personal information of individuals other than the appellant. The withheld portions include brief segments containing personal information about individuals, including personal email addresses and certain information, which would reveal other personal information about those individuals, if disclosed. Based on my consideration of it, I am not persuaded that the section 14(2) factors raised by the appellant favour the release of this particular personal information. In particular, I am not persuaded that disclosing personal email addresses or certain other discrete personal information would serve the purposes contemplated by paragraphs (a), (b) and (d) of section 14(2). Accordingly, I find that disclosure of this information would constitute an unjustified invasion of the personal privacy of individuals other than the appellant. As such, I uphold the exemption claim regarding the personal information of other individuals on pages 30 (in part), 45, 86, 103, 111, 112 under section 38(b).

[62] However, I reach a different conclusion respecting certain other pages that contain the personal information of other individuals. Based on my review of the information on pages 9, 17, 30 and 31, and in the absence of any evidence from the police, I am not persuaded that its disclosure would constitute an unjustified invasion of the personal privacy of the individuals to whom it relates. With reference to pages 30 and 31, I agree with the appellant that disclosure of this particular information would facilitate the public scrutiny of the police respecting the development of the Memorial Wall process and criteria, as contemplated by the factor in section 14(2)(a). I accept

[16] Orders P-242 and MO-2235.

the evidence before me that the development of the process has been the subject of public discussion and interest, and I consider this fact relevant to the application of section 14(2)(a) in this appeal. Accordingly, given the application of section 14(2)(a), I find that on balance, the information on these pages is not exempt under section 38(b).

[63] With respect to personal information about the appellant on pages 45 and 46, I note that this information consists of the views or opinions of other individuals about the appellant, as found in paragraph (e) of the definition. I accept that there may be some circumstances in which an adjudicator would find this type of personal information exempt under section 38(b). However, in a situation where there is no evidence to establish a basis for non-disclosure under one of the listed factors in section 14(2) favouring privacy protection, or otherwise, this type of personal information will be disclosed. This is one such appeal, and I find that the identified personal information on pages 45 and 46 is not exempt under section 38(b).

[64] To conclude, I have not upheld the police's claim for exemption under section 38(a), with section 9(1)(d), or its claim to section 38(b) with section 14(1), for the most part. Where access is denied under section 38(a) or 38(b), an institution must demonstrate that, in exercising its discretion, it considered whether a record should be released to the requester because the record contains her personal information. In the particular circumstances of this appeal, I am satisfied that insofar as the brief snippets for which I have upheld exemption under section 38(b) are concerned, the police did not exercise their discretion improperly, and I will not interfere with it in this order. I make this finding notwithstanding the fact that the police provided no submissions on the exercise of discretion, but in light of the fact that most of the withheld information will be disclosed to the appellant as a consequence of this order.

E. Did the police conduct a reasonable search for records in response to Interim Order MO-2831-I?

[65] As outlined in many past orders of this office, 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.*[17] 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.

[66] 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.[18] To be responsive, a record must be "reasonably related" to the request (Order PO-2554).

[17] Orders P-85, P-221 and PO-1954-I.
[18] Orders M-909, PO-2469 and PO-2592.

[67] 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 a reasonable effort to identify and locate responsive records has been made.[19] 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).

[68] This issue was reviewed extensively in Interim Order MO-2831-I. At paragraphs 27-31 of that decision, I outlined the appellant's position on the search issue, as follows:

> [27] … the appellant expressed her view that the working group meetings referred to in the emails she received as a consequence of the revised decision of June 2012 should have resulted in the creation of minutes, agendas and other responsive records. The appellant also believes that these emails suggest that other "selection criteria and process" and "revisions to procedure" documents should exist.
>
> [28] In the written representations provided in response to the Notice of Inquiry, the appellant maintains that the suggestion by the police that additional responsive records may exist, but are not in their possession is not tenable. Moreover, the appellant submits that:
>
> > What is apparent is that there are records which have not been produced, either in full, or in redacted form, that are responsive to the request. …
>
> [29] The appellant contends that the "detailed, pointed and specific" request should have permitted the police to identify more responsive records than those initially identified. The appellant sets out the wording of the request; namely, the preamble outlining the types of records sought and the subject matter, followed by the list of 10 identified individuals, nine Memorial Wall Committee meeting dates, and a specific letter between a representative of the Toronto Police Association and the (chief of the) Toronto Police, which was identified in an email sent to the appellant by the Association representative.
>
> [30] The appellant's representations set out in detail nine examples of records that she asserts ought reasonably to exist, but which have not been identified or produced. The appellant itemizes records based on references in the email correspondence disclosed with the June 5, 2012 revised decision to:

[19] Orders P-624 and PO-2559.

- "first version content document for the procedure {February 4, 2011 email};"
- "draft procedure [circulated to] the working group" by the Chief's staff {February 4, 2011 email};
- "draft criteria" or "suggested criteria {March 7 & 11, 2011 emails};"
- "the criteria will be inserted in the procedure and some other modifications will be made to clean up the language {March 11, 2011 email};"
- "revised version of the Memorial Wall procedure draft {March 29, 2011 email};"
- "… the wording of the first sentence of the submission criteria section [is] a bit confusing {March 30, 2011 email};"
- "the draft procedure was circulated… and several minor changes were suggested… this coming week the draft will go to our planning group for formatting {April 1, 2011 email};"
- "working group is meeting April 27 to review the latest draft and incorporate any feedback from the various Board's [sic] of directors {April 16, 2011 email}; and
- "basic agreement on the selection criteria and process but some further revisions to the procedure were recommended {May 27, 2011 email}."

> [31] Stating that none of the "drafts, policies, procedures, guidelines, revisions or records" have been produced as part of the police's response, the appellant submits that the records must exist because they are mentioned in the police's own correspondence.

[69] In Interim Order MO-2831-I, I determined that the search for responsive records by the police had not been reasonable, concluding my findings, as follows:

> [35] In light of my finding that the police's search for records responsive to the appellant's request in this appeal cannot be upheld, I will order the police to conduct further searches. Specifically, I am requiring the police to conduct searches of its record-holdings for <u>all records</u> related to the appellant, her father and the Toronto Police Wall of Honour for the time period May 28, 2007 to October 30, 2011. I note that the police were reminded by this office to maintain their files and any responsive records until further notice.
>
> [36] Additionally, the types of records specifically identified in the request are not to be taken as an exclusive or exhaustive list, and should be viewed in conjunction with the list of named individuals, the specified

meetings, and the identified correspondence. For greater certainty, "all records" may include "correspondence, communications, deleted emails, emails, meeting minutes, records, memorandums, notes and material" relating to the subject matter, the named individuals, and the identified meetings (as specified in the request), but may also include processes, procedures, selection criteria, or meeting agendas.

[70] The provisions of Interim Order MO-2831-I relevant to my findings on the search issue stated:

2. I order the police to conduct further searches for responsive records, whether in printed form, on videotape, by electronic means or otherwise, within their record holdings. With regard to this provision, I order the police to provide me with affidavits sworn by the individuals who conduct the searches. At a minimum, the affidavit should include information relating to the following:

    a) information about the employee(s) swearing the affidavit describing his or her qualifications, position and responsibilities;

    b) a statement describing the employee's knowledge and understanding of the subject matter of the request;

    c) the date(s) the person conducted the search and the names and positions of any individuals who were consulted;

    d) information about the type of files searched, the nature and location of the search, and the steps taken in conducting the search;

    e) the results of the search;

    f) if as a result of the further searches it appears that responsive records existed but no longer exist, details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.

4. The affidavit(s) referred to in Provision 2 should be sent to my attention, and may be shared with the appellant, unless there is an overriding confidentiality concern.

Representations

[71] As previously reviewed in Interim Order MO-2831-I, the police did not submit representations in this appeal that directly address the search issue. However, some information has become available through the affidavit provided in response to Interim Order MO-2831-I. In the affidavit, the FOI analyst responsible for the request indicates that her understanding of the scope of the request was that it included "all 'materials' regarding 'The Toronto Police Wall of Honour' from 2007-2011'."

[72] Rather than outlining the steps taken consequent to provision 2 of Interim Order MO-2831-I, however, the rather concise affidavit provided by the police addresses the searches and activities undertaken by the police in the earlier stages of this appeal, between February 2011 and June 2012. Only one paragraph relates to the steps taken by the police in response to the searches for additional records that were required by Interim Order MO-2831-I. Specifically, the FOI analyst states:

> In response to the Interim Order MO-2831-I, an email was sent to [the responsible] Insp. … to confirm whether any additional records had been located amongst the Toronto Police Service Committee members that had not been previously forwarded. We were forwarded a three page copy of the Draft Procedure which was added to the Index of Records. I was advised that we have received all responsive records within their custody.

[73] Regarding the types of records created and the records identified initially (i.e. up to the point of the revised decision in June 2012), the police submit that:

> The Committee identified that a good many of the emails were from her [the appellant] or to her which she would already be in possession of. The Committee also identified that they do not keep formal notes/minutes and because of the locational challenges of its members, conduct most of the follow up of their meetings via electronic mail. Any involved members are copied on all the email correspondence.

[74] The police indicate that FOI staff followed up with the Committee contact (the identified inspector) in March and April of 2012 regarding certain types of documents that might exist, based on references to those documents in the emails identified to that point. However, the affidavit does not provide further information with respect to clarification that may have been given by the inspector in response.[20] Respecting the police's June 5, 2012 revised decision, the police state that:

[20] The next several paragraphs of the affidavit address the issues around staffing and the previously mentioned non-response to the Notice of Inquiry sent by this office. The affidavit concludes with the one paragraph regarding the response to Interim Order MO-2831-I, set out above.

> What was not released were emails generated by members of the third party associations who are not governed by the *Act* and the appellant's own correspondence.

[75] Having been provided with the affidavit outlined above, the appellant directed my attention to the representations provided in August 2012, and adopted those submissions for the purpose of this proceeding. I have reviewed those representations again, in their entirety. The appellant repeated the references to records thought to exist, based on references in emails that have been disclosed. The appellant also set out again the portion of her initial representations that itemized the references, which I summarized at paragraph 30 of Interim Order MO-2831-I and reproduced above. According to the appellant, this chain of emails suggests that successive drafts of the Memorial Wall Procedure and/or criteria were prepared and should currently exist, but have not been identified due to the inadequate searches conducted. The appellant adds that the emails that were disclosed have attachments that would include versions of the procedures or criteria and these were never produced. The appellant conveys disbelief that the responsive records could consist solely of emails, other than the newly identified (and disclosed) March 2011 draft Procedure. The appellant expresses the view that the ongoing delay of the police in responding to the request represents a continued pattern of bad faith.

[76] In concluding remarks on the search issue, the appellant notes that all of the emails were "sent or received using Toronto Police Service email addresses." The appellant submits, therefore, that "the emails and attached documents are on the Toronto Police Service server and in the custody and control of the Toronto Police Service."

Analysis and findings

[77] Provision 2 of Interim Order MO-2831-I referred to "further searches for responsive records… within their record holdings," including affidavits sworn by the individual or individuals who conducted the additional searches required. The affidavit was to contain, at a minimum, certain specified information or details, with the intent being to provide specific details and elaboration on the police's response to the required searches. Paragraph d), in particular, asked for "information about the type of files searched, the nature and location of the search, and the steps taken in conducting the search." However, in my view, the affidavit evidence provides a less-than-fulsome explanation of the efforts of the police to respond to Interim Order MO-2831-I. It does not adequately serve the purpose of substantiating the steps taken to identify records reasonably related to this request. I am mindful of the argument that the Memorial Wall Committee did not create the types of records the appellant maintains ought to exist, such as agendas, minutes, memoranda, notes or other materials, because the Committee operated strictly by email. I have also considered the position that no additional records (apart from the March 29, 2011 draft Procedure) were identified as a

result of the searches ordered by Interim Order MO-2831-I because no more records were created due to "locational challenges of its members."

[78] My concern with respect to the adequacy of the searches conducted by the police in this appeal, and in response to Interim Order MO-2831-I, stems in part, from the lack of evidence on the issue. However, my concerns are heightened by the police's assertions regarding section 9(1)(d), and generally, that records created by Wall of Honour Committee members who represent the various police associations, "exceed the scope of the [police]" because they are not subject to the *Act.* Due to the brevity of, and lack of clarity, in the evidence provided by the police, it is not clear whether the police included all of those individuals in their searches, or if only the identified inspector was contacted. Accordingly, I am not satisfied that the police conducted a reasonable search, that is, one that included appropriate searches of all types of records generated by the individuals affiliated with the Toronto Police Association, Toronto Senior Officers Association and the Toronto Police Amateur Athletic Association who were contributing members to the Toronto Police Wall of Honour Committee.

[79] Moreover, I have no evidence before me that the police responded to, or followed up on, the very detailed clarification provided by the appellant, respecting other individuals who might reasonably be thought to have responsive records in their custody or control. In response to Interim Order MO-2831-I, the police located one additional, three-page record. None of the responsive records identified so far date from before January 2011, although the appellant's request clearly identifies certain records from 2010 that, in my view, might reasonably be thought to exist. As described in paragraph 29 of Interim Order MO-2831-I, the request was very specific; "namely, the preamble outlining the types of records sought and the subject matter, followed by the list of 10 identified individuals, nine Memorial Wall Committee meeting dates, and a specific letter between a representative of the Toronto Police Association and the (chief of the) Toronto Police, which was identified in an email sent to the appellant by the Association representative."

[80] The jurisdiction of the Commissioner and her delegates on this issue does not include the authority to dictate the record-keeping practices of an institution. In this context, therefore, I am not able to order the police to create records where I am satisfied that none exist, even if better documentation is desirable. Having said that, in circumstances where I am not satisfied by the evidence that an institution has conducted a reasonable search for responsive records, and where an appellant has provided a reasonable basis for her belief that additional records may exist, I may order further searches.

[81] In this appeal, the police appear to have been operating under the mistaken impression that records created by, and for, the Memorial Wall Committee are not subject to the *Act,* if created by a member affiliated with a police association. This mistaken view, combined with insufficient evidence of searches for records of a certain

type, or from an author specifically identified in the request itself, leads me to conclude that the police have not yet conducted a reasonable search in response to the appellant's request.

[82] As I am not satisfied that the police's search was reasonable, I will order the police to conduct additional searches. Here, I essentially repeat the instruction I provided to the police at paragraph 36 of Interim Order MO-2831-I, while noting that I have rejected the police's position on the affiliations of committee members:

> The types of records specifically identified in the request are not to be taken as an exclusive or exhaustive list, and should be viewed in conjunction with the list of named individuals, the specified meetings, and the identified correspondence. For greater certainty, "all records" may include "correspondence, communications, deleted emails, emails, meeting minutes, records, memorandums, notes and material" relating to the subject matter, the named individuals, and the identified meetings (as specified in the request), but may also include processes, procedures, selection criteria, or meeting agendas.

[83] Further, I accept the appellant's submission that in the context of inadequate evidence as to how and where the police searched previously, the police should also be ordered to conduct "a further search, including but not limited to a search of the Toronto Police computer servers."[21] This component of the required searches order echoes the provision in Interim Order MO-2831-I that the police conduct "searches for responsive records, whether in printed form, on videotape, by electronic means or otherwise, within their record holdings."

ORDER:

1. I uphold the decision of the police to withhold the personal information of other identifiable individuals on pages 30, 45, 86, 103, 111, 112 under section 38(b) of the *Act.* This information is highlighted in orange on the copies of the relevant records enclosed with this interim order.

2. I order the police to disclose to the appellant copies of all other withheld responsive portions of the records by **June 4, 2013** but not before **May 29, 2013**. To verify compliance with this provision, I reserve the right to require the police to provide me with a copy of the records disclosed to the appellant.

3. I order the police to conduct a further search for records responsive to the request that are in the custody and control of the police. The police are to conduct this

[21] As set out in paragraph 31 of Interim Order MO-2831-I.

search within the time period specified in section 19 of the *Act*, treating the date of this order as the date of the request and without recourse to section 20 of the *Act.*

4. With regard to provision 3, I order the police to provide me with affidavits sworn by the individuals who conduct the searches. At a minimum, the affidavit should include information relating to the following:

    a. information about the employee(s) swearing the affidavit describing his or her qualifications, position and responsibilities;

    b. a statement describing the employee's knowledge and understanding of the subject matter of the request;

    c. the date(s) the person conducted the search and the names and positions of any individuals who were consulted;

    d. information about the type of files searched, the nature and location of the search, and the steps taken in conducting the search;

    e. the results of the search;

    f. if as a result of the further searches it appears that responsive records existed but no longer exist, details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.

5. If further responsive records are located as a result of the searches referred to in Provision 3, I order the police to provide a decision letter to the appellant regarding access to those records in accordance with the provisions of the *Act*, considering the date of this order as the date of the request. The police must provide a copy of any new decision letter to me.

6. The affidavit(s) referred to in Provision 4 should be sent to my attention, and may be shared with the appellant, unless there is an overriding confidentiality concern.

7. I remain seized of this appeal in order to deal with any other outstanding issues arising from this order.

Original Signed By: April 29, 2013
Daphne Loukidelis
Adjudicator