

Information and Privacy Commissioner,
Ontario, Canada



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

INTERIM ORDER MO-2857-I

Appeal MA12-198

Halton Regional Police Services Board

March 25, 2013

Summary: The appellant submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* for access to the five most violent incidents that occurred nearest to his house, in the last year. The police located two responsive records and denied access to them pursuant to sections 8(2)(a) (law enforcement report) and 14(1) (personal privacy) of the *Act*. The appellant appealed the police's decision to deny access. During mediation, it was determined that the two records were not responsive to the request and therefore, that no responsive records were located. At issue on appeal was the way in which the police defined the scope of the request and whether they conducted a reasonable search for responsive records. The adjudicator found that the police interpreted the scope of the request too narrowly and that, as a result, they did not conduct a reasonable search for responsive records. The police were ordered to conduct a further search for responsive records.

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

OVERVIEW:

[1] The Halton Regional Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

[T]he top five most violent [incidents] that have occurred nearest to my home address ... in the last year.

[2] During the processing of the request, the appellant was asked by the police what he meant by "violent." He clarified that he meant homicides, sexual assaults, and assaults.

[3] The police located two responsive records and issued a decision letter, denying access to them pursuant to the mandatory personal privacy exemption at section 14(1), read in conjunction with the presumption at section 14(3)(b) (investigation into violation of law), and the discretionary law enforcement exemption at section 8(2)(a) of the *Act*.

[4] The requester, now the appellant, appealed the police's decision to deny access to the records.

[5] During mediation, the appellant clarified that his request related to "stranger on stranger" crimes and not to domestic incidents. The police advised that the two records that they had identified as responsive to the request involved individuals known to each other. Consequently, the police's position regarding records relating to "stranger on stranger" crime was that no responsive records exist.

[6] The appellant advised that he expected that if the police did not find incidents in his immediate neighbourhood, that the search would be expanded until records of such incidents were found. The police responded that the request specified "nearest to [the appellant's] home address" and that the search undertaken addressed that parameter.

[7] The appellant advised that how the police defined the scope of his request as well as the reasonableness of their search for responsive records were at issue in this appeal.

[8] As the appeal could not be resolved during mediation, it was transferred to the adjudication stage of the appeal process where an adjudicator conducts an inquiry under the *Act*. The adjudicator formerly assigned to this appeal began the inquiry by sending a notice of inquiry setting out the facts and issues to the police initially, and then to the appellant, seeking representations. Both parties provided representations, in turn, which were shared in accordance with the practices of this office. Reply representations were sought from and provided by the police in response to the appellant's representations. Sur-reply representations were sought from the appellant but he declined to make further submissions.

[9] The appeal was transferred to me to complete the inquiry. For the reasons that follow, I find that the police did not adopt a sufficiently liberal interpretation of the scope of the appellant's request and therefore, that they did not conduct a reasonable

search for responsive records. Accordingly, I will order them to conduct a further search for records responsive to the appellant's request.

ISSUES:

- A. What is the scope of the appellant's request?
- B. Did the police conduct a reasonable search for responsive records?

DISCUSSION:

A. What is the scope of the appellant's request?

[10] 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).

[11] 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.¹

[12] To be considered responsive to the request, records must "reasonably relate" to the request.²

¹ Orders P-134 and P-880.

² Orders P-880 and PO-2661.

Representations

[13] The police submit that the appellant attended the front desk of Halton Police Headquarters in person and spoke to the Information Privacy Officer. They submit that the appellant voluntarily advised that he required the information to complete an application form entitled "Authorization to Carry for the Protection of Life." This was also indicated clearly on his request form.

[14] The police submit that the request clearly stated that the appellant sought access to "the top five most violent [incidents] that have occurred nearest to my home address in the last year." They submit that they sought clarification of the request and it was determined that the appellant sought access to five occurrence reports.

[15] The police state that the Coordinator of Crime Analysis who was to conduct the search was provided with the exact wording of the request. At his request, further clarification was sought and it was determined that, to the appellant, the most violent crimes were "homicide, rape³ or assault." He then conducted a search based on the wording of the access request and the clarification sought from the appellant.

[16] The police submit that when it was advised that the appellant sought access to only "stranger on stranger" incident reports, it was determined that no such reports were located within the search parameters in the access request. They submit that they tried to accommodate the appellant's frequent changes to his request and ultimately advised him that if he wanted to change the location and search parameters again, he was invited to submit a new request, clearly indicating the new criteria.

[17] In their representations on reasonableness of search, the police made the following representations that speak more specifically to the scope of the request:

During mediation, we attempted to assist the appellant but it was obvious that he was not going to be satisfied unless he obtained police occurrence reports of a violent nature which he believed would assist in his application to carry a firearm.

While every attempt is made to satisfy a requester, often the scope of the request is expanded to assist requesters in their quest for information. In this case however, even expanding the scope would not have produced the result the appellant wants.

The institution conducts searches on a daily basis. We look at the request, determine what the requester is seeking and conduct a search. If we

³ The term "rape" is not used in the *Criminal Code of Canada*. The crime often described colloquially by that term falls under the crimes defined in the *Code* as "sexual assault," "sexual assault with a weapon" and "aggravated sexual assault."

realize the requester has their dates or locations wrong, we always expand or correct the search parameters. We do not literally interpret each request as stated. We realize requesters are often missing key pieces of the puzzle when making a request, and we routinely fill it in and are able to produce exactly what it is the requester is seeking.

This institution attempted to satisfy the appellant, without success.

[18] The appellant did not make any specific representations on the issue of the scope of his request but he did submit 10 news articles that reference what he submits are incidents of random violent crime that have occurred in the Burlington/Halton region in the last year. He submits that "these news articles involve 'stranger on stranger' attacks that were perpetrated in relatively close proximity to [his] residence."

[19] On reply, the police state that the Coordinator of Crime Analysis who conducted the initial search reviewed the news articles submitted by the appellant. They reiterate that following the submission of his original request which sought access to "the top five most violent incidences that have occurred nearest to my home address in the last year," he clarified that he was seeking access to police occurrence reports for the top five incidents of homicide, sexual assault or assault.

[20] The police submit that none of the newspaper clippings provided by the appellant were within the given location (one kilometer from the appellant's home), nor were they of the type of violent crimes requested (homicide, sexual assault or assault). Therefore, they submit that the newspaper clippings do not relate to incidents that fall within the scope of the requested information.

Analysis and findings

[21] I acknowledge that the wording of the request at issue is problematic for the police in that it involves a number of interchangeable variables that, when altered, may generate differing results. For this reason, I find that the request did not provide sufficient detail to enable an experienced employee to identify the precise records sought by the appellant and therefore required clarification.

[22] Based on the evidence before me, from the outset of their receipt of the request, the police made several attempts to clarify what specific information was being sought by the appellant. They continued to make such attempts during mediation. Although I accept that the police attempted, in good faith, to reformulate the request in a way that would generate responsive records, in doing so, I find that their efforts resulted in a narrowed request that ultimately frustrated the appellant's efforts to obtain access to the information he seeks.

[23] The original request, which was quite general in nature, sought access to the "top five most violent [incidents] that have occurred nearest to my home address in the

last year.” As the police’s record keeping systems have the capacity to locate this information electronically, the police sought further specifics about the types of incidents sought by the appellant in order to create search parameters that would generate responsive records. After consultation with the appellant they determined the type of incidents he considered to be “violent” included murder, sexual assault or assault.

[24] As a result of the clarification, the parameters of the search were set to cover these types of incidents. I accept that this was reasonable and that the scope of the request was established as a search for responsive records that related to those three types of incidents.

[25] With respect to the geographic area covered by the search, the appellant specified he was looking for responsive incidents “nearest to his home address.” In my view, this geographical area is very general in nature as it does not provide an identified radius within which the police are to search for responsive records. The police however, did not attempt to clarify with the appellant the extent of area that he wished to have included. Instead, they identified a radius of one kilometre from the appellant’s home and included it in the parameters of the search. Accordingly, any responsive records relating to murder, sexual assault or assault that occurred outside of the scope of that radius would not be captured by the search. While in my view, the one kilometre radius was a reasonable starting point, it is an arbitrary (and relatively narrow) one that did not amount to a “liberal” interpretation of the request.

[26] As noted above, institutions should adopt a liberal interpretation of a request and, generally, ambiguity in the request should be resolved in the requester’s favour. Given that the appellant’s request as narrowed, generated no responsive records, in my view, in keeping with these principles, it was incumbent on the police to broaden the parameters of the search, specifically with respect to geographical area. Particularly given that the appellant’s request stated that he sought records related to incidents “nearest to my home address” and did not specify the one kilometre radius applied by the police.

[27] While I accept that during the processing of the request, the police made significant attempts to understand the type of records sought by the appellant and that all parties agreed to establishing the scope of the request as including only records related to the three identified types of incidents, in my view, restricting the geographical area covered by the request to just one kilometre from the appellant’s home unilaterally and unreasonably narrowed the request. In the circumstances of this case, I find that the police should either have clarified further with the appellant and established a mutually acceptable geographical radius, or, resolved the ambiguity in the request in the appellant’s favour by broadening the geographical radius of the search to the point whereby the search generated five incidents of murder, sexual assault or assault.

[28] Accordingly, I find that it was unreasonable for the police to narrow the scope of the request by restricting the geographical area of the search to one kilometre.

B. Did the police conduct a reasonable search for responsive records?

[29] 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 17.⁴ 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.

Representations

[30] The police state that a search was conducted by the Coordinator of Crime Analysis, who is an expert in the field of crime analysis and the individual most qualified to conduct this search. They submit that he conducted the search within the parameters given and produced results.

[31] In support of the police's representations on this appeal, the Coordinator of Crime Analysis submitted an affidavit attesting to the search he conducted. He states that he received the request from the police's Freedom of Information Coordinator which involved searching for records relating to violent incidents around the individual's home address. He states that in an effort to better understand the nature of the request, clarification was received by the appellant and he was requested to look at three classes of violent crime occurrences (homicide, sexual assault or assault) that occurred within one kilometre of the identified address. He submits:

I used the Intergraph GeoMedia mapping application to create and run queries using a map interface. This software links directly into the Halton Police Computer Aided Dispatch records and allows the user to query by geographic area, type and time – in this case a radius around a single location. I selected the address and radius and ran a query for calls received by police for the requested occurrence types which occurred between [January] 1, 2011 and [March] 26, 2012. Those results with a disposition of "Report to Follow" – indicating officers responded and further investigation were further examined.

...

⁴ Orders P-85, P-221 and PO-1954-I.

Although no homicides were reported with the constraints of the query, I also looked at these within the time frame to ensure that none were close to the address in question.

The results yielded no calls meeting the requested criteria occurring within the 1 km radius of the provided address for the requested time frame.

I spent approximately 30 minutes on this request.

[32] As noted above, in response, the appellant states that he conducted his own cursory search of incidents of random violent crime that have occurred in the Burlington/Halton region in the last year and attached 10 news articles that reference these incidents. He notes that "these news articles involve 'stranger on stranger' attacks that were perpetrated in relatively close proximity to [his] residence." He submits that he has personally spoken to some of the victims and has confirmed that to be a fact. He submits:

These are just some examples of the kind of random violent crime that I believe put Halton [residents] in 'imminent danger,' and must be available in the Halton Police records which are not being disclosed in my Freedom of Information request."

The articles provided by the appellant identified the following incidents:

- a clothing store robbery at gunpoint;
- a variety store robbery at gunpoint;
- a confrontation in the parking lot of a Tim Horton's that involved a knife and where charges of assault with a weapon, weapons dangerous to the public peace, and failing to comply with a recognizance, were laid;
- a robbery of an iPod at knifepoint;
- an assault at an apartment complex where charges of aggravated assault, breach of probation order, breach of recognizance, accessory after the fact, and obstruct police were laid;
- an assault and robbery of an iPhone ;
- a swarming that resulted in an assault and robbery;
- a home invasion with weapons that resulted in an assault and robbery;
- an assault on a taxi driver resulting in charges of assault causing bodily harm, uttering threats, and fraudulently obtaining transportation; and
- a home invasion that resulted in an assault and robbery.

Analysis and findings

[33] 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.⁵ 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.⁶

[34] Based on the evidence before me, I accept that an experienced employee knowledgeable in the subject matter of the request expended efforts to locate records which were reasonably related to the request, as the request was interpreted by the police and the search parameters that they set. However, given that I have found that the scope of the request was unreasonably and unilaterally narrowed by the police, restricting the geographical parameters to a radius of one kilometre from the appellant's house, I do not find that the police's search was reasonable.

[35] Moreover, 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.⁷ In my view, the appellant has provided a reasonable basis for concluding that records responsive to his request exist. His submissions indicate a number of assaults have occurred within the area that he would consider to be near to his home address and responsive to his request. Based on the parameters chosen, specifically geographically, the police's search has located none.

[36] Accordingly, I find that by narrowing the geographic area covered by the request to one kilometre from the appellant's home, the police have not made a reasonable effort to identify and locate all of the responsive records within its custody and control. As a result, I will order the police to conduct a further search for records identifying the first five incidents of murder, sexual assault, or assault involving individuals unknown to each other, that have occurred in the specified time frame nearest to the appellant's home address. Without a precise geographic distance to enter into their system, in order to conduct a reasonable search the police may have to conduct several searches for responsive records, gradually expanding the geographic radius until five incidents of murder, sexual assault or assault are located within the proximity of the appellant's home.

ORDER:

1. I order the police to conduct a further search for records identifying the first five incidents of murder, sexual assault, or assault that have occurred in the specified time frame nearest to the appellant's home address. The incidents must involve individuals who are unknown to each other.

⁵ Orders P-624 and PO-2559.

⁶ Orders M-909, PO-2469, PO-2592.

⁷ Order MO-2246.

2. I order the police to provide me with an affidavit from the individual(s) who conducted the search, confirming the nature and extent of the search conducted for responsive records within 30 days of this interim order. At a minimum the affidavit should include information relating to:
 - (a) Information about the employee(s) swearing the affidavit describing his or her qualifications and responsibilities;
 - (b) the date(s) the person conducted the search and the names and positions of any individuals who were consulted;
 - (c) information about the type of files searched, the search terms used, the nature and location of the search and the steps taken in conducting the search; and
 - (d) the results of the search.
3. The affidavit referred to above should be sent to my attention, c/o Information and Privacy Commissioner/Ontario, 2 Bloor Street East, Suite 1400, Toronto, Ontario, M4W 1A8. The affidavit provided to me may be shared with the appellant, unless there is an overriding confidentiality concern. The procedure for the submitting and sharing of representations is set out in IPC *Practice Direction 7*.
4. If, as a result of the further search, the police identify any records responsive to the request, I order the police to provide a decision letter to the appellant regarding access to these records in accordance with the provisions of the *Act*, considering the date of this order as the date of the request.
5. I remain seized of this appeal in order to deal with any outstanding issues.

Original signed by: _____
Catherine Corban
Adjudicator

March 25, 2013 _____