

Information and Privacy Commissioner,  
Ontario, Canada



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

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## **ORDER MO-2917**

Appeal MA12-578

Toronto Police Services Board

July 23, 2013

**Summary:** The appellant sought information about any background checks conducted on her name. The police located responsive records and issued an access decision. The appellant appealed this decision claiming that additional responsive records should exist. This order finds the police's search for responsive records reasonable and dismisses the appeal.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 17(1).

### **OVERVIEW:**

[1] The Toronto Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for the following:

- Who performed the background checks on me and when (name of person, corporation, date, copy of what was provided to them).
- Background check report on me ... including what the police have on file (not necessarily a criminal record).

[2] The police issued a decision advising that five police reports had been located. Access was granted in full to a sudden death report. One report was withheld in full due

to an on-going investigation. Partial access to the remaining three reports was granted. The police denied access to the remaining records pursuant to section 38(a) (discretion to deny access to requester's own information), read in conjunction with the law enforcement exemption in section 8(1), and the personal privacy exemption in section 38(b) of the *Act*.

[3] The police also advised that any questions regarding the Background Check process should be directed to the police's Police Reference Check Program (PRCP).

[4] The requester (now the appellant) appealed the police's decision to deny access to the withheld parts of the records, and objected to the police directing her to another department regarding the PRCP.

[5] During mediation, the appellant explained that she is concerned that the police are investigating her and may have confused her with another individual. The appellant bases this concern on hearing from her neighbours, at her home and cottage, that the police have been asking questions about her. Records regarding this alleged investigation have not been provided to the appellant. The appellant believes that the police should have records regarding this investigation, thereby raising the issue of the reasonableness of the police's search for responsive records.

[6] The records that had been withheld from the appellant, in part, consist of three police reports, all created before 2009. The appellant indicated that she is not interested in any records that were created prior to 2009. As such, the three police reports are no longer at issue.

[7] The appellant also told the mediator that she is not interested in pursuing access to the police report that was withheld in full due to an on-going investigation. The appellant stated that she will make a new request once the investigation is complete.

[8] With respect to the part of the request pertaining to the PRCP; the appellant advised the mediator that she wished to exercise her rights under the *Act* to receive an access decision. As a result, the police issued a supplementary decision regarding the parts of the request relating to the PRCP. The police denied access on the basis that the requested records do not exist. The police also noted that PRCP has a retention period of two years for the type of information requested.

[9] The police also maintained that they had executed a reasonable search for responsive records.

[10] The appellant did not accept the response of the police that no further records exist and that they had conducted a reasonable search.

[11] No further mediation was possible. Accordingly, this file was transferred to the inquiry stage of the appeals process.

[12] On June 18, 2013, I conducted an oral in-person hearing in this appeal on the issue of whether the police had conducted a reasonable search for responsive records. The appellant was present at the hearing, as were two analysts from the police, all of whom provided evidence. In addition, during the course of the inquiry, evidence was obtained by telephone from the police's group leader of the PRCP. The mediator was also present during the hearing.

[13] In this order, I find that the police's search for responsive records was reasonable and dismiss the appeal.

## **DISCUSSION:**

[14] In appeals where the only issue remaining is where the appellant believes that additional records exist, as is the case in this appeal, the sole issue to be decided is whether the police have conducted a reasonable search for the records as required by section 17 of the *Act*. If the adjudicator in this appeal is satisfied that the search carried out was reasonable in the circumstances, the decision of the police will be upheld. If the adjudicator is not satisfied, further searches may be ordered.

[15] The appellant's request was received by the police on October 1, 2012. In her request, she requested copies of any background checks performed by the police on her. At the hearing, the appellant testified that she believes background checks were requested on her in 2010, by a third party agency, and in 2012, by unauthorized means.

[16] The police analysts both testified that the police had both a PRCP supervisor and a PRCP staff member conduct searches for responsive background check reports on November 19, 2012, after the request was received, and also during mediation in February 2013. No responsive records were located by the police during these two searches.

[17] The police explained that there are two types of background checks, a Clearance Letter for criminal convictions, and a more comprehensive check of an individual who will be working with vulnerable persons or children. The appellant testified that, due to her line of work, she would not have needed a vulnerable persons reference check. She stated that the type of background check that would have been performed on her would have been for a police Clearance Letter.

[18] The police provided evidence that for Clearance Letters, they only respond to requests from the individuals themselves who are requiring this letter. They do not respond to third party agencies who are seeking Clearance Letters. They also indicated

that these letters need to be picked up by the individuals themselves or are mailed to their home addresses.

[19] The police's evidence at the hearing was that their records retention schedule for background check Clearance Letters was two years. The police first searched for responsive records on November 19, 2012. As the appellant believed that a background check was done on her sometime between July and October 2010, the police were asked if there was any means to locate information from prior to November 19, 2010. Consequently, the police contacted the PRCP group leader to provide evidence by telephone during the hearing.

[20] The PRCP group leader testified that she could locate information on the police's computer system about any requests for Clearance Letters from 2009 until the present. During the hearing, she conducted a search for any requests made to the police for a Clearance Letter for the appellant from 2009 until the date of the hearing. She then testified that her search turned up no results for any Clearance Letter requests under the appellant's name for that time period.

[21] Following the hearing the appellant provided the police with further information about the police background checks she testified about at the hearing. In response, the police's Freedom of Information Coordinator (the FOIC) wrote the appellant the following letter, with a copy sent to this office:

**Re: All Police Reports Under Your Name**

Pursuant to the recent Oral Inquiry held on Tuesday June 18th, 2013, with Adjudicator Smith and Mediator Brocklehurst of the Information and Privacy Commissioner's Office/Ontario (IPC), you provided the IPC with a copy of the documents you reference the process as supportive documentation of your claims. This document was forwarded to our office as agreed.

I [the FOIC] have since consulted with the Coordinator of the Toronto Police Service Reference Check program who has reviewed the document you forwarded.

She has confirmed the following:

- 1) "This is a background screening done by a private third party company. They [name of company] have contracted with a Police agency who would have completed the check. The information disclosed would have been obtained by searching information in the custody of the RCMP. The

Toronto Police Service **does not** have any agreement in place with the named organization to perform this service.”

2) “The information disclosed and results provided are the “standard” RCMP reply when a persons’ name/date of birth/gender are not a match to a criminal record. It does not include local records retained by a Service, and is not a vulnerable sector screening. We would call this a clearance letter, however *the document received **is not** a clearance letter released by the Toronto Police Service.*” [Emphasis in original]

[22] The appellant did not provide representations in response to this letter, despite being given ample opportunity to do so.

### ***Analysis/Findings***

[23] As stated above, in appeals where the only issue remaining is whether additional records exist, as is the case in this appeal, the sole issue to be decided is whether the police have conducted a reasonable search for the records as required by section 17 of the *Act*. If I am satisfied that the search carried out was reasonable in the circumstances, the decision of the police will be upheld. If I am not satisfied, further searches may be ordered.

[24] Important factors in assessing the reasonableness of the search will be whether the appellant has provided sufficient identifying information to assist the institution in its search and has provided a reasonable basis for concluding that additional records exist.

[25] 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.<sup>1</sup> To be responsive, a record must be “reasonably related” to the request.<sup>2</sup>

[26] 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.<sup>3</sup>

[27] 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.<sup>4</sup>

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<sup>1</sup> Orders P-624 and PO-2559.

<sup>2</sup> Order PO-2554.

<sup>3</sup> Orders M-909, PO-2469 and PO-2592.

[28] Although the appellant claims that a Toronto police background check was done on her name through a third party agency, I find that the police have provided me with a reasonable explanation as to why the results of any such background check could not be identified and located by them.

[29] Based on a careful review and consideration of the oral testimony provided by both parties, along with the documents the parties provided in support, I find that the police have conducted a reasonable search for responsive records.

[30] I find that the appellant has not provided a reasonable basis for me to conclude that additional responsive records exist. Accordingly, I am upholding the reasonableness of the police's search for responsive records and dismissing this appeal.

**ORDER:**

I uphold the reasonableness of the police's search for records and dismiss the appeal.

Original signed by: \_\_\_\_\_  
Diane Smith  
Adjudicator

\_\_\_\_\_ July 23, 2013

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<sup>4</sup> Order MO-2185.