Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-2940

Appeal MA12-536

South Simcoe Police Services Board

September 5, 2013

Summary: The South Simcoe Police received a broadly worded request from a long-serving former employee seeking access to any electronic or hard copy records, including police officer notebooks, which mention him by name. The adjudicator decided that part of the request too broad and inclusive to enable the police to respond. In addition, the fee estimate respecting the electronic email records holdings was upheld.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 45(1).

Orders and Investigation Reports Considered: Orders 33 and M-865.

OVERVIEW:

[1] The South Simcoe 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:

> …copies of any and all internal South Simcoe Police Service (SSPS) correspondence, but not limited to emails, faxes, letters, phone conversations, memorandum books, etc., concerning [the requester] or in reference to [the requester] and or where [the requester] is mentioned.

> Please provide copies of all these correspondence, documents, etc. for the time frame of September 2006 to present.

[2] In response to the request, the police issued a fee estimate decision advising that a 50% payment of the estimated fee of $132,795.00 was required in order to proceed with the request. The police did not include a fee estimate for the time required to search for "all internal SSPS correspondence", other than its electronic emails holdings. The police did, however, break down the fee estimate relating to the searches of its email records and memorandum books as follows:

> Memorandum Books:
>
> Search time period for applicable records:
> 616 memo books @ 1 hour per book (per year requested) x 7 @ 30 per hour = $129,360.00
>
> Emails:
>
> Search time period for applicable records (emails):
> 114.5 hours @ $30 per hour = $3,435.00
>
> Total estimated cost: $132,795.00

[3] The requester (now the appellant) appealed the police's fee estimate.

[4] During mediation, the police issued a revised fee estimate and interim decision advising that the fee estimate was now $129,858.00, broken down as follows:

> Memorandum Books
>
> Search time period for applicable records:
> 616 memo books @ 1 hour per book (per year requested) x7 @ $30 per hour - $129,360.00
> ...
> Emails
>
> Search time period for applicable records:
> 8 minutes/mailbox x 125 mailboxes = 1000 minutes
> 1000 minutes / 60 minutes (hour) = 16.6 hours
> 16.6 hours @ $30 per hour = $498.00

[5] The police also advised that there would be a $0.20 / page photocopy fee and that they estimated "there may be approximately 15 pages of emails per employee". The police again confirmed that a 50% deposit was required in order to proceed with the request, explained that some information could be denied pursuant to a number of exemptions and exclusions of the *Act* and offered to reduce the fee if the appellant chose to "refine and narrow [his] request". The appellant advised the mediator that he did not want to narrow his request, instead wanted to proceed to the adjudication stage of the appeals process.

[6] I sought and received the representations of the police, a complete copy of which were provided to the appellant, who also made submissions in response to a Notice of Inquiry setting out the facts and issues in the appeal.

[7] In this order, I uphold the police fee estimate with respect to the electronic records and decide that the other aspects of the request are too broadly-worded to enable the police to conduct a search and provide access under the *Act*.

DISCUSSION:

PRELIMINARY ISSUE

IS THE REQUEST SUFFICIENTLY SPECIFIC?

[8] Section 36(1) of the *Act* states:

> Every individual has a right of access to,
>
> (a) any personal information about the individual contained in a personal information bank in the custody or under the control of an institution; and
>
> (b) any other personal information about the individual in the custody or under the control of an institution with respect to which the individual is able to provide sufficiently specific information to render it reasonably retrievable by the institution.

[9] In Order M-865, I addressed a situation involving a broadly-worded request for access to records maintained by a police service. In that case, as is the case in the present appeal, the requester had also made other requests for records relating to specific, discrete events and occurrences which could be more readily searched electronically by date or using the name of the other officers involved. In the present appeal, the vast majority of the responsive records consist of police officer notebooks

which cannot be searched electronically. Instead, they must be examined manually to determine if they contain references to the appellant, a long-serving, former employee of the police.

[10] In Order M-865, I addressed the obligations of a requester seeking access to a wide range of records which are not easily searchable electronically as follows:

> It is well-established that requesters, as well as institutions, have responsibilities in exercising their right of access under the *Act*. In Order 33, former Commissioner Sidney Linden made the following observations about the obligations of requesters and institutions under sections 47 and 48 of the provincial *Act*, which are the equivalent provisions to sections 36 and 37 in the municipal *Act*:
>
> > As a matter of common sense an institution will, usually, be in a better position than a requester to know what records are within its custody or control. However, a requester may well have some knowledge as to the whereabouts of a record of personal information that pertains to him or her. Sections 47 and 48 of the *Act* place the responsibility for ascertaining the nature or whereabouts of a record of personal information on both the requester and the institution.
> >
> > It is clear from sections 47 and 48 of the *Act* that there is some obligation placed on the requester to provide as much direction to an institution as possible to where the records he or she is requesting may be found and/or to describe the records sought. A requester's knowledge as to what records are in an institution's custody and control will vary.
> >
> > A danger exists that, due to a lack of knowledge on the part of a requester, a record that would respond to his or her request may not be considered for release because it has not been identified by the requester with sufficient precision. A request for "all" information relating to a requester, held by an institution, is one example where there is a potential to frustrate the right to access provided for in the *Act* because a request for "all" information may not be sufficiently descriptive for the purposes of subsection 48(1), although an institution that is computerized and able to search its files using only a name may be able to answer the request. In the majority of these types of requests for "all" information, an institution is going to have to seek

> clarification from the requester in order to respond to the request for access.
>
> . . .
>
> In my view, taking into account the comments made by Commissioner Linden above, the request provided the Police with very little information upon which to base a search, beyond the name of the requester and the lengthy time frame for which records were sought. Bearing in mind the type of records retrieval systems operated by police services generally, usually pertaining to recent occurrence information, and the fact that the appellant is known to them, however, in my view, the Police could have been able to at least conduct a search of its own computer system for current information which is filed under the appellant's name. A search of the current information system using the name of the appellant may locate some, if not all, of the information which he requested. In this way, at least part of the Police's record-holdings could have been searched.
>
> In summary, I find that while the appellant's request is not record-specific, it is sufficiently specific to identify the location of perhaps some of the personal information which he is seeking. I find that the information provided by the appellant in his request is sufficiently detailed under section 36(1)(b) to render some responsive information reasonably retrievable by the Police through a search of their current computerized records.
>
> However, I find that the appellant has not provided sufficient specific information to enable the Police to locate all of the potentially responsive records which may be stored in other record-keeping systems which are not accessible through a search conducted using only the appellant's name. If the Police had been given the dates of specific occurrences and/or the names of the officers involved, it may have been in a position to conduct a comprehensive search for other records which may be responsive to the appellant's request. Without this information however, the Police are limited in the types of searches which they can conduct.

[11] In the present case, the appellant was employed by the police as a police officer for a number of years and is seeking, in part, any references to himself that may appear in notebook entries made by his fellow officers over a seven year period. In addition, he is seeking access to references to himself which may appear in "any and all internal [SSPS] correspondence, but not limited to emails, faxes, letters, phone conversations, memorandum books, etc. concerning [himself] or in reference to [himself] or where [he] is mentioned."

[12] The appellant takes issue with the fee estimate provided by the police, noting that it does not include a fee for the search, preparation and photocopy charges relating to any "internal correspondence". He argues that the fee in relation to the notebooks is unreasonable as it ought to take only 5 to 12 minutes to review a 100-page notebook, rather than the hour estimated by the police. He also suggests that the individual conducting the searches, whether it is the individual police officer who wrote the entries in the notebook or staff with the freedom of information coordinator's (the FOIC's) office, need not read every page of every book. Rather, he insists that the search could be undertaken by "scanning" each page for references to his name. The appellant also argues that it is not necessary for the FOIC's office to identify the notebooks containing responsive information because this would be done by each of the 76 officers employed by the police and only the relevant notebooks would be provided to the FOIC. However, I note that this suggestion overlooks the fact that the searches would be accomplished by 76 individuals, rather than the FOIC's office, but would still require a huge expenditure of time and energy.

[13] I find that the request is not sufficiently specific to enable the police to conduct searches for responsive records owing to the breadth of the record-holdings they would be required to review. The request as currently framed is overly inclusive and in effect frustrates the right of access under the *Act* by requiring a disproportionate and enormous expenditure of time and effort to locate potentially responsive records. Accordingly, absent any narrowing or focussing of the scope of the request by the appellant with respect to the police officer notebooks or the "internal correspondence", I find that the police are not required to conduct searches of their record-holdings for records responsive to these aspects of the request.

[14] I conclude that until such time as the appellant provides more specific information about the nature and extent of the records he is seeking, the police are not required to respond to this aspect of the request, as it is currently framed. The supply of more specific information by the appellant will enable the police to more readily locate the information in the notebooks and in any "internal correspondence" that the appellant is seeking, at a greatly reduced fee.

SHOULD THE FEE RELATING TO THE ELECTRONIC RECORDS BE UPHELD?

[15] At this time, I have decided to review only that part of the police fee estimate that relates to electronic record-holdings, and not the police officer notebooks or the "internal correspondence" specified in the request. During mediation, the police issued a second decision letter to the appellant dated January 11, 2013, in which they provided the following fee estimate to cover the cost of identifying and locating responsive information from their email record holdings:

> Search time period for applicable records:
> 8 minutes/mailbox x 125 mailboxes = 1000 minutes
> 1000 minutes / 60 minutes (hour) = 16.6 hours
> 16.6 hours @ $30 per hour = $498.00

General principles

[16] Where the fee exceeds $25, an institution must provide the requester with a fee estimate [Section 45(3)]. Where the fee is $100 or more, the fee estimate may be based on either

- the actual work done by the institution to respond to the request, or
- a review of a representative sample of the records and/or the advice of an individual who is familiar with the type and content of the records [Order MO-1699].

[17] The purpose of a fee estimate is to give the requester sufficient information to make an informed decision on whether or not to pay the fee and pursue access [Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699]. The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees [Order MO-1520-I].

[18] In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated [Orders P-81 and MO-1614].

[19] This office may review an institution's fee and determine whether it complies with the fee provisions in the *Act* and Regulation 823, as set out below. Section 45(1) requires an institution to charge fees for requests under the *Act*. That section reads:

> A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,
>
> (a) the costs of every hour of manual search required to locate a record;
>
> (b) the costs of preparing the record for disclosure;

> (c) computer and other costs incurred in locating, retrieving, processing and copying a record;
>
> (d) shipping costs; and
>
> (e) any other costs incurred in responding to a request for access to a record.

[20] More specific provisions regarding fees are found in section 6 of Regulation 823, which reads:

> 6. The following are the fees that shall be charged for the purposes of subsection 45(1) of the *Act* for access to a record:
>
> 1. For photocopies and computer printouts, 20 cents per page.
>
> 2. For records provided on CD-ROMs, $10 for each CD-ROM.
>
> 3. For manually searching a record, $7.50 for each 15 minutes spent by any person.
>
> 4. For preparing a record for disclosure, including severing a part of the record, $7.50 for each 15 minutes spent by any person.
>
> 5. For developing a computer program or other method of producing a record from machine readable record, $15 for each 15 minutes spent by any person.
>
> 6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.

Representations of the parties and findings

[21] The police submit that the fee estimate was prepared based on information provided by staff with the Information Technology (IT) Department, who is familiar with the type and contents of the electronic records sought. A representative sample of three employee mailboxes was searched for responsive records. The police also state that their email records are maintained in the Records Management System which

includes an email address for each police employee, including civilian employees, which they are issued on the day they are hired.

[22] Only the IT Department has access to every employee's email log in information and passwords. The fee estimate provided to the requester includes the time required to search for and sever the responsive records in order to prepare them for disclosure to the appellant. This calculation was made based on the representative sampling of the records, according to the police.

[23] The appellant does not appear to take issue with the search time and fee estimate for electronic records responsive to this aspect of his request, stating:

> The Service [the police] has corrected its first (error) inaccurate estimate concerning email search time and cost. I believe the main and or outstanding issue now is with the Service's notebook estimate for the number of notebooks, search time and or cost, which I strongly disagree with.

[24] I find that the police have properly undertaken a search of a representative sampling of the responsive records, which have been identified by a knowledgeable individual employed in their IT Department. I am satisfied that this individual is familiar with the record holdings which were identified as containing the responsive records, as well as the technical requirements of searching them for information that is responsive to the appellant's request. In addition, I find that the calculation set out above for the conduct of the necessary searches of the email accounts of each of the 125 employees of the police is reasonable and represents an accurate estimate of the time required to do so.

[25] Based on the information provided to me by the police and my review of their submissions and attachments, I am satisfied that the estimate of 16.6 hours of search time required to review all of the email accounts of 125 police employees for responsive records is reasonable. Accordingly, I uphold the search aspect of the fee estimate provided to the appellant, in the amount of $498.00.

ORDER:

1. I uphold the fee estimate of $498.00 for the search time required to locate the requested email records.

2. The police are not required to perform any further searches for responsive records that may be located in the officers' notebooks or any "internal correspondence" until such time as the appellant provides additional clarification as to the information he is seeking in order to facilitate a more focused search.

Original signed by: September 5, 2013
Donald Hale
Adjudicator