Information and Privacy Commissioner,
Ontario, Canada

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

INTERIM ORDER MO-2924-I

Appeal MA12-41

Toronto Police Services Board

July 30, 2013

Summary: The requester sought access to all correspondence, documents and reports in relation to a named individual's encounter at his home with CBC's This Hour Has 22 Minutes and his subsequent 911-phone call. The request covered the time period from the date of the event up to the date of the request. The police identified an Occurrence Report as being responsive to the request and, relying on the personal privacy exemption at section 14(1) of the *Municipal Freedom of Information and Protection of Privacy Act*, denied access to it. The requester appealed the decision and further alleged that it was in the public interest that the requested information be disclosed. The appellant also alleged that the police did not conduct a reasonable search for responsive records. This interim order requires the police to conduct a further search for responsive records but otherwise upholds the decision of the police.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, ss. 2(1), 2(2.1), 2(2.2), 14(1)(f), 14(3)(b), 16, 17.

Orders Considered: M-969, MO-1994, P-613, PO-2225, PO-3025, PO-3093.

Cases Considered: *John Doe v. Ontario (Information and Privacy Commissioner*) (1993), 13 O.R. (3d) 767 (Div. Ct); *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.); *R. v. R.L*, [2007] O.J. No. 4095 (Sup. Crt.); *Vancouver Police Department (Re)*, 2007 Canlii 9595 (BC IPC); *Grant v. Torstar Corp.* 2009 SCC 61.

BACKGROUND:

[1] The Toronto Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act* or *MFIPPA*) for access to "all correspondence, documents and reports in relation to [a named individual's] encounter at his home with CBC's This Hour Has 22 Minutes and his subsequent 911-phone call on October 24th, 2011." The requester asked that this information be provided for the time period from October 24th, 2011 to the present day (which the police considered to be November 7, 2011).[1]

[2] After notifying an affected party and obtaining their position on disclosure, the police issued a decision letter with respect to the Occurrence Report they identified as responsive to this request. Relying on the mandatory personal privacy exemption in section 14(1) of the *Act* (invasion of privacy) the police denied access to the Occurrence Report.

[3] The requester (now the appellant) appealed the decision denying access. The appellant indicated in the Appeal Form that it is in the public interest that this information be disclosed. Accordingly, the application of the public interest override at section 16 of the *Act* was added as an issue in the appeal.

[4] At mediation, the reasonableness of the police's search for other responsive records, such as officers' notes, was also added as an issue in the appeal.

[5] Mediation did not resolve the matter and it was moved to the adjudication stage of the appeal process where an adjudicator conducts an inquiry under the *Act*.

[6] I commenced the inquiry by sending a Notice of Inquiry setting out the facts and issues in the appeal to the police and a party whose interests may be affected by disclosure of the record (the affected party). Both the police and the affected party provided responding representations. I then sent a Notice of Inquiry as well as the non-confidential representations of the police and the affected party to the appellant. The appellant provided responding representations. I determined that the appellant's representations raised issues to which the police and the affected party should be given an opportunity to reply. Both the police and the affected party provided reply representations.

[1] I note that the requester has made three separate requests for information relating to the encounter. This appeal does not address the audio recordings of the 911 calls that are the subject of appeal MA12-39. Nor does this appeal address the I/CAD records, as well as any similarly responsive records, which are the subject of Appeal MA12-40.

ISSUES:

A. Does the record contain personal information?

B. Would disclosing the information in the record constitute an unjustified invasion of personal privacy pursuant to section 14(1) of the *Act*?

C. Is there a compelling public interest in the disclosure of the Occurrence Report that outweighs the application of section 14(1) of the *Act*?

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

RECORD:

[7] The record at issue in this appeal is an Occurrence Report.

DISCUSSION:

A. Does the record contain personal information?

[8] The police rely on the mandatory exemption in section 14(1) of the *Act* to withhold the Occurrence Report. Before I can determine whether the personal privacy exemption may apply to the record it is necessary to determine whether the record contains "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 where 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 if 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;

[9] The list of examples of personal information under section 2(1) is not exhaustive. Therefore information that does not fall under paragraph (a) to (h) may still qualify as personal information.[2]

[10] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[3]

[11] Sections 2(2.1) and 2(2.2) of the *Act* also relate to the definition of personal information. These sections state:

> 2(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.
>
> 2(2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[12] In addition, previous IPC orders have found that to qualify as personal information, the information must be about the individual in a personal capacity. As a

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[2] Order 11.
[3] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.[4]

[13] However, previous orders have also found that 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.[5]

[14] The police submit that the named individual was in the company of his family at his personal residence when he was approached by a television crew. The police submit that after "many attempts to have these individuals removed, [the named individual]" contacted the police through the 911 emergency telephone service. The police submit that at no time was the named individual acting in an official or governmental capacity and he made the call while attempting to leave his property with another individual. The police submit that the record contains information that falls within the scope of the definition of "personal information" in section 2(1) of the *Act* and furthermore, it would be reasonable to expect that the named individual would be identified if the information is disclosed.

[15] The affected party submits that information provided by the named individual is "personal information" because it includes this individual's account of his involvement in the incident. Furthermore, finding the information in the record to qualify as "personal information" is consistent with prior Canadian court decisions, including *R. v. R.L.*[6] where the court determined that the "existence or contents" of police reports fell within the definition of "personal information". The affected party further submits that sections 2(2.1) and 2(2.2) do not apply, but even if I find that the information relates to the named individual in a professional, official or business capacity, in all the circumstances, the information would still qualify as that individual's personal information.

[16] The appellant's representations do not specifically address this issue, but focus instead on how disclosure of the information would be in the public interest.

[17] In Order PO-2225, former Assistant Commissioner Tom Mitchinson, set out the following two-step process applicable to a determination of whether information is "about" an individual in a business, professional or official rather than a personal capacity, and therefore does not constitute personal information:

> …the first question to ask in a case such as this is: *"in what context [does the information] of the individuals appear"*? Is it a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere?

[4] Orders P-257, P-427, P-1412, P-1621, R-980015 and PO-2225.
[5] Orders P-1409, R-980015, PO-2225 and MO-2344.
[6] [2007] O.J. No. 4095 (Sup. Crt.).

> ...
>
> The analysis does not end here. I must go on to ask: *"is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual"*? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature? [emphasis in original]

[18] In my view, while the contact with the police may have been made by an individual who occupied an official role at the time, the information in the record appears in a personal context, namely that of the named individual's personal involvement in a police matter. In that regard, the encounter at issue took place at his personal residence, not at a venue where he regularly conducts official business. There is no evidence before me that the individuals were invited to his place of residence or that he anticipated their presence.

[19] Even if it were arguable that the information is about the individual in his official capacity, I find that disclosure of the information in the Occurrence Report would reveal something of a personal nature about the named individual and that it qualifies, therefore, as his personal information within the meaning of that term in section 2(1) of the *Act*.[7] It is the substance of the information and what would be revealed by disclosing the information that is germane.

[20] The record also contains the personal information of other identifiable individuals which also falls within the scope of personal information set out in section 2(1) of the *Act*.

[21] The record does not contain any personal information of the appellant.

B. Would disclosing the information in the record constitute an unjustified invasion of personal privacy pursuant to section 14(1) of the *Act*?

[22] Where the appellant seeks the personal information of another individual, section 14(1) of the *Act* prohibits an institution from disclosing this information unless one of the exceptions in paragraphs (a) through (f) of section 14(1) applies. In this appeal, the only available exception is 14(1)(f), which states:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

[7] See in this regard Order M-969.

> if the disclosure **does not** constitute an unjustified invasion of personal privacy. [Emphasis added]

[23] Sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 14(1)(f). Section 14(2) provides some criteria for the police to consider in making this determination; section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy; and section 14(4) refers to certain types of information the disclosure of which does not constitute an unjustified invasion of personal privacy. The Divisional Court has stated that once a presumption against disclosure has been established under section 14(3), it cannot be rebutted by either one or a combination of the factors set out in section 14(2).[8]

[24] The police provide representations in support of the application of the presumption at section 14(3)(b) of the *Act*, which reads:

> 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

[25] Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.[9] The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.[10]

[26] The affected party submits that this office has found that the section 14(3)(b) presumption applies to police documents and transcripts of 911 calls generated as a result of an investigation into a possible trespass on private property.[11]

[27] The appellant disputes the application of section 14(3)(b) and submits that if it did apply, citing section 16 of the *Act*, it would be in the public interest that the information be disclosed.

[28] I have reviewed the record and it is clear from the circumstances that the personal information which it contains was compiled and is identifiable as part of the

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[8] *John Doe v. Ontario (Information and Privacy Commissioner*) (1993), 13 O.R. (3d) 767 (Div. Ct).
[9] Orders P-242 and MO-2235.
[10] Orders MO-2213, PO-1849 and PO-2608.
[11] See Order MO-2446.

police's investigation into a possible violation of law, namely the *Criminal Code* of Canada.

[29] Accordingly, I find that the personal information in the record was compiled and is identifiable as part of an investigation into a possible violation of law, and falls within the presumption in section 14(3)(b).

[30] As a result, I find that disclosure of the personal information is presumed to constitute an unjustified invasion of personal privacy and is, therefore, exempt under section 14(1) of the *Act*.

C. Is there a compelling public interest in the disclosure of the Occurrence Report that outweighs the application of section 14(1) of the *Act*?

[31] The appellant takes the position that there is a compelling public interest in the disclosure of the Occurrence Report that outweighs the application of section 14(1) of the *Act*.

[32] Section 16 states:

> An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[33] For section 16 to apply two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

[34] In considering whether there is a "public interest" in disclosure of a record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government.[12] In order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.[13]

[35] A public interest is not automatically established where the requester is a member of the media.[14]

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[12] Order P-984 and PO-2607.
[13] Order P-984 and PO-2556.
[14] Orders M-773 and M-1074.

[36] A public interest does not exist where the interests being advanced are essentially private in nature.[15] However, where a private interest in disclosure raises issues of a more general application, a public interest may be found to exist.[16]

[37] The word "compelling" has been defined in previous orders as "rousing strong interest or attention".[17]

[38] Any public interest in *non*-disclosure that may exist also must be considered.[18] A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of "compelling".[19]

[39] In their initial representations, the police submit that there is no compelling public interest in disclosure of the record. The police state that the appellant's request is the only one the police received for this information. They submit that no other media source or member of the public made any attempt to obtain this information.

[40] The police submit that, in any event, any public interest would not clearly outweigh the purpose of the exemption. The police submit that the disclosure of the record that arose from a 911 call to remove unwanted individuals from the named individual's residence would not make the named individual more accountable to the public or serve the purpose of "informing or enlightening the citizenry about the activities of their government or agencies". The police submit that the withheld information has:

> … no bearing on the position held by the [named individual]. It is completely a personal matter. The already intense exposure/attention the situation has received surely has satisfied the Toronto community which is substantiated by the fact that no one has requested these records aside from the appellant.

[41] In the appellant's non-confidential representations, it is submitted that there is no compelling public interest in the disclosure of the record at issue for several reasons, including:

- although there has been public curiosity about the incident, there has already been sufficient disclosure to satisfy the public.[20] The affected party states that two public statements as well as an independent review

[15] Orders P-12, P-347, and P-1439.
[16] Order MO-1564.
[17] Order P-984.
[18] *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).
[19] Orders PO-2072-F, PO-2098-R and PO-3197.
[20] In this regard the affected party relies on Orders P-532, PO-2626 and PO-2614.

> and confirmation of one of the public statements sufficiently address any public concerns and any legitimate public interest.
>
> - there has also been wide public coverage of the incident, such that disclosure of the record will not shed any further light on the matter.[21]
>
> - the interests advanced are essentially private in nature.

[42] The affected party also submits that any public interest that may exist would not clearly outweigh the purpose of the exemption. Relying on my Order MO-1994, the affected party submits that the purpose of section 14 is to ensure that the personal privacy of individuals is maintained except where infringements of this interest are justified. The affected party submits that in Order P-613 this office found that there did not exist a compelling interest in the disclosure of information compiled and identifiable as part of an investigation into a possible violation of law.

[43] The appellant submits that there has been a high level of public interest in regards to numerous reported 911 calls by the named individual and that there has been "wide public discussion" for the release of audiotapes of the [named individual's] 911 calls in relation to his encounter at his home with CBC's This Hour Has 22 Minutes. The appellant further submits that "reaction to media reports has been extensive, with one CBC.ca article generating over 500 reader comments." The appellant submits:

> Moreover, stating that I am the sole requestor is immaterial in this matter for a number of reasons. First, as a member of the media I am a representative of the public and act in the public's interest. Second, the number of requests on a topic is not determinative as to whether or not the matter is in the public interest. Just because there are not a plethora of requests doesn't mean what is being requested is not a significant matter to the public – the subject matter is the driving factor, not the quantity of requests.

[44] The appellant submits that there has been wide debate "as to the events that surround 911-phone calls involving [the named individual]":

> This debate has remained unresolved, as there has not been enough information accessible to the public to settle these issues one way or another. Release of all relevant records and audio would enable the public to assess factual, documented information about the events, as opposed to conflicting reports in the media.

[21] In this regard the affected party relies on Orders P-613 and PO-2626.

The Toronto Star has highlighted this issue, as well as the importance of why the information needs to be made public. In regards to the This Hour Has 22 Minutes encounter with [the named individual], on October 27th, 2011 the Star wrote the following: "The CBC also reported that after the alleged tirade, [the named individual's] call was made a priority ahead of other calls. [The named individual] released a statement Thursday afternoon, denying the allegations. 'After being attacked in my driveway, I hope I can be excused for saying the F-word,' reads the statement. 'I never called anyone any names, I apologize for expressing my frustration inappropriately.'"

Toronto City Council also feels the need to address the issue head on is of significant public interest. Quoted in the aforementioned Toronto Star article, Councilor Joe Mihevc thinks the tapes should be released "it's absolutely important for the tapes to be released to clear the air" adding Torontonians should know how their elected officials treat city staff. "If the tapes are not released, the absence of them basically verifies CBC's version of events. If it turns out he behaved in the way CBC says he did, an apology is in order and people can question the appropriateness of his actions and his ability to serve [in his official capacity]."

Aside from conflicting versions of what was said in the phone call and how [the named individual] did or did not treat city staff, there are also some unanswered questions about what took place at [the named individual's] home. From the same Toronto Star article "[The named individual] said the CBC comedy troupe "crossed the line" by ambushing him in the presence of his [relation], whom he said ran back into the house crying. [Another individual] told the Star [the named individual's] [relation] wasn't there when she showed up in his driveway." This shows a clear dispute in relation to the encounter at [the named individual's] home and the subsequent 911-phone calls. Releasing relevant records and audio could help clear up the dispute.

It is also worth noting that [the named individual] has spoken publicly about his involvement in regards to 911 phone calls. This fact itself puts the matter in the public domain and creates a certain level of compelling public interest. Additionally, in discussing these matters, [the named individual] has given statements that present a different account of events than what has been reported by media outlets. It is not conducive to clarifying a dispute of events to make a statement and then withhold the documents that can resolve any variance of opinions surrounding the event. Releasing the relevant records can help show which account of events is more accurate.

[45] The appellant further submits that disclosure of the information would shed light on the operations of government, stating:

> Such information would inform the public as to whether or not our elected officials are abusive towards city employees or if preferential treatment is being given to city officials, as has been alleged. While I pass no judgment as to whether or not the alleged abuse of 911 dispatchers and demands for preferential treatment occurred, relevant records and audio recordings would give insight into the question of whether or not the [named individual's official title] is demanding and receiving special treatment from the Toronto Police Service due to his status as [an official]. Records pertaining to the matter would enlighten Torontonians with regards to the activities of their municipal governments and police service and help answer the unanswered questions.

[46] In reply, the police submit that the appellant's submissions do not meet the threshold set out in section 16 of the *Act*. The police submit that simple public interest or curiosity does not translate into a compelling public interest. The police reiterate that at the time the named individual was not acting in an official capacity.

Analysis and Finding

[47] In my view, where the issue of public interest is raised, one must necessarily weigh the costs and benefits of disclosure to the public. As part of this balancing, I must determine whether a compelling public interest exists which outweighs the purpose of the exemption.[22] An important consideration in this balance is the extent to which denying access to the information is consistent with the purpose of the exemption.[23]

[48] The appellant provides a number of reasons why, in his view, it is in the public interest that the information be disclosed. These include:

- conflicting media reports;
- a perceived divergence between the official statements and media reports
- the importance of knowing how elected officials treat city staff and whether the treatment is abusive;
- whether an apology is in order;
- the public's ability to question the appropriateness of the named individual's actions and his ability to serve;
- resolving unanswered questions about what took place at the named individual's home;

[22] Order PO-1705.
[23] Order P-1398.

- the named individual creating a compelling public interest himself by publicly addressing the 911 call;
- whether preferential treatment is given by the police to public officials; and,
- whether the named individual is demanding and receiving special treatment from the police as a result of his official status.

[49] Section 14 is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified. It must be borne in mind that this is a request for information pertaining to another individual's contact with the police as a result of a 911 telephone call, and not that of a requester seeking his own information pertaining to police attendances involving him. Although the matter was initiated with the police through the 911 system while the named individual held an official title, in my view, disclosing the information in the Occurrence Report would reveal matters of a personal and private nature, such as that which can be contained in a police occurrence report involving a police investigation. Although it has been stated that a public figure has a lessened expectation of privacy, public figures are still entitled to privacy with respect to their personal matters.

[50] While written in the context of a defamation case, the following comments of a majority of the Supreme Court of Canada in *Grant v. Torstar Corp*, [24] bear repeating:

> … First, and most fundamentally, the public interest is not synonymous with what interests the public. The public's appetite for information on a given subject - say, the private lives of well-known people - is not on its own sufficient to render an essentially private matter public for the purposes of defamation law. An individual's reasonable expectation of privacy must be respected in this determination. Conversely, the fact that much of the public would be less than riveted by a given subject matter does not remove the subject from the public interest. It is enough that some segment of the community would have a genuine interest in receiving information on the subject.

[51] Public figures therefore do not lose their privacy rights when they enter the political sphere. That being said, there may nevertheless be times when the private activities of public officials may warrant public scrutiny. In my view, this supports a conclusion that when the private activities of public officials affect their official sphere this may give rise to a public interest. An example is when it is alleged that a public official has misused their office for personal advantage, such as is alleged in the appeal before me.

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[24] 2009 SCC 61 at paragraph 102. See also *Vancouver Police Department (Re)*, 2007 Canlii 9595 (BC IPC) and Order PO-3025.

[52] That said, I have reviewed the record at issue and the information contained in the record is not the type of information that falls within the scope of what would be in the public interest to disclose. I am not satisfied that disclosure of the personal information in the Occurrence Report would serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.

[53] In my view, the information in the record does not give rise to a compelling public interest in the disclosure of the record nor would this interest clearly outweigh the purpose of the exemption with respect to the information in the record at issue.

[54] Accordingly, I find that there does not exist a compelling public interest in the disclosure of the record, which outweighs the purpose of the personal privacy exemption in section 14(1).

[55] As a result, I find that section 16 has no application in the present appeal.

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

[56] At mediation, the reasonableness of the police's search for responsive records, such as police officers' notes, was added as an issue in the appeal.

[57] The Notice of Inquiry sent to the police set out the tests pertaining to the issue of the reasonableness of the search for responsive records and provided that:

> The institution is required to provide a written summary of all steps taken in response to the request. In particular:
>
> > 1. Did the institution contact the requester for additional clarification of the request? If so, please provide details including a summary of any further information the requester provided.
> >
> > 2. If the institution did not contact the requester to clarify the request, did it:
> >
> > > (a) choose to respond literally to the request?
> > >
> > > (b) choose to define the scope of the request unilaterally? If so, did the institution outline the limits of the scope of the request to the requester? If yes, for what reasons was

> the scope of the request defined this way? When and how did the institution inform the requester of this decision? Did the institution explain to the requester why it was narrowing the scope of the request?
>
> 3. Please provide details of any searches carried out including: by whom were they conducted, what places were searched, who was contacted in the course of the search, what types of files were searched and finally, what were the results of the searches? Please include details of any searches carried out to respond to the request.
>
> 4. Is it possible that such records existed but no longer exist? If so please provide details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.
>
> **This information is to be provided in affidavit form.** The affidavit should be signed by the person or persons who conducted the actual search. It should be signed and sworn or affirmed before a person authorized to administer oaths or affirmations. [Emphasis in original]

[58] The police did not provide specific representations with respect to the reasonableness of their search for responsive records.

Analysis and Finding

[59] The issue to be decided is whether the institution has conducted a reasonable search for responsive records as required by section 17.[25] 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.

[60] 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.[26]

[61] I conclude that the police have not conducted a reasonable search for additional records responsive to the appellant's request at issue in this appeal, such as responsive officers' notes.

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[25] Orders P-85, P-221 and PO-1954-I.
[26] Orders P-624 and PO-2559.

[62] In the Notice of Inquiry I initially issued to the police and the affected party to commence my inquiry, I requested the police to provide me with a "written summary of all steps taken in response to the request." In particular, I asked the police to provide this information "in affidavit form" from the "person or persons who conducted the actual search[es]." No affidavits were provided.

[63] In my view, the police have not provided adequate detail about the searches undertaken for responsive records, including what was actually searched, where the searches took place, when each search was completed, who was consulted during the course of each search and the results of each search.

[64] Accordingly, for the reasons set out above, I conclude that the police have not conducted a reasonable search for records responsive to the appellant's request and I will order them to conduct focussed searches and to provide a reasonable amount of detail to this office regarding the results of those searches.

ORDER:

1. I order the police to conduct a further search for records responsive to the request. I order the police to provide me with an affidavit sworn by the individual(s) who conduct(s) the search(es), **by August 30, 2013** deposing their search efforts. At a minimum, the affidavit(s) should include information relating to the following:

> (a) information about the individual(s) swearing the affidavit describing his or her qualifications, positions and responsibilities;
>
> (b) a statement describing their 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.

2. The affidavit(s) referred to above should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 2 Bloor Street East, Suite 1400, Toronto, Ontario, M4W 1A8. The affidavit(s) 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*.

3. If, as a result of the further searches, records responsive to the request are identified, I order the police to provide a decision letter to the appellant regarding access to these records in accordance with sections 19, 21 and 22 of the *Act*.

4. I remain seized of this appeal with respect to compliance with this interim order or any other outstanding issues arising from this appeal.

5. In all other respects, I uphold the decision of the police.

Original signed by: July 30, 2013
Steven Faughnan
Adjudicator