

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2947-F

Appeal MA12-198

Halton Regional Police Services Board

September 16, 2013

Summary: The appellant sought access to records held by the Halton Police relating to the top five most violent incidents of crime, between individuals unknown to each other, that occurred nearest to his home in the year leading up to the date of his request. In Interim Order MO-2857-I, I clarified the scope of the request and found that the police unreasonably narrowed their search for responsive records to a one-kilometre radius of the appellant's home. As a result, I found that the police did not conduct a reasonable search for responsive records and ordered them to conduct a further search with specific parameters. The police conducted a further search and additional records were located. In this order, the adjudicator finds that the police conducted a reasonable search in compliance with the parameters outlined in Interim Order MO-2857-I. The appeal is dismissed.

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

Orders Considered: Interim Order MO-2857-I.

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 a violation of law), and the discretionary law enforcement exemption at section 8(2)(a) (law enforcement report) of the *Act*.

[4] The requester 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 identified as responsive involved individuals known to each other. Consequently, the police took the position that there were no responsive records.

[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 was at issue. The file was transferred to the adjudication stage and an adjudicator with this office conducted an inquiry. The file was then transferred to me for a decision.

[8] On March 25, 2013, I issued Interim Order MO-2857-I, in which I ordered the police to conduct a further search for records identifying the first five incidents of murder, sexual assault, or assault that occurred in the specified time frame nearest to the appellant's home address. I also stated that the incidents must involve individuals who are unknown to each other.

[9] The order further stated that the police should provide me with an affidavit detailing the search conducted in compliance with Interim Order MO-2857-I and, at minimum, the affidavit should include information relating to the following:

- (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.

[10] In compliance with Interim Order MO-2857-I, the police provided me with two affidavits sworn by two employees detailing the additional searches conducted. As a result of the further search, the police located five occurrence reports, four of them relating to assaults and one relating to a sexual assault. Access was granted in part to the records. Portions of the records were severed pursuant to the personal privacy exemption at section 14(1), read in conjunction with the presumption at 14(3)(b) (investigation into a possible violation of law) of the *Act*. Additionally, police 10-codes, patrol zone information and/or statistical codes were severed pursuant to the law enforcement exemptions at section 8(1)(e) (endanger life or safety) and 8(1)(l) (facilitate the commission of an unlawful act) of the *Act*.

[11] I sent a copy of the two police affidavits to the appellant and sought his representations on the issue of whether the police had conducted a reasonable search for records in response to my direction in Interim Order MO-2857-I. The appellant provided me with representations on this issue.

[12] The sole issue that remains to be decided in this appeal is whether the police conducted a reasonable search for five incidents of murder, sexual assault, or assault, that occurred within a specified time frame nearest to the appellant's home address, as required by Interim Order MO-2857-I. This order constitutes my ruling on that issue.

[13] For the reasons that follow, I find that the police's search, conducted in compliance with Interim Order MO-2857-I, was reasonable and I dismiss the appeal.

DISCUSSION:

SEARCH FOR RESPONSIVE RECORDS

[14] 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 17.¹ 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.

¹ Orders P-85, P-221 and PO-1954-I.

[15] Although a requester will rarely be in a position to indicate precisely which records that the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.²

[16] 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.³

[17] 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.⁴

[18] 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.⁵

[19] In Interim Order MO-2857-I, it was confirmed that the appellant was seeking only incidents that occurred between individuals unknown to each other. It was also confirmed as a result of a clarification of the request by the police and the appellant that the types of incidents that the appellant considered to be "violent" included murder, sexual assault or assault. Finally, it was confirmed that the police conducted a search for five incidents of that type within a one-kilometre radius of the appellant's home address. I found that restricting the geographical area of the search in that fashion, without consulting the appellant, unreasonably narrowed the scope of the request and that the police should have either established a mutually acceptable geographical radius or, resolved the ambiguity of the request by broadening the geographical radius to the point whereby the search generated five incidents of murder, sexual assault, or assault.

[20] Additionally, I found that the appellant provided a reasonable basis for concluding that, were the scope of the request expanded and the search conducted for records covering a larger radius, additional records responsive to his request should exist. Accordingly, as previously explained, I ordered the police to conduct a reasonable search for records identifying the first five incidents of murder, sexual assault or assault that occurred within the identified time frame, nearest to the appellant's home address.

[21] In response to Interim Order MO-2857-I, the police provided me with affidavits from two individuals who were involved in the additional search for responsive records. One affidavit was sworn by the individual who prepared the computer query to locate incidents around the appellant's home address. He states:

² Order MO-2246.

³ Orders P-624 and PO-2559.

⁴ Orders M-909, PO-2469, PO-2592.

⁵ Order MO-2185.

The initial query ran events within a 1km radius, a standard distance used for similar requests, around the residence. The Commissioner determined that this radius was insufficient to address the requester's intended purpose. To ensure that the spirit of request was honoured, I created a spatial database query that extracted all occurrences within a 15km radius of the residence. This area included most of the City of Burlington (to Highway 6) and the Town of Oakville (to just past Ford Drive), as well as most of the Milton urban area south of Highway 401.

To further ensure that the intent of the query was met, I expanded the date range to provide more current information – initially data was requested covering January 2011 to March 2012. I ran the query from January 1, 2011 to March 24, 2013.

For each of the events captured within this area, I calculated the direct "crow flies" distance from the [appellant's] residence and sorted these records in order of increasing distance. This would allow a sequential review starting with those records closest to the residence and working out for there. I passed the result to [named individual], FOI [Freedom of Information] analyst, to review the sexual assault and assault occurrences in the table. I reviewed the homicide results – for this period there was only one stranger homicide identified, occurring just over 9.7km away.

As seen in the previous search effort, the vast majority of the occurrences do not involve stranger-on-stranger contact. Most involved young people, local schools or domestic situations.

I spent approximately 3 hours preparing, executing and verifying the results on this request.

[22] The second affidavit is sworn by the FOI analyst referred to in the first affidavit, who reviewed the records collected by the individual who prepared the computer query. She states:

In response to Interim Order MO-2837-I, issued by the Information and Privacy Commission, and in conjunction with [named individual] of the Halton Regional Police, I reviewed an Excel spreadsheet created by [named individual] to determine stranger-on-stranger assaults and sexual assaults.

Using the Excel spreadsheet sent to me by [named individual], I revised the entries starting from the top of the list and moving downward. The spreadsheet was sorted by distance from the appellant's home address (the closest occurrence being at the top of the list while the furthest

occurrence was at the bottom of the list). Responsive assault and sexual assaults were highlighted for later review. This search took 1 hour to complete.

Per the order, the police were directed to "identify 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." By combining my results of responsive assault and sexual assault occurrences with [named individual's] responsive homicide occurrences, the occurrences with the closest direct "crow flies" distance (radial distance) from the appellant's home address were selected. One (1) occurrence was still before the court and was therefore excluded [section 8(1)(f)].

...

The selected occurrences, 4 assaults and 1 sexual assault, were edited in order to exclude third party information. It should be noted that the closest stranger-on-stranger homicide was approximately 9767m (9.7 km) away from the appellant's home address.

[23] I supplied the appellant with copies of the affidavits and provided him with the opportunity to submit representations on whether the police complied with Interim Order MO-2837-I. In his representations, the appellant takes the position that they did not. He submits that rather than pay the fee for the responsive records located as result of the search, he reviewed them on site, at the police station. He takes the position that the five incidents that make up the search results amount to minor offences as opposed to the "most violent" incidents that he originally sought.

[24] The appellant also submits that the responsive incident reports included one which involved a father and son contrary to the requirement that the incidents must involve individuals who are unknown to each other.

[25] The appellant further states that he conducted another random search of the local news website and managed to find "five hits of incidents of local stranger-on-stranger violent crime" including a stabbing, an assault, a home invasion, a burglary and a robbery.

[26] As a result, the appellant submits that "the police are not sincerely conducting their search in good faith but are using various search manipulation strategies to not provide [him] with the incidents [he has] requested." He requests that the police be ordered to conduct another search that:

...not only meets his original search criteria but now searches such incidents 3 years back from your next order date to compensate for the

dated data that may be gathered because of delays in this appeal. The remedial search should also expand out to the borders of the Halton region if necessary, and the work completed with no more delays within two weeks of your final order, so that I can continue working to empirically prove my hypothesis, based on evidence from the police's own incident records, that despite my region being deemed one of the safest in Canada, random and serious stranger-on-stranger violent crimes still does occur and the Halton police are impotent to prevent them from occurring.

[27] The appellant requests that the police now directly work with him at his convenience when conducting the additional searches "so that there will be no further misunderstandings or time wasted on more misdirected searches, and that this process continue unabated until I am fully satisfied with the results." The appellant also requests that he be refunded his original freedom of information request fee and "a formal letter from the police chief apologizing for their unwarranted stonewalling behavior."

Analysis and finding

[28] As previously mentioned, 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.⁶ 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.⁷

[29] I accept that the police have provided me with sufficient evidence to demonstrate that they have complied with the requirements of Order MO-2857-I and have made a reasonable effort to identify and locate 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. I also accept that the search was conducted by experienced employees who are knowledgeable in the subject matter of the request and that they expended a reasonable effort to locate the records responsive to the request as defined in that order.

[30] I acknowledge that the appellant disputes that the incidents located by the police in their most recent search qualify as the "most violent" incidents as specified in his original request. However, in Interim Order MO-2857-I, I made a finding on the scope of the original request. Two of the four components of the appellant's original request were variable in nature. Although the incidents must have occurred between individuals

⁶ *Supra*, note 3.

⁷ *Supra*, note 4.

unknown to each other within a particular time frame, the determination of what incidents are "most violent" in nature and what classifies as "nearest" to the appellant's home are based on subjective assessment.

[31] I found that as the appellant was of the view that the "most violent" incidents were those involving homicide, sexual assault or assault, I ordered the police to search specifically for those types of incidents and that, rather than restricting the search to a one-kilometre radius around the appellant's home, the police must gradually expand the radius of their search until they hit the first five responsive incidents of the identified types. As a result, I specifically, ordered the police to 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." This characterization of the request was set by my ruling in Interim Order MO-2857-I.

[32] In my view, in the circumstances of this appeal, the police were not required, nor is it reasonable to require them to conduct a subjective assessment of the specific incidents within the agreed upon three general categories of the violent incidents of "murder, sexual assault and assault" as being more or less violent than one another without further information from the appellant. I accept that the search, as conducted by the police, is in compliance with Interim Order MO-2857-I.

[33] Additionally, I note that the appellant believes that one of the five incidents located by the police as a result of the search ordered in Interim Order MO-2857-I involved a "father on son assault in a driveway" which he argues does not meet the criteria of involving individuals who are unknown to each other. Having reviewed the responsive records located by the police, I can confirm that the appellant is mistaken in his recollection of that specific incident report that he reviewed at the police station. The incident was reported by a father and it involved an assault on his son by a stranger.

[34] Accordingly, I find that the police have complied with Interim Order MO-2857-I and have conducted a reasonable search for records reasonably related to the request as redefined in that order.

[35] Should the appellant wish to obtain access to incidents of homicide, sexual assault or assault other than those located in the search conducted in compliance with Interim Order MO-2857-I, and particularly, should he wish to outline new search parameters such as expanding to the scope of the search to cover the entire Halton region and modifying the time frame, he would be advised to submit a new request, keeping in mind that all such parameters should be described as precisely as possible to assist the police in locating the specific types of records to which he seeks access. I would encourage both the appellant and the police to work together when defining the parameters of any new request in order to facilitate the search of existing police records.

ORDER:

I find that the search conducted by the police, for the first five incidents of murder, sexual assault, or assault that occurred in a specified time frame nearest to the appellant's home address was reasonable, and I dismiss the appeal.

Original Signed By: _____
Catherine Corban
Adjudicator

_____ September 16, 2013