

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-2989

Appeal MA13-339

Peel Regional Police Services Board

December 20, 2013

**Summary:** The appellant sought access to records relating to a motor vehicle accident that involved him. The police located records responsive to the request and disclosed them, in part. However, the appellant questioned the reasonableness of the police's search asserting that photos and videos placing him at the scene of the accident should exist. The police's search is upheld as reasonable.

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

### BACKGROUND:

[1] The Peel Regional Police Services Board (the police) received several requests under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to a motor vehicle accident involving the requester.

[2] The police located responsive records and issued an access decision granting partial access to them. The police relied on the mandatory exemption in section 14(1) (personal privacy), with reference to the presumption in section 14(3)(b), and the discretionary exemption in section 8(1)(l) (facilitate commission of unlawful act) of the *Act*, to deny access to portions of the records.

[3] The requester, now the appellant, appealed the police's decision.

[4] During mediation, the police clarified that they removed some information from the records at issue because it is not responsive to the request. The appellant confirmed that he is not interested in pursuing any of the information withheld from the records either because it is not responsive or exempt under any of the exemptions claimed. Accordingly, none of the withheld records remain at issue in this appeal.

[5] However, the appeal was not resolved because the appellant sought access to the records of the fire department and the paramedics who attended the accident. In response, the police advised that they do not possess fire department or paramedic service records, and that the appellant could submit a request to the relevant institutions directly.

[6] The appellant also raised issues about the authenticity of the records and asked that this office investigate the police's conduct, alleging that the police falsified the responsive records relating to his accident. I note that the appellant raised similar issues in a previous appeal to this office, PA12-235, and was advised at that time that this office's jurisdiction is limited to issues related to access to information. Although appeal PA12-235 was before me for adjudication, I closed the appeal without an order, once the sole outstanding record at issue in that appeal was disclosed to the appellant. The appellant was again advised during mediation of this appeal, that this office cannot address his allegations that the records were falsified and does not investigate complaints about the conduct of police officers.

[7] Finally, during mediation, the appellant raised reasonable search as an issue in this appeal when he conveyed his belief that additional records, such as photographs and video recordings that place him at the scene of the accident and at the police station, should exist.

[8] Accordingly, the sole issue for me to determine in this appeal is whether the police's search for responsive records was reasonable.

[9] During my inquiry, I sought and received representations from the parties, and shared them in accordance with this office's *Practice Direction Number 7* and section 7 of the *Code of Procedure*.

[10] In this order, I uphold the police's search as reasonable.

## **DISCUSSION:**

### **Did the institution conduct a reasonable search for records?**

[11] Because the appellant claims that additional records exist beyond those identified by the police, I must decide whether the police have conducted a reasonable search for

records as required by section 17.<sup>1</sup> If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the police's decision. If I am not satisfied, I may order further searches.

[12] The *Act* does not require the police to prove with absolute certainty that further records do not exist. However, the police must provide sufficient evidence to show that they have made a reasonable effort to identify and locate responsive records.<sup>2</sup> To be responsive, a record must be "reasonably related" to the request.<sup>3</sup>

[13] 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>4</sup>

[14] A further search will be ordered if the police do not provide sufficient evidence to demonstrate that they have made a reasonable effort to identify and locate all of the responsive records within their custody or control.<sup>5</sup>

[15] 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.<sup>6</sup>

[16] In their representations, the police state that they provided the appellant with the two video recordings of himself at the police station in response to his request, and that these are the only video recordings they have that are responsive. The police state that no video recordings or photos of the appellant at the scene of the accident exist, as no Peel Regional Police patrol vehicles were equipped with on-board video recording systems at the time of the incident. The police add that some photos of the collision site and the appellant's vehicle were taken on a personal cellular telephone by one of the police officers who attended the site, however, these photos were erased, and in any event, were not responsive to the request as they were not of the appellant.

[17] The police provide four affidavits in support of their representations, which summarize the steps taken in response to the appellant's request.

[18] Two of the affidavits are sworn by the two analysts who searched for responsive records relating to the appellant's two requests; the request at issue in this appeal, and the request at issue in appeal PA12-235. The analysts have approximately two decades of experience in police records services each, in addition to four years of experience

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<sup>1</sup> Orders P-85, P-221 and PO-1954-I.

<sup>2</sup> Orders P-624 and PO-2559.

<sup>3</sup> Order PO-2554.

<sup>4</sup> Orders M-909, PO-2469, PO-2592

<sup>5</sup> Order MO-2185.

<sup>6</sup> Order MO-2246.

each as analysts in the police's Information and Privacy Unit. Both of the affidavits sworn by the analysts state that the following records were located in the police's records management system: an occurrence report; police officer's notes including the driving offence notes and evidence; the alcohol influence/test report; vehicle tow card; prisoner log sheet and property envelope; the motor vehicle collision report; a mug shot; a copy of the police division bullpen cell area video; a copy of the holding facility and breathalyzer room videos; and a copy of the 911 call to police.

[19] The third affidavit is sworn by the Coordinator of the police's Information and Privacy Unit who has 25 years of experience, including five years of experience in the Breathalyzer Unit and the Major Collision Bureau. The Coordinator states:

- As a result of being involved in the investigation of hundreds of alcohol related driving offences, he has expert knowledge of the evidence that could reasonably be expected in the course of alcohol related driving investigations.
- He has personal knowledge of the appellant's requests and the steps taken to respond to them.
- After the analysts conducted a detailed search, he reviewed all of the responsive records that were identified and located prior to issuing a decision letter regarding access.
- Based on his expert knowledge of drinking and driving offences, it is his opinion that all relevant records were located and it would be unreasonable to presume the existence of any further records.

[20] The final affidavit is sworn by the Director, Materials Management, who is responsible for overseeing the purchase and installation of all equipment in police vehicles. The Director, who has held his position for over 20 years, states in his affidavit that no police patrol vehicles were equipped with video recording equipment at the time of the motor vehicle accident in question.

[21] In his representations, the appellant does not address the reasonable search issue directly. Instead, he alleges, as he did in appeal PA12-235, that the responsive records have been falsified. His representations consist of various "inconsistencies" that he claims exist among the records that have been disclosed to him, all of which, in his opinion, prove that the police have conspired against him.

[22] Having reviewed the representations of the parties, I am satisfied that the police conducted a reasonable search for records in this appeal. I accept the police's evidence that all of the responsive records have been located. I find that the appellant's representations do not provide me with a reasonable basis to believe additional records exist.

[23] Accordingly, I find that the police's search was reasonable.

**ORDER:**

I uphold the police's search as reasonable and dismiss the appeal.

Original signed by: \_\_\_\_\_  
Stella Ball  
Adjudicator

\_\_\_\_\_ December 20, 2013