

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## **ORDER MO-3002**

Appeal MA13-297

Hamilton Police Services Board

January 28, 2014

**Summary:** The appellant requested information from the police about an investigation they conducted regarding him on or about a specified date. The police initially located a record and provided the appellant with a copy of portions of it, withholding the remaining portions pursuant to a number of exemptions under the *Act*. After it became apparent that the record located by the police pertained to a different individual who had the same name as the appellant, the police determined that they did not have any records in their database relating to the appellant. The appellant appealed the reasonableness of the search conducted by the police on the basis that a different police service referred to an investigation conducted by the police in the representations that the co-ordinator of this other police service made in response to another request made by the appellant to that other service. During mediation, the police confirmed that a search was conducted of its database using the appellant's name, birthdate, address and telephone number and the time frame specified by him as the search terms. The co-ordinator for the other police service identified by the appellant confirmed that she had referred to the police in error in her representations. After seeking representations from the appellant only, the adjudicator determined that the search conducted by the police was reasonable. The adjudicator also determined that the explanations provided by both the police and the other police force identified by the appellant satisfactorily addressed the miscommunications that had occurred during the processing of the appellant's request.

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

## **OVERVIEW:**

[1] The appellant submitted the following request to the Hamilton Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

9 May 2013 I learned [the police] investigated me on or about 30 April 2008.

I am requesting all information pertinent to this investigation, including the crime I was accused of.

[2] The police issued a decision stating that the existence of a record cannot be confirmed or denied in accordance with subsection 14(5) of the *Act*.

[3] The appellant appealed the police's decision to this office.

[4] During the mediation stage of the appeal, the police issued a revised decision granting partial access to the record they identified as being responsive to the appellant's request. The police denied access to the withheld portions of the record pursuant to a number of exemptions under the *Act*.

[5] After receiving the revised decision and redacted record, the appellant notified the police and the mediator that the record he received did not relate to him and requested that the information in it be expunged.

[6] The police subsequently confirmed that the record related to another individual with a similar name. I note that the mediator worked with the police to ensure that the privacy issues associated with the disclosure of the record to the appellant were addressed.

[7] During mediation, the appellant explained why he believes records relating to him should exist. He pointed out that in the submissions made by the Halton Regional Police Service (Halton police) to this office in respect of another appeal filed by the appellant (Appeal MA12-469-2), the Halton police indicated that an investigation about the appellant was "continued by the Hamilton Police Service."

[8] In response to the appellant's contention that records should exist, the police sent him a letter, copied to this office in which the police explained that they had conducted a thorough search for records and that:

At no time did your personal information such as your date of birth, home address, or telephone number ever appear in our records.

At no time were you ever under investigation by the Hamilton Police Service therefore there is nothing in our records about you to be removed. I am not aware of any Halton police investigations and I do not have access to their records....

[9] The mediator contacted the Halton police and asked the Freedom of Information and Privacy Co-ordinator (the co-ordinator) about her statement regarding the Hamilton Police Service. After reviewing the file relating to Appeal MA12-469-2 and the representations she made, the co-ordinator for Halton police confirmed that the reference to the Hamilton Police Service in her submissions to this office was made in error. She confirmed that the statement should have read that the "investigation was continued by the Halton Regional Police Service."

[10] The mediator shared this information with the appellant. The appellant did not accept that an error had been made by Halton police. The appellant indicated that when he inserted "Halton police" in the statement made by the co-ordinator, it no longer made sense. The appellant believes that the police have investigated him and therefore should have records about him. As such, the reasonableness of the police's search for responsive records remains at issue in this appeal.

[11] No further mediation was possible and the file was forwarded to the adjudication stage of the appeal process. As I indicated above, both the Halton police and the police provided the appellant with explanations regarding the reference to the police by the co-ordinator and the searches that were conducted by the police in response to the appellant's request. The appellant continues to believe that records should exist despite these explanations. Accordingly, I decided to vary the procedure typically followed by this office and sought representations from the appellant, initially. The appellant was asked to explain why he believes records should exist in the records holdings of the police and to provide evidence to support his position.

[12] The appellant submitted representations in response to the Notice of Inquiry that I sent to him. After reviewing them, I decided that it was not necessary to seek representations from the police regarding the searches that they undertook.

[13] The sole issue in this appeal is whether the search conducted by the police for responsive records was reasonable. In this order, I find that the search was reasonable and dismiss the appeal.

## **DISCUSSION:**

### **Did the institution conduct a reasonable search for 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.<sup>1</sup> 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.

[15] 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>2</sup> To be responsive, a record must be "reasonably related" to the request.<sup>3</sup>

[16] 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>

[17] 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>5</sup>

[18] 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>

[19] Generally, in reasonable search appeals, the institution is required to provide a written summary of all steps taken in response to the request. In this case, the police have provided considerable information to the appellant and this office regarding the searches that were conducted by them in response to the appellant's request, which clearly identified the information that he was seeking. The police have also provided an explanation for the initial misunderstanding, which resulted in the appellant being given a severed copy of a record that did not pertain to him, as discussed above.

[20] In addition, the co-ordinator for the Halton police, who was apparently the source of the information that the police had undertaken an investigation into the appellant has clarified her comments and indicated that her reference to the police was made in error. Accordingly, I decided to defer receiving representations from the police (and the Halton police if I deemed it necessary to hear from this police service). Rather, I asked the appellant to provide evidence to support his belief that the police have records pertaining to him in their records holdings.

---

<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.

[21] In his representations, the appellant provided the following as evidence that the police should have records pertaining to their investigation of him in their custody:

- The appellant's name was associated with the Hamilton area as a file relating to someone else with the same name as the appellant was identified;
- The appellant's name is also associated with Toronto because the Halton police contacted the Toronto Police Service regarding him;
- Since the appellant's name was associated with Hamilton and Toronto and the Halton police contacted the Toronto police, "it stands to reason and lends credence to my concerns that [the Halton police contacted the police];
- Referring to a statement made by the co-ordinator for Halton police, the appellant submits that the co-ordinator made a statement "of fact" that the investigation into the appellant's activities was continued by the police.

[22] The appellant refers to the representations that the Halton police made in Appeal MA12-469-2 and the record that was mistakenly sent to him by the police as evidence in support of his claim that records should exist in the records holdings of the police.

[23] After reviewing the file and representations made in the current appeal, and the representations and records at issue in Appeal MA12-469-2, I am not persuaded that the search conducted by the police was unreasonable.

[24] The source of the confusion in this appeal is the following statement made by the co-ordinator for Halton police in the representations she submitted in Appeal MA12-469-2:

Despite the fact that the investigation was continued by the Hamilton Police Service, the Halton Regional Police investigation was conducted with a view to determine whether or not there was a possible violation of law.

[25] In an e-mail to the mediator assigned to the current appeal, which the mediator then forwarded to the appellant, the co-ordinator for Halton police stated:

I have reviewed the file and the contents of my representations. On page 9 of my representations, the word 'Hamilton' should read 'Halton.' I apologize to both the appellant and IPC for this error.

[26] The appellant's position is that when the word "Hamilton" is replaced by the word "Halton", the sentence does not make sense. Through a process of elimination of other possible police services that the co-ordinator might have contacted, the appellant concludes that he is left with only the possibility that the police were contacted by Halton police and that they "continued the investigation." The appellant is of the opinion that the information about him in records held by the Halton police, and most likely also by the police, is "fabricated and erroneous." The appellant indicates that he does not believe that the co-ordinator for Halton is being truthful.

[27] I agree with the appellant that the statement referred to above is not clear when the word Hamilton is replaced by Halton. However, I am not persuaded that the co-ordinator had any reason to fabricate her answer when asked. She indicated that she reviewed the file for Appeal MA12-469-2 and acknowledged that she made a mistake in referring to Hamilton. The records at issue in Appeal MA12-469-2 appear to support the co-ordinator's explanation.

[28] Accordingly, I am satisfied with the response given by Halton police that any reference to Hamilton was made in error.

[29] To add to the overall confusion in this appeal, the police located a record in response to the appellant's access request that related to a person with the same name. Portions of this record were provided to the appellant, who understandably, was upset about its content since it did not pertain to him. As I noted above, in response to the appellant's queries about this record, the police wrote to him to explain the error:

As you know it appears that our report is in reference to someone with the same name as your own. At no time did your personal information such as your birth date, home address or telephone number ever appear in our records.

At no time were you ever under investigation by [the police] therefore there is nothing in our records about you...I am not aware of any Halton Police investigations and I do not have access to their records. You would need to contact them directly.

[30] The co-ordinator for the police confirmed with the mediator during mediation that she conducted a search through their database for the timeframe indicated in the request.

[31] The appellant is clearly angry that records pertaining to him exist and that information has allegedly been shared between the Halton and at least one other police service. His suspicions have been heightened by the statement made by the co-ordinator for Halton police and the initial responses given by the police. While I appreciate the appellant's confusion, I find that both the Halton police and the police

have provided him with reasonable explanations for any misconceptions he might have regarding the records that they do or do not have.

[32] Further, I am satisfied that the search conducted by the police through their database applied the appropriate search terms that would locate a record relating to the appellant, if one existed. Accordingly, I find that the search conducted by the police was reasonable.

**ORDER:**

The search conducted by the police was reasonable and this appeal is dismissed.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Adjudicator

\_\_\_\_\_ January 28, 2014