Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3063

Appeal MA13-281

Toronto Police Services Board

June 24, 2014

Summary: The Toronto Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for access to all records concerning a specific incident at the requester's apartment. The police denied access to the records in part, citing the discretionary law enforcement exemption in sections 38(a), in conjunction with 8(1)(l), and the discretionary personal privacy exemption in section 38(b) of the *Act*. The police also withheld some parts of the records on the basis that it was not responsive to the request. The appellant also raised the issue of whether the police conducted a reasonable search for a specific record. This order upholds the police's decision to deny access to the responsive records and finds that the police conducted a reasonable search.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of personal information), 8(1)(l), 14(2)(e) and 14(2)(h), 17, 38(a) and 38(b).

Orders and Investigation Reports Considered: Orders MO-1384, MO-1428 and MO-2871.

OVERVIEW:

[1] The Toronto Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for access to all records:

> …relating to my apartment break and entered and arrest which took place on [date] …

[2] The police issued a decision granting partial access to the responsive records. The police withheld the remaining parts of the records pursuant to the discretionary law enforcement exemption in sections 38(a), in conjunction with 8(1)(l), and the discretionary personal privacy exemption in section 38(b) of the *Act*. The police also withheld some parts of the records on the basis that they contained information that was not responsive to the request.

[3] The requester (now the appellant) appealed the police's decision to deny access to the remaining parts of the responsive records.

[4] During mediation, the appellant indicated that he wished to pursue access to the records, and specifically information pertaining to the other individuals (affected persons) named in the report. The appellant also indicated that he wanted access to the Form 2 referred to in the report. Accordingly, the reasonableness of the police's search was added as an issue in this appeal.

[5] The mediator relayed the appellant's concerns to the police. The police advised the mediator that they do not normally retain copies of the Form 2 in their files, and the appellant would have to submit his request for it to the hospital where he attended, or the Ministry of Health and Long-Term Care.

[6] Notwithstanding the above, the police agreed to conduct a search in their database under search queries related to the occurrence. The police also asked the officer involved to conduct a search for the Form 2. The police were unable to locate the Form 2 or any other related records.

[7] As mediation did not resolve the issues in this appeal, the file was transferred to the adjudication stage of the appeal process where an adjudicator conducts an inquiry. Representations were exchanged between the parties in accordance with section 7 of the IPC's *Code of Procedure* and *Practice Direction 7*.

[8] In this order, I uphold the police's decision and dismiss the appeal.

RECORDS:

[9] The records at issue consist of the withheld parts of the occurrence report and police officers' notes.

ISSUES:

A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

B. Does the discretionary personal privacy exemption at section 38(b) apply to the information at issue?

C. Does the discretionary exemption at section 38(a) in conjunction with the section 8(1)(l) law enforcement exemption apply to the information at issue?

D. Did the institution exercise its discretion under sections 38(a) and 38(b)? If so, should this office uphold the exercise of discretion?

E. Are the portions of the records marked as non-responsive responsive to the request?

F. Did the institution conduct a reasonable search for the Form 2?

DISCUSSION:

A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[10] In order to determine which sections of the *Act* may apply, it is necessary to decide 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 if 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;

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

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

> (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) 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.

[13] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.[2]

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[1] Order 11.
[2] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

[14] 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.[3]

[15] The police state that the records relate to a police response to a request for the enforcement of a Ministry of Health form which gave the police authority to bring an individual to an appropriate place for examination by a physician. The police further state that the records contain the personal information of the appellant and several affected persons, including their names, addresses, date of births and personal opinions.

[16] The appellant did not address this issue in his representations.

Analysis/Findings

[17] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[4]

[18] Based on my review of the records, I agree with the police that they all contain the personal information of the appellant and other identifiable individuals in their personal capacity. This information includes their sex, marital status, ages, home addresses and telephone numbers and information relating to their psychological conditions, in accordance with paragraphs (a), (b) and (d) of the definition of personal information in section 2(1) of the *Act*.

[19] I will now consider whether the discretionary personal privacy exemption in section 38(b) applies to the personal information in the records.

B. Does the discretionary personal privacy exemption at section 38(b) apply to the information at issue?

[20] Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

[21] Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester. Since the section 38(b) exemption

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[3] Orders P-1409, R-980015, PO-2225 and MO-2344.
[4] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

is discretionary, the institution may also decide to disclose the information to the requester.[5]

[22] Sections 14(1) to (4) provide guidance in determining whether disclosure would be an unjustified invasion of personal privacy.

[23] If the information fits within any of paragraphs (a) to (e) of section 38(b) or if paragraphs (a) to (c) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). In this appeal neither paragraphs (a) to (e) of section 14(1) nor paragraphs (a) to (c) of section 14(4) apply.

[24] In determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), this office will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.[6]

[25] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 38(b).

[26] The police rely on section 14(3)(b), 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.

[27] The police state that disclosure would constitute "an unjustified invasion of privacy" under section 14(1)(f). They state that the nature of law enforcement institutions, in great part, is to record information relating to unlawful activities, crime prevention activities, or activities involving members of the public who require assistance and intervention by the police.

[28] The appellant did not address this issue in his representations.

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[5] See below in the "Exercise of Discretion" section for a more detailed discussion of the institution's discretion under section 38(b).
[6] Order MO-2954.

Analysis/Findings

[29] 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.[7] The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.[8]

[30] Section 14(3)(b) does not apply if the records were created after the completion of an investigation into a possible violation of law.[9]

[31] The presumption can apply to a variety of investigations, including those relating to by-law enforcement[10] and violations of environmental laws or occupational health and safety laws.[11]

[32] The police were asked in the Notice of Inquiry whether the personal information in the records was compiled and is identifiable as part of an investigation into a possible violation of law and to identify the law or legislative provision. The police did not identify any possible violation of law in their representations.

[33] The records are police officers' notes and an occurrence report about the apprehension of the appellant under a *Mental Health Act* (*MHA*) Form 2.

[34] In Order MO-1428, the personal information recorded on the Occurrence Report and the Event Details Report was compiled in accordance with legislated authority under the *MHA*. The appellant in that appeal was subject to detention under Form 9 under the *MHA* for being absent from a hospital facility "without authorization", and the police were directed to apprehend and return him to a psychiatric facility. They submitted in that appeal that:

> ... [The] legal authority to apprehend the appellant, by way of Form 9, caused the police to begin an investigation to locate the appellant and ensure his safety (and the safety of the general public).
>
> The possibility of an individual wanted on a Form 9 may be violent can never be ruled out, and as such officers must investigate with the mindset that the community may be at risk. This policing, to ensure the safety of everyone involved falls under the *Act's* definition of law enforcement, and as such is subject to exemption under section 14(3)(b).

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[7] Orders P-242 and MO-2235.
[8] Orders MO-2213, PO-1849 and PO-2608.
[9] Orders M-734, M-841, M-1086, PO-1819 and PO-2019.
[10] Order MO-2147.
[11] Orders PO-1706 and PO-2716.

[35] In Order MO-1428, the police alluded to section 17 of the *MHA* in their representations. In this appeal, the records refer to section 16 of the *MHA*, which is almost identical to section 17 of the *MHA*. Section 16 refers to a Justice of the Peace's order for an examination by a physician. Section 17 refers to a police officer taking a person in custody to an appropriate place for examination by a physician if it would be dangerous to proceed under section 16.

[36] Both sections of the *MHA* apply where a person is apparently suffering from mental disorder of a nature or quality that likely will result in serious bodily harm to themselves or to another person or serious physical impairment of themselves.

[37] The issue of a police officer's duties pursuant to section 17 of the *MHA* was addressed in Order MO-1384, in which Assistant Commissioner Tom Mitchinson found:

> Section 17 of the *Mental Health Act* does not create an offence for the actions of individuals which may justify the involvement of the Police. The Police have provided no evidence to suggest the appellant's behaviour harmed or threatened to harm any other person. Rather, it would appear that the Police decided to approach the appellant on the basis of possible harm she might inflict on herself. In my view, absent evidence to the contrary, the actions taken by the Police, under the apparent authority of the *Mental Health Act*, do not fall within the scope of section 14(3)(b) because, while they involve police officers, they do not involve or relate to "a possible violation of law". This situation can be distinguished from investigations undertaken by police services in situations involving a suspicious death, where possible foul play may have occurred. In those circumstance, it is often reasonable for a police service to conclude that there may have been "a possible violation of law", specifically the *Criminal Code* of Canada.

[38] In Order MO-1428, Adjudicator Dora Nipp found that the principles articulated in Order MO-1384 were applicable in that appeal. She stated that:

> To satisfy the requirements of section 14(3)(b), the information at issue must have been compiled as part of an investigation into a possible violation of law. Although the Police have stated that an investigation was initiated to locate the appellant, they have not persuaded me that the appellant was engaged in any potential criminal activity or that the "investigation" undertaken by the Police, after a Form 9 was issued, was related to a possible breach of the *Criminal Code* or any other law.
>
> In the absence of this evidence, I find that the presumption of an unjustified invasion of personal privacy does not apply. I will now turn to a consideration of the factors at section 14(2).

[39] I adopt this reasoning in Orders MO-1428 and MO-1384 and find that the requirements of section 14(3)(b) have not been met. In this appeal, the appellant was to be brought by the police for an examination by a physician in accordance with the *MHA* Form 2. I find that I do not have sufficient evidence to determine that the information at issue was compiled as part of an investigation into a possible violation of law. The police have not persuaded me that the appellant was engaged in any potential criminal activity at the time of the incident referred to in the records.

[40] Section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. Although the presumption in section 14(3)(b) does not apply, nevertheless, based on my review of the records I find that the factors favouring privacy protection in section 14(2)(e) and (h) apply. These sections read:

> A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
>
> > (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
> >
> > (h) the personal information has been supplied by the individual to whom the information relates in confidence.

[41] In order for section 14(2)(e) to apply, the evidence must demonstrate that the damage or harm envisioned by the clause is present or foreseeable, and that this damage or harm would be "unfair" to the individual involved. I find that disclosure of the personal information in the records would cause the person to whom it relates to be unfairly exposed to pecuniary or other harm.

[42] Section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.[12] In order for this section to apply, both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. In this appeal, both the individual supplying the information and the recipient had a reasonable expectation that the information would be treated confidentially.

[43] In Order MO-1384, which is referred to above, the Peel Regional Police stated:

[12] Order PO-1670.

> When the police receive calls of this nature [pursuant to section 17 of the *Mental Health Act*] there is an expectation on the part of the caller that their identity will be protected.

[44] Assistant Commissioner Mitchinson in Order MO-1384 found that this assumption was a reasonable one in the circumstances. I agree that in the circumstances of this appeal that there was an expectation on the part of the caller to the police that their identity would be protected.

[45] In my view, the factors in sections 14(2)(e) and (h) outweigh the appellant's right of access in the circumstances and disclosure of the affected parties' personal information would constitute an unjustified invasion of privacy under section 14(1), as well as section 38(b). This is consistent with the finding in Order MO-1384 as noted above. Consequently, the exemption at section 38(b) applies to the personal information of other identifiable individuals in the records. I will consider below whether the police exercised their discretion in a proper manner concerning section 38(b).

C. Does the discretionary exemption at section 38(a) in conjunction with the section 8(1)(l) law enforcement exemption apply to the information at issue?

[46] Section 36(1) gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

[47] Section 38(a) reads:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > if section 6, 7, 8, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information.

[48] Section 38(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information.[13]

[49] Where access is denied under section 38(a), the institution must demonstrate that, in exercising its discretion, it considered whether a record should be released to the requester because the record contains his or her personal information.

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[13] Order M-352.

[50] In this case, the institution relies on section 38(a) in conjunction with section 8(1)(l). Sections 8(1)(l) states:

> A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> > facilitate the commission of an unlawful act or hamper the control of crime.

[51] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[14]

[52] Except in the case of section 8(1)(e), where section 8 uses the words "could reasonably be expected to", the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient.[15]

[53] It is not sufficient for an institution to take the position that the harms under section 8 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfillment of the requirements of the exemption.[16]

[54] Only the police provided representations on this issue. The police state that they have applied section 38(a), in conjunction with section 8(1)(l), to the "ten codes" in the the records as they are specific codes used by them while sending transmissions that are not generally known to the public. They state that the use of ten codes by law enforcement is an effective and efficient means of conveying a specific message without publicly identifying its true meaning. The police quote my decision in Order MO-2871, where I wrote:

> This office has issued numerous orders with respect to the disclosure of police codes and has consistently found that section 8(1)(l) applies to "10 codes" (see Orders M-93, M757, MO-1715 and P0-1665), as well as other coded information such as "900 codes" (see Order MO-2014). These orders adopted the reasoning of Adjudicator Laurel Cropley in Order PO-1665:
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> > In my view, disclosure of the "ten-codes" would leave OPP officers more vulnerable and compromise their ability to

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[14] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[15] Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), and *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).
[16] Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

> provide effective policing services as it would be easier for individuals engaged in illegal activities to carry them out and would jeopardize the safety of OPP officers who communicate with each other on publicly accessible radio transmission space...
>
> Concerning section 8(1)(l), I also agree with Adjudicator Bhattacharjee in Order MO-2112 that this office has issued numerous orders with respect to the disclosure of police codes and has consistently found that section 8(1)(l) applies to "10 codes". Adopting this reasoning, I find that disclosure of the 10 codes in the records could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime and that section 38(a) read in conjunction with section 8(1)(l) applies to this information…

[55] I adopt my reasoning in Order MO-2781 and find that the ten codes are subject to section 38(a), read in conjunction with section 8(1)(l). Disclosure of the ten codes in the records can reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.

[56] I will now consider whether the police exercised their discretion in a proper manner concerning section 38(a), read in conjunction with section 8(1)(l).

D. Did the institution exercise its discretion under sections 38(a) and 38(b)? If so, should this office uphold the exercise of discretion?

[57] The sections 38(a) and 38(b) exemptions are discretionary and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[58] In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

[59] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[17] This office may not, however, substitute its own discretion for that of the institution.[18]

[60] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:[19]

- the purposes of the *Act*, including the principles that
    - information should be available to the public
    - individuals should have a right of access to their own personal information
    - exemptions from the right of access should be limited and specific
    - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information.

[17] Order MO-1573.
[18] Section 43(2).
[19] Orders P-344 and MO-1573.

[61] Only the police provided representations on this issue. The police state that in exercising their discretion under section 38(b) to exempt information in favour of protecting the privacy of another person, the following factors were considered:

> a) Section 29 of the Act authorizes the indirect collection of personal information for the purpose of law enforcement. Section 28 introduces safeguards to the collection of personal information. In the case at issue, the balance between right of access and the protection of privacy must be given in favour of protecting the privacy of the other involved parties.
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> b) In assessing the value of protecting the privacy interests of an individual other than the requester, one needs to consider the nature of the institution. The nature of a law enforcement institution is in great part to record information relating to unlawful activities, crime prevention activities, or activities involving members of the public who require assistance and intervention by the police.

[62] The police further state that:

> An important principle contained in the Freedom of Information legislation is that personal information held by institutions should be protected from unauthorized disclosure. The information collected was supplied to the investigating police, in the course of an investigation into a possible law enforcement matter. The individual supplied their personal information, believing there to be a certain degree of confidentiality. Police investigations imply an element of trust that the law enforcement agency will act responsibly in the manner in which it deals with recorded personal information. This is in addition to the possibility that based on any potential release of their personal information; the affected parties could be exposed to further negative attention from the appellant.

Analysis/Findings

[63] Based on my review of the entirety of the police's representations, I find that they exercised their discretion under sections 38(a) and 38(b) in a proper manner, taking into account relevant considerations and not taking into account irrelevant considerations.

[64] Accordingly, I uphold the police's exercise of discretion and find that the personal information in the records is exempt under section 38(b). I also find that the ten codes in the records are exempt under section 38(a), read in conjunction with section 8(1)(l).

E. Are the portions of the records marked as non-responsive responsive to the request?

[65] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

> (1) A person seeking access to a record shall,
>
> (a) make a request in writing to the institution that the person believes has custody or control of the record;
>
> (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;
>
> . . .
>
> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[66] Only the police provided representations on this issue. The police state that the portions of the records marked as non-responsive to the request consist of police officer's memorandum notebook notes taken prior to and after this incident and a notation of time spent by the officers at the medical facility. They state that these portions of the records are clearly non-responsive to the appellant's request.

Analysis/Findings

[67] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.[20]

[68] To be considered responsive to the request, records must "reasonably relate" to the request.[21]

[69] I agree with the police that the portions of the records marked by them as non-responsive to the request are not responsive to the request. This information is not reasonably related to the request, but concerns other matters.

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[20] Orders P-134 and P-880.
[21] Orders P-880 and PO-2661.

F. Did the institution conduct a reasonable search for the Form 2?

[70] 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.[22] 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.

[71] 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.[23] To be responsive, a record must be "reasonably related" to the request.[24]

[72] 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.[25]

[73] 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.[26]

[74] 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.[27]

[75] A requester's lack of diligence in pursuing a request by not responding to requests from the institution for clarification may result in a finding that all steps taken by the institution to respond to the request were reasonable.[28]

[76] Only the police provided representations on this issue. The police were asked to provide a written summary of all steps taken to locate the Form 2. They state that the assigned officer was contacted in relation to care and control of the Form 2. The police state that the officer responded by addressing the fact that the police are not mandated to keep a copy of the Ministry of Health Form 2 and did not do so in this instance. The officer advised that the hospital where the appellant was taken kept this as it is part of his medical record. The police further state that the appellant was advised of this during mediation.

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[22] Orders P-85, P-221 and PO-1954-I.
[23] Orders P-624 and PO-2559.
[24] Order PO-2554.
[25] Orders M-909, PO-2469 and PO-2592.
[26] Order MO-2185.
[27] Order MO-2246.
[28] Order MO-2213.

Analysis/Findings

[77] Based on my review of the police's representations, I find that they have conducted a reasonable search for the responsive Form 2. I find that the appellant has not provided me with a reasonable basis for concluding that the police have custody or control of the responsive Form 2. Accordingly, I am upholding the police's search for this record.

ORDER:

I uphold the police's decision and dismiss the appeal.

Original signed by: June 24, 2014
Diane Smith
Adjudicator