

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-3109**

Appeal MA13-248

Toronto Police Services Board

October 14, 2014

**Summary:** An individual sought access under the *Act* to records related to a specific emergency call. The police issued a decision in which partial access to the responsive records was granted, with portions of the records withheld under sections 38(b) or 14(1) (personal privacy), and on the basis of non-responsiveness. Upon appeal to the IPC, the appellant challenged the exemption claims and the adequacy of the police's search for responsive records. In this order, the adjudicator 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, section 17(1).

**Orders and Investigation Reports Considered:** Order MO-1674

### **OVERVIEW:**

[1] This order addresses the issues raised in an appeal of a decision of the Toronto Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) regarding a request for records, including "ICAD data,"<sup>1</sup> relating to "an emergency run" described as occurring at a specified location, date and approximate time.

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<sup>1</sup> ICAD refers to Intergraph Computer Aided Dispatch.

[2] The police identified a provincial offences ticket and an ICAD report as responsive to the request and issued a decision granting partial access to the provincial offences ticket, but denying access to the ICAD report, in its entirety. The police relied on the personal privacy exemptions in sections 14(1) and 38(b), together with the presumption against disclosure in section 14(3)(b) (investigation into possible violation of law). Some information was also severed from the provincial offences ticket record as being non-responsive to the request.

[3] Following an appeal of the access decision to this office, a mediator was appointed to explore resolution. During mediation, the appellant explained that his access request was motivated by a desire to confirm that the officer who had issued the provincial offences ticket to him had, in fact, been on an emergency call at the time that he (the officer) pulled him (the appellant) over. When provided with this information by the mediator, the police issued a revised decision to the appellant that disclosed portions of the ICAD report relating to the identified police officer.<sup>2</sup> The police denied access to the remaining portions of the ICAD report on the same grounds as the provincial offences ticket. Next, the appellant advised that he did not wish to continue his appeal respecting access to the undisclosed portions of the provincial offences ticket. As a result, that record and the exemption in section 38(b) were removed from the scope of the appeal.

[4] However, the appellant maintained that the remaining portions of the ICAD report should be disclosed to him, without the names or addresses of other individuals. He also raised concerns about the adequacy of the police's search for records. Since a mediated resolution of the appeal was not possible, it was transferred to the adjudication stage, where an adjudicator conducts an inquiry.

[5] I sent a Notice of Inquiry outlining the issues in the appeal to seek representations from the police initially, which I received. I then shared the police's representations with the appellant to elicit his response to them. The appellant submitted correspondence indicating that he "had no comments with respect to the 'Notice of Inquiry'." However, since the appellant had provided a copy of a letter he had sent to the Chief of Police outlining his concerns about the traffic stop, I asked a staff member from this office to speak with the appellant about the limits of my authority in conducting this appeal under the *Act*. In particular, I wanted to ensure that the appellant understood that I would only be addressing those issues relating to access to the withheld information and the reasonableness of the police's search for responsive records, not the circumstances surrounding his dispute of the provincial offences ticket, including the conduct of the identified officer.

[6] In this order, I find that the undisclosed portions of the ICAD report are not responsive to the appellant's request and I uphold the police's decision to withhold the

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<sup>2</sup> The officer was identified by his badge number.

information. I also find that the police conducted a reasonable search. The appeal is dismissed.

## **RECORDS:**

[7] The information at issue in this appeal consists of portions of an 11-page ICAD report.

## **ISSUES:**

- A. Are the withheld portions of the ICAD report responsive to the appellant's request?
- B. Did the police conduct a reasonable search for records?

## **DISCUSSION:**

### **A. Are the withheld portions of the ICAD report responsive to the appellant's request?**

[8] The police submit that the ICAD report was initially withheld in its entirety under section 14(1), together with the presumption in section 14(3)(b), because it contains the sensitive and confidential personal information of other individuals. The police maintain that:

The appellant has absolutely no involvement in the incident related to the 911 call in question. As this call was mentioned in the Record of Provincial Offences Ticket and during mediation ... a heavily redacted version of the 911 call was released to the appellant, just to show him that at that time of the day, [the identified officer] was responding to a call for service.

[9] Later in their representations, the police also submit that:

The appellant requested information to confirm whether the named officer was in the midst of conducting police business (emergency run) when they interacted briefly. This has been proven via the release of the Record of Provincial Offices Ticket and the ICAD. If the requester has further issues with the conduct or validity of the officer's activities, there are various outlets for any complaints. Releasing the personal information of an uninvolved third party or an incident that does not involve the appellant is not one of the remedies.

[10] As stated previously, the appellant's representations did not address the issues outlined in the Notice of Inquiry, and instead recounted his concerns about the traffic stop by the identified officer. In the appeal letter sent to this office, the appellant's representative advised that the purpose of the request was to "confirm or deny whether [the] Officer ... who effected the traffic stop ... was, indeed, on an emergency call as claimed." The reason given was that the validity of the charges resulting from the traffic stop was "related to the existence of an emergency call." In that letter, the appellant's representative also acknowledges "... the need to protect any personal information contained in the report..."

### ***Analysis and findings***

[11] Based on my consideration of the evidence, I conclude that the position taken by the police that the withheld information in the ICAD report is not related to the appellant is, in effect, another way of arguing that it is not *responsive* to the appellant's request. In the circumstances, I accept that the determination of whether the information is responsive will decide whether the appellant has a right of access to it.

[12] In Order MO-1674, Adjudicator Frank DeVries considered a similar situation where an appellant sought access to undisclosed portions of an ICAD report. In that case, the Toronto Police had disclosed the appellant's own personal information to her, but denied access to the remaining information under the same exemptions claimed in this appeal. As in this appeal, Adjudicator DeVries focused on the indications given by the appellant as to the purpose and scope of the request:

It is clear to me that throughout this appeal the appellant has been interested solely in information which relates to her. Her request was specifically for "... all incidences collected under my name." In response to the mediator's report, which was sent to her during the processing of this appeal, the appellant confirmed that she was only interested in information referable to her. In response to the Notice of Inquiry, and after being provided with the portion of the Police's representations quoted above, the appellant again confirmed that her only goal was to obtain all personal information pertaining to her.

In the circumstances of this appeal, I am satisfied that the information in the printouts which was severed from page five of the records is not responsive to the appellant's request, nor is it referable to her in any way.

[13] I find Adjudicator DeVries' comments relevant in the present appeal. Past orders of this office have established that in order to be considered responsive to a request, records must "reasonably relate" to it.<sup>3</sup> In this appeal, the appellant's stated intention

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<sup>3</sup> Orders P-880 and PO-2661.

was to obtain verification of whether the identified police officer was on an emergency call at the time he carried out the traffic stop involving the appellant. The information in the 11-page ICAD report relating to the identified officer's dispatch status that is capable of verifying that fact has been disclosed to the appellant. Furthermore, based on my review of the undisclosed portions of the ICAD report, I find that this information is not responsive to the appellant's request, nor is it referable to him in any way.

[14] In view of my finding that the undisclosed portions of the ICAD report are not responsive to the appellant's request, it would not serve any useful purpose for me to review the application of the personal privacy exemption in section 14(1) to the record. Accordingly, on the basis of the non-responsiveness of the undisclosed content of the ICAD report, I uphold the decision of the police to withhold it.

**B. Did the police conduct a reasonable search for records?**

[15] The reasonableness of the search conducted by the police in response to the appellant's request was challenged because the appellant suggested that there should be additional written documentation that verifies (or refutes) the assertion that the identified police officer was on an emergency call at the time he stopped the appellant.

[16] As outlined in many past orders of this office, 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 of the *Act*.<sup>4</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.

[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.<sup>5</sup> To be responsive, a record must be "reasonably related" to the request.<sup>6</sup> 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 a reasonable effort to identify and locate responsive records has been made.<sup>7</sup> 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>8</sup>

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<sup>4</sup> Orders P-85, P-221 and PO-1954-I.

<sup>5</sup> Orders M-909, PO-2469 and PO-2592.

<sup>6</sup> Order PO-2554.

<sup>7</sup> Orders P-624 and PO-2559.

<sup>8</sup> Order MO-2185.

[18] Additionally, 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>9</sup>

[19] In their representations, the police explain the steps taken to determine what records might exist that were responsive to the appellant's request. The police submit that the FOI analyst searched the ICAD system, using the date and badge number provided, and one responsive event was identified. The FOI analyst then requested the officer's notes for the event and, upon review of them, determined that the notes did not refer or relate to the appellant. Next, the analyst searched the system under the appellant's name and identified a CIPS<sup>10</sup> report related to the traffic stop, which was printed and "contain[ed] all information to fulfill this request (which is to prove that [the officer] was enroute to a call)." The police submit that FOI staff decided that the ICAD report would not be disclosed, but the CIPS report would be. The rest of the police's submissions under the search heading address efforts to satisfy the appellant's concerns about the existence of an emergency call by disclosing a severed version of the ICAD report.

[20] In this appeal, the appellant has not provided any submissions in support of his view that the police should have, but did not, locate additional records that might "confirm or deny" that the identified officer was on an emergency call at the relevant time.

### ***Analysis and findings***

[21] As previously stated, in appeals involving a claim that additional records exist, the issue to be decided is whether an institution has conducted a reasonable search for responsive records as required by section 17 of the *Act*. Furthermore, although requesters are rarely in a position to indicate precisely which records an institution has not identified, a reasonable basis for concluding that additional records might exist must still be provided.

[22] Based on the evidence provided, I am satisfied that the police made a reasonable effort to identify and locate any records that are responsive to the appellant's request. I accept that relevant and appropriate police staff conducted searches and that they understood the nature of the responsive records that might exist. Conversely, I find that the appellant has not provided a reasonable basis for me to conclude that additional responsive records of the nature requested exist apart from the two records already identified.

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<sup>9</sup> Order MO-2246.

<sup>10</sup> Criminal Information Processing System.

[23] Accordingly, I find that the search for records responsive to the appellant's request was reasonable for the purposes of section 17 of the *Act*, and I dismiss this part of the appeal.

**ORDER:**

I dismiss this appeal.

Original Signed by: \_\_\_\_\_ October 14, 2014 \_\_\_\_\_  
Daphne Loukidelis  
Adjudicator