

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3211

Appeal MA13-563

Toronto Police Services Board

June 29, 2015

Summary: The police received a request for access to the investigation reports prepared by the chief of police and filed with the Toronto Police Services Board with respect to the deaths of five named individuals. The police initially denied access to the records on the basis of the exemption in section 6(1)(b) (closed meetings) of the *Act*. The appellant then narrowed his request to exclude all personal information of any identifiable individuals and to include only certain types of information. In response, the police issued a revised decision granting partial access to the records. This order finds that the undisclosed portions of the records are not responsive to the appellant's narrowed request.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 17; *Police Services Act*, R.S.O. 1990, section 11 of Regulation 267/10.

OVERVIEW:

[1] The Toronto Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to specific investigations. The request read:

Section 11 of Ontario Regulation 267/10 requires the chief of police to do an investigation of any incident to which the [Special Investigations Unit (SIU)] is called; the report must be filed with the Board; and the report can be made available to the public.

I would like copies of the investigations prepared by the chief and filed with the Toronto Police Services Board with respect of the deaths of the following individuals:

[2] The request then named five specific individuals.

[3] The police responded to the request by issuing a decision which stated that access to the records was denied on the basis of the exemption in section 6(1)(b) (closed meetings) of the *Act*. The appellant appealed the decision of the police.

[4] During mediation, the appellant narrowed the scope of his request. He referred to the requirements set out in section 11(2) of Regulation 267/10 of the *Police Services Act*, and indicated that he was not interested in pursuing access to any personal information of any individuals, including the identity of the police officers, information about the actions of the police officers, or any other matters involving personnel.

[5] As a result of the narrowed request, the police issued a revised decision which read:

... you are only interested in obtaining information regarding a review of our policies and service. As such, partial access is granted to the [requested] Section 11 reports concerning your request. Access is denied to certain portions of these reports pursuant to [sections 14(1) (personal privacy) and 52(3) (the exclusion for labour relations or employment related matters)] of the *Act*. ...

Please also note that some information has been removed from the records(s) provided to you, as it does not pertain to your request.

[6] The police no longer referred to section 6(1)(b) as an exemption that applies to the records.

[7] After receiving the revised decision and the portions of the records which were disclosed, the appellant indicated that he wished to continue with the appeal. Mediation did not resolve this appeal and it was transferred to the inquiry stage of the process, where an adjudicator conducts an inquiry under the *Act*.

[8] I initially sent a Notice of Inquiry to the police, inviting them to make representations on the issue of the possible application of the exclusion in section 52(3) to the records. The police provided representations in response.

[9] In their representations, the police maintain that the responsive records are excluded from the scope of the *Act* under section 52(3). They also indicate, however, that they are no longer relying on this exclusion, stating:

... upon further review, [the police] advise that it is no longer relying on section 52(3), as the appellant amended his request as follows: "... My request is limited to those parts of the chief's reports that review policies and police services..." As such, any information within the Section 11 reports relating to anything other than the "review of policies and police services" would now fall outside the scope of the appellant's request; and [is] therefore rendered non-responsive.

[10] I then provided the appellant with a complete copy of the representations of the police, along with the Notice of Inquiry. As a result of the position taken by the police, I included "scope of the request" as an issue to be addressed. I also invited the appellant to address the possible application of the exclusion in section 52(3) to the records. The appellant provided representations in response. The appellant's representations were then shared with the police, who provided reply representations.

[11] If section 52(3) applies to the records, and none of the exceptions found in section 52(4) applies, the records are excluded from the scope of the *Act*. This office has found that Section 11 records prepared pursuant to investigations undertaken under the regulations of the *Police Services Act* are excluded from the scope of the *Act* on the basis of the exclusion in section 52(3).¹ However, the police state that they are no longer relying on the section 52(3) exclusion. In these circumstances, I will restrict my review of the decision of the police to whether the remaining portions of the records are responsive to the appellant's narrowed request.

RECORDS:

[12] The records at issue consist of the withheld portions of the five requested "Section 11" reports.

¹ In Order MO-2324, Adjudicator Colin Bhattacharjee addressed records similar to those at issue in this appeal. He found that section 52(3) applied to an investigation report prepared pursuant to section 11(4) of Regulation 673/98 of the *Police Services Act* and presented by the Chief of Police to the Guelph Services Board regarding an investigation by the SIU into an alleged assault by an officer.

DISCUSSION:

[13] The sole issue in this appeal is whether the withheld portions of the records are responsive to the appellant's narrowed request. This requires a review of the scope of the request.

[14] 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).

[15] 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.²

[16] To be considered responsive to the request, records must "reasonably relate" to the request.³

[17] In their representations the police state that the appellant narrowed the scope of his request to include only certain specific information, and that they have disclosed to the appellant the very information that answers his amended request. They refer to various pages of these responsive records that contain what they describe as "a review of policies and police services," and take the position that any information within the section 11 reports relating to anything other than the "review of policies and police services" falls outside the scope of the appellant's request.

[18] The appellant, in response, confirms and clarifies the specific scope of his request. He states:

² Orders P-134 and P-880.

³ Orders P-880 and PO-2661.

My interest in the requested information is straightforward. I wish to know whether or not anything was learned by the police force, as represented by the chief, from the deaths of these five individuals ... which would influence the actions of officers in the future. My desire is that the number of such deaths at the hands of the police should be reduced, and that will only occur if police learn from each incident.

My assumption was that the lessons learned would be found in the chief's report on each death. ...

[19] The appellant then refers to the portions of the reports that were disclosed to him, and observes that "these pages contained ... no words which indicate what was learned from each incident." He speculates that perhaps the reports did not contain any "lessons learned" and refers again to the requirements of section 11(4) of Regulation 267/10.

[20] In reply representations, the police review the appellant's narrowed request, and state that they have "straightforwardly responded to the appellant by providing him with the requested information." The police also assert that the reports conform to the requirements of the regulation under the *Police Services Act*.

Analysis

[21] My review of the issues in this appeal is restricted to determining whether the portions of the records remaining at issue are responsive to the appellant's narrowed request.

[22] I note that the appellant narrowed the scope of his request during mediation, and that the wording of the narrowed scope of the request is referred to in different ways by the police and the appellant on a number of occasions. The appellant's initial narrowing of the request refers to the requirements set out in section 11(2) of Regulation 267/10.⁴ However, the appellant clearly identifies the scope of this narrowed request in his representations, and indicates that his request is for information about "whether or not anything was learned by the police force, as represented by the chief, from the deaths of these five individuals ... which would influence the actions of officers in the future." As a result, I interpret the appellant's request to be for information concerning any policies of or services provided by the police relating to the actions of the officers involved in the incidents, which would inform the actions of other officers involved in similar incidents in the future.

⁴ This subsection states: "The purpose of the chief of police's investigation is to review the policies of or services provided by the police force and the conduct of its police officers."

[23] The police have disclosed to the appellant certain limited portions of the records. These portions include the information contained on the first page of each report under the headings "Recommendations," "Financial Implications," and "Background/Purpose." In addition, parts of the "Summaries" of each of the investigations have been disclosed.

[24] There is considerable information severed from the records. This includes those portions of the records which contain the personal information of individuals, references to the conduct of the officers, their identity and certain personnel matters. The appellant has specifically stated that he is not pursuing access to this information, and it is clearly excluded from the scope of the request.

[25] The remaining severed portions of the records include information about certain post-incident procedures and other matters. On my review of this information, I am satisfied that these portions of the records are not responsive to the appellant's request for information reflecting an analysis of the events which would inform the actions of other officers involved in similar incidents in the future.

[26] Lastly, the police have severed some portions of the records relating to the manner in which the report was presented, etc. I find these portions are not responsive to the appellant's narrowed request.

[27] In summary, I find that the severed portions of the records do not contain information responsive to the appellant's narrowed request, and I dismiss this appeal.

ORDER:

I dismiss this appeal.

Original Signed By: _____
Frank DeVries
Senior Adjudicator

_____ June 29, 2015