

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3243

Appeal MA14-308

Toronto Police Services Board

September 22, 2015

Summary: The appellant made a request under the *Municipal Freedom of Information and Protection of Privacy Act* to the Toronto Police Services Board relating to the disclosure of his criminal record to a corporation. The sole issue in this appeal is whether the police conducted a reasonable search for responsive records. In this order, the adjudicator upholds both searches conducted by the police as reasonable and dismisses the appeal.

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

OVERVIEW:

[1] This order disposes of the sole issue raised as a result of an appeal of a decision of the Toronto Police Services Board (the police) in response to a request made under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to the disclosure of the requester's criminal record to a named corporation.

[2] The police issued a decision letter to the requester advising him that no record was identified that was directly associated to the request. However, partial access was granted to an Occurrence Report and portions of an officer's memorandum book notes during a specified time period. The police claimed the application of the exemptions in sections 14(1)(f), 14(3)(b), 38(b) of the *Act* in relation to these records. The police

further advised the requester that their search also revealed a record that was provided to them "in confidence" from the named corporation. The police denied access to this record, claiming the application of the mandatory exemption in s. 9(1)(d).

[3] The requester (now the appellant) appealed the police's decision to this office with respect to the police's search for responsive records. At the conclusion of the mediation of the appeal, the appellant wrote the mediator, stating that the mediator's report incorrectly identified the records at issue and asking that it be amended to reflect that he was seeking a particular set of records.

[4] The mediator then discussed the appellant's position with the police. As the records being sought by the appellant were not included in the records previously identified by the police, they conducted another search. The police did not locate any additional records. The appeal then moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry. The adjudicator assigned to the appeal sought representations from the parties on the sole issue of the reasonableness of the police's search for a revised investigative report and a new decision from the Chief of Police indicating that the appellant's personal information was disclosed to the named corporation under section 41 of the *Police Services Act*. Only the police provided representations, which were shared with the appellant.

[5] For the reasons that follow, I find that the police's search was reasonable and I dismiss the appeal.

DISCUSSION:

[6] The sole issue in this appeal is whether the police conducted a reasonable search. 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 17.¹ 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.

[7] 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.² To be responsive, a record must be "reasonably related" to the request.³ 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

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Order PO-2554.

to the request.⁴

[8] 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.⁵

[9] 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.⁶ 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.⁷

[10] The police provided affidavit evidence sworn by their Access and Privacy Coordinator. In her affidavit, the coordinator advises that the police conducted two searches for records responsive to the appellant's request. The second search the police conducted was for the records identified and clarified by the appellant during the mediation of the appeal, including a revised investigative report and a new written decision from the Chief of Police. The police further advise that the second search did not yield records responsive to the appellant's clarified request. The police also provided contextual information regarding the appellant's request. The police state that the appellant made two separate complaints to the police, and had already received responsive records relating to the first complaint. The second complaint, the police advise, did not result in an investigation. Consequently, the police do not have records that respond to the appellant's clarified request. As previously stated, the appellant did not provide representations.

[11] On my review of the representations provided by the police, I am satisfied that they have conducted reasonable searches for responsive records, taking into account all of the circumstances of this appeal. A reasonable search is one in which an experienced employee expends a reasonable amount of effort to locate records which are reasonably related to the request.⁸ The police have provided affidavit evidence explaining the nature and extent of the search conducted in response to the request, and also the additional search conducted during the mediation of this appeal. These searches were conducted by an individual at police headquarters in the city where the appellant resides, which is the location where these records would reasonably be expected to be located. Although the second search did not uncover additional information, I am satisfied that these searches were reasonable in the circumstances. In addition, as the appellant did not provide representations in this inquiry, he has not

⁴ Orders M-909, PO-2469 and PO-2592.

⁵ Order MO-2185.

⁶ Order MO-2246.

⁷ Order MO-2213.

⁸ Order M-909.

provided sufficient evidence to establish a reasonable basis for concluding that the police's search was inadequate, or that further records exist.

ORDER:

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

Original Signed by: _____
Cathy Hamilton
Adjudicator

_____ September 22, 2015