Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3344

Appeal MA15-161

Toronto Police Services Board

August 9, 2016

Summary: The police received a request for any and all records relating to the appellant's mental health and any information concerning possible disclosure of his mental health status to potential employers from January 2007 to present. The police responded to the request granting partial access to one record and noting that there were no further responsive records. The appellant indicated that he was not interested in pursuing access to the information withheld but claimed that the police had not conducted a reasonable search. This order finds that the police conducted a reasonable search in response to the request.

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

Orders and Investigation Reports Considered: M-909

BACKGROUND:

[1] The appellant made a request to the Toronto Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), stating:

> I wish to have disclosed any and all record[s] including my mental health [records], any and all record[s] under reviewing and/or reviewed, any and all information pertaining to any employment screening that you may

> [have] disclosed my mental health record [to] including the employers name from January, 2007 to the present.

[2] In response, the police informed the appellant that via consultation with members of the Toronto Police Service Police Reference Check Program (PRCP), they had been informed that the appellant submitted an application in October of 2011 for the purpose of volunteering at an identified Community Centre. PRCP advised that it only retains applications for one year, plus the current year, and therefore the appellant cannot be granted access to this record as it no longer exists.

[3] In addition, the police identified one responsive record and granted partial access to it.

[4] The appellant appealed the police's decision to this office. During mediation, the appellant confirmed that he does not seek access to the withheld portions of the partially-disclosed record.[1]

[5] The appellant argues that there must be other responsive records. During mediation, he indicated a belief that there should be records relating to a police check and medical records. In response to this clarification, the police located one additional record from the PRCP data entry log and provided same, in full, to the appellant. The police maintain that there are no other responsive records. The appellant continues to believe that additional records should exist.

[6] As mediation did not resolve the dispute, this appeal was transferred to adjudication. I sought and received representations from the parties. Representations were shared in accordance with Practice Direction 7 and section 7 of the IPC's *Code of Procedure.*

[7] The sole issue in this appeal is whether the police conducted a reasonable search for records responsive to the appellant's request. For the reasons that follow, I find that the police's search was reasonable and I dismiss the appeal.

DISCUSSION:

[8] As the appellant claims that additional records exist beyond those identified by the police, the sole issue for me to determine is whether the police conducted a reasonable search for records as required by section 17.[2] If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the police's decision. If I am not satisfied, I may order further searches.

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[1] It was confirmed during the inquiry into this appeal that this record is not at issue in this appeal.
[2] Orders P-85, P-221 and PO-1954-I.

[9] 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 they have made a reasonable effort to identify and locate responsive records.[3] To be responsive, a record must be "reasonably related" to the request.[4]

[10] 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.[5] In Order M-909, Adjudicator Laurel Cropley made the following finding with respect to the obligation of an institution to conduct a reasonable search for records. She found that:

> an institution has met its obligations under the Act by providing experienced employees who expend a reasonable effort to conduct the search, in areas where the responsive records are likely to be located. In the final analysis, the identification of responsive records must rely on the experience and judgment of the individual conducting the search.

[11] 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.[6]

[12] 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.[7]

[13] I adopt the approach taken in the above orders.

Parties' Representations

[14] In their representations, the police submit that they conducted reasonable searches for records responsive to the appellant's request. In support of their representations, the police attached an affidavit sworn by an analyst whose job includes dealing with requests for information under the *Act*. The affidavit referred to the scope of the appellant's initial request and noted that the day after receiving the request the analyst conducted a complete search of all relevant Toronto Police Service databases which yielded negative results. This was communicated to the appellant.

[15] Subsequently, the analyst noted that he was informed that an appeal had been launched by the appellant with the IPC. The analyst affirms that he had a phone conversation with the appellant where the appellant outlined that he believed the police

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[3] Orders P-624 and PO-2559.
[4] Order PO-2554.
[5] Orders M-909, PO-2469 and PO-2592.
[6] Order MO-2185.
[7] Order MO-2246.

had some information about his mental health. The appellant indicated that he was the victim of a government program of stalking, harassment and discrimination and that the police had conducted investigations on him. The analyst affirms that he reiterated to the appellant that his search yielded negative results. The analyst stated that the following day, the appellant contacted him again and provided two additional addresses. Several months later additional searches were completed of these two addresses. One record was located where the appellant was named as a contact person by an accused. This information/record was forwarded to the appellant by letter.

[16] The letter also advised that via consultation with the Toronto Police Service Police Reference Check Program (PRCP) the access and privacy section had been informed that the appellant had submitted an application for the purpose of volunteering at a community center in 2011. The PRCP confirmed that they retain the applications for one year, plus the current year and as a result the application had been purged and no record exists. The letter also confirmed that the only record they were able to locate, based on the parameters of the request, was the aforementioned record where the appellant is named as a contact. The affidavit continues that the affiant contacted PRCP again in early 2016 and searches were again conducted of the relevant database yielding negative results but for an entry pertaining to the appellant's application for a background check. It is noted that the PRCP logs all background check applications received. After conversations with the IPC mediator a copy of the spreadsheets kept by the PRCP was forwarded to the appellant.

[17] The appellant provided lengthy representations with information about the types of records he believes ought to exist. In his representations he raised a number of other issues but I am only dealing with the issue of reasonable search in this order.

[18] On the issue of reasonable search, the appellant comments that certain documents should exist which the police failed to identify. The appellant appears to suggest that this is sufficient evidence to support his position that a reasonable search was not conducted. The relevant comments from the appellant's representations on the police's search are summarized as follows:

- The appellant refers to a police investigation which involves community organizations, individuals and professionals. He intimates that he is the victim of gang stalking, electrical and microwave harassment and invasion of privacy.

- The appellant refers to the 2 subsequent decisions by the police after his initial request for records. He states that the findings were inconsistent because the police found a record in a subsequent search.

- The appellant states that an organization sent unreliable information concerning spousal abuse to the police resulting in an allegation that the police put the appellant under investigation.

- The appellant alleges that the Toronto Community Housing Corporation (TCHC) produced false reports concerning the appellant's possible mental disorder and sent this information to the police. The appellant also believes that the TCHC shared the content of his freedom of information access requests with the police.

- The appellant states that when interviewing for a job with the Manitoba Government and seeking feedback from the interview, the appellant was asked if he had any problem with the police which he takes as indication that the police should have records.

- The appellant refers to the record that was identified by the police where he was informed that he is indicated on the record to be a "contact" and sees this as evidence that there are records about him.

- The appellant indicates that the police failed to say in their affidavit if records exist and cleverly commented upon what they already disclosed and failed to comment on if further records exist.

- The appellant alleges that the City of Toronto is responsible for "affecting impediment on the way of getting a government job," and put him under police investigation.

- The appellant refers to the police calling him twice on a specified date attempting to get him to drop ongoing lawsuits.

- The appellant refers to his spouse's history of headache, breathing problems and anxiety for which her doctor was treating her with vitamin B injections. The appellant states that after researching vitamin B12 injections he realized that it was responsible for his spouse's problems and he spoke to the family doctor who then stopped the injections and gave her other drugs. The appellant refers to this as a plot to use his spouse to create an abusing story about him and that this was done by the City of Toronto or by a police investigation.

- The appellant refers to his belief that his privacy had been violated resulting in his reporting of same to the Scarborough police station where he spoke to a named officer on a specified date.

[19] The appellant's representations were provided to the police in their entirety and the police were invited to make reply representations. In their reply representations, the police address the instances where the appellant states or implies that records exist. I note that subsequent to receiving the appellant's representations, the police conducted additional searches taking into consideration the information in the appellant's representations, however, this search yielded negative results. They state that they were unable to locate any records involving the named organization, nor any records mentioning the appellant abusing his wife. There were no records located about the appellant's possible mental disorder and the police note that Exhibit "E" of the

appellant's affidavit shows a TCHC report that states, "Cause Disturbance/Loitering" which has nothing to do with any potential mental health issues.

[20] The police reiterated their position that a number of searches were conducted yielding no further records. The police note that when referring to a hidden eviction/conviction process, the appellant refers to the police and/or the TCHC. The police suggested that the appellant contact the TCHC to discuss this portion of his request as their subsequent search provided negative results for records. The police point to the appellant's affidavit where he describes an attempt to trap him, which was allegedly organized by a specified community, and the police note that the appellant states that he "continued cool" despite the original attempts to hand him over to the police. The police note that since he was not handed over to the police, as per the appellant's own words, the police were not involved in the matter and as such no records would have been created. Finally, the police replied that an individual at the Scarborough police station, referred to in the appellant's representations, is not a police officer but a station duty clerk. The police state in the affidavit that station duty clerks do not keep a memorandum book and would not have created any report regarding this alleged conversation with the appellant, and as such no records exist.

ANALYSIS AND FINDINGS:

[21] As set out above, in appeals involving a claim that further responsive records exist, the issue to be decided is whether the police conducted a reasonable search for the records as required by section 17 of the *Act*. As mentioned, if I am satisfied that the police's search for responsive records was reasonable in the circumstances, the police's search will be upheld. If I am not satisfied, I may order that further searches be conducted.

[22] In this appeal, I have considered the appellant's representations in which he identifies what he regards as evidence to show that further responsive records exist. He also argues that the police provided insufficient evidence in support of the searches it conducted. I have also considered the police's initial and reply representations. In the circumstances of this appeal, I find that the police have provided sufficient evidence to establish that reasonable searches were conducted for responsive records. I make this finding for a number of reasons.

[23] First, as noted above, although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response, the appellant must, nevertheless, provide a reasonable basis for concluding that such records exist. On my review of the appellant's representations, I note that all of his representations focus on a belief that records exist. While he does not have to identify precisely which records the police have not located, the appellant must provide a reasonable basis for concluding that such records exist. I find that the appellant's suggestions that further records exist is not supported by information which would

convince me that there is a reasonable basis for concluding that records should exist. Also, I find that the police, in their reply representations, have provided adequate explanations to rebut the appellant's suggestion that further records exist.

[24] Further, the police maintain that they conducted a reasonable search for requested records. In fact, the police conducted a number of searches after their initial search. They conducted a further search after the appellant supplied more information (the other 2 addresses) which resulted in finding one record. They also conducted a further search after receiving the appellant's representation and affidavit where he provided examples for why he believed further records exist. Despite the police finding records after their initial search, this was only after the appellant clarified his request during the mediation or when he provided additional addresses to the analyst. The other attempts to search for responsive records did not result in finding additional records including during the final search competed after the police reviewed the appellant's representations.

[25] Having reviewed the representations and evidence of the parties, I am satisfied that the police conducted a reasonable search for responsive records in this appeal. I accept the affidavit evidence provided by the police, that they have made reasonable efforts to identify and locate responsive records. I am satisfied that the search was conducted by an experienced employee who expended a reasonable effort to locate records related to the request. The individual who conducted the various searches has been in the position as analyst since June 2007 and part of this role is to search and provide records in response to requests for information under the *Act*.

[26] While the appellant has referred to incidents suggesting that records should exist, I find that he has not provided a reasonable basis for me to conclude that additional records exist. As stated above, the *Act* does not require the police to prove with absolute certainty that further records do not exist. Accordingly, I am satisfied that the police provided sufficient evidence to demonstrate that they made a reasonable effort to address the appellant's request and locate all records reasonably related to the request.

[27] I find that the appellant has not provided a reasonable basis for me to conclude that the searches conducted by the police were not reasonable. The appellant has also not provided cogent evidence to support his position that further records exist.

[28] Accordingly, I uphold the police's search for responsive records.

ORDER:

I dismiss this appeal.

Original Signed by: August 9, 2016
Alec Fadel

Adjudicator