

Information and Privacy Commissioner,  
Ontario, Canada



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

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## INTERIM ORDER MO-3361-I

Appeal MA14-408-2

Toronto Police Services Board

September 28, 2016

**Summary:** A portion of the appellant's request for financial information under the *Municipal Freedom of Information and Protection of Privacy Act* to the City of Toronto was transferred to the Toronto Police Services Board. The police issued a decision letter denying access to the responsive records under section 15(a) on the basis that they are publicly available. The appellant appealed the police's decision to this office claiming that additional records should exist. During mediation, the appellant clarified the request and the police agreed to conduct a further search for records regarding their legal expenses in addition to the financial information requested in the original request. The police are ordered to conduct further searches. The appeal is allowed.

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

### OVERVIEW:

[1] The appellant submitted an access request to the City of Toronto (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following records for the time period from 2009 to 2014:

A full accounting of any and all financial information with respect to the funds received and spent by the Toronto Police Service and the Toronto Police Services Board [TPS]; Full disclosure of communication [between] TPS, City of Toronto, and applicant.

[2] The city determined that the Toronto Police Services Board (the police) had a greater interest in the records seeking financial information and transferred this portion of the request to the police under section 18(3). The city issued a decision letter granting the appellant partial access to records regarding communications between the city and the police about the appellant (communication records). The appellant appealed that decision to this office and the city's decision was partially upheld by me in Order MO-3334.

[3] The police subsequently issued a decision denying the appellant access to the requested financial information under section 15(a) claiming that the records are publicly available. In its access decision, the police stated:

... it has been determined that the release of information, such as financial reports may be denied pursuant to section 15(a) where the information is publicly available. Data regarding the Service's finances, budget and spending are publicly available for viewing and downloading at [www.tpsb.on.ca](http://www.tpsb.on.ca) (variance reports) and via the City of Toronto's financial statements.

[4] The appellant appealed the police's decision to this office claiming that additional records should exist and a mediator was assigned to the appeal. During mediation, the mediator had discussions with the parties and the police directed the appellant to website links which contained information about the allocation of their budget. In response, the appellant advised that he was not interested in obtaining access to this type of information but rather:

... any and all filed annual and other reports or statements, disclosing financial data or financial transactions, for the information of the public, that show the status of an account, of the Toronto Police Service and the Toronto Police Services Board, collectively.

[5] The appellant also indicated that he sought access to information regarding the police's "financial score with respect to their legal expenses" and "full disclosure of their specific and verifiable legal expenses".

[6] Finally, the appellant advised that he continues to seek access to any records capturing communications between the city and the police about himself.

[7] Mediation continued and the police had discussions with various program areas and advised the mediator that its finance department located a computer generated report containing information regarding legal fees and expenses incurred in 2014 which may respond to the appellant's request for legal expenses. The police provided a copy of this record to the mediator and advised that it was a sample of the type of legal

expense information which may be responsive to the appellant's request.<sup>1</sup>

[8] The police subsequently sent a letter to the appellant, which stated:

Pursuant to the mediation process, we have identified that a complete decision letter was not issued to you in response to your original request.

In your request, you requested any communication with respect to the TPS, the City of Toronto and the appellant. As well, you were looking for "any and all filed annual and other reports or statements, disclosing financial data or financial transactions, for the information of the public, that show the status of an account, of the Toronto Police Service and the Toronto Police Services Board, collectively".

At present, we are completing additional searches regarding the above to ensure that our response to you will be complete.

[9] The police's letter to the appellant also provided two additional website links containing budget breakdown information for 2015. The police advised that their Finance Department identified this information as possibly responsive to the appellant's request for legal expenses. The police's letter did not refer to the sample record they provided the mediator.

[10] In response, the appellant wrote to the police directly to advise that the new website links provided to him were "not fully responsive to [his] request". The appellant also advised that he had problems opening the website links provided to him.

[11] The police responded by sending an email to the mediator including a hyperlink to one of the website links provided to the appellant. The police also indicated that the budget breakdown information could also be located on its public website. Finally, the police advised that it would be sending a final decision letter to the appellant.

[12] Approximately one month after the police sent its email to the mediator, the police had not issued a final decision letter to the appellant. Accordingly, the appellant requested that the appeal proceed to the adjudication stage of the appeals process in which an adjudicator conducts an inquiry.

[13] During the inquiry the police and the appellant provided representations to this office. Neither party objected to the release of any portion of their representations.

[14] In this order, I order the police to search for records responsive to the appellant's request for legal expenses in addition to the financial reports they undertook to locate in their correspondence to the appellant.

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<sup>1</sup> The record contained information about legal fees and expenses paid in 2014 in addition to information identifying the names of law firms or individuals. It is not clear from the record whether the individuals identified in the record are identified in their professional or personal capacity. Accordingly, it would appear that some of the information in the sample record may qualify for exemption under the *Act*.

## **PRELIMINARY MATTER**

[15] As identified above, there has been some confusion regarding the nature of the appellant's request, the scope of the request, and the types of records that may be responsive to the appellant's request. I also note that the police have communicated with the appellant regarding the nature of the request, and that the appellant has responded; however, these communications did not resolve issues regarding the scope of the appellant's request or whether the police's searches were reasonable, and I address these issues below.

[16] One issue raised was whether the appellant's request sought access to communications records between the city and the police about the appellant. Initially, the police took the position that the city's decision letter to the appellant responded to this part of the appellant's request. However, during mediation the police wrote to the appellant and advised that it would conduct a search for these records. The police subsequently advised the mediator that the communication records relate to the appellant's civil suit. As a result, the police did not conduct a search for these records or issue an access decision to the appellant.

[17] In my view, the communication records do not reasonably relate to the appellant's request for financial information. The appellant initially submitted a two-part request to the city for financial and communication records and the city transferred the portion of the request which sought access to financial records relating to the police. The city granted the appellant partial access to the communication records and the appellant appealed the city's decision to this office. I reviewed the city's decision in Order MO-3334 and ordered that further information in the communication records should be disclosed to the appellant. Accordingly, I have removed this issue from the scope of this appeal.

[18] I also note that the police indicated that they intended to send a further decision letter to the appellant regarding its further search for financial records but have not done so. In the circumstances, I am satisfied that their failure to do so resulted from continued confusion regarding the scope of the request. As I address the scope issue as part of the reasonable search discussion below, I will not separately address the issue of whether or not the police properly issued access decisions under section 19 in the circumstances of this appeal.

## **DISCUSSION:**

[19] The sole issue in this appeal is whether the police conducted a reasonable search for responsive records. Based on the information in the file, it appears that during mediation the parties worked together to clarify the request and the request was expanded to include legal expense information and communication records in addition to the financial information requested in the original request.

[20] 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.<sup>2</sup>

[21] 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.<sup>3</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.

[22] 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.<sup>4</sup> To be responsive, a record must be "reasonably related" to the request.<sup>5</sup>

[23] 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>6</sup>

[24] 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>7</sup>

[25] 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>8</sup>

### **Representations of the parties**

[26] The police submit that it conducted a reasonable search for records responsive to the appellant's request. The police take the position that the requested financial reports are publicly available. Though the police provided a sample record containing legal expense information to the mediator, it does not appear that the appellant's views as to whether or not he would be interested in this type of record was canvassed. Instead, the police sent correspondence to the appellant with website links to budget breakdown information for 2015 and invited him to contact them if this information did not respond to his request for legal expense information. The appellant subsequently wrote to the police to advise that the website links did not respond to his request for legal expense information.

[27] In their representations, the police state:

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<sup>2</sup> Orders P-134 and P-880.

<sup>3</sup> Orders P-85, P-221 and PO-1954-I.

<sup>4</sup> Orders P-624 and PO-2559.

<sup>5</sup> Order PO-2554.

<sup>6</sup> Orders M-909, PO-2469 and PO-2592.

<sup>7</sup> Order MO-2185.

<sup>8</sup> Order MO-2246.

... in response to our [letter] the appellant forwarded a letter to this institution [specified dated] filled with conjecture, providing no assistance and indicating that we are somehow "stonewalling" him. This institution was simply asking the appellant to yet again provide some needed direction and sought the appellant's input regarding the portion of his request surrounding the Service's legal expenses and communication with respect to the Toronto Police Service and the appellant. This information could only be provided by the appellant as we were trying to locate a record(s) which he believes exist.

[28] The police's representations did not address why it did not issue a final decision letter regarding the further searches for "any and all filed annual and other reports or statements, disclosing financial data or financial transactions" it undertook to complete in its interim decision.

[29] The appellant takes the position that additional records responsive to his request should exist. The appellant submits that the police's evidence fails to demonstrate that their searches were conducted by an experienced employee knowledgeable in the subject matter of the request and that reasonable effort was expended to locate responsive records.

[30] The appellant provided extensive representations which addressed a number issues relating to his concerns about the manner in which the police managed his request. The appellant also provided some background information about his civil suit against the police. Throughout the appeals process the appellant raised questions about the police's expenditure of funds to finance litigation matters. During mediation, the appellant made it clear that he was not interested in receiving budgetary financial information "based on guesswork, speculation, or hypothetical possibilities". Based on my review of the file, it also appears that the appellant also consistently advised the police that the specified time period for his request was 2009 to 2014.

## **Decision and Analysis**

[31] I have reviewed the representations of parties and find that the police failed to conduct a reasonable search for the "filed annual and other reports or statements" they advised the appellant they attempt to locate. As stated above, there is no evidence in the appeal file suggesting that the police issued a final decision letter to the appellant. In addition, the police's submissions did not outline the steps they took to locate the financial records referenced in their letter. Accordingly, I find that the police failed to conduct a reasonable search for this information and will order them to conduct a further search for "filed annual and other reports or statements".

[32] I also find that police failed to conduct a reasonable search for the records responding to the appellant's request for information about legal expenses incurred by the police. In my view, the website links the police provided the appellant in their letter did not respond to the appellant's request for legal expense information. Throughout the appeal process, the appellant has been clear that he is not interested in information

regarding the allocation of funds but rather actual expenses. The appellant also raised specific questions about the police's spending regarding litigation matters. In addition, during mediation the appellant indicated that he sought "full disclosure of their specific and verifiable legal expenses".

[33] Having regard to the principle that generally ambiguity in the request should be resolved in the requester's favour, I am satisfied that the appellant's clarified request sought access to the type of information contained in the sample record the police provided the mediator. Accordingly, I will order the police to conduct a further search for records which contains information about the amount of monies expended for legal fees and expenses from 2009 to 2014.

### ***Summary***

[34] The police are ordered to conduct a further search for:

- records reporting the police's legal fees and expenses incurred from 2009 to 2014; and
- the financial reports the police undertook to locate in their letter.

[35] The police shall send their representations on the results of their new search to me and issue an access decision to the appellant regarding access to any records located as a result of their further search.

### **ORDER:**

1. I order the police to conduct a new search for records responsive to the appellant's request for legal expenses incurred from 2009 to 2014 and the financial reports the police undertook to locate.
2. I order the police to issue an access decision to the appellant regarding access to any additional records located as a result of the search ordered in provision 1, in accordance with the *Act*, treating the date of this order as the date of the request.
3. I order the police to provide me with a copy of their decision rendered to the appellant in accordance with order provision 2.
4. The police shall send their representations on the new search referred in provision 1 and to provide me, by **November 3, 2016**, an affidavit outlining the following:
  - a. the names and positions of the individuals who conducted the searches;

- b. information about the types of files searched, the nature and location of the search, and the steps taken in conducting the search; and
- c. the results of the search.

The police's representations may be shared with the appellant, unless there is an overriding confidentiality concern. The procedure for submitting and sharing representations is set out in this office's *Practice Direction Number 7*, which is available on the IPC's website. The police should indicate whether it consents to the sharing of their representations with the appellant.

- 5. I remain seized of this appeal in order to deal with any other outstanding issues arising from this interim order.

Original Signed by: \_\_\_\_\_

Jennifer James  
Adjudicator

September 28, 2016 \_\_\_\_\_