

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3658

Appeal PA15-604

Ministry of Community Safety and Correctional Services

September 30, 2016

Summary: The appellant made a request to the Ontario Provincial Police under the *Freedom of Information and Protection of Privacy Act* for a copy of a 911 call she made regarding a house fire and information relating to the 911 call response. The ministry did not locate the appellant's 911 call but granted the appellant partial access to some information in other records. The ministry withheld some information in the records on the basis it was not responsive to the appellant's request and other information under several discretionary exemptions in the *Act*. The appellant appealed the ministry's decision and raised the issue of whether the ministry had conducted a reasonable search for responsive records (section 24). The order finds that the ministry conducted a reasonable search for responsive records. The order also confirms that the appellant is not interested in pursuing access to the information withheld under various exemptions in the *Act*, and that the remaining withheld information is not responsive to the appellant's request.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 24.

OVERVIEW:

[1] The Ministry of Community Safety and Correctional Services (the ministry) received the following request under the *Freedom of Information and Protection of Privacy Act (Act)*:

Fire transcript from 911 call made by requester as well as transcript from fire house and police regarding response time after 1st call and who officer at scene was first as well as badge number.

[2] The ministry did not locate a 911 call by the appellant, but granted partial access to the records it considered responsive, including most of an audio recording of conversations between fire and police communications personnel and between police officers regarding their response to the house fire. The ministry withheld some information in the records on the basis it was not responsive to the request. Access to the remainder of the information in the records was denied pursuant to section 49(a) in conjunction with section 14(1)(l) and under section 49(b) in conjunction with sections 21(2)(f) and 21(3)(b) of the *Act*.

[3] The appellant appealed the ministry's decision. During mediation, the appellant advised that she believed the ministry should possess an audio recording of her 911 call to report a house fire. The ministry conducted a further search but found no such record. The ministry explained that the appellant's 911 call must have been received by a communications centre not part of the ministry, such as the fire department that attended the house fire.

[4] The mediator notified the affected parties whose personal information was withheld in the records but they did not provide consent to disclose their personal information to the appellant.

[5] As mediation was unsuccessful in resolving the appellant's concerns, the appeal proceeded to adjudication. The ministry and the appellant provided representations, which were shared in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[6] In this order, I find that the ministry conducted a reasonable search for records responsive to the appellant's request. I also confirm that the appellant is not interested in pursuing access to those discreet portions of information withheld under various exemptions in the *Act*, and that the remaining withheld information is not responsive to the appellant's request.

RECORDS:

[7] The records at issue include withheld information in a police occurrence summary, information about the police officers involved in responding to the fire, and officer handwritten notebook entries, comprising six pages of records in total, and an audio recording of conversations between fire and police communications personnel, and between police officers, regarding their response to the house fire. The audio recording has been described as a 911 call, but while it arises from a 911 call, it is not a 911 call in the layperson's sense of being a call to 911 by an individual. Rather, the

audio recording comprises conversations between fire and police personnel regarding their response to a house fire.

[8] Also at issue is any additional responsive record that may exist in the ministry's custody or control.

ISSUES:

Preliminary issue

[9] As noted above, the ministry identified records it considered responsive to the appellant's request and provided access to portions of them. The ministry denied access to some portions of the records on the basis that they were not responsive to the request, and some other small portions of information under several exemptions in the *Act*.

[10] The information disclosed included information about the timing of the police response to the house fire, information about the identity of the first police officer at the fire scene as well as other related information, in accordance with the appellant's request. The only remaining information the appellant sought that had not been disclosed to her was a recording of her 911 call. The appellant's focus throughout this appeal concerned the location of that call. In her representations, the appellant identifies her specific concerns regarding the "finding of the 911 call." I address the appellant's concerns regarding the whereabouts of her 911 call in considering the ministry's search for responsive records below.

[11] Therefore, in the circumstances and based on the appellant's representations, I am satisfied that the appellant is not interested in pursuing access to the information withheld under various exemptions in the *Act*, so I will not review the ministry's application of the exemptions to this information.¹

[12] The issues in this appeal are:

- A. Did the institution conduct a reasonable search for records?
- B. Is the remaining withheld information responsive to the appellant's request?

¹ The information mostly comprises the identity of affected parties and various police codes and it is not relevant to the appellant's interests expressed during the appeal.

DISCUSSION:

Issue A: Did the institution conduct a reasonable search for records?

[13] 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 24.²

[14] The *Act* does not require the ministry to prove with absolute certainty that further records do not exist. However, the ministry must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.³ A responsive record is one that is "reasonably related" to the request.⁴ 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 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

[15] 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

Representations and analysis

[16] The appellant's outstanding issue with the ministry's response to her request for records is its failure to locate and disclose a 911 call she says she made regarding a house fire.

[17] Having reviewed the representations of the parties, I am satisfied that the search conducted by the ministry for records responsive to the appellant's request, in particular its search for a 911 call she says she made regarding a house fire, was reasonable and is in compliance with its obligations under the *Act*.

[18] The ministry's searches for a 911 call were conducted by an Ontario Provincial Police (OPP) Provincial Constable knowledgeable in the subject matter of the request. The Provincial Constable's affidavit evidence states she has worked for the OPP for almost 15 years and that she is familiar with the procedures and processes for responding to requests under the *Act*. Her affidavit evidence demonstrates familiarity with the nature and contents of the OPP records database relevant to the appellant's

² Orders P-85, P-221 and PO-1954-I.

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.

request that is supported by her evidence that she has worked at the Provincial Communication Centre in London for approximately 5 years. Evidence of her familiarity with the relevant database is demonstrated by the Provincial Constable's success in locating the audio recordings related to the appellant's 911 call the ministry partially disclosed to the appellant.

[19] I find that the ministry has provided sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate responsive records within its custody or control. The ministry's evidence is that the Provincial Constable conducted two searches of the relevant OPP records database for records responsive to the request. The Provincial Constable explains that because the house fire is relatively recent, any responsive records would be contained in the OPP records database she searched and no requested records would have been deleted.

[20] Most importantly, the Provincial Constable provides an explanation for why the 911 call the appellant seeks was not located by the ministry in the OPP's database. She explains that it was not the OPP but the fire department or ambulance service that received the 911 call regarding the house fire. This explanation is supported by the audio recording disclosed to the appellant, which includes audio of a request by fire communications personnel to police communications personnel to attend the house fire. The Provincial Constable explained that in this circumstance the fire department or ambulance service that received the incoming 911 call would have the record of that call. The ministry's representations explain that the fire department and ambulance service are separate institutions from the ministry and therefore, any records held by those entities are not within the ministry's custody or control.

[21] As noted above, although a requester will rarely be in a position to indicate precisely which records an institution has not identified, they must provide a reasonable basis for concluding that such records exist. The appellant's representations and the information disclosed to the appellant point to the existence of a 911 call. However, the ministry's evidence satisfactorily explains why the ministry has not located the 911 call in its search for records responsive to the appellant's request.

[22] The issue before me is not whether records exist, but whether the ministry's search for responsive records was reasonable. On my review of the evidence and explanations provided by the ministry, I accept that the ministry's search was reasonable.

[23] I am satisfied that the ministry has discharged its onus and has demonstrated that it has conducted a reasonable search in compliance with its obligations under the *Act*. Accordingly, I uphold the ministry's search for records responsive to the appellant's request.

[24] I will now consider the withheld information in the records the ministry partially disclosed to the appellant in response to her request.

Issue B: Is the withheld information responsive to the appellant's request?

[25] This office has repeatedly stated that to best serve the purpose and spirit of the *Act*, institutions should adopt a liberal interpretation of a request. That means that generally, ambiguity in a request should be resolved in the requester's favour.⁸

[26] To be considered responsive to a request, records must "reasonably relate" to the request.⁹

[27] Having reviewed the records identified by the ministry as responsive, I am satisfied it adopted a liberal approach to identifying records as responsive to the request consistent with the purpose and spirit of the *Act*.

[28] The appellant's request is clear that what she wanted was the 911 call she made and information about the timing of the response to that call, including specific identifying information about the first police officer on scene. The appellant's purpose in making an access request appears to be to cast light on the response time to the house fire, particularly her perception that it was not timely. The ministry's evidence is that it clearly understood the appellant's request such that it did not need to clarify the scope of it with the appellant.

[29] I am satisfied that the ministry adopted a quite liberal approach to identifying and disclosing information to the appellant in accordance with her request.

[30] As noted above, the ministry withheld some information on the basis that it was non-responsive to the appellant's request.

[31] Of the six pages of responsive records, all of the withheld information on pages 3 and 4, much of the withheld information on pages 5 and 6, and some information on pages 1 and 2 was withheld on the basis that it is not responsive to the appellant's request. Neither party addressed the records withheld as non-responsive in their representations.

[32] The information withheld as non-responsive on pages 3-6 appears in officers' notebooks and comprises officers' notes regarding matters unrelated to the incident involving the appellant, such as notes about other activities undertaken during the officers' shift. The information is only included in the responsive records because the information appears on the same page of the notebook as notes about the house fire.

[33] The information withheld as non-responsive on pages 1 and 2 comprises the badge or identifying employee number of a ministry employee in a central

⁸ Orders P-134 and P-880.

⁹ Orders P-880 and PO-2661.

communications centre who was not involved in the physical response to the incident, and some computer generated text appearing in a header on page 1 and footer on pages 1 and 2.

[34] I am satisfied from my review of the information withheld by the ministry as nonresponsive that it is unrelated to and therefore outside the scope of the appellant's request.

ORDER:

I uphold the ministry's search for records responsive to the appellant's request. I find that the withheld information in issue is not responsive to the appellant's request and dismiss the appeal.

Original Signed by: _____
Hamish Flanagan
Adjudicator

_____ September 30, 2016