

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3365

Appeal MA14-511-2

The Greater/Grand Sudbury Police Services Board

October 21, 2016

Summary: The police received a request under the *Act* for records related to any communication between the police and 22 identified individuals affiliated with a local university. The requester also sought access to records that might reveal inappropriate sharing of his information by the police with the university. The police claimed that certain exemptions applied to records revealing communications between the police and the 22 individuals named in the request, and also advised that no records revealing inappropriate information sharing of the requester's information with the university were located. The requester appealed the police's decision. In this order, the adjudicator finds that the records for which the exemptions are claimed fall outside the scope of the appeal. Additionally, the adjudicator upholds the police's search for responsive records 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] The Greater Grand Sudbury Police Services Board (the police) received a four-part request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] In part one, the requester sought access to records containing information about any communication that occurred between the police and 22 identified individuals affiliated with a local university. The types of records sought by the appellant specifically included:

[A]ll information, documents and records within these individuals' police records, including all criminal charges laid against such individuals by others, charges laid by such individuals against others, arrests made, reports made by such individuals by others, investigations and/or inquiries engaged in by the police about the [identified individuals] as requested and guided by others, investigations and/or inquiries engaged in by [the police] against others as requested and guided by the [university] and/or its members listed above, the results of such investigations....

[3] In part two of the request, the requester stated that if the police refuse him access to the information sought in part one, he also seeks access to any information about him that the police shared with individuals at the university, together with an explanation of the legal authority relied upon to share that information. Part two of his request included an allegation that the police inappropriately shared information about him with the university.

[4] In part three of the request, the requester sought an apology letter from the police for inappropriately sharing information about him with the university.

[5] In part four of the request, the requester inquired as to where to find the police's personal information bank.

[6] After reviewing his request, the police contacted the requester and advised him of the public complaints process available to him through the Office of the Independent Police Review Director (the OIPRD). On the understanding the requester had agreed to address the issues set out in his request through the OIPRD complaint mechanism, the police closed the file. Subsequently, the requester (now the appellant) contacted this office to open an appeal on the basis that the police were in a deemed refusal position as they had not issued an access decision in response to his request. Following contact with this office, the police reopened the file and issued a decision letter responding to all four parts of the appellant's request.

[7] With respect to part one of the appellant's request addressing records detailing contact between the police and 22 identified individuals, the police stated that if any records responsive to that part of his request did exist, disclosure of their existence would constitute an unjustified invasion of the personal privacy of the individuals to whom the information relates. Therefore, the police advised that they were refusing to confirm or deny their existence pursuant to section 14(5) (refuse to confirm or deny existence of a record – personal privacy), as well as pursuant to section 8(3) (refuse to confirm or deny existence of a record – law enforcement) of the *Act*.

[8] With respect to part two of the request, the police stated:

Be advised [...] we have no records to substantiate your allegation that [the police have] provided members of [identified university] with your personal and private information from your police files.

[9] With respect to part three of the request whereby the appellant requested that the police write him an apology letter, the police stated that they would not do so as his "allegation of wrongdoing and illegal actions taken by members, has not been reported nor substantiated," and therefore, in their view, an apology letter was not "applicable."

[10] In response to part four, the final part of the request, the police advised that their personal information bank is currently under construction. However, they explained that their "current Police Records Management System is 'Niche RMS'", a database that they described as containing information about police officers' engagement with the public.

[11] The requester, now the appellant, appealed the police's decision to neither confirm nor deny the existence of any records responsive to part one of his request. The requester also contested the reasonableness of the police's search for records responsive to part two of his request on the basis that responsive records should exist.

[12] During mediation, the police confirmed that they continue to refuse to confirm or deny the existence of records responsive to part one of the appellant's request whereby he sought access to records relating to 22 named individuals affiliated with the university. The police confirmed that they rely on both sections 8(3) and 14(5) of the *Act* to refuse to confirm or deny the existence of such records.

[13] The police also confirmed that they did not locate any records that reveal that they shared the appellant's personal information with individuals affiliated with the university, as requested in part two of the request.

[14] As a mediated resolution could not be reached, the file was transferred to the adjudication stage of the appeal process for an adjudicator to conduct an inquiry.

[15] During my inquiry into this appeal, I sought and received representations from both parties on the facts and issues on appeal. The representations that I received from the parties were shared in accordance with this office's procedure on sharing, as set out in *Practice Direction 7*.

[16] In this order, I find that the police have conducted a reasonable search for records responsive to part two of the appellant's request.

PRELIMINARY ISSUE:

Part one of the request – scope of the request

[17] As set out above, in part one of the request, the appellant identified 22 individuals affiliated with a local university. The appellant advised that he sought access to "all information, documents and records within these individuals' police records" including information such as criminal charges laid against them, arrests made with respect to them, investigations or inquiries initiated either by or about these individuals

and the results of such investigations or inquiries.

[18] Given the nature of any existing records responsive to part one of the appellant's request, the police advised in their decision letter that they were refusing to confirm or deny the existence of any such records that would reveal communications between the police and the 22 individuals named in the request pursuant to section 8(3) (law enforcement) and 14(5) (personal information) of the *Act*.

[19] Despite their claims that the refuse to confirm or deny provisions at sections 8(3) and 14(5) of the *Act* applied to any responsive records, in their representations on this issue, the police acknowledge that some records exist, without identifying to whom these records relate. However, the police dispute the responsiveness of these records, taking the position that they fall outside of the scope of part one of the request.

[20] The police state that the appellant requested access to all information, documents and records that name, describe and discuss individuals affiliated with a local university, some of them employees. They explain that despite the fact that part one of the request did not specifically connect information belonging to the appellant with the identified individuals, in their view, the appellant sought this information as a consequence of his assertion that the police provided personal and private information from his police file to those individuals. Accordingly, they submit that their view was that any responsive records would also contain information belonging to the appellant. The police explain that they conducted a search of their Records Management System applying the name of each of the 22 identified individuals, together with the university's business address, and located records for 5 of the 22 individuals. They submit that they subsequently reviewed the records containing information relating to those 5 identified individuals and found that only one of those responsive records also contained information relating to the appellant. They submit that the only record that is responsive to part one of the request was that which contained both information relating to the appellant and one of the individuals identified in the request. However, the police submit that as that one record had previously been addressed in the context of a separate Freedom of Information request whereby the appellant sought access to his own personal information, they did not address this record in their decision.

[21] In his representations, the appellant does not contest the police's approach to responding to part one of his request. The appellant confirms that by part one of his request he did not seek access to, nor did he expect to be given access to records that pertain exclusively to other people's personal information and do not contain any of his own information. He submits that his intention in submitting his request was to determine whether there were police records containing information belonging to the individuals that he identified, as well as his own. He explains that he had hoped that the existence of such records would provide evidence of whether the police had shared his own information with any of the identified individuals affiliated with the university (one particular employee being of specific interest to him).

[22] Therefore, in the circumstances, based on the clarification provided by the parties in their representations, including the appellant's statement that by part one of

his request he did not seek access to police records that contain information that is exclusively that of others and do not relate to him, in my view there is no need to review the issues arising from the police's invocation of the refuse to confirm or deny provisions at sections 8(3) and 14(5). The appellant is not seeking access to these records and they are removed from the scope of the appeal.

[23] Accordingly, the only record that is responsive to part one of the request is the record that contains both the appellant's information and that of one of the 22 individuals identified in his request. However, as the appellant is clearly aware of this record as it was responsive to a previous request and addressed in a previous appeal, I find that there is no useful purpose in revisiting any disclosure issues related to that record in this appeal.

DISCUSSION:

Did the police conduct a reasonable search for responsive records?

[24] The issue that remains before me in this appeal is whether the police conducted a reasonable search for responsive records.

[25] 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.

[26] 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

[27] 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.⁴

[28] 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

[29] 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

¹ Orders P-85, P-221, and PO-1954-I.

² Orders P-624 and PO-2559.

³ Order PO-2554.

⁴ Orders M-909, PO-2469 and PO-2592.

⁵ Orders MO-2185.

basis for concluding that such records exist.⁶

Representations

[30] The appellant submits that he believes that additional records responsive to part two of his request should exist.

[31] The police explain that as the appellant's request suggests that they cooperated with members of the university who requested access to the appellant's police records, the Freedom of Information and Privacy Coordinator (the FOIC) invited the appellant to meet with him. The police submit that although the appellant declined to attend police headquarters, he agreed to speak with the FOIC on the telephone.

[32] During the conversation with the appellant, the police submit that the FOIC explained that as the appellant's request appeared to be an allegation regarding the conduct of a member or members of the police service, instead of proceeding with an access request it might be more appropriate to have the matter reviewed through the public complaints process of the Office of the Independent Police Review Director (the OIPRD). The police submit that, at the time, the appellant was amenable to this and agreed to proceed in that manner. They submit that, as a result, his access request and application fee was returned to him.

[33] The police submit that subsequently, this office contacted them advising that the appellant wished to pursue an appeal with respect to his access request on the basis that the police were in a deemed refusal situation as they had not responded to part two of his request in which he sought access to the records which demonstrate the police's contact with a university employee. They submit that, following communication with this office, they responded to the appellant's request as set out in the background of this order.

[34] The police submit that between the termination of mediation and the beginning of adjudication, they received correspondence from the appellant which included a photocopy of an email between a university employee and a police officer.⁷ The police submit that, as a result, a meeting was scheduled with their Professional Standards Branch to review the situation.

[35] The police further submit that once in possession of the records upon which the appellant based his allegation which revealed that an officer did communicate with a university staff member via email regarding concerns relative to the appellant, the officer was contacted directly and required to provide all responsive records in their possession including (1) a copy of a General Report (which was the subject of a separate request by the appellant), (2) a copy of the email sent by the officer to the university (a copy of which, as noted above, was provided to the police by the appellant), and (3) a copy of the officer's emails to their immediate supervisor detailing

⁶ Order MO-2246.

⁷ This office was also provided with a copy of this email at that time.

the action taken and the conclusion of the investigation.

[36] Addressing the fact that their original search did not locate the records subsequently provided to them by the appellant, the police submit that it remains their position that their original search of their Records Management System was reasonable. They submit that at the outset, they met with the appellant with respect to his request and he did not advise them that he was in possession of these particular records or any other information that might have been of assistance in identifying the responsive records. They submit that section 17(1)(b) of the *Act* creates an obligation on the requester to provide sufficient detail to enable an experienced employee of the institution, upon reasonable effort to identify the record. They submit that the appellant had many opportunities to provide additional detail during the processing of the request and the mediation process but that “[i]n the absence of further detail from the [appellant] it was not within the realm of reason to search outside the [appellant’s police] file since records are normally required to be held within the file.”

[37] The police submit that once they had further direction of where such records might be located, responsive records were indeed located and a revised decision letter was provided to the appellant. They submit that at that time, the email of the officer who communicated with the university employee as well as an email in which the officer updates their supervisor of the actions taken and the conclusion of the investigation, were disclosed to the appellant.

[38] The police also advise, in their representations on the issue of search, that this office previously contacted them with respect to a privacy complaint initiated by the appellant with respect to the disclosure of information between the officer and the university employee and the subsequent actions taken. The privacy complaint was investigated and subsequently closed.

[39] In his representations, the appellant reiterates his position that the police have inappropriately shared his personal information with at least one employee of the university and that the university misused the information for the purpose of expelling him. He submits that he seeks access to records that might reveal or provide evidence of this “illegal sharing” or his personal information.

[40] The appellant submits that the police stated that he has not provided further information to help them identify additional responsive records and argues that given that his is “an outsider to their bureaucratic filing system” he is not in a position to know what that system looks like or how it is organized. He submits that, he has “absolutely no means of specifying where [the police] may look within their bureaucratic and filing structure for the purpose of findings records that pertain [to him].” He further submits that he has looked for a “personal information bank” that corresponds to the police filing system but that as a result of his conversations of the police a personal information bank of the police’s filing system “does not exist for use by the public when making record requests.” He submits that the police have also not provided him with a list identifying its “filing departments” and the types of records that are kept in such departments. The appellant submits that given his lack of knowledge

about the police's filing system, only the police can specify and refine the search for records relating to him.

Analysis and finding

[41] In this part of the appeal, the issue to be determined is whether the police conducted a reasonable search for records responsive to part two of the appellant's request. That is the portion of the request whereby the appellant seeks access to records that demonstrate that the police shared information about him with an employee of a local university.⁸ Following my review of the representations of the parties and the circumstances of this appeal, I accept that the police conducted a reasonable search for records responsive to part two of the appellant's request.

[42] I recognize that when they first responded to the appellant's request the police did not locate any responsive records and it was only after the appellant provided them with copies of a specific record in his possession that they located and identified such records as responsive. However, in my view, over the course of this appeal, the steps taken by the police have resulted in a reasonable search for responsive records as required by the *Act*.

[43] As set out above, in order to establish that it has conducted a reasonable search an institution must provide sufficient evidence to demonstrate that it made a reasonable effort to identify and locate responsive records. I find that the police have done so. I accept that the police made multiple attempts to communicate and work with the appellant with respect to his request, with the aim of responding in a manner that would be satisfactory to him and providing him with the information he sought. In my view, the police tasked experienced employees, knowledgeable in the subject matter of the request, to make reasonable efforts to locate records and respond to the appellant's concerns and that they did so in good faith. Although records responsive to part two of his request were not located at first, records were ultimately located by the police and disclosed to him.

[44] It is not clear to me whether the appellant continues to believe that, following the disclosure of the emails that demonstrate that an police officer communicated with a member of the university in relation to him, additional responsive records exist. His lack of clarity in this respect may be tied to his submission that he is not in a position to understand the intricacies of the police's records management system and therefore cannot be of much assistance in directing their search for responsive records. As set out above, previous orders have acknowledged an appellant's disadvantage in this respect by acknowledging that a requester will rarely be in a position to indicate precisely which records the institution has not identified. Nevertheless, it has also been established that

⁸ It should be noted that the issue of whether the disclosure of that information by the police to the university was inappropriate or not in accordance with the *Act*, is not before me. That matter was the subject of a previous privacy complaint filed by the complainant and addressed by this office in MC14-60. This office's investigation into the privacy complaint MC14-60 was completed and closed on February 15, 2015.

a requester still must provide a reasonable basis for concluding that additional records exist.

[45] In the circumstances of this appeal, I have not been provided with any evidence to suggest that responsive records, in addition to those that are already in the appellant's possession, might exist. Additionally, the *Act* does not require the police to provide with absolute certainty that further records do not exist, simply that they have conducted a reasonable search for them. As I have found that the police have provided sufficient evidence to demonstrate that they made a reasonable effort to identify and locate responsive records and I have no evidence before me to suggest that further responsive records might exist, I am satisfied that the search carried out by the police was reasonable in the circumstances, and in accordance with the requirements of the *Act*.

ORDER:

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

Original Signed By: _____
Catherine Corban
Adjudicator

_____ October 21, 2016