

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-3377

Appeal MA15-343

Toronto Police Services Board

November 16, 2016

**Summary:** In 2015, the appellant sought access pursuant to the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* to records regarding his detention during the G20 Summit in 2010. The police provided the appellant with access to responsive records. The appellant believes that additional records ought to exist. This order upholds the police's search for responsive records as reasonable.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 17(1).

### OVERVIEW:

[1] The requester submitted an access request to the Toronto Police Services Board (the police) pursuant to *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA or the Act)*, seeking the following information from June 2010:

Any and all records including film, video, photos, notes, written or computer records of:

My take down and detention by security forces on Saturday afternoon of [date] at Queen's Park in Toronto.

My detention at the Eastern Avenue Detention Centre [dates].

A copy of the video taken of me just before I was released from the Eastern Avenue Detention Centre on the evening of [date].

What happened to my personal possessions including [several items]? These items were never returned to me.

What happened during my transportation to the Eastern Avenue Detention centre on [date]?

My transportation in a police cruiser from the Eastern Avenue Detention centre to my release at the drop off point in Toronto during the evening of [date].

[2] The police issued their access decision, indicating they were granting access to the responsive police officers' notes, records of arrest and a photograph. They further noted that there was certain information in these records which they were withholding, as it did not pertain to the request (non-responsive to the request). The police further stated:

Through consultation with the various related stakeholders, a thorough and complete search for the responsive records regarding your G20 arrest/detainment, which included any/all videotaped footage and the property identified in your request, was conducted. However, we regret to inform you that our search has yielded negative results.

[3] The requester, now the appellant, appealed the decision.

[4] The appellant advised the mediator that he was not interested in pursuing the information that did not pertain to his request. The appellant asserted that additional records exist and that the police's search was incomplete.

[5] In terms of additional records, the appellant referred specifically to a police surveillance video, which was released to another requester in the context of an access request made by that requester, which he appears in. The appellant further advised that there should be a number of other videotapes, since there were video surveillance cameras throughout the whole process, including at Queen's Park, the detention centre and the transport van/cruiser. He further noted that the transport vehicle had a sign stating it was recording. The appellant also advised he was asked to read a statement and that it was videotaped. Moreover, the appellant said that he had asked the former Chief to look into his case, so there should be some documents regarding that search.

[6] With respect to its search, the police noted that in addition to obtaining the police officers' notes and searching the database when processing the request, they had also contacted the Officer-In-Charge, as well as the Manager of the Property Unit and the G20 Disclosure Team. With respect to video recordings, the police agreed to conduct a further search.

[7] As mediation did not resolve this appeal, the file was transferred to the adjudication stage of the appeal process. The police then issued an interim access and fee estimate decision to the appellant concerning video recordings from the other access request.

[8] The police also provided a letter (the letter), which I sent to the appellant, along with a Notice of Inquiry, outlining their efforts to locate responsive records.

[9] In response to the police's letter, I sought the appellant's representations as to the adequacy of the police's search for responsive records and the appellant's position concerning the existence of any additional responsive records that have not already been located.

[10] The appellant provided representations in response. These representations were shared with the police, who provided reply representations in response. I then provided the police's representations to the appellant, who responded by providing sur-reply representations.

[11] In this order, I uphold the police's search for records as reasonable.

## **DISCUSSION:**

### **Did the police conduct a reasonable search for records?**

[12] 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>1</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.

[13] The police submit that they have exhausted all avenues in their attempt to locate the information responsive to the appellant's request. They state that the search has revealed that many of records either do not exist or no longer exist. The police state that the Officer-in-Charge of the case advised that he did not have any contact with the appellant and only entered the paperwork into the relevant database, which was submitted without any badge numbers.

[14] The police state that the staff sergeant of the G20 Disclosure Team had conducted a search of the following files in the G20 Library with negative results:

- Total Arrest Excel Spread Sheet

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<sup>1</sup> Orders P-85, P-221 and PO-1954-I.

- Arrest sheets (Hot Sheets)
- CIPS [Criminal Information Processing System] case library file
- Arrest Hot Shot photos
- PPC [Prisoner Processing Centre] Booking Log
- PPC Booking Video Log
- RIC [Repository for Integrated Criminalistic Imaging] Photos
- Release Photos
- Medical Occurrence at the PPG
- Record of Injury Reports
- Lawyer Interview Log

[15] The appellant states that he is missing the following information:

- the time, date, location and other details about a specific photograph of him.
- the paperwork of the Officer-in-Charge of the case, including the computer logs and other information missing from a three-page Record of Arrest completed by this officer.
- notes taken that resulted in the information entered into the Record of Arrest
- information about what happened to the appellant's possessions after his arrest
- information about the person who looked for the appellant's missing items and the individuals that were interviewed about these items.
- information about the date and time the appellant arrived at and was released from the police station, as well as who released him.
- a copy of the statement that the appellant agreed to upon his release, as well as a copy of the recording of the appellant's agreement.
- details and notes about the person who cautioned the appellant and explained his rights to counsel.
- the date and time that two sets of handwritten notes were completed and what time the encounters referred to in the notes happened.
- the names of the arrest team.

- names of the police officers in a specific photograph and in a car with the appellant.
- information from databases, physical or film records, videos, photographs, etc. that the police has that relates to the events the appellant was involved, including any records of a former police chief.

[16] In reply, the police provided additional information about the searches they undertook, as follows:

Video Services Unit (VSU):

VSU conducted searches for any/all video records of the appellant. The searches conducted involved using the parameters of name/date of birth, arrest number and all related G20 video files, but could not locate any records indicating the appellant was at the [PPC]. VSU advised there were no booking or PPC cell video completed for the appellant; and with only having skeletal details regarding the appellant's arrest (to be addressed below), there was not enough information in order to locate any In-Car Camera video or any additional CCTV video (addressed by appellant in his representations). The searches did reveal one file labelled with the appellant's name. This video was reviewed and the appellant's image was not identified. As such, VSU was unable to locate any footage capturing the appellant regarding [the photograph of the appellant, the Record of Arrest, and the first set of handwritten notes] ...

Property Evidence Management Unit (PEMU):

... PEMU was contacted to facilitate the return of the appellant's property. On June 26, 2015, [name], Manager of PEMU advised that a search was conducted of the appellant's name and also by the description of his property, but yielded negative results. Unfortunately, the extreme circumstances surrounding the appellant's arrest during the G20 demonstration on [date], hindered the process in which his property was catalogued. As a result, this institution is unable to locate any records of, or the actual articles ... despite being referred to in other Toronto Police Service records.

G20 Disclosure Team:

[As outlined above] the G20 Disclosure Team conducted a search of the G20 Library with negative results. In addition, during the processing of the appellant's original request the G20 Disclosure Team was consulted and after an exhaustive search advised that the only records located were the appellant's record of arrest and a photograph. The [two sets of handwritten notes] were not actually catalogued in relation to the

appellant, but to a separate G20 arrest and only came to light through a separate access to information request received by this institution.

... [T]he G20 Disclosure Team was consulted again and in turn conducted a subsequent search yielding the same results.

Access and Privacy Section (APS):

In addition to liaising with the aforementioned stakeholders throughout the processing of the appellant's request, the APS Analyst [and] APS Coordinator, met with the Officer-in-Charge of the case [name...This officer] indicated he received numerous hand-written forms ("Hot Sheets") that were created to capture information about the individuals arrested during the G20, to which he transposed into an arrest record database. The information provided was skeletal and the synopsis generic; and as a result, the information, at times, was inaccurate. Hence, the discrepancy between the duration in which the appellant was actually detained at the PPC and what is documented in his record of arrest. [The Officer-in Charge] further advised that he is unaware as to the whereabouts of the appellant's "Hot Sheet" or his aforementioned property; and that at no time did he have any contact with the appellant.

During the processing of the appellant's request the assigned APS Analyst contacted [the two officers that wrote the handwritten notes] in regards to the appellant's property. Unfortunately, neither officer could provide any information to ascertain the whereabouts of the [missing] articles referenced by the appellant.

[17] In sur-reply, the appellant states that the police have not conducted a proper search including not providing details of the photograph of him, when the records were created, and about the officer who wrote down information.

***Analysis/Findings***

[18] 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>2</sup> To be responsive, a record must be "reasonably related" to the request.<sup>3</sup>

[19] 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

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<sup>2</sup> Orders P-624 and PO-2559.

<sup>3</sup> Order PO-2554.

are reasonably related to the request.<sup>4</sup>

[20] 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>5</sup>

[21] 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>6</sup>

[22] The appellant's request was made almost five years after the G20. In the circumstances of this appeal, and taking into account the police's detailed representations in particular, I find that the police have conducted a reasonable search for responsive records. In making this finding, I have considered the specific information that the appellant submits remains outstanding.

[23] The appellant submits that he has not received information about the time, date, location where his photograph was taken, along with the name of photographer. However, I note that the police did advise that it was taken during the G20. I find that the detailed information about the photograph that the appellant is seeking is not information that is responsive to the request.

[24] The appellant also submits that he has not received information about when the responsive records were written or created. However, I note that, other than the photograph, the paper records that the appellant received are all dated.

[25] As well, the appellant is looking to recover some missing items. The police have provided details about their search for these items.

[26] Accordingly, I am upholding the police's search for responsive records.

**ORDER:**

I uphold the police's search for responsive records and dismiss the appeal.

Original Signed by: \_\_\_\_\_  
Diane Smith  
Adjudicator

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November 16, 2016

<sup>4</sup> Orders M-909, PO-2469 and PO-2592.

<sup>5</sup> Order MO-2185.

<sup>6</sup> Order MO-2246.