

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 PO-3685

Appeal PA15-666

Ministry of Community Safety and Correctional Services

January 12, 2017

**Summary:** The Ministry of Community Safety and Correctional Service (the ministry) received a request for access under the *Freedom of Information and Protection of Privacy Act (FIPPA)* for records relating to a specific Ontario Provincial Police investigation. The ministry located responsive records, however, the appellant claimed that a final police report should have been located by the ministry. This order upholds the ministry's search for this record.

**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 Service (the ministry) received a request for access under the *Freedom of Information and Protection of Privacy Act (FIPPA or the Act)* to the following:

...all information including the Police Occurrence Report and investigation notes including start date, conclusion date, names of all people questioned and evidence taken regarding an investigation for mischief, theft, and fraud against [named individual and address], by Detective

Constable [name, of the Ontario Provincial Police (the OPP)].<sup>1</sup> I believe the investigation was in 2012-2013.

[2] The ministry granted the appellant partial access to the requested information. Access to the remaining information was denied pursuant to the discretionary exemptions in section 49(a) (discretion to refuse requester's own information), in conjunction with sections 14(1)(l) (facilitate commission of an unlawful act), 14(2)(a) (law enforcement report), and section 49(b) (personal privacy) of the *Act*. In addition, the ministry severed some information on the basis that it was not responsive to the request.

[3] The requester (now the appellant) appealed the decision of the ministry to this office.

[4] In his letter of appeal, the appellant referred to the records withheld on pages 71 to 166 of the records. These pages were denied in full pursuant to section 49(b) of the *Act*. During the course of mediation, the ministry issued a supplemental decision, granting the appellant partial access to those pages of records. Access to some of the information on those pages of records was denied pursuant to section 49(b) of the *Act*. The appellant subsequently advised the mediator that he was not appealing the severances to the information disclosed to him.

[5] The appellant wrote to the mediator indicating that he is seeking the final police report (the final report) setting out the reasons why charges were not laid against the person investigated in this matter. The mediator advised the ministry of this and the ministry agreed to conduct an additional search in order to determine if any additional records exist. Following its search efforts, the ministry advised the mediator of the steps taken to search for any additional records and advised that no additional records exist.

[6] The appellant advised the mediator that he believes that a final report exists and he advised the mediator that he would like to have this appeal proceed to adjudication on the issue of whether the ministry has conducted a reasonable search for this record.

[7] As mediation did not resolve this appeal, the file was referred to the adjudication stage of the appeal process where an adjudicator conducts an inquiry.

[8] Representations were sought and exchanged between the ministry and the appellant in accordance with section 7 of the IPC's<sup>2</sup> *Code of Procedure and Practice Direction 7*.

[9] In this order, I uphold the ministry's search for the final report and dismiss the appeal.

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<sup>1</sup> The Ontario Provincial Police, which is part of the ministry.

<sup>2</sup> The Information and Privacy Commissioner, Ontario, Canada.

## **DISCUSSION:**

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

[10] The appellant is seeking to obtain a copy of the final report setting out the reasons why charges were not laid by the OPP against a person investigated in a specific matter.

[11] The ministry submits that it has not been able to locate the final report sought by the appellant. It states that it contacted the OPP FOI<sup>3</sup> Liaison for the North East Region (the FOI Liaison), who searched RMS/Niche, a shared OPP data base, where the OPP store electronically all records related to law enforcement investigations, including records related to the investigation which is at issue for the purpose of this appeal.

[12] The ministry states that the FOI Liaison identified responsive records on RMS/Niche, and also identified the Sudbury Detachment of the OPP as being a source for officer notes pertaining to the investigation. The FOI Liaison sent a request to Sudbury Detachment for responsive records to be searched and the FOI Liaison then received officer notes from Sudbury Detachment. The notes were then sent by the FOI liaison to the ministry FOI office representative. The ministry then provided the appellant with partial access to the records located by the FOI Liaison and the Sudbury Detachment.

[13] The ministry states that its FOI office representative advised the FOI Liaison that the appellant would like the final report. The FOI liaison advised the ministry that all responsive reports had already been provided to it.

[14] The ministry states that its FOI office representative contacted the FOI Liaison again, and requested that the investigating officer specifically be asked whether a final report exists. In response, the investigating officer confirmed that there is no final report in relation to this investigation.

[15] The ministry advises that besides the FOI Liaison officer, it also contacted the investigating officer directly, who responded that a final report does not exist as a final report was never created. It submits that given the comprehensive searches that were conducted, and given the fact that the investigation occurred in the last few years, it is not possible that a final report existed but no longer does.

[16] The ministry notes that a final report may be, but is not necessarily, completed in response to an OPP investigation and that the fact that a final report does not exist is, therefore, consistent with OPP practices.

[17] The appellant's representations focus on the application of the exemptions to the

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<sup>3</sup> Freedom of Information.

information withheld from the records he has already received. The appellant did not appeal the application of the exemptions to the records.

[18] The only issue remaining after the mediation of this appeal was whether the ministry had conducted a reasonable search for the final report. This is the only issue I am considering in this order.

[19] With respect to this search issue, the appellant states that there should be a final report as to whether the investigation was complete that also contains an explanation as to why criminal charges were not laid.

[20] The appellant states that twice before he had a named OPP detachment and a named Police Service investigate theft and mischief against his property and both times there was a final report.

[21] The appellant submits that the fact that the investigating officer did not create a final report is not consistent with previous OPP policy.

[22] In reply, the ministry repeats that final reports may, but are not required to be completed, as part of an OPP investigation.

### ***Analysis/Findings***

[23] Based on my review of the parties' representations, I find that the ministry has conducted a reasonable search for the final report. The ministry has explained in detail its efforts to locate this record, as set out above.

[24] 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.<sup>4</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.

[25] 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>5</sup> To be responsive, a record must be "reasonably related" to the request.<sup>6</sup>

[26] 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>4</sup> Orders P-85, P-221 and PO-1954-I.

<sup>5</sup> Orders P-624 and PO-2559.

<sup>6</sup> Order PO-2554.

are reasonably related to the request.<sup>7</sup>

[27] 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>8</sup>

[28] 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>9</sup>

[29] In this appeal, based on my consideration of both the ministry's and the appellant's evidence, I find that the ministry has conducted a reasonable search. As detailed above, the ministry has conducted a comprehensive search throughout its record holdings for the responsive record, the final report.

[30] I find that the ministry has provided sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records. I accept the ministry's explanation that final reports may, but are not required to be completed, as part of an OPP investigation. I also find that the appellant has not provided a reasonable basis for me to conclude that in the circumstances of this appeal a final report exists.

[31] Accordingly, I am upholding the ministry's search for the final report as reasonable.

**ORDER:**

I uphold the ministry's search for the final report and dismiss the appeal.

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

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January 12, 2017

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<sup>7</sup> Orders M-909, PO-2469 and PO-2592.

<sup>8</sup> Order MO-2185.

<sup>9</sup> Order MO-2246.