

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3690

Appeal MA18-108

Toronto Police Services Board

November 26, 2018

Summary: The Toronto Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records related to a specified incident involving the requester. The police located responsive records in relation to many aspects of the request, and issued an access decision granting partial access to the appellant. Some information was withheld on the basis of the personal privacy exemptions at sections 14(1) and 38(b) of the *Act*. The requester appealed the decision. The sole issue in dispute at adjudication was reasonable search, under section 17 of the *Act*. In this order, the adjudicator finds the police's search to be 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, s. 17.

OVERVIEW:

[1] The Toronto Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following records:

- [the requester's] 911 call;
- Any and all squad car dash cam videos and in-car videos and audio recordings;
- The in-house security video of a [named business] – from [the requester's] seizure of the weapon until the police finally leave the building;

- Any and all police station recordings regarding [the requester] at 11 Division on [a specified date];
- Any and all police station recordings of [a specified individual] at 11 Division on [a specified date...]; and
- Any and all recordings of interaction between [the requester] and [a specified police officer].

[2] The police located videos and an occurrence report with attachments, and issued a decision granting access, in part, to the responsive records.

[3] The police withheld information in the occurrence report on the basis of the personal privacy exemptions of the *Act* at sections 14(1) and 38(b), citing section 14(3)(b) (investigation into possible violation of law) as a consideration to withhold the information.

[4] The police denied access, in full, to the in-house video of the specified business on the basis that they did not have consent to disclose it. In addition, the police denied access to closed-circuit television records relating to the 11 Division police station on the basis that no such records exist. The police also advised that they severed some of the information on the basis that it is not responsive to the request.

[5] The requester, now the appellant, appealed the police's decision to the Office of the Information and Privacy Commissioner of Ontario (the IPC, or this office).

[6] During mediation, issues were narrowed between the parties. The police agreed to provide the appellant with partial access to the in-house video of the specified business, with blurred out images of any other individuals. The police subsequently issued a revised decision granting partial access to that video, and withheld other information on the video pursuant to the personal privacy exemptions at sections 14(1) and 38(b) of the *Act*. The appellant advised that he was not seeking information withheld in the police reports and the specified business' video pursuant to the personal privacy exemptions. The police also advised the mediator that no records exist relating to 11 Division, or to the appellant's interactions with a specified police officer. The appellant advised that the information identified by the police as non-responsive or non-existent is no longer at issue in this appeal.

[7] However, the appellant advised the mediator that he believes further responsive records relating to both the in-car video and the specified business' video exist beyond those identified by the police. Specifically, he claims that the videos provided to him are missing footage. Accordingly, only the issue of reasonable search moved to the adjudication stage of the appeal.

[8] At adjudication, I began my inquiry under the *Act* by sending a Notice of Inquiry, setting out the facts and issues on appeal, to the police. The police responded with written representations, the non-confidential portions of which were shared with the

appellant, and the confidential portions of which were not shared, in keeping with the criteria for withholding representations found in *Practice Direction 7* of the IPC's *Code of Procedure*. I also sought and received written representations in response from the appellant, which were shared with the police in their entirety. The police were invited to provide reply representations, but advised the IPC that they had nothing further to add to their previous ones.

[9] For the reasons that follow, I uphold the reasonableness of the police's search and dismiss this appeal.

DISCUSSION:

Did the police conduct a reasonable search for responsive records?

[10] The appellant claims that additional records exist beyond those identified by the police, so the issue to be decided is whether the police have conducted a reasonable search for records as required by section 17.¹ As explained below, since I am satisfied that the search carried out was reasonable in the circumstances, I have no reason to order a new search.

[11] The *Act* does not require an 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

[12] 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 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

The police's evidence

[13] The police were required to provide a written summary of all steps taken in response to the request, in affidavit form signed by the person or persons who conducted the actual search, and they did so.

[14] The search was conducted by a Disclosures Analyst of the Access and Privacy Section of the police who has served in that role for about eight years. Her affidavit explains that part of her role is to search and provide records for requests for information pursuant to the *Act*. Based on this description of her employment, and the

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 Order MO-2185.

steps she took in this appeal as described below, I accept that this employee was knowledgeable and experienced in the subject matter of the request.

[15] Having reviewed this employee's affidavit, I also find that it sufficiently explains where she searched, and which other police employees/units she contacted to locate responsive records:

- She attests to having searched the appropriate police databases and locating the responsive 9-1-1 call, a general occurrence report (with its attachments), and in-car camera (ICC) footage. The employee explains that the attachments to the general occurrence report (which is also the appellant's arrest record) included attachments for all memorandum notebook notes, booking and release video, and in-house security video at the specified business. These attachments were provided to the appellant as part of his disclosure during his criminal court proceedings.
- The employee also ordered and provided the 9-1-1 recording to the appellant shortly after the appellant expressed interest in it.
- She also knew to e-mail the Video Services Unit to inquire about video footage regarding the portion of the request dealing with Division 11. She was advised that there were no cameras in the reception area of Division 11.⁶
- The employee also explained that the appellant was invited to view ICC footage with a named officer, and that that officer confirmed that the footage that was shown to the appellant was the same footage that had been provided to the appellant. She also attests that the Information Systems Services unit was contacted to inquire about ICC footage, and that unit advised her that ICC footage is uploaded automatically and there is no possibility that it can be altered prior to upload.

[16] I find that police employee's efforts to search relevant databases, retrieve the 9-1-1 call and other responsive records, and contact other units for further responsive records (or explanations as to why they do not exist) were reasonable and appropriate steps to take in response to the appellant's request.

[17] The police employee's affidavit also addresses the number of officers who attended the call on the day of the incident in question, as did the appellant, but I do not find this issue relevant to whether the police conducted a reasonable search for responsive records.

The appellant's evidence

[18] Although a requester will rarely be in a position to indicate precisely which records the ministry has not identified, the requester still must provide a reasonable

⁶ The police provided additional representations on the cameras at Division 11 which were not shared with the appellant and which I am unable to reproduce here.

basis for concluding that such records exist.⁷

[19] In this case, the appellant did not do so.

[20] Many of his representations do not relate to the issue of reasonable search. They have to do with access to portions of responsive records that have been withheld under the personal privacy exemptions in the *Act*. However, the issue of access was removed from the scope of this appeal at mediation. Therefore, if the appellant would like to pursue full access to these records, he is free to make another request to the police under the *Act*.

[21] Apart from raising the issue of access, the appellant submits that what was captured on the video footage provided to him does not have a "narrative logic" that can be understood, does not show the entire sequence of events, and/or was edited to hide alleged misconduct by the police towards him. I am not persuaded by these assertions that the police's search steps were unreasonable. In addition, as mentioned in the Overview section above, some video footage was not released to the appellant on the basis of the personal privacy exemptions; however, that is an access issue, which is no longer within the scope of this appeal. In an appeal with the sole issue of reasonable search, the only issue is whether an institution took reasonable steps in conducting its search.

[22] For these reasons, I find that the police's search for responsive records was reasonable.

ORDER:

I uphold the police's search and dismiss this appeal.

Original Signed by: _____
Marian Sami
Adjudicator

November 26, 2018

⁷ Order MO-2246.