

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3698

Appeal MA17-287

Toronto Police Services Board

November 29, 2018

Summary: The appellant made a request to the Toronto Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to parking tickets issued by the police. The police issued a decision advising that no responsive records were located. The appellant appealed the decision taking issue with the reasonableness of the police's search. In this order, the adjudicator finds that the police's search was reasonable.

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 following request was made to the Toronto Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

I want all notes and information from [named officer] in regards to file [specified file number] and all information that was given to you from [named officer] when she retired.

[2] The police issued a decision advising the requester that no records responsive to his request could be located, stating:

Please note that generally speaking, officers performing inside duties, such as those at the Parking Enforcement Unit, do not identify every incident reported to them. Unless a significant event occurs, entries in their memorandum book notes are general in nature, and in this case, they were not responsive to your request.

[3] The requester (now the appellant) appealed the police's decision.

[4] During mediation, the appellant advised the mediator that he believes records responsive to his request exist.

[5] The mediator conveyed the appellant's position to the police, which responded by advising the mediator that a search for responsive records was conducted and yielded copies of the infraction and tags, which did not appear to be responsive to the appellant's request. The police stated that as this was more of an administrative matter, daily notes were not generally required. The police noted that although letters were mailed out in response to complaints made by the appellant, they were not necessarily retained and that both officers are now retired.

[6] The police also advised the mediator that the appellant filed another request relating to the same specified file, under which all responsive records (infraction notices and tags) were disclosed to him in full.

[7] After the mediator conveyed the police's response to the appellant, he advised that he continues to believe that further records responsive to his request exist.

[8] As mediation did not resolve the dispute, this appeal was transferred to adjudication. As the adjudicator in this appeal, I sought and received representations from the parties. Representations were shared in accordance with *Practice Direction 7* and section 7 of the IPC's *Code of Procedure*.

[9] For the reasons that follow, I find that the police conducted a reasonable search for responsive records and I dismiss the appeal.

DISCUSSION:

[10] As the appellant claims that additional records exist beyond those identified by the police, the sole issue for me to determine is whether the police 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 police's decision. If I am not satisfied, I may order further searches.

[11] The *Act* does not require the police to prove with absolute certainty that further records do not exist. However, the police must provide sufficient evidence to show that

¹ Orders P-85, P-221 and PO-1954-I.

they have 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

[13] 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

[14] 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.⁶

Representations

[15] The police provided representations in this appeal. In their representations, the police refer to information shared during mediation. They also indicate that they had a number of conversations with the appellant in relation to his request. They submit that subsequent to their initial search, members of the access and privacy section conducted searches with the police officer involved and with the Chief's office. The police confirm that all avenues proved fruitless as no additional records beyond what was provided to the appellant were found (the police noted that they provided the email trail between their analyst and the mediator).

[16] The appellant was provided with a copy of the police's representations and provided his own representations. In the appellant's representations, he deals with other issues that do not address the reasonable search issue, the only issue in this appeal. As a result, the parts of the appellant's representations that are not relevant to the reasonable appeal issue will not be addressed here.

[17] The appellant's representations include 16 pages of detail. Much of the detail consists of a somewhat chronological listing of various tickets that he received and his dealings with the police and court system regarding the tickets. The appellant gives no context as to how his chronological list is relevant to a reasonable search appeal. My assumption is that he is alleging that the police should have records for each of these tickets and his various dealings with the police.

[18] The appellant refers to the specified officer and another officer and submits that the two officers went into a room and wrote a false and misleading letter together to cover things. The appellant submits that though the specified officer may have retired,

² Orders P-624 and PO-2559.

³ Order PO-2554.

⁴ Orders M-909, PO-2469 and PO-2592.

⁵ Order MO-2185.

⁶ Order MO-2246.

he had a file as another specified officer had stated that she left her notes for that officer. The appellant also submits that another specified officer likely has some information as she worked with one of the officers specified in the request. The appellant included a copy of internal correspondence from the police which he submits shows that two identified officers (one of which is the subject of the request) were working on his file. He submits that there have to be notes relating to these officers.

[19] The appellant notes that in September 2014, he sent the police Chief a binder concerning the illegal tickets that parking enforcement was writing and that in November 2014 he also faxed in other information.

[20] As mentioned, throughout the appellant's representations, he indicates that he had dealings with various individuals with the police, referring to various parking tickets he was issued and his dealing with the police as a result.

[21] In one instance, the appellant speaks to a time when his motor vehicle was towed from a specified parking lot even though he submits that he had permission to park there. The appellant submits that he asked many times for the name of the person who gave permission to tow his trailer but never received this information. The appellant also refers to attending court in order to fight the ticket relating to this event and submits that he was never given disclosure despite his repeated requests. In another part of his representations, the appellant speaks to a towing incident from January 2014. The appellant submits that he would like to meet the person that phoned the complaint in to the police stating that the police are hiding that information.

[22] After completing 16 pages of representations, where the appellant sets out the various tickets he received on his vehicles and his various responses. The appellant states that he is not surprised that the police have advised this office that they do not have notes.

[23] A copy of the appellant's representations was provided to the police who provided reply representations. In their reply, the police reiterate that they had confirmed several times that the appellant was provided with all records held by the police and that after conversations with the Chief's office and parking enforcement, that no memo book notes of the two named officers exist. The police also referred to a two year retention of records currently being followed by the parking enforcement unit. The police confirmed that its access and privacy section had reached out to all areas where possible responsive records might exist and disclosed, in full, whatever was uncovered in its search.

Analysis and finding

[24] As set out above, in appeals involving a claim that further responsive records exist, the issue to be decided is whether the police conducted a reasonable search for records as required by section 17 of the *Act*. As mentioned, if I am satisfied that the police's search for responsive records was reasonable in the circumstances, the police's search will be upheld. If I am not satisfied, I may order that further searches be

conducted.

[25] In this appeal, I have considered the appellant's representations where he identifies what he regards as evidence to show that further responsive records exist. I have also considered the police's initial and reply representations. In the circumstances of this appeal, I find that the police have provided sufficient evidence to establish that reasonable searches were conducted for responsive records.

[26] As noted above, although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response, the appellant must, nevertheless, provide a reasonable basis for concluding that such records exist. On my review of the appellant's representations, he suggests that there should be notes regarding the various tickets that he received and his dealings with the police regarding those tickets. The appellant also referred to a binder that he sent to the Chief as well as other information that he faxed to the police. In one instance the appellant refers to not receiving disclosure when he was fighting one of his tickets in court.

[27] In my view, the appellant has not provided a reasonable basis for concluding that further responsive records exist. While the appellant has referred to incidents suggesting that records should exist, I find that he has not provided a reasonable basis for me to conclude that additional records exist.

[28] The police maintain that they conducted a reasonable search for responsive records. As stated above, the *Act* does not require the police to prove with absolute certainty that further records do not exist. However, in this appeal, the police spoke to the existence of police notes in both mediation and their representations noting that notes are not detailed unless a significant event occurs, and the entries in their memorandum notebooks are general in nature, and in this case not responsive to the request. In addition, the police noted that its current retention policy for records is two years. I note that the appellant's request is dated in March 2017 and he refers to many events in his representations, that occurred between October 2013 and February 2015.⁷ It is likely, therefore, that even if responsive records did exist regarding the various tickets issued and exchanges between the appellant and the police, that those records were destroyed in compliance with the police's record retention policy.

[29] Having reviewed the representations of the police, I am satisfied that they conducted a reasonable search for responsive records in this appeal. I am satisfied that the search was conducted by the access and privacy staff who are experienced in dealing with the *Act* and who expended a reasonable effort to locate records related to the request.

[30] Accordingly, I am satisfied that the police provided sufficient evidence to demonstrate that they made a reasonable effort to address the appellant's request and

⁷ The appellant speaks to being in court to appeal parking tickets in April 2017, but it is unclear when those tickets were issued.

locate all records reasonably related to the request.

[31] I find that the appellant has not provided a reasonable basis for me to conclude that the searches conducted by the police were not reasonable, and the appellant has also not provided cogent evidence to support the position that further records exist.

[32] Accordingly, I uphold the police's search for responsive records.

ORDER:

I dismiss this appeal.

Original Signed by: _____

Alec Fadel
Adjudicator

November 29, 2018