

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3740

Appeal MA18-41

Peel Regional Police Services Board

March 6, 2019

Summary: The appellant made a request to the police for access to a copy of detailed notes from a detective and his partner in relation to a specified incident. The police identified a responsive record and withheld some information pursuant to the mandatory personal privacy exemption in section 14(1). The appellant appealed the police's decision and advised the mediator that while she was not pursuing access to the withheld information, she believes that the police should have located notes made by a detective in the police's fraud division. The police's search is upheld as reasonable.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1009, c. M.56, as amended, section 17.

BACKGROUND:

[1] The appellant made a request for access to Peel Regional Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of detailed notes from a detective and his partner in relation to a specified incident.

[2] The police issued a decision granting partial access to the responsive record with severances pursuant to the mandatory personal privacy exemption in section 14(1) of the *Act*. In the decision, the police explained the following:

It should be noted that this was a self-reported incident that you reported at 12 Division and therefore the officers did not make notations in their

notebooks. Due to our retention schedule the CRC report you filled out has been destroyed.

[3] The appellant appealed the police's decision. During the course of mediation, the appellant advised the mediator that she believed additional responsive records should exist. Specifically, the appellant explained that she was seeking access to notes made by a detective in the police's fraud bureau relating to an incident she reported to the police. The appellant confirmed she was not pursuing access to any of the withheld information in the responsive record.

[4] The police consulted with staff at the fraud bureau and reported to the mediator that the bureau could not conduct a search for the detective's notes without the officer's name or badge number. The police also described searches that it undertook to locate responsive records. The mediator conveyed this information to the appellant. The appellant was unable to locate the name or badge number of the detective. Mediation did not resolve the appeal and it was moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*. I sought and received representations from the parties on the sole issue of reasonable search.

[5] In this order, I find that the police conducted a reasonable search for records as required by section 17 of the *Act* and dismiss the appeal.

DISCUSSION:

[6] The sole issue remaining in this appeal is whether the police conducted a reasonable search for records relating to the incident identified by the requester.

[7] 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.

[8] 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

[9] 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

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Order PO-2554.

are reasonably related to the request.⁴

[10] 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

[11] 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

[12] In support of its search, the police provided representations and an affidavit from a Freedom of Information analyst, who the police submit is an experienced employee knowledgeable in the subject matter of the request.

[13] The analyst states that in conducting the search, she searched all databases which may have had responsive records. She affirms that she conducted queries of the appellant's name, as well as the address provided. Based on this search, the affiant located the occurrence referred to in the appellant's request and confirmed that it was a matter in which the appellant had requested assistance regarding her co-worker. The appellant believed that her co-worker had taken her information and used it to open an account.

[14] Based on the query results, she identified individuals within the police who may have responsive records. She further states that she sent emails to those individuals, requesting that they provide her with any officer's notes or communication recordings related to the occurrences.

[15] The affiant affirms that once she received responses from the individuals, she reviewed those responses to ensure that a fulsome search was conducted. She further states that she was satisfied that there were no further outstanding responsive records.

[16] The affiant states that the police provided the appellant with a decision on the records, in which they granted partial access.

[17] The affiant states that the appellant subsequently advised her that she was seeking access to notes made by a detective in the fraud bureau of the police in relation to a specified occurrence. The affiant affirms that she consulted with the police fraud bureau. The affiant states:

I was advised that this was a minor occurrence with no update to the occurrence report indicating that any other officer was involved. There is

⁴ Orders M-909, PO-2469 and PO-2592.

⁵ Order MO-2185.

⁶ Order MO-2246.

no way to determine who the unknown officers were without further identifying information.

[18] In her representations, the appellant provides an account of her interactions with the police relating to the specified incident, as well as her reasons for requiring the records related to that incident.

[19] The appellant states that she is unable to remember the name of the detective in the fraud division. She states that she searched among her belongings that are not in storage and was not able to locate the notebook containing the detective's name. The appellant submits that, at the time, the detective was "young and just about to get married."

[20] The appellant takes issue with the record-keeping practices of the police, stating that it did not make sense for police not to keep detailed unified records tied together within the case filing.

[21] The police were given an opportunity to respond to the appellant's representations, and stated that the information the appellant provided did not aid in its ability to locate additional responsive records.

[22] As noted above, the *Act* does not require the police to prove with absolute certainty that further responsive records do not exist. Rather, the police are required to demonstrate that they have made a reasonable effort to locate responsive records. In this case, I find that the analyst expended a reasonable effort to locate records relating to the appellant and the incident that is the subject matter of the request.

[23] While I take note of the appellant's submission about the police's record keeping practices, I accept the police's explanation that given the occurrence and the fact that there was no update, there is no other way of identifying the fraud detective the appellant may have spoken with in 2007.

[24] In conclusion, I am satisfied based on my review of the police's representations that it made a reasonable effort to locate responsive records, including the detective notes and I dismiss the appeal.

ORDER:

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

original signed by: _____
Stephanie Haly
Adjudicator

_____ March 6, 2019