

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3776

Appeal MA18-38-2

Owen Sound Police Services Board

May 29, 2019

Summary: The Owen Sound Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for all records of the appellant's interactions with the police during a specified period, including 911 dispatch recordings. The police located responsive records and granted partial access to them, withholding some information on the basis of the discretionary exemptions at sections 38(a) (discretion to refuse requester's personal information) and 38(b) (personal privacy) of the *Act*. The police also noted that no responsive 911 audio records exist. The appellant appealed the police's decision. At mediation, the issues were narrowed to the issue of whether the police conducted a reasonable search for responsive records, under section 17 of the *Act*. In this order, the adjudicator upholds the police's search as 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 Owen Sound Police Services Board (the police) received a request under *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for all records of the requester's contact with the police during a specified month and year, including 911 dispatch recordings.

[2] The police conducted a search and located responsive records.

[3] The police then issued a decision granting partial access to the records responsive to the request. Access to the withheld information was denied under the

discretionary exemptions at sections 38(a) (discretion to refuse requester's own personal information) and 38(b) (personal privacy) of the *Act*. With regards to the 911 audio recording requested, the police noted that no responsive records exist. The police advised the requester that 911 audio recording are purged 6 months from the date they are received, in accordance with their retention and destruction of records bylaw.

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

[5] During the course of mediation, the mediator had discussions with both the appellant's representative (her husband) and the police.

[6] The appellant's representative advised the mediator that he believed further records responsive to the request exist, and gave the mediator specific details regarding the further records. The mediator conveyed that information to the police and requested that they conduct a further search for records.

[7] The police conducted a further search and advised the mediator that the records sought were disclosed in a previous request and are not responsive to the present request: the previous request had to do with the appellant's husband, and this request only concerns the appellant. The mediator conveyed this information to the appellant's representative. The appellant's representative advised the mediator he would like to proceed to the next stage of the process on the sole issue of reasonable search.

[8] Accordingly, this file moved to adjudication. As the adjudicator of this case, I began an inquiry under the *Act* by sending a Notice of Inquiry, setting out the facts and issues in dispute, to the police. I sought and received written representations from the police on the issue of reasonable search, and shared these representations with the appellant on consent. I then gave the appellant multiple opportunities to respond to the representations of the police, but her representative advised this office that no representations would be provided.

[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] 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 That is the sole issue in this

¹ Orders P-85, P-221 and PO-1954-I.

appeal. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. On the basis of the following, that is the case here.

[11] 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

[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

The evidence of the police

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

[14] The police provided this office with an affidavit from their freedom of information co-ordinator (the affiant), who has been employed by the police for over twenty years. She stated that she is the police employee responsible for completing all freedom of information requests received by the police, including that of the appellant.

[15] The affiant explained that when she received the appellant's request, she searched through the Records Management System (RMS) of the police by the name of the appellant as stated in her request form. The affiant did not contact the appellant for clarification because she felt that she had an understanding of what was being requested, given the clear wording of the request. As a result of her RMS search, the affiant located one record linked to a specified occurrence number, date, and time.

[16] The affiant reviewed the officer's tab within the RMS system and contacted the investigating officer, requesting that he submit a copy of his notes, statements, and/or photographs as a result of the investigation and advise if any other officers were involved in the incident. The affiant states that the police officer whom she contacted responded to her inquiry with a true copy of his notes. He advised her that no other information was on file. The affiant states that she relied on the information as provided by investigating officer to conclude that all the responsive information on file regarding that incident had been located.

² Orders P-624 and PO-2559.

³ Order PO-2554.

⁴ Orders M-909, PO-2469 and PO-2592.

[17] When concerns about the reasonableness of the police's search were raised at mediation, the affiant conducted another search of the RMS system using the appellant's name. Only the information that had been previously located appeared.

[18] Through speaking with the mediator, the police learned that the issue with respect to reasonable search stemmed from a different occurrence number and the notes of two specified police officers. The affiant states that upon being advised of this, she notified the mediator that the records relating to that different occurrence number do not pertain to the appellant. As a result, the police took the position that those records were not responsive to the request as submitted by the appellant. The police also noted that the information pertaining to that different occurrence number had been provided to the appellant's representative through a separate freedom of information request.

No evidence from the appellant

[19] 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.

[20] In this case, the appellant was given multiple opportunities to respond to the affidavit evidence of the police regarding their search, but her representative indicated that no representations would be provided.

Findings

[21] Without representations from the appellant, I find that she has not provided a reasonable basis for concluding that additional records exist.

[22] In addition, having reviewed the affidavit of the police employee who conducted the search for responsive records, I find that the police provided sufficient evidence to show that they made a reasonable effort to identify and locate responsive records. I find that the police employee who conducted the search is an experienced employee knowledgeable in the subject matter of the request. Given the nature of the request, I find that it was reasonable for her to search the RMS system by the appellant's name. It was also reasonable for her to contact the investigating officer noted in the search result to inquire about additional records he may have, and to ask about the involvement of any other officers in the matter. The fact that she asked for a variety of records (notes/statements/photographs) also adds to the reasonableness of her efforts because by doing so, she was not limiting the investigating officer's search parameters by any particular type of record. I find that it was reasonable for the police employee responsible for the search to rely on the search results of the RMS system and the information provided by investigating officer about responsive records and whether there were other officers involved.

[23] I also find that what constitutes "reasonably related" to the request, in this case,

is clear. The appellant asked for all records relating to her interactions with the police, including 911 records. I find that records relating to a different individual do not "reasonably relate" to such a clear request. Therefore, the fact that the police would not release records involving another individual's interactions with the police is not a basis for believing that additional responsive records exist.

ORDER:

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

Original Signed By: _____

Marian Sami
Adjudicator

_____ May 29, 2019