Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3990

Appeal PA17-359

Ministry of the Solicitor General

September 17, 2019

Summary: The Ministry of the Solicitor General (the ministry) received a request pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to two incidents with the OPP. After conducting its search, the ministry located responsive records providing access to some information but also withholding information on the basis of the discretionary exemptions at section 49(a) in conjunction with section 14(1) (law enforcement) and section 49(b) (personal privacy). The ministry also claimed that portions of the records were not responsive to the request. At mediation, the appellant indicated that he intends to seek access to all the withheld information including the information the ministry claimed was not responsive to the request. The appellant also indicated that he believed further responsive records should exist. In this order, the adjudicator upholds the ministry's decision, in part, and orders the ministry to disclose non-exempt information. He also finds its search to be reasonable.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of "personal information"), 14(1)(l), 17, 21(1), 48(4) (comprehensible form), 49(a), 49(b).

Orders and Investigation Reports Considered: Orders 19, M-715, MO-3699, P-1618 and P0-3742.

OVERVIEW:

[1] The following request was made to the Ministry of the Solicitor General[1] (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act):*

> To Whom it May Concern, I respectfully request copies of:
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> • 911 police panic button, computer call, phone call or any other method that is available for the day of February 13, 2017 at around 12:30 – 1:00 p.m. made to OPP from Kirkland lake District Hospital
>
> • a copy of a dispatch call to police car units
>
> • All police officers return confirmation to response to said call (recorded confirmation)
>
> • All 6-8 police officers' personal and hand written notes in their little black book
>
> • All police officers' computer generated notes
>
> • All 8 ½ by 11 page hand written notes
>
> • All police officers' names, rank and arrival on scene times
>
> • Copies of all hospital staff complaints about [named requester] taken by police while on scene
>
> • Copy of video that police were recording on Feb 13 2017 at around 12:30-1:00 p.m. about [named requester] at Kirkland and District Hospital
>
> • A copy of an audio recording that was done on Feb 15 2017 at around 4:15 at Kirkland Lake OPP detachment when [named requester] was picking up complaint against police form
>
> • Any other hand written, computer generated notes, as well as any video or audio recording documentation that I may have not mentioned regarding [named requester] and Kirkland and District Hospital and staff.

[2] The ministry issued a decision granting partial access to the records responsive

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[1] Formerly the Ministry of Community Safety and Correctional Services.

to the request. Access to the withheld information was denied pursuant to sections 49(a) in conjunction with section 14(1)(l) (facilitate commission of an unlawful act) and 49(b) with reference to section 21(3)(b) and 21(2)(f). The ministry also indicated that certain information was withheld as it was non-responsive to the request.

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

[4] During the course of mediation, the appellant advised the mediator that he believed further records responsive to his request existed at the ministry. The mediator conveyed that information to the ministry, who conducted a further search for records. Following the completion of the further search, the ministry advised the mediator that no further responsive records were located.

[5] During mediation, the appellant indicated that he wishes to pursue access to all of the information withheld by the ministry, including the information withheld on the basis that it is non-responsive to the request. The appellant also believes that further records responsive to his request exist at the ministry.

[6] As no further mediation was possible, the file was transferred to the adjudication stage of the appeals process in which an adjudicator conducts an inquiry under the *Act*. The parties were invited to provide representations which when received were shared in accordance with section 7 of the IPC's *Code of Procedure* and *Practice Direction 7*.

[7] In this order, I uphold the decision of the ministry, in part, but find that the redacted name in the 911 audio recording should be disclosed. I also find that the ministry's search was reasonable.

RECORDS:

[8] The records consist of 12 pages of records consisting of an occurrence summary, a general occurrence report and several pages of police officers' notes, all withheld in part, and two audio recordings being the 911 audio recording and the dispatch audio recording, all withheld in part.

ISSUES:

A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

B. Does the discretionary exemption at section 49(b) apply to the information at issue?

C. Does the discretionary exemption at section 49(a) in conjunction with the section 14(1)(l) exemption apply to the information at issue?

D. Did the institution exercise its discretion under section 49(a) and section 49(b)? If so, should this office uphold the exercise of discretion?

E. What is the scope of the request? What records are responsive to the request?

F. Did the institution conduct a reasonable search for records?

G. Is the ministry required under the *Act* to transcribe the handwritten police officers' notes so that they are comprehensible to the appellant?

DISCUSSION:

Issue A: Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[9] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1), in part, as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> > (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
> >
> > (d) the address, telephone number, fingerprints or blood type of the individual,
> >
> > (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[10] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.[2] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[3]

[11] Sections 2(2.1) and (2.2) also relate to the definition of personal information. These sections state:

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[2] Order 11.
[3] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

> (2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
>
> (2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[12] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.[4] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.[5] Order PO-2225 sets out the two-part test used by this office to assist in determining whether information is about an individual acting in a business capacity as opposed to a personal capacity:

> … the first question to ask in a case such as this is: "*in what context do the names of the individuals appear*"? Is it a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere? ....
>
> The analysis does not end here. I must go on to ask: "is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual"? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?[6]

Representations

[13] The ministry claims that parts of the records contain personal information within the meaning of the definition in section 2 of the *Act*. It submits that all of the responsive personal information belongs to affected third party individuals. The personal information in the written records includes:

- The birthdate, age, gender and home address of an affected party individual on page one

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[4] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[5] Orders P-1409, R-980015, PO-2225 and MO-2344.
[6] See also: Orders MO-2342 and PO-2934.

- The Workplace Identification Number (WIN number) of an employee on page one

- The first name of a health care worker on the 911 audio recording.

[14] The ministry submits that it relies on Order P0-3742, where it was held that the disclosure of the WIN number, particularly when combined with the employee's name, which has already been disclosed to the appellant in this appeal, could reveal something of a personal nature about the employee.

[15] The ministry submits that the personal information in the 911 audio recording consists of the first name, occupation and voice of an affected third party individual and disclosure of this information would reveal the fact that the affected party individual contacted the police for assistance, using the 911 emergency response system. The ministry submits that although this individual is identified in the record as being a health care professional, it is still her personal information. The ministry submits that this affected party was not acting *"in a professional, office or business capacity"* when the record was created, because her job was to treat patients, not to call for police assistance. Instead, the ministry submits that the record contains personal information, because it *"reveals something of a personal nature about"* this individual, namely that she had been concerned enough for her safety and the safety of others to make an emergency phone call.

[16] The appellant was provided with a complete copy of the ministry's representations and was invited to provide his own representations on the issue. The appellant provided representations but did not address all of the issues including if the record contains the personal information of an affected party. Other than some comments about the ministry's search (set out below) the appellant submits that some of the police notes he received are not legible and that he asked the police for a transcription of same (dealt with below). Finally, the appellant submits that the police are covering for each other and if they produce a video recording of what transpired it would clearly show one of their own officers trying to get him into a confrontation.

[17] The affected party whose first name was severed from the audio 911 recording was invited to provide representations during the inquiry but did not do so.

Finding

[18] After a review of the withheld information contained in the records, I find that it contains information that qualifies as the personal information of affected parties. The withheld information contains the affected parties' age, birthdate, address and other information about them that falls within the ambit of paragraphs (a), (d), and (h) of the definition of personal information in section 2(1) of the *Act*.

[19] I agree with the ministry and find that the WIN number of the CAD operator, whose name has been disclosed, constitutes their personal information. I rely on Order

PO-3742, where it was held that the disclosure of the WIN number, particularly when combined with the employee's name, could reveal something of a personal nature about the employee.

[20] However, with regard to the affected party's first name that was not disclosed on the 911 audio recording, I do not agree with the ministry that this constitutes her personal information under the *Act*. The ministry submits that the affected party who called 911 was not acting in a professional, office or business capacity when the record was created, because her job was to treat patients, not to call for police assistance. I disagree. In the circumstances of this appeal, a health care professional called 911 in order to deal with an issue that occurred at the hospital while she was on duty. I find that this individual's name as it appeared in the 911 recording appears in a professional context. Moreover, I find that disclosure of this individual's name would not reveal anything of a personal nature of this individual as this person was contacting 911 in her professional capacity. In Order MO-3699, the adjudicator found that the name of a 911 caller did not constitute personal information as the individual had made the call in their business capacity. Similarly, I find that the context in which this individual's name appears in the record is a business context. As a result, the withheld name of the affected party does not constitute personal information and the ministry will be ordered to disclose this information to the appellant. Further, despite the ministry's submission that the audio contains the affected party's voice and occupation, in my review of the released audio, it is clear that the affected party's voice and occupation have already been disclosed and therefore this information is no longer at issue.

[21] In my review of the records, I find that they all contain the appellant's personal information. Accordingly, I will proceed to consider whether the severed information that I have found constitutes personal information of affected parties (the severed information on page one) is exempt from disclosure under section 49(b).

Issue B: Does the discretionary exemption at section 49(b) apply to the information at issue?

[22] Since I have found that the record contains both the personal information of the appellant and the affected parties, section 47(1) applies to this appeal. Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right.

[23] Under section 49(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the appellant.

[24] If the information falls within the scope of section 49(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the appellant. This involves a weighing of the appellant's right of access to their own personal information against the other individual's right to protection of

their privacy.

[25] Sections 21(1) to (4) provide guidance in determining whether disclosure of the information would be an unjustified invasion of personal privacy under section 49(b). If the information fits within any of paragraphs (a) to (e) of section 21(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 49(b). However, in the circumstances of this appeal, none of these paragraphs apply to the information remaining at issue.

[26] If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 49(b).

[27] The ministry submits that the presumption at section 21(3)(b) and the factor at section 21(2)(f) of the *Act* apply to the personal information at issue. These sections state:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> > was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
>
> A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
>
> > the personal information is highly sensitive;

Representations

[28] The ministry submits that it withheld some of the records because to disclose them would constitute an unjustified invasion of affected parties' personal privacy.

[29] The ministry submits that the presumption at section 21(3)(b) is relevant in this appeal as all of the records it withheld under this exemption relates to an OPP investigation initiated as a result of an emergency request for assistance submitted by an affected party through a 911 call answering service. The ministry submits that while no charges were laid, the presumption at section 21(3)(b) applies nevertheless because if OPP officers had found that an offence had been committed, they could have, as members of the OPP, laid one or more charges, likely under the *Criminal Code of Canada*.

[30] The ministry also submits that the factor at section 21(2)(f) (highly sensitive) applies in the circumstances of this appeal. It submits that affected parties in this

appeal can be considered witnesses or complainants. The ministry relies on Order P-1618 where it was found that the personal information of "complainants, witnesses or suspects" as part of their contact with the OPP is "highly sensitive."

[31] The appellant did not specifically address this issue in his representations.

Finding

[32] I have reviewed the withheld portions of page one for which the section 49(b) exemption is claimed, all of which I have found contains the personal information of an identifiable individuals other than the appellant. The portion of the records which the ministry claims qualify for exemption under section 49(b) include:

Page 1: the birthdate and address of an affected party

Page 1: the WIN number of another affected party

[33] It is clear that the records at issue in this appeal were compiled by the OPP in the course of its investigation of the matters involving the appellant. On the basis of the representations provided by the ministry, I am satisfied that the personal information remaining at issue for which the section 49(b) exemption is claimed was compiled and is identifiable as part of the police investigation into a possible violation of law, and falls within the presumption in section 21(3)(b).

[34] In addition, I am satisfied that, because of the nature of the investigation and the personal information contained in the withheld portions of the records, the personal information is highly sensitive (section 21(2)(f)). I adopt the reasoning in Order P-1618 (mentioned above) to make this finding.

[35] Although the appellant did not comment on section 21(2) factors that might support disclosure of the withheld information, I have assessed the various enumerated considerations in section 21(2) and also considered any unlisted factors and conclude that without specific representations, there are no factors that favour disclosure.

[36] Because the factor in section 21(2)(f) and the presumption in section 21(3)(b) apply to the withheld information, and no other factors favouring disclosure under section 21(2) have been established, I am satisfied that the disclosure of this information would constitute an unjustified invasion of the personal privacy of the affected parties and find that all of the abovementioned severances qualify for exemption under section 49(b).

[37] Accordingly, I find that the withheld portion of the record listed above is exempt from disclosure under section 49(b) of the *Act*, subject to my review of the ministry's exercise of discretion, below.

Issue C: Does the discretionary exemption at section 49(a) in conjunction with the section 14(1)(l) exemption apply to the information at issue?

[38] Under section 49(a) of the *Act*, the institution has the discretion to deny an individual access to their own personal information in instances where the exemptions in sections 12, 13, 14, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that information.

[39] The ministry takes the position that sections 14(1)(l) applies to the portions of records remaining at issue.

Sections 14(1)(l) states:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> > (l) facilitate the commission of an unlawful act or hamper the control of crime.

[40] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[7]

[41] It is not enough for an institution to take the position that the harms under section 14 are self-evident from the record or that the exemption applies simply because of the existence of a continuing law enforcement matter.[8] The institution must provide detailed evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.[9]

Representations

[42] The ministry submits that it applied section 14(1)(l) to information in the occurrence summary at page 1, the police notes at pages 6, 8 and 9 and the dispatch audio recording at issue. It refers to Order PO-3013 and submits that the OPP is a law enforcement agency and the records at issue were created during an OPP response to a 911 call. The ministry also refers to subsection 5(6) of *Regulation 3/99* made under the *Police Services Act*, which requires police forces such as the OPP to have 911 type

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[7] *Ontario (Attorney General) v. Fineberg,* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[8] Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.
[9] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

services for the purpose of answering and responding to emergency calls.

[43] The ministry submits that it applied section 14(1)(l) to protect the integrity of its law enforcement operations, and out of concern for the privacy of affected third party individuals. The ministry further submits that it applied the exemption in consideration of the principle cited in *Ontario (Attorney General) v. Fineberg*[10], which is that that the law enforcement exemption must "be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context."

[44] The ministry submits that section 14(1)(l) states that it may refuse to "disclose a record where the disclosure could reasonably be expected to ... facilitate the commission of an unlawful act or hamper the control of crime."

[45] The ministry submits that it has applied section 14(1)(1) to pages 1, 6, 8, 9 and the emergency 911 dispatch recording, on the basis that they contain internal police codes, which are widely used internally as part of OPP operations. The ministry submits that many IPC order have found that police codes qualify for exemption under section 14(1)(l), because of the reasonable expectation of harm from their release."[11] The ministry maintains that it has withheld these police codes in accordance with its usual practice, and in particular because the disclosure of these codes could make it easier for individuals carrying out criminal activities to have internal knowledge of how systems within the OPP operate. The ministry submits that disclosure of internal police codes could jeopardize the security of law enforcement systems and the safety of the OPP staff identified by them

[46] The appellant did not speak to this exemption, despite being provided with the ministry's representations.

Finding

[47] A number of previous orders have found that internal police codes qualify for exemption under section 14(1)(l), because of the reasonable expectation of harm which may result from their release.[12] In the circumstances of this appeal, I am satisfied that the ministry has provided sufficient evidence to establish that disclosure of the operational codes, found on pages 1 being the occurrence report and pages 6, 8 and 9 being the police officers' notes, along with several excerpts on the dispatch audio recording could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.

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[10] (1994), 19 O.R. (3d) 197 (Div. Ct.).
[11] M-393, M-757, M-781, M0-1428, P0-1665, P0-1777, P0-1877, P0-2209, and P0-2339, PO-2409.
[12] see, for example, M-393, M-757, M-781, MO-1428, PO-1665, PO-1777, PO-1877, PO-2209, and PO-2339

[48] I find that the operational codes and other police code information including other numerical information are exempt under section 49(a), in conjunction with section 14(1)(l), subject to my review of the ministry's exercise of discretion, below.

Issue D: Did the institution exercise its discretion under section 49(a) and section 49(b)? If so, should this office uphold the exercise of discretion?

[49] The exemptions in sections 49(a) and 49(b) are discretionary and permit the ministry to disclose information, despite the fact that it could be withheld. On appeal, this office may review the ministry's decision in order to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so.[13]

[50] In its representations, the ministry submits that it exercised its discretion properly in not releasing the withheld information in the records. The ministry submits that it exercised its discretion based on the following considerations:

- The public policy interest in safeguarding the privacy of affected third party individuals, and in particular those whose personal information is collected as part of law enforcement activities
- The concern that the disclosure of the records would jeopardize public confidence in the OPP, especially in light of the expectation that information the public provides to the police and its dispatchers during a 911 call will be kept confidential
- The OPP has acted in accordance with its usual practices, in severing law enforcement records containing internal police codes and affected third party personal information.

[51] The appellant did not address this issue in his representations.

[52] In considering all of the circumstances surrounding this appeal, except for the redacted name in the 911 audio recording which the ministry will be ordered to disclose, I am satisfied that the ministry has considered the appropriate factors in exercising its discretion, and has not erred in its exercise of discretion not to disclose the records under sections 49(a) and 49(b) of the *Act*.

Issue E: What is the scope of the request? What records are responsive to the request?

[53] The ministry withheld some information on the basis that it is not responsive to the appellant's request. The appellant disagrees with this assessment.

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[13] Orders PO-2129-F and MO-1629

[54] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

> (1) A person seeking access to a record shall,
>
> > (a) make a request in writing to the institution that the person believes has custody or control of the record;
> >
> > (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;
> >
> > . . .
>
> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[55] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.[14]

[56] To be considered responsive to the request, records must "reasonably relate" to the request.[15]

Representations

[57] The ministry submits that it adopted a liberal and literal interpretation of the request. It submits that the request provided sufficient detail to identify responsive records. The ministry submits that the portion of the records that were marked as non-responsive were done so for the following reasons:

- The portions of the officer's notes withheld as non-responsive relate to incidents that are not the incidents at issue in this appeal. The ministry submits that OPP officers prepare time-sequenced notes that contain all the law enforcement activities they have been involved with during the course of their shift and as a result portions of the notes do not relate to the incidents in which the appellant was involved.

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[14] Orders P-134 and P-880.
[15] Orders P-880 and PO-2661.

- The withheld information in the occurrence summary and general occurrence report contain administrative information relating to when both records were printed for the purpose of responding to the appeal. The ministry relies on Order PO-2660 to support that this type of information is not part of the record and therefore not responsive to the request.

[58] In his representations, the appellant did not explain why he would be entitled to this information.

Finding

[59] I have reviewed the various severances in the records which the ministry claims are not responsive to the appellant's request. I agree with the ministry that they relate to incidents that are not the incidents referred to in the appellant's access request as well as information in the occurrence summary and general occurrence report that is administrative information relating to when the records were printed. Although the appellant indicated at mediation that he wanted access to all of the severed information, he did not explain in his representations how this information is responsive to his request. Accordingly, I find that the ministry is not required to disclose the information it has identified as not responsive to the request.

Issue F: Did the institution conduct a reasonable search for records?

[60] 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.[16] 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.

[61] 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.[17] To be responsive, a record must be "reasonably related" to the request.[18]

[62] 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.[19]

[63] A further search will be ordered if the institution does not provide sufficient

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[16] Orders P-85, P-221 and PO-1954-I.
[17] Orders P-624 and PO-2559.
[18] Order PO-2554.
[19] Orders M-909, PO-2469 and PO-2592.

evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[20]

[64] 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.[21]

Representations

[65] The ministry submits that although the appellant indicates a belief that further responsive records should exist, he did not provide any information to support this position, including during mediation. The ministry provided an affidavit sworn by the staff member that performed the search and describing the ministry's search efforts. In that affidavit, the affiant states:

- He has been employed by the OPP since 2002 and from 2009 has worked in the freedom of information and privacy office and since 2011 has served as the freedom of information liaison between the north east region of the OPP and the freedom of information and privacy office

- When he received the request it was sufficiently clear that he did not require additional clarification in order to identify responsive records and completed a search of Niche RMS, the police records database that the OPP and other police services use to store law enforcement occurrences

- Because of the location of the occurrences, he contacted the OPP provincial communications centre in North Bay and requested responsive audio and video recording for both dispatch and 911 calls and obtained audio recordings while being informed that there were no video recordings

- Another liaison staff member contacted the clerk at the Kirkland Lake detachment of the OPP to provide all of the responsive records, including officers' notebook entries and any witness statements and after receiving the information was informed by the clerk that there were no other responsive records

- After providing the responsive records to the freedom of information analyst in North Bay, he was contacted and advised that the requester had appealed and a mediation was being conducted. As a result of the mediation, he was asked to confirm that there were no police statements responsive to the occurrence

[20] Order MO-2185.
[21] Order MO-2246.

related to the incident at the hospital resulting in another search at Niche RMS which confirmed that there were no statements related to this occurrence

- Due to the fact that responsive records were generated in the year that the search was conducted the affiant indicated that there was no reason to believe that records were destroyed.

[66] The appellant addressed this issue in his representations and submits that he requested the arrival times for each police unit but no document was ever received. In my view, this was the only part of the appellant's representations that addressed the search issue.

Finding

[67] As set out above, the *Act* does not require the ministry to prove with absolute certainty that further records do not exist. However, it must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.[22] In this appeal, I have considered the appellant's representations where he addresses the search issue along with the ministry's representations on the issue. In this instance, and for the reasons set out below, I find that the ministry has provided sufficient evidence to show that its search was reasonable.

[68] As noted, 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, the only point he makes with regard to the search issue is that the ministry did not provide the arrival times for each police unit. However, I note that during mediation, the mediator took the appellant's concerns on the search to the ministry and another search was conducted with no further responsive records being located. In my view, the appellant has not provided a reasonable basis for me to conclude that further responsive records will be located if a further search is ordered. Further, in my review of the disclosed information, I note that the police officers' notes indicate a time in the margin of the note.

[69] Having reviewed the representations and evidence of the parties, I am satisfied that the ministry conducted a reasonable search for responsive records in this appeal. I accept the affidavit evidence provided by it, that the ministry made a reasonable effort to identify and locate responsive records. I am satisfied that the search was conducted by an experienced employee who expended a reasonable effort to locate records related to the request. The individual who conducted the search commenced working in the freedom of information office since approximately 2009 and as such has knowledge

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[22] Orders P-624 and PO-2559.

of the information pertaining to the request in this appeal.

[70] While the appellant has referred to information that he has not received, suggesting that records should exist, I find that he has not provided a reasonable basis for me to conclude that additional records exist. As stated above, the *Act* does not require the ministry to prove with absolute certainty that further records do not exist. I am satisfied that the ministry provided sufficient evidence to demonstrate that it made a reasonable effort to address the appellant's request and locate all records reasonably related to the request.

[71] Accordingly, I uphold the ministry's search for responsive records.

Issue G: Is the ministry required under the *Act* to transcribe the handwritten officers' notes so that they are comprehensible to the appellant?

[72] The appellant submits that the police officers' notes to which he has been given access are illegible and the ministry should be required to provide him with a "transcript" of the notes in comprehensible form.

Section 48(4) of the *Act* reads:

> Where access to personal information is to be given, the head shall ensure that the personal information is provided to the individual in a comprehensible form and in a manner which indicates the general terms and conditions under which the personal information is stored and used.

[73] In Order 19, the adjudicator addressed the issue of the applicability of section 48(4) finding that it only requires an institution to ensure that the average person can comprehend the records; it does not create a further duty to assess a specific requester's ability to comprehend particular records.

[74] Having considered the evidence before me, including the records themselves, I find that the ministry has met its obligations under section 48(4) of the *Act* by providing the information to the appellant in a "comprehensible form."

[75] I agree with the finding in Order 19 that section 48(4) requires only that an institution ensure that the average person is able to comprehend the records. I also agree with the finding of the adjudicator in Order M-715, that the *Act* does not place a specific duty on an institution to provide copies of records that are legible. However, I also note that in Order M-715, the adjudicator goes on to state that "the general principles of access under the Act require that, if the institution is going to provide the appellant with a copy of the records, it should make every effort to ensure that the copies are of a reasonable quality." I agree with the adjudicator's finding in that respect. In my view, these findings from previous orders are relevant and applicable to the case before me.

[76] Having reviewed the police officers' notes that the appellant argues are illegible, while I acknowledge that some of those officers' notes are quite challenging to read, in my view, they are of reasonable quality and are comprehensible. Therefore, I find that the officers' notes were provided to the appellant in a comprehensible form within the meaning of section 48(4) and there is no obligation on the ministry to provide him with a typewritten copy or transcript of those records.

ORDER:

1. I uphold the ministry's decision with respect to section 49(a) and 14(1)(l) for information on the occurrence report on page 1, information in the police officers' notes on pages 6, 8 and 9 as well as information on the dispatch audio recording.

2. I uphold the ministry's decision to withhold information under section 49(b) in part. I order the ministry to disclose the individual's name on the 911 audio recording by **October 22, 2019** but not before **October 17, 2019**.

3. I uphold the ministry's search as reasonable.

4. In order to verify compliance with order provision 2, I reserve the right to require the ministry to provide me with a copy of the records which are disclosed.

Original signed by
Alec Fadel
Adjudicator

September 17, 2019