

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3888

Appeal MA18-567

Peel Regional Police Services Board

January 16, 2020

Summary: This order disposes of the sole issue of whether the Peel Regional Police Services Board (the police) conducted a reasonable search under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records related to a traffic stop. 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. 2990, c. M.56, as amended, section 17.

OVERVIEW:

[1] The Peel Regional Police Services Board (the police) received a request from an individual under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to an incident where he was stopped by the police on suspicion of driving under the influence. In his request, he specified that he seeks access to "officer notes" relating to that traffic stop. The appellant also requested the "value of [his] cheques" that he says disappeared during that traffic stop.

[2] The police issued a decision granting partial access to an occurrence report and the officer notes identified as responsive to the request. They advised that they withheld portions of the records pursuant to the mandatory personal privacy exemption at section 14(1) of the *Act*.¹ The police noted that "neither the occurrence report [nor] the officer's

¹ As any records responsive to the appellant's request would necessarily contain his own personal information, the appropriate personal privacy exemption to be claimed would be the discretionary one in section 38(b) rather than section 14(1). However, as the appellant did not appeal the police's access decision, it is not necessary for me to address this issue.

notes [relating to the traffic stop] make a reference to cheques.”

[3] The requester, now the appellant, appealed the police’s decision.

[4] During mediation, the appellant confirmed that he does not seek access to the portions of the records that the police severed pursuant to section 14(1) of the *Act*. He requested however, that the police search for any records of a conversation he had with a specific detective in April 2017 regarding the cheques referred to in his request. The police agreed to expand the scope of the request to include a search for any records relating to such a conversation or any records that reference cheques belonging to the appellant.

[5] The police advised the mediator that they followed up with the detective identified by the appellant and he did not locate any records relating to a conversation with the appellant in April 2017. However, the police advised that they had located an additional record that might be responsive to the request, a Public Complaint Investigation Report involving the appellant, regarding a complaint relating to missing property. The police issued a supplementary decision granting partial access to this record. Access to some of the information in that record was denied pursuant to the discretionary exemptions at section 38(a) (discretion to refuse requester’s own information), read in conjunction with section 8(1) (law enforcement), and section 38(b) (personal privacy) of the *Act*. The appellant confirmed that he does not seek access to the severed portions of the newly located record.

[6] The mediator relayed the details of the police’s search to the appellant, who advised that he continues to believe that additional records responsive to his request should exist. Therefore, the issue of the reasonableness of the police’s search for responsive records remains at issue in this appeal. The appellant also continued to state that he should be reimbursed the “value of [his] cheques.”

[7] As a mediated resolution was not reached, the file was transferred to the adjudication stage of the appeal process and an adjudicator conducted a written inquiry under the *Act*. The adjudicator assigned to the appeal began her inquiry by sending a Notice of Inquiry to the police initially and they provided representations. She then sent a Notice of Inquiry and a complete copy of the police’s representations to the appellant, who provided representations in response. The adjudicator determined that it was not necessary to share the appellant’s representations with the police to seek a reply.

[8] The appeal was transferred to me to complete the inquiry. In this order, I find that the police conducted a reasonable search for records responsive to the request and I dismiss the appeal.

PRELIMINARY ISSUE:

[9] In his request, during the mediation of this appeal and in his representations, the appellant states repeatedly that he seeks “the value of [his] cheques.” In his representations, the appellant explains that in the summer of 2014, the police stopped him on suspicion of driving under the influence. He states that he was apprehended and taken to hospital for his blood alcohol level to be measured. He states that when the results demonstrated that his blood alcohol level was zero, the police released him. He states that

when he returned to his vehicle, his bag containing two cheques, his passport and other documents was no longer there. He further states that in the fall of 2014, the police agreed to conduct an investigation into his missing belongings and promised to return the value of his cheques as long as he signed some papers. He states that he refused to sign the papers because the police would not tell him what they contained. He submits that a month later, when he contacted the police to ask them to provide him with the value of his cheques, the police advised him that they had closed the investigation.

[10] The appellant states that he subsequently contacted legal aid to try to get help in getting the value of his cheques reimbursed to him, but legal aid refused to take on his case. He submits that finally, in February 2017, he contacted the police again to have the investigation re-opened and was told at that time that the value of his cheques would be reimbursed. The appellant submits that to date, he has not been reimbursed the value of his cheques and that is what he seeks through this appeal.

[11] From the information before me, it appears that the appellant's primary concern in this appeal is either to recover the cheques that disappeared from his car while it was left unattended during a traffic stop or that he be reimbursed the value of his cheques. In this appeal under the *Act*, it is not within my jurisdiction to make a determination on whether the police, or anyone else, must reimburse the appellant the "value of [his] cheques" and I will not be addressing that matter in this appeal. Rather, my jurisdiction under the *Act* is limited to determining the reasonableness of the police's search for records that are responsive to the appellant's request. That is the sole issue I will address in this appeal.

DISCUSSION:

[12] As the appellant claims that additional records exist beyond those identified by the police, I must determine whether the police conducted a reasonable search for records responsive to the request, as required by section 17 of the *Act*.

[13] 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 that are reasonably related to the request.² 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.

[14] The police submit that the appellant's request contained sufficient detail to enable an experienced employee, upon reasonable effort, to identify the records sought. They submit that it is clear from the request that he seeks records, including officers' notes, pertaining to an incident on an identified date when he was stopped by the police. The police state that it is also clear that he seeks to recover the value of two cheques that he alleges disappeared during the traffic stop when his car was left unattended. They also submit that during mediation, the appellant made it clear that he was also seeking records detailing a conversation that he says he had with a detective in April 2017 regarding the cheques referred to in his request.

² Orders M-909, PO-2469 and PO-2592.

[15] The police submit that they adopted a liberal reading of the request by interpreting it to encompass any record that detailed interaction between the appellant and the police on the date of the traffic stop, as well as any subsequent reference to the cheques the appellant says disappeared during that stop. They submit that when conducting their search, they did not limit the scope of the request and they describe the steps taken to locate any responsive records.

[16] The police submit that a Freedom of Information Analyst (the FOI analyst), who is an experienced employee knowledgeable in police records, took the following reasonable steps to locate responsive records:

- Confirmed the request provided sufficient detail to identify the responsive records.
- Interpreted the scope of the request liberally to include any record containing information regarding contact with the appellant, including at the specified locations and dates.
- Conducted queries of the appellant's name in several specified police databases.
- Obtained and reviewed a Persons Detail Report, which contains a summary of all Peel Police occurrences involving the appellant.
- Identified any individuals within the police who may have responsive records and made a request for any officer's notes and any "communications recordings related to the records sought."
- Reviewed all responses and confirmed that there were no further materials outstanding.

[17] The police's summary of the steps taken by the FOI analyst was supported by an affidavit sworn by that analyst which describes the steps she took to locate records responsive to the request.

[18] The police submit that following the initial search and their decision to grant partial access, they agreed to expand the scope of the request to include a search for any records relating to a conversation the appellant says that he had with a detective in April 2017. They submit that the broader search returned a Public Complaint Investigation Report regarding a complaint of missing property. The police submit that the report was provided to the appellant, in part, with a supplementary decision.

[19] The police conclude their representations by stating:

All avenues to identify responsive records have been exhausted. All potential responsive databases were searched. All members who had involvement in any responsive occurrence were requested to search for responsive records and did so. Those who did not have responsive records provided reasonable information to satisfy the Acting Coordinator that there were no further records.

[20] The appellant's representations do not specifically respond to the police's representations that set out the steps they took when conducting searches for records

responsive to his request. As previously described under the heading "Preliminary Issue," the appellant's representations focus on his interpretation of what transpired when he was stopped by the police and his subsequent interactions with them in his attempt to recover the "value of [his] cheques."

[21] As stated above, 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 17.³ Additionally, 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.⁴ To be responsive, a record must be "reasonably related" to the request.⁵

[22] Having considered the evidence before me, I am satisfied that the police have conducted a reasonable search for responsive records, including for any records referencing the cheques referred to by the appellant. Specifically, I am satisfied that the police's representations demonstrate that an experienced employee, knowledgeable in records related to the subject matter of the request, made a reasonable effort to locate all responsive records. I accept that the police interpreted the request liberally, did not limit the timeframe and searched for records related to the traffic stop as well as any records that might refer to the appellant's cheques. I find that the evidence demonstrates that the police searched for records detailing any and all contact that they had with the appellant. As a result, I find that the police expended a reasonable effort to locate any records responsive to the request as well as any records reasonably related to those sought by the appellant.

[23] 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 In the circumstances of this appeal, the appellant's representations focus on his position that the police are responsible for reimbursing him for the value of the cheques that he alleges disappeared when his vehicle was left unattended when he was stopped by the police. He also states generally that the police previously agreed to reimburse him the value of his cheques. I do not accept that the evidence that he has provided to me establishes a reasonable basis upon which to conclude that additional records responsive to his request, including any that refer to his cheques, might exist.

[24] The appellant does not specifically state that he believes that the police are in possession of his cheques or that they should have located the cheques themselves during their search for responsive records and it is not clear that this is his position. However, even if this is his position, I do not accept that he has provided me with a reasonable basis to conclude that the cheques themselves might exist within the police's record holdings.

[25] In conclusion, I accept that the police expended a reasonable effort to locate responsive records and I do not accept that the appellant has provided me with a

³ Orders P-85, P-221 and PO-1954-I.

⁴ Orders P-624 and PO-2559.

⁵ Order PO-2554.

⁶ Order MO-2246.

reasonable basis to conclude that additional records responsive to his request might exist. As a result, I find that the police have conducted a reasonable search as required by section 17 of the *Act* and I dismiss the appeal.

ORDER:

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

Original Signed By: _____
Catherine Corban
Adjudicator

January 16, 2020