

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4037

Appeal MA18-198

Toronto Police Services Board

April 7, 2021

Summary: The sole issue in this appeal is whether the Toronto Police Services Board (the police) conducted a reasonable search for records responsive to the appellant's access request. The appellant appealed the police's decision based on her belief that records should exist. In this order, the adjudicator finds that the police conducted a reasonable search given the nature and extent of their search efforts. The appeal is dismissed.

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 Toronto Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for "[a]ny and all papers, documents re: myself, my family in the care and control of the Chief of Police, [named police chief], police headquarters including complaints re: 13 Division."

[2] The police issued a decision stating that no records could be located matching the information provided by the requester. The police noted that as the requester did not provide the names or consent of the individuals the requester referred to as "my family," these parties were not included in their searches in response to her request for information.

[3] After some attempt by the parties to clarify the request, the police issued a second decision indicating that no record, specifically a file named "[requester's last name] Family," could be located in the office of the named police chief and/or the office of the

chief.

[4] The requester, now the appellant, appealed the police's decision to the Information and Privacy Commissioner of Ontario (the IPC).

[5] During mediation, the police provided information regarding the search for responsive records, which the mediator conveyed to the appellant. Mediation did not resolve the appeal and it was moved to the adjudication stage of the appeal 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.

[6] In this order, I find that the police conducted a reasonable search for records and dismiss the appeal.

DISCUSSION:

[7] The sole issue in this appeal is whether the police conducted a reasonable search for records.

[8] 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.

[9] 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

[10] 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

[11] 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

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Order PO-2554.

⁴ Orders M-909, PO-2469 and PO-2592.

⁵ Order MO-2185.

[12] 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

The police's evidence

[13] The police submit that experienced employees conducted comprehensive searches of the areas where the requested records were likely be stored.

[14] In support of their representations, the police provided an affidavit sworn by an analyst who has worked in the Access and Privacy Section since October 2010. In this affidavit, the analyst details the police's search efforts during the initial request and subsequent appeal stages.

[15] The analyst states that, further to a search of the Office of the Chief, the police issued a decision confirming they found no responsive records based on the information provided by the appellant.

[16] The analyst states the police then sought clarification from the appellant at the appeal stage, requesting further information about the family members referenced in the request, as well as authorizations from these individuals. The analyst attests that the appellant's response included the name of the file she was seeking and its content, her home address, as well as confirmation that she lived with the family members in question, and her view that no authorization should be required. The analyst further states that a staff person from the IPC⁷ advised that he had met with the appellant, who in turn told him that she had been providing documents to the Office of the Chief since 1990. The analyst attests that, further to receiving that information, four members of the chief's office undertook another search, this time searching the Letter File system and records room, but no responsive records relating to the appellant were located. The police issued a decision letter to the appellant confirming that further searches took place and no responsive records were located.

[17] The analyst states that subsequently the police made additional search efforts, and no records related to the appellant were located. These efforts included a search of a named police constable's digital records, the Letter File system and the storage room. The analyst states that she was informed that all documents received by the chief's office are registered in their Letter File system, and once assigned a number, they are distributed to the appropriate Command Unit.

The appellant's evidence

[18] The appellant provided a red folder of documents to the IPC staff member⁸, and

⁶ Order MO-2246.

⁷ The staff member was an analyst from the Intake department of the IPC.

⁸ Ibid.

left voicemails to the mediator in response to the Mediator's Report. During the inquiry conducted at the adjudication stage, the appellant spoke to the adjudication review officer assigned to this appeal and referred the adjudication review officer to the red folder and voicemails as evidence in support of her appeal.

[19] The red folder contains a number of documents, some of which describe past interactions between the appellant, her family and the police.⁹

[20] In her voicemails, the appellant shared her view that she is not required to provide the consent of her mother (now deceased) and her daughter (a minor at that time of the request) and questioned why the police need consent if no record exists. She advised that she would like to know the identity of the individual who gave the order that her family should not receive police service. She also questioned whether the file exists by a number and not a name, and if it may exist in another office and not the chief's office.

Analysis and finding

[21] I have reviewed both the appellant's voicemails and the contents of the folder of documents submitted to this office in support of her position that records responsive to her request exist. The appellant's belief that responsive records should exist is based on both her and her family's past experience with police which is set out in the confidential documents provided.

[22] However, given the police's evidence of multiple searches, I am satisfied that they made reasonable efforts to locate records responsive to the request. 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.

[23] In this case, the police provided affidavit evidence sworn by an analyst with approximately a decade of experience in the Access and Privacy Section, explaining the nature and extent of their searches. The analyst stated that the police conducted an initial search in response to the request. The analyst further stated that after clarifying the request and obtaining further information from the appellant, they conducted two additional searches during the appeal process. As detailed by the analyst, the Letter File system, storage room and records room in the Office of the Chief were searched. Given that the appellant specified in her request that she sought records "in the care and control of the Chief of Police," I find that such records would reasonably be expected to be located in the places searched by the police. Furthermore, the analyst affirmed that all documents received by the Office of the Chief are registered in their Letter File system, which was searched more than once. Lastly, several members of the Office of the Chief

⁹ The appellant indicated that the information in the red folder should not be shared with the police and I have not provided the police with a copy of the information. I accepted the appellant's position that this information is confidential for the purposes of the inquiry.

carried out these three searches, including the Chief/Board Correspondence Coordinator, a police constable and a receptionist. The analyst confirmed that after carrying out the search efforts detailed above, the police did not locate responsive records. I am satisfied by this evidence and I find that the police's search efforts were reasonable.

[24] The appellant raised the possibility that responsive records may exist elsewhere than in the chief's office. While this may be possible, the appellant specified in her request that she was seeking records "in the care and control of the Chief of Police." As such, the police reasonably targeted their search efforts to the Office of the Chief. Given the nature of the appellant's representations and in particular, the records she is seeking, I find the focus of the police's search to the chief's office to be reasonable.

[25] In light of the above, I find that the police has provided detailed information regarding the nature, extent and results of its searches for responsive records. In conclusion, I am satisfied based on my review of the police's representations that it made reasonable efforts to locate responsive records, and I dismiss the appeal.

ORDER:

I find the police's searches to be reasonable and dismiss the appeal.

Original Signed by: _____
Stephanie Haly
Adjudicator

_____ April 7, 2021