

Information and Privacy Commissioner,
Ontario, Canada



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

FINAL ORDER MO-4054-F

Appeal MA19-00129

Ottawa Police Service

May 21, 2021

Summary: This final order follows Interim Order MO-4014-I. The appellant made a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ottawa Police Service (the police) for access to information relating to her in reports and officers' notes. The police located responsive records and granted the appellant partial access to them, with severances under sections 14(1) and 38(b) of the *Act* (personal privacy). The appellant appealed the police's decision, and challenged the adequacy of their search for responsive records. In Interim Order MO-4014-I, the adjudicator found that the information that the police withheld from the records is exempt from disclosure under the discretionary personal privacy exemption in section 38(b), but she ordered the police to conduct a further search for an officer's notes. In this final order, the adjudicator finds that the police have now conducted a reasonable search for responsive records and dismisses the appeal.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 17.

Orders Considered: Order MO-4014-I.

OVERVIEW:

[1] This final order disposes of the only issue remaining from Interim Order MO-4014-I, specifically, whether the Ottawa Police Service (the police) conducted a reasonable search for records responsive to the appellant's request, as required by section 17 of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] The appellant made a request under the *Act* for access to:

1. All information that relates to me.
2. All information that relate[s] to me in the police officer's notebooks.

[3] The police conducted a search and located responsive records. They issued a decision granting partial access. The police denied access to some information pursuant to the exemptions in section 8(1) (law enforcement), and section 14(1) (personal privacy). The police also withheld some information on the basis that it is exempt under the discretionary personal privacy exemption in section 38(b), with reference to the presumption against disclosure in section 14(3)(b) (investigation into possible violation of law).

[4] The police later issued two supplementary decisions, granting partial access to additional records not previously disclosed, and granting access to one of the records to which they had earlier denied access.

[5] The appellant appealed the police's decision. During mediation, the issues in the appeal were narrowed to access to a September 2015 police occurrence report, to which the police granted partial access, withholding some information on the basis of the personal privacy exemptions in section 14(1) and section 38(b), and to the reasonableness of the police's search for responsive records.

[6] Mediation could not resolve the outstanding issues and the appeal was transferred to the adjudication stage of the appeal process. During the inquiry, I received representations from the police and the appellant.¹ In Interim Order MO-4014-I, I found that the discretionary personal privacy exemption in section 38(b) applies to the information that the police withheld from the September 2015 occurrence report, but that the police had not conducted a reasonable search for responsive records. I ordered the police to conduct a further search for a specific officer's notes.

[7] In this final order, I find that that police have now conducted a reasonable search for responsive records and I dismiss the appeal.

DISCUSSION:

[8] The only remaining issue in this final order is whether the police conducted a reasonable search for responsive records in response to Interim Order MO-4014-I.

[9] Where a requester claims additional responsive records exist beyond those identified by the institution, the issue to be decided is whether the institution conducted a reasonable search for records as required by section 17 of the *Act*.² If, after conducting an inquiry, the adjudicator is satisfied the institution carried out a reasonable search in the circumstances, they will uphold the institution's search. If the adjudicator is not satisfied, they may order further searches.

[10] The *Act* does not require an institution to prove with absolute certainty that further records do not exist. However, the police must provide sufficient evidence to show they

¹ After reviewing the appellant's and the police's representations, and the record at issue, I determined that it was not necessary to invite representations from affected parties to whose personal information the appellant was seeking access.

² Orders P-85, P-221 and PO-1954-I.

made a reasonable effort to identify and locate responsive records.³

[11] 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 reasonably related to the request.⁴ An adjudicator will order a further search if the institution does not provide sufficient evidence to demonstrate it made a reasonable effort to identify and locate all of the responsive records within its custody or under its control.⁵

[12] Although the requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester must still provide a reasonable basis for concluding that such records exist.⁶

Interim Order MO-4014-I

[13] In Interim Order MO-4014-I, I found that the police conducted a reasonable search for records responsive to the appellant's request, with the exception of the notes of one particular officer, Constable W.

[14] During the inquiry, I asked the police to provide a written summary of all the steps they took in their searches conducted in response to the appellant's request.

[15] The police submitted an affidavit sworn by a senior analyst describing their various searches for responsive records. According to this affidavit, the police searched their records management database using different search parameters to locate reports relating to the appellant. These searches identified occurrences relating to the appellant, as well as the officers involved in each. The police contacted those officers who did not have any notes or records attached to a report for an occurrence in which they were involved to provide whatever notes or records they had for any of the identified occurrences.

[16] The police identified seven officers who were contacted for notes, as well as the results of the inquiries regarding their notes. Notes of six of the seven officers contacted were described as being already attached to a report or as having already been provided. In two instances, no officers' notes were available.

[17] With respect to the seventh officer contacted, Constable W, the police's affidavit stated, "Unable to confirm existence of Notes." The police's representations on their search did not otherwise address the matter of Constable W's notes.

[18] While I found that, overall, the police's representations demonstrated that an experienced employee, knowledgeable in records related to the subject matter of the request, made reasonable efforts to locate all responsive records, I found that the police did not conduct a reasonable search for Constable W's notes. I found that the police had not provided sufficient evidence to demonstrate that they had conducted a reasonable search for Constable W's notes because they provided no details regarding any subsequent search for the notes, including what, if any, additional steps they took to determine the existence of Constable W's notes and locate them.

³ Orders P-624 and PO-2559.

⁴ Orders M-909, PO-2469 and PO-2592.

⁵ Order MO-2185.

⁶ Order MO-2246.

[19] Based on the statement, "Unable to confirm existence of Notes," and in the absence of evidence of additional efforts made to locate or determine the existence of Constable W's notes, I found that there was an insufficient basis for me to conclude that the police conducted a reasonable search for those notes. I therefore ordered the police to conduct a further search for Constable W's notes.

Representations

[20] In response to Interim Order MO-4014-I, the police submitted representations and an affidavit regarding their search for Constable W's notes and described their further searches to locate or confirm the possible existence of any written notes. They submit that Constable W has no notes relating to the appellant.

[21] The police provided a second affidavit sworn by a senior analyst, stating that the police searched their records management database for any attachments, such as notes or statements, related to two occurrences in which Constable W's name appeared. According to this affidavit, Constable W's interaction with the appellant was documented in one occurrence report (documenting her primary interaction with the appellant), which was then copied into another occurrence report.

[22] The police submit that the senior analyst sent an email to Constable W asking for any additional notes or records relating to the occurrence reports, or to confirm if none existed. A supervisor also sent an email to Constable W's Sergeant, Staff Sergeant, Superintendent and Records Manager asking for assistance. The police submit that, after these various inquiries, Constable W was able to review her notebook and confirmed that she has no written notes regarding the occurrence in which she was named. The police say that Constable W's notebook was inspected and that it contained no notes regarding the appellant.

[23] The appellant did not submit any representations in response to the police's new representations, informing the IPC that she did not intend to submit a response.

Analysis and findings

[24] I find that the police have now conducted a reasonable search for responsive records, and specifically for Constable W's notes, in satisfaction of Interim Order MO-4014-I. I am satisfied that the police's further search demonstrates that they made a reasonable effort to locate responsive records in fulfilment of their obligations under the *Act*.

[25] As noted above, the *Act* does not require an institution to prove with absolute certainty that further records do not exist. However, the police must provide sufficient evidence to show they made a reasonable effort to identify and locate responsive records.⁷

[26] Based on my review of the police's affidavit and representations, I am satisfied the police have submitted sufficient evidence to demonstrate that they conducted a reasonable search for records responsive to the appellant's request. I am satisfied that an experienced employee knowledgeable in the subject matter of the request expended a reasonable effort to locate records, namely, reports and officers' notes, relating to the appellant. I am

⁷ Orders P-624 and PO-2559.

satisfied that the police made reasonable inquiries for Constable W's notes and were able to examine Constable W's notebook for any entries regarding the appellant.

[27] In the absence of any representations from the appellant, I find no reasonable basis for a belief that further responsive records exist.

[28] For these reasons, I find that the police have now conducted a reasonable search for records, as required by section 17 of the *Act*.

ORDER:

I uphold the police's search as reasonable. As reasonable search was the only remaining issue before me after Interim Order MO-4014-I, I dismiss this appeal.

Original Signed By: _____
Jessica Kowalski
Adjudicator

_____ May 21, 2021