

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4072

Appeal MA19-00263

Hamilton Police Services Board

June 23, 2021

Summary: The sole issue in this appeal is whether the police conducted a reasonable search for records responsive to an access request made under the *Municipal Freedom of Information and Protection of Privacy Act*. In this order, the adjudicator finds that the police conducted a reasonable search for records responsive to the request 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.

OVERVIEW:

[1] This order deals with the reasonableness of a search conducted by the Hamilton Police Services Board (the police) in response to an individual's request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to a complaint she filed with the police in 2015.

[2] The police located responsive records and initially issued a decision letter to the appellant advising that no records exist. The police subsequently issued a revised decision after locating a record identified as an Event Chronology and granted the appellant partial access to it. The police withheld some information contained in the records under the law enforcement exemption in section 8(1).

[3] The appellant appealed the police's access decision to the Information and Privacy Commissioner of Ontario (the IPC) and a mediator was appointed to explore settlement with the parties. During mediation, the appellant confirmed that she was not

seeking access to the withheld information in the records the police disclosed to her. However, the appellant indicated that she continues to seek access to an audio recording of her complaint call to the police.

[4] Initially, the police responded that the audio recording of the appellant's call no longer exists. The police conducted a further search but did not locate the requested audio recording. However, officer notes were located as a result of the police's further search. The police issued a revised decision granting the appellant partial access to the officer's notes. The police indicated that the information withheld from the officer's notes was non-responsive to the request. The police also provided the appellant with a copy of its current retention schedule but indicated that it was outdated and was in the process of being replaced.

[5] The appellant did not appeal the removal of non-responsive information from the officer's notes, but confirmed that she continues to believe that an audio recording of her call to the police should exist. No further mediation was possible and the file was transferred to the adjudication stage in which an adjudicator may conduct an inquiry. I decided to conduct an inquiry, and the parties both submitted written representations in support of their positions. The parties' representations were shared between them in accordance with the IPC's confidentiality criteria in *Practice Direction 7*.

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

DISCUSSION:

[7] The sole issue in this appeal is whether the police conducted a reasonable search for the audio recording of a complaint the appellant filed with the police.

[8] The appellant provided three arguments as to why she believes that the audio recording exists. First, the appellant argues that the retention schedule the police provided her indicates that "daily tapes" are to be permanently retained, in whatever form they exist. Second, the appellant submits that the individual she complained about was charged with criminal harassment and thus an audio recording of her call to the police would have had to be retained to deal with related pending court matters. Finally, the appellant argues that an audio recording of her call should have been retained along with the other records relating to her complaint as they "co-exist together."

[9] In response, the police submit that its computer automated dispatch system (CAD), which records all 911 and non-emergency calls, only has the capacity to retain recordings for three years although the incident information and call information are retained permanently. The police provided an affidavit in which it states that the requested record "would have existed when the appellant placed her original call to the institution however; it is automatically purged 3 years after the recording occurred."

[10] The police's affidavit also provided a written summary of the steps it took in response to the appellant's request, including identifying the original search terms entered into the police's record management system and dispatch system. The police also provided a summary of the additional search it conducted after the appellant filed an appeal with the IPC. The police submit that it was discovered that the original search terms entered in the dispatch system were case sensitive and so a further search was conducted that located an incident number involving the appellant. The police submit that no audio recording was linked to the incident, but that they were able to locate additional officer's notes, which were disclosed in part to the appellant in a subsequent decision letter.

[11] Finally, the police provided confidential representations in the affidavit that responded to the appellant's argument that an audio copy of her call to the police must exist to deal with pending court matters. The police also provided confidential representations regarding the status of efforts to update its retention schedule, which was created in 2006.

Decision and analysis

[12] In this case, the appellant filed a request under the *Act* in 2019 for records relating to a complaint she filed with the police in 2015. The police located responsive paper records but indicate that an audio recording of the appellant's call no longer exists. The appellant takes the position that the audio recording of her call to the police should exist.

[13] 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. Otherwise, I may order the institution to conduct another search for records.

[14] 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

[15] 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

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.

[16] 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

[17] 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

[18] I have considered the evidence of the parties, along with the police's confidential submissions and am satisfied that the police conducted a reasonable search. I find that the police's searches were coordinated and completed by an experienced individual, who was knowledgeable in the subject matter of the request and the police's record management systems. I acknowledge that, unfortunately in this case, the retention schedule provided to the appellant is outdated and not helpful in determining whether the requested record should exist. I accept that the retention schedule was provided to the appellant upon her request and not for the purpose of confirming when the requested record would have been scheduled for destruction.

[19] The police's affidavit provides an explanation regarding the destruction of the requested audio recording based on a built-in feature of its dispatch system that automatically destroys audio calls after three years. I find the police's explanation satisfactory.

[20] I also considered the appellant's arguments as to why she believes that the requested audio recording should exist. However, taking into consideration the police's confidential submissions regarding the status of the matter the appellant complained to the police about, I am satisfied with the police's evidence that the requested record would not have been retained by the police for purposes relating to the prosecution of the individual the complainant complained about.

[21] Having regard to the above, I am satisfied that the police's evidence demonstrates that it expended a reasonable effort to locate records that would be responsive to the appellant's request for a copy of the audio call to the police from her 2015 complaint. Accordingly, I find that the police's search was reasonable and dismiss the appeal.

ORDER:

The appeal is dismissed.

Original Signed By: _____

June 23, 2021 _____

⁵ Order MO-2185.

⁶ Order MO-2246.

Jennifer James
Adjudicator