Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4081

Appeal MA18-400

Halton Regional Police Services Board

July 8, 2021

Summary: The appellant submitted a request to the police for a copy of the summary of work done by a detective regarding an incident in which the appellant was a victim. The appellant also sought access to a recording or transcript of the police's interview of a named individual. The police withheld the complete DVD interview of a named individual and partial information from the supplementary occurrence reports on the basis of section 38(a) with reference to law enforcement exemptions in section 8(1) and 38(b) (personal privacy). The appellant also raised an issue about the reasonableness of the police's search for responsive records. The adjudicator upholds the police's claim of sections 38(a) and (b) for most of the information including the DVD. Further, she upholds the police's search as reasonable. Finally, the adjudicator orders the police to disclose information to the appellant that is not exempt under section 38(b).

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O 1990, c. M.56, as amended, sections 2(1) (definition of personal information), 8(1)(a), 38(a), and 38(b).

OVERVIEW:

[1] The appellant submitted a request for access under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Halton Regional Police Services Board (the police). The appellant indicated a named detective had carriage of an investigation of a 1980 incident in which the appellant was the victim. The appellant sought access to a copy of the named detective's letter/report with a specified date, containing a summary of the work done on the investigation. The appellant advised that the named detective had provided her with the summary earlier, but she was submitting this access request, as she was unable to locate her copy. In addition, the

appellant also requested a copy of a DVD interview with a named individual or a copy of the interview questions and answers.

[2] In response to the request for the named detective's summary of work done, the police disclosed, in part, a compilation of supplementary occurrence reports with severances. The compilation consists of 37 pages, with severances made to all pages except pages 20, 30 and 35. The police withheld information in the reports citing the exemptions in sections 38(a) (refuse access to requester's own personal information), read with sections 8(1) (e) (endanger life or safety), 8(1) (l) (facilitate commission of an unlawful act). The police also relied on section 38(b) (personal privacy) of the *Act*. The police withheld the DVD, in full, based on the same exemptions.

[3] The appellant appealed the police's decision.

[4] During mediation, the appellant confirmed that she was pursuing access to the information withheld in the supplementary occurrence reports and the DVD interview. The appellant also advised that she is not pursuing access to police codes/patrol zone information and statistical information that is in the records at issue.[1]

[5] Also during the course of mediation, the appellant expressed her concern that police officer notebooks had been destroyed after the investigation had re-opened. In support of this, the appellant referred to the supplementary occurrence reports disclosed to her which indicated that two named officers' notebooks had been destroyed in 2011 and 2012. Accordingly, the issue of reasonable search was added to the scope of the appeal.

[6] Mediation did not resolve the appeal and the file was transferred to the adjudication stage of the appeals process where an adjudication may conduct an inquiry. During the inquiry, I sought representations from the police and the appellant. The police provided representations and the non-confidential portions of those representations were shared with the appellant in accordance with the IPC's *Code of Procedure*. The appellant did not provide representations.

[7] In this order, I partially uphold the police's decision and order the disclosure of non-exempt information. I further find the police's search for responsive records to be reasonable.

RECORDS:

[8] The records at issue consist of:

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[1] These severances are at the top of pages 1, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 21, 22, 23, 24, 25, 28, 29, 31, 32, 33, 36, 37. For pages 8, 19, 25, and 31, these are the sole severances on these pages. Accordingly, pages 8, 19, 25 and 31 are not at issue in the appeal.

- A 37-page compilation of supplementary occurrence reports. The information at issue consists of the severances on pages 1-7, 9-18, 21-24, 26-29, 32-34, 36, and 37.

- DVD interview – withheld in full.

ISSUES:

A. Do the records contain personal information as defined in section 2(1) of the *Act* and, if so, to whom does it relate?

B. Does the discretionary personal privacy exemption at section 38(b) apply to the information at issue?

C. Should the police's late raising of additional discretionary exemptions be allowed?

D. Does the discretionary exemption at section 38(a) in conjunction with section 8(1)(a) apply to the information at issue?

E. Was the police's exercise of discretion proper in the circumstances?

F. What is the scope of the appellant's request?

G. Was the police's search for responsive records reasonable?

DISCUSSION:

Issue A: Do the records contain personal information as defined in section 2(1) of the *Act* and, if so, to whom does it relate?

[9] The police submit that the records (the occurrence reports and the DVD) contain information that qualifies as the personal information of the appellant, four suspects and one witness as well as other involved parties. The police submit that the appellant's personal information is intermingled with that of other identifiable individuals, including information about what the affected parties said and did on the day of the occurrence in question.

[10] Personal information is defined in section 2(1) of the *Act* as recorded information about an identifiable individual including the list of examples under paragraphs (a) to (h) of the definition. Based on my review of the records at issue, I find that they contain the appellant's personal information as well as the personal information of a number of identifiable individuals, including information relating to race, sex, age (paragraph (a)); information relating to medical, criminal or employment history of the individual (paragraph (b)); identifying number or other particular assigned to an individual (paragraph (c); address, telephone number, blood type of an individual (paragraph (d)); the personal views or opinions of the individual about the individual

and/or another individual (paragraphs (e) and (g). I further find that the records contain information that qualifies as the appellant and other individuals' personal information under paragraph (h) of the definition of that term in section 2(1) of the *Act*.

[11] I also find that the supplementary occurrence reports contain information relating to police officers and a police composite artist that qualifies as their personal information within the meaning of section 2(1). The records contain information pertaining to the police officer's employment history and their work with the board that qualifies as their personal information within the meaning of paragraph (b) of the definition. Further, the records contain information that qualifies as the police composite artist's personal information within the meaning of paragraph (d) of the definition of that term. I have no reason to find that the composite artist's personal cell phone number is used for business purposes and find that this information is the composite artist's personal information.

[12] I note that the police have disclosed much of the appellant's personal information to her and the only personal information of the appellant's that remains at issue is her information that is intermingled with that of the other individuals whose information is at issue in the records.

[13] As all of the records contain the appellant's personal information, I will consider the exemptions from the appellant's right of access to the information under sections 38(a) and (b) of the *Act*.

Issue B: Does the discretionary personal privacy exemption at section 38(b) apply to the information at issue?

[14] Section 36(1) of the Act gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right. Under section 38(b), where a record contains personal information of both the appellant 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. Since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information to the appellant.

[15] If any of the exceptions in paragraphs (a) to (e) of section 14(1) apply, the personal privacy exemption does not apply. In this appeal, none of these paragraphs were argued and I find that none apply. Furthermore, if any of the paragraphs in section 14(4) apply, disclosure of the information is not an unjustified invasion of privacy and the information is not exempt under section 38(b). I find that none of the circumstances list in section 14(4) are relevant in this appeal. Accordingly, I will only be considering sections 14(2) and (3) in my determination of whether disclosure of the personal information would be an unjustified invasion of personal privacy.

[16] The police submit that sections 14(3)(b), (d), 14(2)(h) and (i) apply to the personal information it has withheld. These sections state:

> (2) 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,
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> > (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
> >
> > (i) the disclosure may unfairly damage the reputation of any person referred to in the record.
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> (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> > (b) 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;
> >
> > (d) relates to employment or educational history;

Representations

[17] The police submit that the presumption at section 14(3)(b) applies because the personal information at issue was compiled and is identifiable as part of an investigation into a possible violation of law. Specifically, the police were investigating an allegation of a sexual assault.

[18] Regarding the section 14(3)(d), the police submits that disclosure of the personal information relating to police officers would disclose information that relates to their employment history.

[19] The police submit that the information was supplied in confidence so that the factor in section 14(2)(h) is also relevant. The police submit that individuals would think twice before calling police to report on a potential crime if the information they provide is disclosed.

[20] Finally, the police submit that the factor in section 14(2)(i) is relevant to my consideration because disclosing the personal information in the record would unfairly damage the reputation of a number of the individuals whose personal information is at issue. The police state:

> …numerous individuals referred to in the records were suspects and, although cleared, were still labelled as a "suspect". Disclosing the personal information of affected individuals, particularly when they are referred to as a suspect in a sexual assault, would certainly unfairly damage their reputations.

[21] As stated above, the appellant did not submit representations.

Analysis and finding

[22] Based on my review of the factors in section 14(2) and the presumptions in section 14(3), I find that disclosure of the personal information at issue in the records would be an unjustified invasion of the affected parties' personal privacy.

[23] I accept the police's submissions that the personal information at issue was compiled and is identifiable as part of an investigation into the sexual assault allegation, so the presumption at section 14(3)(b) applies. Further, I accept and give significant weight to the factor in section 14(2)(i) to the disclosure of this information. A number of the affected parties are identified as "suspects" in the records and I find that disclosing their personal information could unfairly damage their reputations.

[24] I further find that section 14(3)(d) applies to the withheld personal information relating to the police officer and the police composite artist and disclosure of their employment history information is presumed to be an unjustified invasion of their personal privacy. The information in the record discloses information about their employment with the police service at the time of the investigation as well as information about the current whereabouts and knowledge of the investigation.

[25] Finally, I accept that some of the personal information in the records was supplied by members of the public in confidence. This factor applies if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. Thus, section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.[2] I accept that the program used by the police to receive information from the public reporting crimes or potential crimes requires that the individual who provides the information has an expectation that the information will be treated confidentially.

[26] Based on my review of the factors in section 14(2) that favour disclosure of the personal information at issue, and my review of the information at issue, I find that none of these factors, or any unlisted factors favouring disclosure apply. Accordingly, as I have found the presumptions in section 14(3)(b) and (d) apply and the section 14(2) factors favouring non-disclosure of the personal information should be given some weight, I find that disclosure of the personal information in the records would be an unjustified invasion of personal privacy and it is therefore exempt from disclosure under section 38(b).

Absurd result

[27] Where the appellant originally supplied the information, or the appellant is

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[2] Order PO-1670.

otherwise aware of it, the information may not be exempt under section 38(b), because to withhold the information would be absurd and inconsistent with the purpose of the exemption.[3]

[28] The absurd result principle has been applied, where, for example:

- The appellant sought access to his or her own witness statement[4]
- The appellant was present when the information was provided to the institution[5]
- The information is clearly within the appellant's knowledge[6]

[29] Based on my review of the records, I find that the absurd result applies to the personal information on three pages of the records – pages 9, 14 and, 16.[7] The sentences that I am referring to reveal personal information that was given by the appellant to the police. I find that it would be absurd to apply the discretionary personal privacy exemption in section 38(b) to this information given that the appellant herself supplied the personal information about the named individual to the police. Accordingly, I will order these sentences in the reports disclosed to the appellant.

[30] For the remaining information that I have found to be exempt under section 38(b), I have also considered whether this information could be severed under section 4(2) of the *Act* to disclose the personal information of the appellant. However, based on my review of the information at issue I find that the appellant's personal information is inextricably intertwined with the personal information of the other individuals or severing would only leave disconnected snippets, which would be meaningless to the appellant.[8]

Issue C: Should the police's late raising of additional discretionary exemptions be allowed?

[31] As noted above, the police raised the possible application of a number of exemptions in section 8(1) during the inquiry of the appeal. Previously, the police had only claimed sections 8(1)(e) and 8(1)(l) to withhold certain information.

[32] The IPC's *Code of Procedure* (the *Code*) provides basic procedural guidelines for parties involved in appeals before this office. Section 11 of the *Code* addresses circumstances where institutions seek to raise new discretionary exemption claims

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[3] Orders M-444 and MO-1323.
[4] Orders M-444 and M-451
[5] Orders M-444 and P-1414
[6] Orders MO-1196, PO-1679 and MO-1755
[7] The copy of the records that I have before me show that these are noted as the following: 9 of 37, 14 of 37 and 16 of 37.
[8] Order PO-1663.

during an appeal.

[33] Section 11.01 states:

> In an appeal from an access decision an institution may make a new discretionary exemption claim within 35 days after the institution is notified of the appeal. A new discretionary exemption claim made within this period shall be contained in a new written decision sent to the parties and the IPC. If the appeal proceeds to the Adjudication stage, the Adjudicator may decide not to consider a new discretionary exemption claim made after the 35-day period.

[34] The purpose of the policy is to provide a window of opportunity for institutions to raise new discretionary exemptions without compromising the integrity of the appeal process. Where the institution had notice of the 35-day rule, no denial of natural justice was found in excluding a discretionary exemption claimed outside the 35-day period.[9]

[35] In determining whether to allow an institution to claim a new discretionary exemption outside the 35-day period, the adjudicator must also balance the relative prejudice to the institution and to the appellant.[10] The specific circumstances of each appeal must be considered individually in determining whether discretionary exemptions can be raised after the 35-day period.[11]

[36] I note that the police did not address its late raising of additional section 8(1) exemptions in its representations. However, it confirmed that the information being withheld under the late claimed additional exemptions was already being withheld under sections 8(1)(e) and (l).

[37] The appellant was given an opportunity to respond to the police's additional discretionary exemption claims but did not provide representations.

[38] Based on the police's claim of the additional discretionary exemptions and the nature of the information at issue, I have decided to allow the police to claim the additional discretionary exemptions in the appeal.

[39] Adjudicator Corban in Order MO-2070 explained the IPC's policy on the late raising of discretionary exemptions:

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[9] *Ontario (Ministry of Consumer and Commercial Relations v. Fineberg)*, Toronto Doc. 220/95 (Div. Ct.), leave to appeal dismissed [1996] O.J. No. 1838 (C.A.). See also *Ontario Hydro v. Ontario (Information and Privacy Commissioner)* [1996] O.J. No. 1669 (Div. Ct.), leave to appeal dismissed [1996] O.J. No. 3114 (C.A.).
[10] Order PO-1832.
[11] Orders PO-2113 and PO-2331.

> Previous orders issued by the Commissioner's office have held that the Commissioner or his delegate has the power to control the manner in which the inquiry process is undertaken. This includes the authority to establish time limits for the receipt of representations and to limit the time frame during which an institution can raise new discretionary exemptions not originally cited in its decision letter, subject of course to a consideration of the particular circumstances of each case.
>
> The objective of the policy is to provide government institutions with a window of opportunity to raise new discretionary exemptions, but not at a stage of the appeal where the integrity of the process is compromised or the interests of the appellant in the release of the information prejudiced. This approach was upheld by the Divisional Court in *Ontario (Ministry of Consumer and Commercial Relations) v. Fineberg.*[12]

[40] In the present appeal, neither party submitted representations on the prejudice to their interests should I allow or not allow the late raising of the discretionary exemptions. However, based on my review of the police's representations regarding the claim of section 8(1)(a), I find that should I not allow the police to claim the additional discretionary law enforcement exemptions, the police's investigation could be prejudiced by the disclosure of the withheld information. I have also considered any potential prejudice to the appellant and find none. The information for which the police have claimed the additional discretionary exemptions was information that was already being withheld in the present appeal. Accordingly, I find that there is no additional delay in the disclosure of the information by my consideration of the additional exemptions. Furthermore, the integrity of the appeal process has not been compromised because the appellant was provided with an opportunity to provide representations on the police's additional discretionary exemption claims.

[41] Thus, given the possible prejudice to the police's interests and the lack of prejudice to the appellant or the appeal process, I allow the police to claim the additional discretionary exemptions.

Issue D: Does the discretionary exemption at section 38(a) in conjunction with section 8(1)(a) apply to the information at issue?

[42] As stated above, the police have claimed section 38(a) in conjunction with either section 8(1)(e) or (l) for the remaining information at issue. The remaining information at issue consists of the withheld information on pages 3, 11, 15, 22, 23, 24 and 26. During the inquiry, the police raised the possible application of additional section 8(1) exemptions and I have decided to allow the claim.

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[12] (21 December 1995) Toronto Docket 220/89, leave to appeal refused [1996] O.J. No. 1838 (C.A.).

[43] Section 38(a) reads:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > if section 6, 7, 8, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of the personal information.

[44] Section 38(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant appellant's access to their own personal information.[13]

[45] Section 8(1) states in part:

> A head may refuse to disclose a record if the disclosure could reasonably be expected to
>
> > (a) interfere with a law enforcement matter;
> >
> > (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
> >
> > (c) reveal investigative techniques and procedures in use or likely to be used in law enforcement;
> >
> > (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;
> >
> > (e) endanger the life or physical safety of a law enforcement officer or any other person;
> >
> > (f) deprive a person of the right to a fair trial or impartial adjudication

[46] The term "law enforcement" is used in several parts of section 8, and is defined in section 2(1) as follows:

> *law enforcement* means,
>
> > (a) policing,

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[13] Order M-352.

> (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or
>
> (c) the conduct of proceedings referred to in clause (b)

[47] Generally, the law enforcement exemptions must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[14]

[48] It is not enough for an institution to take the position that the harms under section 8 are self-evident from the record or that the exemption applies simply because of the existence of a continuing law enforcement matter. 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.[15]

Representations

[49] Regarding the application of sections 8(1)(a) and (b), the police submit that in 2011, the investigation was brought up to current standards. The police note that the following actions were taken: forensic evidence was submitted to the Centre for Forensic Sciences; fingerprint lifts were considered for identification or comparison; attempts were made to age original composite sketches; potential suspects were interviewed; attempts to locate old and new witnesses were made; a press release was disseminated in an attempt to identify more leads; and there was a review of the investigative file by the Criminal Behavioural Analysis Unit – Criminal Profiling (OPP). The police submit that it is their belief that a violation of law has occurred and they will continue to act on new information as it arises. The police submit that the investigation is ongoing as the police continue to follow up on any information that may lead to identifying the accused responsible for the sexual assault against the appellant. The police cite Order MO-1171 in support of their position that premature disclosure of the information at issue could reasonably be expected to result in the harms in sections 8(1)(a) and (b).

[50] The police also made submissions on the application of sections 8(1)(c) – (f) which I do not set out here given my findings below.

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[14] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[15] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

Analysis and findings

[51] For following reasons, I find that the remaining withheld information is exempt under section 8(1)(a).

[52] For section 8(1)(a) to apply, the matter in question must be ongoing or in existence.[16] The exemption does not apply where the matter is completed, or where the alleged interference is with "potential" law enforcement matters.[17] I accept the police's evidence that the investigation in to the sexual assault of the appellant is still ongoing.

[53] Furthermore, it clear from the police's submissions and the content of the supplementary occurrence reports that the police are still pursuing lines of investigation including speaking to witnesses and individuals possibly related to the investigation. I find the records provide evidence of the police's continued efforts including those mentioned in the police's representations: submitting forensic evidence to the Centre for Forensic Services; fingerprint lifts were considered for identification or comparison; potential suspects were interviewed and attempts made to locate old and new witnesses were made. I find that disclosure of this information could reasonably be expected to interfere with the police's activities to identify the perpetrator of the assault on the appellant. Accordingly, I find that disclosure of this information could reasonably be expected to interfere with an ongoing law enforcement matter within the meaning of section 8(1)(a) and I find that this exemption applies to the withheld information.

[54] As I find that section 8(1)(a) applies, the remaining information is exempt under section 38(a), subject to my review of the police's exercise of discretion.

Issue E: Was the police's exercise of discretion proper in the circumstances?

[55] The section 38(a) and (b) exemptions are discretionary, and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[56] In addition, the IPC may find that the institution erred in exercising its discretion where, for example,

- It does so in bad faith or for an improper purpose
- It takes into account irrelevant considerations
- It fails to take into account relevant considerations.

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[16] Order PO-2657.
[17] Orders PO-2085 and MO-1578.

[57] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[18] This office may not, however, substitute its own discretion for that of the institution.[19]

Representations

[58] The police submit that they properly exercised their discretion in applying sections 38(a) and (b) to the records at issue considering the following factors:

- The appellant has the right to access her own personal information
- The exemptions form the right of access were limited and specific
- The nature of the information and the extent to which it is significant and/or sensitive to the institution, the appellant, or any affected individual
- The age of the case
- The significant involvement and assistance the appellant has had as the institution conducted the investigation

[59] The police submits that following a consideration of the above-referenced factors it has met its obligation to the appellant under the *Act* while following established policies and procedures. The police submit that the fact that they provided partial access to the supplementary reports is evidence of its proper exercise of discretion.

[60] Having reviewed the information withheld by the police under sections 38(a) and (b), I accept that the police properly exercised their discretion in withholding the information under these exemptions. I find that the police properly considered the appellant's right of access to her own personal information and the sensitivity of the information to any affected parties. Finally, I find the police's consideration of the ongoing investigation to be proper. Accordingly, I uphold the police's exercise of discretion in the circumstances.

Issue F: What is the scope of the appellant's request?

[61] During mediation, the appellant expressed concern that police officer notebooks had been destroyed, after the investigation had re-opened in January 2011. The appellant seeks an explanation for the destruction of the notebooks in the circumstances. The police submit that the appellant's request, as set out above, did not seek information about the destruction of the police officer's notebooks.

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[18] Order MO-1573.
[19] Section 43(2).

[62] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. The IPC has determined that institutions should adopt a liberal interpretation to a request, in order to best serve the purpose and spirt of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.[20]

[63] To be considered responsive to the request, records must "reasonably relate" to the request.[21]

[64] The police submit that if the appellant has a question about the destruction of records, her question should be addressed to the institution via other means as she is attempting to obtain answers to a question and not requesting a record.

[65] I find that the appellant's request does not ask for either the police officers' notebooks or information relating to their destruction. Accordingly, I find that the appellant's question and request for information about the destruction of the notebooks is outside the scope of the request that is the subject matter of this appeal. I also note that the appellant's question about the destruction of the notebooks was addressed in the context of a reasonable search appeal that I dealt with in Order MO-3963.

[66] For the sake of completeness, I will also address the appellant's allegation in my discussion of the reasonableness of the police's search for records responsive to the access request at issue in the current appeal.

Issue G: Did the police conduct a reasonable search for records?

[67] Where an appellant claims that additional records should exist beyond those identified by the institution, the issue to be decided is the institution has conducted a reasonable search for records as required by section 17.[22] 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.

[68] 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.[23]

[69] 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

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[20] Orders P-134 and P-880.
[21] Orders P-880 and PO-2661.
[22] Orders P-85, P-221 and PO-1954-I.
[23] Orders P-624 and PO-2559.

are reasonably related to the request.[24]

[70] The police submit that after receiving the appellant's request for the summary report from the named detective and the interview of the named individual, the FOI clerk contacted the named detective in an attempt to identify the record the appellant was referring to in her request. The named detective confirmed that the responsive record was the supplementary reports. Further, the named detective provided a copy of the named individual's interview and thus all responsive records were identified.

[71] In support of its representations on its search, the police provided copies of the email communications between the FOI clerk and the named detective outlining the discussions between them regarding locating the responsive records.

[72] As stated above, the appellant did not provide a reasonable basis for her belief that additional responsive records should exist. Based on my review of the appellant's appeal letter, the appellant sought access to information regarding the notebooks because of references made to them in the information that was disclosed to her. These references detail the fact that the notebooks were either destroyed or turned in upon the officer's retirement.

[73] Based on my review of the records at issue and the representations made by the police, I find that the police conducted a reasonable search for responsive records. Again, I note that the appellant's desire for an explanation about the destruction of the officer's notebooks following the reopening of the police's investigation is addressed in Order MO-3963.

[74] I find that the detective named in the request, who conducted the search and provided records to the FOI clerk, was an experienced employee knowledgeable in the subject matter and expended a reasonable effort to locate the records.

[75] Accordingly, I uphold the police's search for records as reasonable in the circumstances.

ORDER:

1. I order the police to disclose the information on pages 9, 14 and 16 of the records to the appellant by **August 13, 2021** but not before **August 9, 2021**. To be clear, the police should only disclose the information that I have highlighted in green on the copy of these pages provided to the police with their copy of the order.

2. I uphold the police's decision to withhold the remaining information.

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[24] Orders M-909, PO-2469 and PO-2592

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

4. I reserve the right to require the police to provide me with a copy of the information order disclosed in order provision 1.

Original Signed by: July 8, 2021

Stephanie Haly
Adjudicator