

Information and Privacy Commissioner,  
Ontario, Canada



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

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## **FINAL ORDER MO-4084-F**

Appeal MA19-00840

Toronto Police Services Board

July 23, 2021

**Summary:** The Toronto Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all records relating to a specified break and enter investigation. The police issued an access decision granting partial access to the responsive records. On appeal, the only issue that the appellant pursued was the sufficiency of the police's search, under section 17 of the *Act*. In Interim Order MO-4027-I, the adjudicator did not uphold the reasonableness of the police's search, and ordered the police to conduct a further search. In this order, the adjudicator upholds the reasonableness of the police's search, and dismisses the appeal.

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

**Order Considered:** Order MO-4027-I

### **OVERVIEW:**

[1] This is the second and final order in an appeal in which the requester has challenged the reasonableness of the search efforts of the Toronto Police Services Board (the police), under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA*, or the *Act*). The request was for records relating to a specified break and enter investigation, arising out of the requester's allegation that her jewellery had been stolen.

[2] The request was for the following information:

All records pertaining to #[specified number] (Break and Enter). Brought photos of items but case closed. Want any info on items listed in report as well.

[3] In Interim Order MO-4027-I, I partially upheld the reasonableness of the police's

search, having found that the police provided sufficient evidence about having engaged an experienced employee to direct the police's search efforts, and had sufficiently explained why the police do not have the photographs, affidavits, and narrative that the appellant believes are in their record holdings. However, I found that there was insufficient evidence relating to a search for *all* records responsive to the request. As a result, I ordered the police to conduct a further search.

[4] In response to Interim Order MO-4027-I, the police conducted a further search. In doing so, the police located and identified a number of additional responsive records. The police then issued a revised access decision to the appellant, granting her partial access to the records. That access decision is not within the scope of this appeal (MA19- 00840).

[5] In accordance with Interim Order MO-4027-I, the police provided representations and affidavit evidence regarding their further search. I shared the police's representations and affidavit with the appellant, and asked for written representations in response. The appellant provided representations, briefly addressing the issue of the reasonableness of the police's search. She also stated that two records disclosed to her were difficult to read, however the appellant was directed to raise this issue with the police. The majority of the appellant's representations addressed issues relating to access and correction, which are not issues in this appeal. Since the only issue in this appeal is the reasonableness of the police's search, I will not address any representations about other matters in this order.

[6] For the following reasons, I uphold the reasonableness of the police's search, and dismiss the appeal.

## **DISCUSSION:**

### **Did the police conduct a reasonable search for all responsive records?**

[7] The only issue to be decided in this appeal is whether the police conducted a reasonable search for records responsive to the request. 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.<sup>1</sup> 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. As I will explain below, the police provided sufficient evidence that they made reasonable efforts to search for all records responsive to the request, and as a result, I uphold their search.

[8] 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.<sup>2</sup> To be responsive, a record must be "reasonably related" to the request.<sup>3</sup>

[9] A reasonable search is one in which an experienced employee knowledgeable in the

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<sup>1</sup> Orders P-85, P-221 and PO-1954-I.

<sup>2</sup> Orders P-624 and PO-2559.

<sup>3</sup> Order PO-2554.

subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.<sup>4</sup>

***Interim Order MO-4027-I***

[10] In Interim Order MO-4027-I, I found that the basis of the appeal was the appellant's belief that additional records exist "including" certain records specified by the appellant based on the clear wording of the request. Therefore, the police should have searched for all responsive records.

[11] In addition, I found that it was not clear from the evidence before me that certain investigating officers had been asked to search for all records relating to the break and enter investigation in which they had been involved. I noted that if the police did not initially ask these investigating officers to search for all records relating to the break and enter investigation, I would have expected their evidence to include an explanation as to why that was.

[12] In any event, I found that it was not clear from the evidence before me which police employees were involved in the initial search effort to identify all records relating to the break and enter investigation and, specifically, whether the two investigating officers ever conducted such searches.

[13] In addition, I noted that the analyst's affidavit and the representations of the police did not specifically identify which locations were initially searched in response to the request and which search terms were used (if any) in order to conduct a search for all records relating to the break and enter investigation.

***The police's evidence***

[14] The police maintain that they conducted a reasonable search for records responsive to the request, as required by section 17 of the *Act*, aside from the records that were initially described by the appellant. The police provided representations and an affidavit to explain their search efforts, which I will summarize below.

[15] The police provided an affidavit from an analyst in the police's Access & Privacy Section who conducted the search. This employee has twenty-one years of experience working for the police, with eleven of those years being in the Access & Privacy Section. In her affidavit, she states that part of her role as an analyst is to search and provide records for requests for information made under the *Act*. Accordingly, she attests to having knowledge of the facts set out in her affidavit.

[16] The police state that, pursuant to Interim Order MO-4027-I, they conducted a search for all records relating to the appellant's access to information request, and that this resulted in additional records being located (the appellant's video interview and memorandum book notes). They provided details of their search efforts in the analyst's affidavit.

[17] The analyst attests that the responsive records are in relation to a break and enter

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<sup>4</sup> Orders M-909, PO-2469 and PO-2592.

occurrence kept electronically in the police's Versadex database.

[18] She also attests to contacting the officer in charge after Interim Order MO-4027-I was issued and inquiring whether there were any other responsive records that existed in relation to this incident, aside from the records that were previously provided to the appellant.<sup>5</sup> According to her affidavit, a few days later, the officer in charge advised her of a recorded interview that is stored in the police's video library and provided her with the asset number. The analyst then requested the appellant's video statement from the library, along with any memorandum notebook notes in relation to the supplementary entries in the occurrence report. The analyst explained that memorandum notebooks are kept at the home divisions of the involved officers. After receiving the responsive memorandum notebook notes from the division, the analyst attests that she received notice that one of the involved officers did not have memorandum notebook entries in relation to this event, as he entered the record of his involvement electronically into the general occurrence report.

[19] Finally, the analyst states that the police issued the appellant a revised decision letter and mailed the additional responsive records to the appellant, and that a copy of this decision was also mailed to the Office of the Information and Privacy Commissioner of Ontario.

### ***The appellant's evidence***

[20] Although an appellant will rarely be in a position to indicate precisely which records the institution has not identified, the appellant still must provide a reasonable basis for concluding that such records exist.<sup>6</sup>

[21] In this case, the appellant's representations address the issue of reasonable search were very brief: she asserts that the police indicated that some or all of the requested records do not exist and that she believes that more records do exist. Her representations did not include an explanation as to the basis of her belief, or raise questions about any particular aspect of the evidence provided by the police about the efforts they undertook to conduct a further search.

[22] Rather, the remainder of the appellant's representations concern many other issues, such as the substantive alleged theft of her jewellery and its effect on her life, and concerns about the correctness of information in the responsive records.

### ***Analysis and findings***

[23] For the following reasons, I uphold the reasonableness of the police's search for all records relating to the break and enter investigation that is the subject of the appellant's request under the *Act*.

[24] In Interim Order MO-4027-I, I found that the employee who provided an affidavit about the police's search is an experienced employee for leading the police's search efforts. As this same employee provided an affidavit in support of the police's further

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<sup>5</sup> The analyst provided specific dates when all of the steps described in this paragraph were taken, but for the purpose of this order, they are not necessary to include.

<sup>6</sup> Order MO-2246.

search, I find no reason to change my finding on this point.

[25] In my view, the police have provided sufficient evidence that they conducted a reasonable search. Based on the details set out above, I am now able to understand where the police searched, and the fact that they engaged both investigating officers (who have direct knowledge of the break and enter investigation) in a search for *all* responsive records. I find that the appellant's assertion that she believes that further records exist does not undermine this evidence and is not a sufficient basis for me to order a further search.

[26] While the location of additional responsive records is not necessary to demonstrate reasonable search efforts, I note that the police's further search did yield the location and identification of additional responsive records.

[27] For these reasons, I uphold the reasonableness of the police's search, and dismiss the appeal.

**ORDER:**

I uphold the reasonableness of the police's search, and dismiss the appeal.

Original signed by: \_\_\_\_\_  
Marian Sami  
Adjudicator

\_\_\_\_\_ July 23, 2021