

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4085-F

Appeal MA13-610-2

Toronto Police Services Board

July 26, 2021

Summary: This final order follows Interim Orders MO-3812-I and MO-3865-I, in which the adjudicator found the Toronto Police Services Board (the police) did not conduct a reasonable search for records responsive to the appellant's two access requests. In each of the interim orders, the adjudicator ordered the police to conduct additional searches. In this final order, the adjudicator finds that the police have now conducted a reasonable search for responsive records, as required by section 17 of the *Municipal Freedom of Information and Protection of Privacy Act*, and she 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 and Investigation Reports Considered: Order MO-2104, and Interim Orders MO-3812-I and MO-3865-I.

OVERVIEW:

[1] This order addresses the one remaining issue in Appeal MA13-610-2, which is whether the Toronto Police Services Board (the police) conducted a reasonable search for records in response to the appellant's two access requests, as required by section 17 of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), and as directed in Interim Orders MO-3812-I and MO-3865-I.

[2] The complete history of these appeals is canvassed extensively in the previous interim orders, and need not be set out again in detail. Relevant for the purposes of this final order is that the appellant submitted two separate access requests to the police under the *Act*. One request was for "all personal information"¹ and the other request was for "all

¹ The "personal information" request.

records² in physical or electronic form, from all locations, in respect of:

1. the [appellant];
2. the residence at [identified location in Toronto, Ontario] for the period from January 1, 2001 to February 15, 2013;
3. the residence at [identified location in Hamilton, Ontario] for the period January 1, 1989 to November 20, 2013 (the Hamilton property).

[3] The police conducted a search and located records that it identified as responsive to the appellant's requests. The police issued a decision granting partial access to those records. Upon receipt of the police's decision, the appellant filed an appeal with the Information and Privacy Commissioner of Ontario (the IPC).

[4] An adjudicator decided to conduct an inquiry under the *Act*. That adjudicator sought and received written representations from the police, following which the file was placed on hold. I assumed conduct of the inquiry when the appeal was re-activated. During the course of my inquiry, I invited both the appellant and the police to provide written representations for my consideration, and issued two interim orders, as described below.

[5] On August 2, 2019, I issued Interim Order MO-3812-I. Among my findings in Interim Order MO-3812-I was that the police did not conduct a reasonable search in response to the appellant's "personal information" and "general information" requests. Informing this finding was my conclusion that the police had not conducted a search for records responsive to the appellant's general information request, because they took the position that any records responsive to that request would contain the appellant's personal information, thereby rendering them responsive to the appellant's personal information request. In other words, I found that the police had unilaterally combined the appellant's two access requests into one request for the purpose of providing an access decision under the *Act*.

[6] In Interim Order MO-3812-I, ordered the police to conduct a further search for records responsive to both of the appellant's requests, including email records, records relating to the identified Hamilton property, and records held by the Toronto Police Services Board. I directed the police to issue an access decision respecting any records located by its additional search, and to provide me with an affidavit describing its search efforts. Interim Order MO-3812-I resolved all of the issues raised by the appeal, with the exception of the issue of reasonable search, regarding which I remained seized.

[7] The police conducted an additional search in response to Interim Order MO-3812-I, which located one record relating to the Hamilton property. On September 4, 2019, the police issued an access decision regarding that record, and provided me with an affidavit describing its search efforts.

[8] I invited the appellant to provide representations in response to the police's September 4, 2019, decision and affidavit. Following receipt of the appellant's representations, I issued Interim Order MO-3865-I on November 25, 2019, in which I

² The "general information" request. In Interim Order MO-3812-I, I found that records responsive to this request would not necessarily contain the appellant's personal information.

ordered the police to conduct a further search. Again, I ordered the police to search for records responsive to both of the appellant's requests, records relating to the identified Hamilton property, and records held by the Toronto Police Services Board. Again, I indicated that the police should include email records in its search.

[9] The police conducted an additional search for records and, on January 20, 2020, issued an access decision in respect of its search effort. Shortly thereafter, the police provided me with affidavits of search dated February 17, 2020, sworn by its Access and Privacy Coordinator and two individuals who conducted searches of the police's intelligence databases. The January 20, 2020 decision and February 17, 2020 affidavits are described in more detail below.

[10] I invited the appellant to comment on whether the police had now conducted a reasonable search for records responsive to his requests. For various reasons, including the ongoing effects of the COVID-19 pandemic, the appellant was unable to provide representations but expressed an interest in continuing this appeal. Therefore, I decided to pursue my inquiry by inviting the police to provide supplementary representations regarding its January 20, 2020 decision and February 17, 2020 affidavits. In doing so, I asked the police to clarify certain inconsistencies or omissions that I noted in their response to Order MO-3865-I.

[11] On March 3, 2021, the police provided a new affidavit of search in response to Interim Order MO-3865-I to clarify certain matters. The police then issued a subsequent access decision, disclosing additional records to the appellant, in full, on March 8, 2021.

[12] Once again, I invited the appellant to provide representations responding to the police's January 20, 2020 and March 8, 2021 decisions, and February 17, 2020 and March 3, 2021 affidavits, by commenting on whether the police had now conducted a reasonable search for records. The appellant raised a procedural matter regarding a variance request under section 20.01 of the IPC's *Code of Procedure for Appeals under the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act*, which I dismissed. He subsequently provided written representations setting out his views on why the police had still failed to conduct a reasonable search for the records he sought access to. The appellant also provided a considerable amount of supporting documentation to accompany his representations.³

[13] For the reasons that follow, I find that the police have now conducted a reasonable search as required by section 17 of the *Act*, and I dismiss the appeal.

DISCUSSION:

[14] The only issue before me in this order is whether the police have conducted a reasonable search for records responsive to the appellant's personal information and

³ I have thoroughly reviewed the appellant's submissions. However, in the interest of concision, I do not refer to or summarize all of the supporting documentation provided by the appellant in this order, nor do I include his representations regarding the history of this appeal file, issues previously decided or addressed in Interim Orders MO-3812-I or MO-3865-I, or regarding any of his related IPC appeal(s), such as Appeal MA20-00110, which are not before me. In addition, I limit my summary of his arguments to what I view as directly related to my determination of the sole remaining issue of reasonable search.

general information requests.

[15] As set out in Interim Orders MO-3812-I and MO-3865-I, 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*.⁴ If, after conducting an inquiry, the adjudicator is satisfied the institution carried out a reasonable search in the circumstances, the adjudicator will uphold the institution's search. If the adjudicator is not satisfied, the adjudicator may order further searches, as I did in Interim Orders MO-3812-I and MO-3865-I.

[16] 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.⁵ To be responsive, a record must be reasonably related to the request.⁶

[17] 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.⁷ 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 control.⁸

[18] 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.⁹

Interim Order MO-3812-I

[19] The appellant's two requests sought similar information, but one request was framed as seeking access to the appellant's own personal information, while the other request was seeking access to records of a general nature, which would not necessarily contain his personal information. In Interim Order MO-3812-I, I made a number of findings regarding the scope of the appellant's requests that were relevant to my findings regarding the inadequacy of the police's search.

[20] These findings are set out in Interim Order MO-3812-I, and summarized in Interim Order MO-3865-I; therefore, I will not summarize them in detail again here. Suffice it to say, I found that:

- a. the police had unilaterally and incorrectly combined the appellant's two access requests into one request, when he had clearly sought access to his own personal information as well as access to records of a general nature (i.e., general records);
- b. it was reasonable to conclude that a request for "all records" would include emails;

⁴ Orders P-85, P-221 and PO-1954-I.

⁵ Orders P-624 and PO-2559.

⁶ Order PO-2554.

⁷ Orders M-909, PO-2469 and PO-2592.

⁸ Order MO-2185.

⁹ Order MO-2246.

- c. the police had not provided sufficient evidence to support the assertion that they would not have records relating to the Hamilton property mentioned in both of the appellant's requests;
- d. in certain circumstances and depending on the nature of a request, a search for responsive records may need to include records held by both the Toronto Police Service and the Toronto Police Services Board;¹⁰
- e. the police did not provide sufficient evidence to substantiate the reasonableness of their search efforts; and
- f. the appellant had provided a reasonable basis for concluding that additional responsive records may exist that had not yet been located by the police.

[21] Based on these findings, I ordered the police to conduct a further search for records responsive to the entirety of the appellant's two requests, which was to include records of a general nature, email records of both the Toronto Police Service and the Toronto Police Services Board, and records relating to the Hamilton property.

Interim Order MO-3865-I

[22] In response to Interim Order MO-3812-I, the police conducted a further search, which located one additional responsive record. The police issued an access decision on September 4, 2019 advising that, "one additional report, [report number], based on a search of [the appellant's] Hamilton address, was located." The police also provided me with an affidavit sworn by the Coordinator of its Access and Privacy Section (the coordinator) regarding its search effort.

[23] The coordinator attested that for the most part, the police's most recent search yielded the same results as their initial search; however, one additional record, an occurrence report from 2000, was located as indicated by its September 4, 2019 access decision.

[24] The coordinator explained that he reviewed the responsive records to identify the attending and investigating officers involved with each incident. Staff of the Access and Privacy section then requested that the respective divisions forward electronic copies of those officers' memorandum books/notes for review, to determine whether they contained additional responsive information. The coordinator attested that the Access and Privacy Section was advised that four of the identified officers' memorandum books/notes for periods of time in 2000, 2010, and 2012 could not be located. The coordinator advised that he believes the notes from 2000 and 2010 were purged as a result of the police's former eight-year memorandum book retention period. Regarding the memorandum book from 2012, the coordinator stated that it was not located, despite the searches conducted by the police and the City of Toronto Archives.

[25] The coordinator also attested to requesting assistance from the police's Information and Security Unit in locating emails responsive to the appellant's request. The coordinator explained that this was necessary because this is the only department that is able to

¹⁰ For the purposes of the *Act*, the Toronto Police Service and the Toronto Police Services Board are the same institution. See Interim Order MO-3812-I, paragraph 60.

conduct a computer search of the police's email system. In response to this request, the police's Information and Security Examiner advised that a search was conducted for "all emails based on the criteria set out in the appellant's request." The responsive email records were provided to the coordinator. The Information and Security Examiner explained that some records that once existed may have been deleted because, since October 2012, it has been their practice to purge any emails that have been archived for over 42 months, unless they are tagged as emails that should never be deleted.

[26] In response to the police's decision and affidavit evidence, the appellant maintained that the police had either failed to process his general information request as required by Interim Order MO-3812-I, or, if they had processed it, they failed to provide any evidence to establish that their search for responsive records was reasonable. He also continued to maintain that the police had not conducted a reasonable search for records responsive to his personal information request.

[27] Based on the evidence before me in Interim Order MO-3865-I, I again concluded that the police had not established that they conducted a reasonable search for records responsive to the appellant's requests, as required by section 17 of the *Act* and Interim Order MO-3812-I. My finding was influenced by the following considerations:

- a. The police only referred to the appellant's "request" in the singular form, and while the coordinator specifically referred to the appellant's personal information request, he made no reference of the general information request. These observations sowed doubt as to whether the police considered the appellant's general information request when conducting their most recent search.
- b. The coordinator did not identify the databases that were searched, explain why they were selected to be searched, outline the methods that he used in conducting the searches, or specify the types of records that would likely be found in each. I indicated that I required more information about the searches conducted, and particulars regarding the types of information that might be located as a result, before being able to conclude that a reasonable search had been conducted.
- c. It was not evident from the police's decision letter or affidavit whether they searched Toronto Police Services Board records, including emails, as directed by Interim Order MO-3812-I.
- d. While the evidence established that the police had searched for records relating to the Hamilton property that would be responsive to the appellant's personal information request, it did not establish that they searched for records relating to the Hamilton property that would be responsive to the appellant's general information request.
- e. While I accepted the police's evidence about the possible destruction of certain memorandum books or emails in accordance with its retention schedules, I was not satisfied that those policies explained the police's inability to locate a memorandum book from 2012. I noted that the 2012 memorandum book would have been six years old at the time that a new retention schedule came into place requiring memorandum books to be maintained for a period of 25, rather than eight, years. On this basis, I concluded that the 2012 memorandum book ought not have been

disposed of pursuant to the former eight-year retention policy, and yet the police had offered no other explanation for their inability to locate this record.

[28] As a result, I again ordered the police to conduct a further search for records responsive to the entirety of both of the appellant's requests, including for records responsive to the general information request, records relating to the identified Hamilton property, and records held by the Toronto Police Services Board, all of which should include responsive email records.

The police's search efforts and the parties' representations following Interim Order MO-3865-I

The police's January 20, 2020 decision and February 17, 2020 affidavit

[29] The police conducted an additional search, as ordered by Order MO-3865-I. On January 20, 2020, the police issued an access decision advising that no additional records were located with respect to the appellant's "personal information" request, and that emails between the appellant and the police, including the Toronto Police Services Board, had already been provided to the appellant.

[30] Regarding the appellant's "general information" request, the police advised that a search of its ICAD database was conducted, which generated "Address History Reports." The police provided the appellant with copies of the ICAD reports that were located. The police noted that the ICAD search did not yield any results with respect to the Hamilton property mentioned in both of the appellant's requests.

[31] In response to representations that the appellant had previously made regarding records that may have been created by certain police program areas and "active policing" initiatives, the police advised that members of its Intelligence Services Unit conducted searches for records relating to the appellant and/or the addresses listed in his requests, and how the appellant may possibly be involved in the "Provincial Counter-Terrorism Plan and any related bio-collections, the Hate Crime Extremism Investigation Team, covert operations, 'incidental' collections, intelligence gathering, joint-force projects, and virtue-testing initiatives." In its January 20, 2020 decision, the police refused to confirm or deny the existence of any such records pursuant to section 8(3) of the *Act*.¹¹

[32] Enclosed with the copy of the January 20, 2020 decision that the police provided to the IPC was a copy of internal correspondence between members of the police's Intelligence Services Unit. This correspondence outlines the steps that were taken to find a particular memorandum book containing investigative notes related to an incident in 2012.¹² The author of the correspondence, an administrative member of the police's Intelligence Services Unit, advises that he searched the Intelligence Services' "memorandum book room" and submitted queries with the City of Toronto Archives, both of which came back with negative results. The correspondence states that neither the police nor the City of Toronto Archives has the memorandum book in question.

¹¹ The appellant filed a separate appeal with the IPC regarding the police's January 20, 2020 access decision and its reliance on section 8(3) of the *Act*. The police's claim of section 8(3) is before another adjudicator in Appeal MA20-00110.

¹² This memorandum book is discussed in more detail in Interim Order MO-3865-I.

[33] The police also provided me with affidavits of search dated February 17, 2020, sworn by its Access and Privacy Coordinator and two individuals who conducted searches of the police's intelligence databases. The coordinator attests to receiving the appellant's personal information request in November 2013, and having conducted a search of "all relevant [police] databases" shortly thereafter. He also attests to having completed a second search of the police's Intergraph Computer-Aided Dispatch Address History Report (ICAD) database in August 2019, following Interim Order MO-3812-I. He notes that the search in 2019 yielded the same results as the search conducted in 2013, and that the search of the ICAD database in regards to the Hamilton address was negative, meaning that no responsive records were identified.

[34] The coordinator explains that following Interim Order MO-3865-I, another review of the appellant's requests was undertaken. As a result, the ICAD report was deemed to be a "general" record to which full access was granted to the appellant in January 2020.

[35] Finally, the coordinator attests that he requested the assistance of the police's Intelligence Services Unit in locating "any information relating to the appellant, and/or the addresses outlined in his requests" relating to a number of police programs and initiatives.¹³

[36] As mentioned, affidavits were also provided by the two individuals who conducted searches of a number of police intelligence databases. These affidavits state that the individuals searched the databases for records using the appellant's names, his date of birth, and the Hamilton and Toronto addresses specified in the appellant's requests.¹⁴ The affiants attest to providing their search results to the head of their section, who is the member of the police's Intelligence Services Unit that the coordinator requested assistance from.

Request for more information from the police

[37] In reviewing the police's February 17, 2020 affidavits, I noted a few inconsistencies or omissions in its response to Interim Order MO-3865-I.

[38] First, I noted that, in certain parts of the affidavit, the coordinator only cited one of the appellant's two requests; however, based on the sworn evidence that followed, it appeared that the police did, in fact, search for records responsive to both the appellant's "personal information" and "general information" requests.

[39] I also noted that the coordinator's evidence did not address the requirement that the police conduct an additional search for responsive records held by the Toronto Police Service Board, as described in Interim Order MO-3865-I and Order Provision 1. Therefore, it remained unclear whether the police had searched "all relevant databases," including those of the Toronto Police Service Board.

[40] Finally, I noted that the two affidavits sworn by the individuals who conducted searches of the police's intelligence databases referred to an incorrect address in Hamilton,

¹³ See paragraph 31 for a list of the programs and initiatives mentioned in the affidavit.

¹⁴ These two affidavits refer to an *incorrect* address in Hamilton, Ontario, which I address in the section that follows.

Ontario.

[41] Therefore, I invited the police to provide supplementary representations addressing and clarifying these inconsistencies and omissions.

The police's March 3, 2021 affidavit and March 8, 2021 decision

[42] On March 3, 2021, the police provided a new affidavit of search in response to Interim Order MO-3865-I. This affidavit was sworn by the same coordinator who provided the police's previous affidavit evidence.

[43] The coordinator attests that following receipt of my invitation for supplementary representations, he confirmed with a member of the Intelligence Services Unit that the two individuals who conducted the searches of the police's intelligence databases did so using the address specified in the appellant's requests. The coordinator attests that the address was typed incorrectly into the February 27, 2020 affidavits.

[44] The coordinator also attests that in February 2021, he emailed a Senior Advisor and a Board Administrator at the Toronto Police Services Board outlining the appellant's requests and asking that they conduct a search for responsive records. The Board Administrator responded to say that she would look into his request, and liaise with other Toronto Police Services Board staff in doing so. Following a search for records by the Toronto Police Services Board, the Board Administrator forwarded the responsive records that were located to the coordinator, and confirmed that both electronic and hard copy files were searched.

[45] The police then issued another access decision on March 8, 2021. In this decision, the police advised the appellant that a search had been conducted by the Toronto Police Services Board for records responsive to his two requests. The police granted the appellant access to the responsive records, noting that some of them had previously been provided to him. The police's decision letter also advised the appellant that they had confirmed that the individuals who conducted the searches of the police's intelligence databases did so using the Hamilton address specified in his requests.

The appellant's representations

[46] In response to the police's decisions and affidavit evidence following Interim Order MO-3865-I, the appellant continues to maintain that the police have not satisfied their obligations under section 17 of the *Act*.

[47] The appellant asserts that the burden of proof in respect of a reasonable search has shifted as a result of the police's reliance on section 8(3) of the *Act* in its January 20, 2020 decision. In particular, the appellant maintains that he is no longer required to establish a reasonable basis for concluding that additional records exist. Rather, he says that the burden of proof now lies with the police to establish the reasonableness of its search efforts. The appellant refers to Order MO-3575 in support of his position.

[48] With respect to his general information request, the appellant advises that he wants my inquiry to be "confined to the following four domains:

1. All records, if they exist, withheld by its section 8(3) claim, and, to the extent not subsumed within the foregoing,
2. All records relating to all three portions of the [general information] request, in respect of counter-radicalization, prevention of radicalization, countering violent extremism, and CVE,
3. All records relating to the appellant, in which there is any connection to the Toronto Association of Police and Private Security (TAPPS) program, and
4. All records relating to all three portions of the [general information] request, in respect of Project Houston” [which would require, at a minimum, searching the P-drive referred to in the *Missing Persons Report*¹⁵].

[49] With respect to his personal information request, the appellant maintains that the police have not yet conducted a reasonable search for the 2012 police memorandum book. He maintains that police – particularly plainclothes or undercover officers – “have made it a practice to take police records, including their notebooks, home.”¹⁶ The appellant refers to Order MO-1985-I, in which the adjudicator said that the “the most appropriate first step would have been to make inquiries of the most knowledgeable individuals.” He maintains that the police should consult with the officer whose 2012 memorandum book remains missing.

[50] The appellant also “adopts” the position on the unexplained loss of records as set out by the adjudicator in Order MO-2104, and says that it is “troubling that the [police are] unable to locate” the memorandum book in question, and that the “failure to locate [this record] has resulted in the integrity of the access procedure being compromised.”

[51] The appellant makes additional representations regarding my earlier findings on the Automated Criminal Intelligence Information System (ACIIS) database in Interim Order MO-3812-I. In that order, I accepted the police’s evidence that the ACIIS database is federally-owned, and that they are unable to query it for records responsive to access to information requests. As a result, I suggested that the appellant submit an access request to the federal body that oversees the ACIIS database (the RCMP).

[52] The appellant says that since I issued Interim Order MO-3812-I, “additional facts have come to light in respect of the [police’s] use of the ACIIS database.” He claims that the police are a “major contributor” to the database, which has been “used in areas ranging from the Project Houston investigation to monitoring peaceful protest activity.” He refers to minutes of the House of Commons Standing Committee on Justice and Legal Affairs from 1981, in which then-Metro Toronto Police Chief John Ackroyd said that the then-titled “Automated Criminal Intelligence Services” database is not a federal data

¹⁵ Epstein, G. (2021). Report of the Independent Civilian Review into Missing Persons Investigations (Investigations, Vol 2). Toronto: Toronto Police Services Board.

¹⁶ In support of this, the appellant refers to a quote from former Metro Toronto Police Chief John Ackroyd in the Minutes of Proceeding and Evidence of the Standing Committee on Justice and Legal Affairs, Tuesday, March 10, 1981, at pages 22-23 [Standing Committee Minutes]. He also refers to Office of the Information Commissioner of Canada, Annual Report 2015-2016, at page 21, available online < <https://www.oic-ci.gc.ca/en/resources/reports-publications/2015-2016-annual-report> >.

bank.¹⁷ He also submits that the police are not permitted to avoid the application of the *Act* by entering into an arrangement where they essentially contract out of their obligations under the *Act*.¹⁸

[53] The appellant maintains that the police have not provided evidence during my inquiry that a contractual arrangement provides that they may not search the ACIIS database, or that the contents of the database are confined to matters of organized crime.

[54] Finally, the appellant submits that the police's affidavit evidence is not sufficiently detailed, as the affidavits contain information without specifying the source of the information. Accordingly, he maintains that the affidavit evidence "calls for" the police to conduct a further search for responsive records.

Analysis and findings

[55] For the reasons that follow, I find that the police have now established that they conducted a reasonable search for records responsive to the appellant's requests, as required by section 17 of the *Act* and Interim Orders MO-3812-I and MO-3865-I.

[56] In Interim Orders MO-3812-I and MO-3865-I, I ordered the police to conduct a further search for records responsive to both of the appellant's access requests. I specified that their search was to include records responsive to the appellant's general information request, in addition to his personal information request. I also specified that the police must search for records relating to the Hamilton property referred to in part three of both of the appellant's requests, as well as records held by the Toronto Police Services Board, including email records.

[57] The evidence before me establishes that since I issued Interim Order MO-3865-I in November 2019, the police have conducted or coordinated a number of additional searches for records responsive to both the appellant's "personal information" and "general information" requests. For example, the police's affidavit evidence indicates that a search of the police's ICAD database was conducted in late November 2019, and searches of its intelligence databases were conducted in December 2019. The scope of the searches of the police's intelligence databases was clarified in February 2021, and I am satisfied by the police's submissions that they align with the wording of the appellant's requests.¹⁹ These searches are in addition to the ones that were previously conducted by the coordinator, and the police's Information and Security Examiner, as described in my previous interim orders.

[58] The police's evidence also indicates that the coordinator asked the Toronto Police Services Board to search their records, including emails, for records responsive to the appellants' two requests. I note that in March 2021, the police provided the appellant with access to the records that the Toronto Police Services Board identified as responsive to his two requests.

¹⁷ Standing Committee Minutes, at pages 22-23.

¹⁸ The appellant refers to *Ontario (Ministry of Community and Social Services) v. Doe*, 2014 ONSC 239 (Div Ct.) at paragraph 64 in support of this position.

¹⁹ In particular, the police confirmed that members of its Intelligence Services Unit used the correct address for the Hamilton property, as specified in the appellant's two requests, when conducting its searches of the police's intelligence databases.

[59] In response to my comments in Interim Order MO-3865-I about the police's efforts to locate a police memorandum book from 2012, the police have now provided evidence to clarify the steps that were taken in an effort to locate this record. In particular, the police's evidence indicates that searches were conducted of the police's Intelligence Services' "memorandum book room" and by submitting a query with the City of Toronto Archives.

[60] Based on the evidence provided, I am now satisfied that the police have addressed my previous concerns regarding the scope and reasonableness of its searches for records responsive to the appellant's requests. I am now satisfied, and I find, that the police have engaged experienced employees knowledgeable in the subject matter of the requests, and that those employees have expended a reasonable effort to locate records responsive to both the appellant's personal and general information requests. I am satisfied that in doing so, the scope of the police's searches included records held by the Toronto Police Services Board, email records, and records relating to a specified property in Hamilton, Ontario.

[61] I am also satisfied that the police searched for responsive records that may have originated as a result of a number of police program areas and "active policing" initiatives referred to by the appellant during the course of my inquiry. Although the appellant continues to refer to various initiatives or program areas that he maintains the police's searches have not included, in my view, his representations do not provide a reasonable basis for concluding that responsive records might exist relating to those program areas or initiatives. Moreover, I note that the legislative requirement is that the police conduct a "reasonable," not an "exhaustive" search. Based on the totality of the submissions and evidence before me, I am satisfied that the police have done so.

[62] Although the police were not able to locate one record that has been identified by both parties as being potentially responsive to the request (the 2012 memorandum book), I am satisfied that the police have made a reasonable effort to locate that record, in accordance with their obligations under the *Act*. To quote from Order MO-2104, referred to by the appellant, while it is "troubling" that the police are unable to locate the 2012 memorandum book, despite their retention policy requiring its continued existence,

I have no evidence before me to suggest that the additional responsive [record] cannot be located because of any act of bad faith on the part of the [police]. Based on the information provided by the [police], which I find credible and convincing, I am satisfied that the [police have] provided me with sufficient evidence to demonstrate that [they have] made a reasonable effort to identify and locate additional responsive records. Accordingly, I find that the [police's] search for records responsive to the [requests] was reasonable in the circumstances.

[63] Finally, I agree with the appellant's submission that the police are not permitted to avoid the application of the *Act* by entering into an arrangement where they essentially contract out of their obligations under the *Act*. However, I am not persuaded of the relevance of this principle in the case of this appeal. Moreover, I have already made findings in Interim Order MO-3812-I regarding the police's inability to search the ACIIS database for records responsive to the appellant's requests, and the appellant's submissions do not provide a reasonable basis to review those findings.

[64] In conclusion, I am now satisfied that the police's search for records responsive to

the appellant's two requests was reasonable in the circumstances and in compliance with the police's obligations under section 17 of the *Act*.

ORDER:

I find that the police have conducted a reasonable search for records responsive to the appellant's two requests and I dismiss the appeal.

Original Signed by: _____
Jaime Cardy
Adjudicator

_____ July 26, 2021