Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4090

Appeal MA19-00565

Ottawa Police Service

July 29, 2021

Summary: The Ottawa Police Service (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to reports and officers' notes relating to occurrences in 1994 and 1996, and to emails sent by the appellant to the police during specific periods between 2003 and 2013. The police located and partially disclosed an occurrence report to which some emails were attached, but did not locate any other responsive emails for the timeframe identified by the appellant. The appellant appealed the police's decision on the basis of his belief that additional emails exist. 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 appeal is about the reasonableness of the Ottawa Police Service's (the police) search for emails dating back to 2003.

[2] By way of background, the police received a request for access under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to information relating to specific occurrences and incidents, summarized as follows:

- unredacted copy of a 1994 police report and officers' notes pertaining to an incident involving a letter and police attendance at a specified school in September 1994;
- unredacted copy of a 1996 police report and officers' notes relating to a complaint made by a student to Richmond OPP or Manotick OPP (transferred to Ottawa Police Service after amalgamation) in the spring of 1996;

- all emails between 2003-2005 that the requester sent to the police from a specified personal email address and an unspecified school email address;[1]

- an email sent between 2008-2013 by the requester from what he said could have been his father's email address.[2]

[3] The police conducted a search for responsive records. They issued a decision (the June 2019 decision) granting partial access to a 2016 occurrence report that contained some emails exchanged between the appellant and the police which the police wrote related to some of the information outlined in the request letter. The police withheld some information from the report on the grounds that it was exempt under the discretionary personal privacy exemption in section 38(a) of the *Act*, read in conjunction with the law enforcement exemption in section 8(1)(i) (endanger security of a building or vehicle), and the discretionary personal privacy exemption in section 38(b).

[4] With respect to emails from 2003-2005 and 2008-2013, the police wrote that:

> A query of our Records Management System under your name yielded negative results for a handwritten note, police reports or any other records filed in 1994 or 1996 to the Manotick or Richmond OPP.
>
> After consultation with our Business Information Solutions Centre, it was discovered that emails dating from 2003 to August of 2013 are no longer available on our Ottawa Police Service databases. Additionally, no emails could be located from August to December 2013 from either email addresses [sic] provided in your request letter.

[5] The requester confirmed receipt of the partially disclosed occurrence report and attached emails, but took the position that they were not responsive to his request.

[6] The police responded with a supplementary decision (the supplementary decision or July 2019 decision) in which they explained that further responsive records do not exist. The police wrote that they were "unable to provide email records that may have existed from 2003-2013," as email records prior to July 2013 could not be recovered on police databases. The police also wrote in the supplementary decision that they were unable to locate email records from a specific email address the appellant provided, "or any email records containing [the appellant's] name for the remaining 2013 year as provided in your request."

[7] The requester, now the appellant, appealed the police's decision to the Office of the Information and Privacy Commissioner (the IPC). The parties participated in mediation to explore the possibility of resolution. During mediation, the appellant confirmed that he is not seeking access to the information withheld from the partially disclosed records. Accordingly, the exemptions in section 38(a), read in conjunction with section 8(1)(i), and section 38(b), were removed as issues in this appeal. However, the appellant believes that

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[1] In his request, the requester noted that he does not remember which email address he used to contact the police about his concerns.

[2] A suggested address is provided with the caveat that the requester is "not 100% certain of the address [but that] I would like a complete copy of that email, irrespective of which email address it was sent from and irrespective of who you believe the author of that email was."

additional records exist that the police did not disclose, while the police maintain that no responsive records exist.

[8] As no further mediation was possible, the appeal was transferred to the adjudication stage of the appeal process where an adjudicator may conduct a written inquiry. I decided to conduct an inquiry on the sole issue of the reasonableness of the police's search for responsive records. As part of my inquiry, I received representations from the appellant and the police that were shared between them in accordance with the IPC's *Practice Direction 7* on the sharing of representations.

[9] In this order, I uphold the police's search as reasonable and dismiss this appeal.

DISCUSSION:

Did the police conduct a reasonable search for responsive records?

[10] 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 of the *Act*.[3] 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.

[11] 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.[4] To be responsive, a record must be "reasonably related" to the request.[5]

[12] 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.[6]

[13] 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.[7]

Representations

The police's representations

[14] The police submit that they searched their Records Management System (RMS) database for responsive records using the appellant's name and date of birth. They also asked their Business Information Section (BIS), which they submit is the formal name of their information technology (IT) department, to search for emails from the timeframe and email addresses the appellant provided. The police say that they asked the specific

[3] Orders P-85, P-221 and PO-1954-I.
[4] Orders P-634 and PO-2559.
[5] Order PO-2554.
[6] Orders M-909, PO-2649 and PO-2592.
[7] Order MO-2185.

detective whom the appellant identified to search her computer using the email addresses, senders, and time frame provided by the appellant.

[15] The police submit that their searches failed to locate any of the emails requested by the appellant and that the specific emails identified by the appellant were not attached to any of the appellant's occurrence reports.

[16] The police say that the searches performed by their BIS section "returned negative," meaning that the police do not have any email records prior to July 2013 on their servers. The police say that BIS were also unable to locate any emails from the appellant's father's name or the appellant's father's email address that the appellant provided.

[17] The police submit that now, when someone requests a "restoration," or a copy of emails sent or received and they have no information about the email's sender or recipient, the police have only one mechanism to perform this function: a "Compliance/eDiscovery" system. However, the police say that this system only came online in the third quarter of 2013, so that emails sent or received before then cannot be queried. If the records were received at the time the appellant says, any emails prior to July 2013 no longer exist on their email servers/system and are therefore not searchable.

The appellant's representations

[18] The appellant submits that he is not certain as to precisely what it means that the police searched their databases (the RMS and BIS) for the emails and he asks whether there are other ways the police can search. He questions whether the police searched only through emails or also through .pdf documents and other formats under which email could be stored; whether there were "any other places to search" other than the RMS and wherever BIS searched, and whether this included documents saved under "different formats, or even in print."

[19] The appellant submits that there is no indication the police searched under any name besides his own. He says the police should have searched using the appellant's father's name and date of birth, and the names of the other individuals the appellant provided, including the name of the individual who reported one of the incidents (in 1996) as well as the name of the accused.

[20] The appellant says he received an automatic reply in 2015 to an email regarding the accused, but that this email was never included in the emails attached to the occurrence report the police partially disclosed. He submits that he believes it would be highly unlikely that the emails no longer exist because they "were pertaining to homicide and rape."[8] He also says that he spoke to a detective who he says confirmed the existence of emails from the 2008-2013 time frame.

The police's reply representations

[21] In reply to the concerns set out in the appellant's representations, the police explain that the RMS is the database that houses all of their occurrence reports and calls for service, while the BIS is the name of their IT section, which is able to search all sent and

[8] The request describes specific incidents that the appellant says occurred in 1994 and 1996. The incidents described by the appellant do not make reference to homicide or sexual assault.

received emails, including attachments.

[22] The police submit that they searched the RMS using the appellant's and his father's information, but did not locate responsive reports or records. They say that BIS's searches of the police's email servers included any sent and received emails. The police say that, because the appellant sought access to "records which he submitted under his name and date of birth," the police searched the RMS for "any and all" occurrence reports that included that information. Because the BIS can search the police's email database/servers for key words, email addresses, and names, the police say they also searched their email servers for any attachments (such as .pdf attachments) that might have been included in all the emails searched, and which included emails sent or received.

[23] The police say that, because of storage capacity limitations on their email servers, any emails sent or received before July 2013 no longer exist and that an email prior to July 2013 could exist only if the recipient decided to save it as a .pdf or other file format on their computer, or has not deleted it from their inbox. The police say that performing a search of each and every member's computer drive for an email that may or may not have been saved would be operationally crippling to the BIS, as the force has more than 2,200 members and non-personal drives. Further, the police say that even if saved onto a police drive, the file name could be changed, which would render a search "next to impossible."

[24] The police submit that the initial searches were completed by the freedom of information analyst who processed the appellant's request. The current analyst conducted another search using the appellant's father's information based on the appellant's advice that he had sent an email from his father's email address, but this additional search also did not locate responsive records.

[25] In reply to the appellant's submission that the police did not search using the accused's name or the names of others involved in the incidents the appellant described, the police say that any information obtained from an individual which ends up being attached to or included in a police report will be linked to that person's name and information. For example, if the appellant submitted an email or a .pdf document that ended up being included in or attached to a report involving another individual, the appellant's name and information "is included/added to that report." In other words, the police say that, if the appellant provided information that was included in any report involving any other individual (such as the accused or the other individuals identified in the appellant's request), the appellant's name is also added to that report. When the police query the appellant's name, no matter who else is in those reports, the search will capture/show all those reports. When the police query the appellant and/or his father's name on the RMS system, they submit that "each and every" report associated with either individual appears. Accordingly, the police submit that they did not query other names, because the name and information of either the appellant and/or his father would appear on the reports of those other individuals, had any information been received from either.

[26] After completing searches for both the appellant and his father, the police say that no reports indicate that an email was ever received with regard to the information provided in the appellant's request.

[27] Finally, the police say that, in addition to reaching out to other investigators and officers in the hope of locating records, they also contacted the detective identified by the

appellant and asked her to search her computer drive and emails for responsive records, but that none were located.

The appellant's sur-reply representations

[28] In his sur-reply representations, the appellant maintains that he does "not believe there has been reasonable search conducted without at least searching the name of the accused etc. or conducting searches using other methods. He submits that he is "not confident that all reasonable ways to obtain the records have been attempted."

Analysis and findings

[29] I am satisfied that the police conducted a reasonable search for records responsive to the appellant's request. The police's representations demonstrate that experienced employees, knowledgeable in the records related to the subject matter of the request, as well as with the police's record keeping systems, made reasonable efforts to locate responsive records. The police conducted searches using different search parameters – the appellant's and his father's name and date of birth, and the email addresses provided by the appellant – and provided details of the results.

[30] Although the appellant submits in his representations that the records ought to still exist because of their relationship to serious offences (a "homicide and a rape"), the request describes different offences, and the appellant has not provided me with a sufficient basis to conclude that the emails still exist, that they relate to incidents that would have been recorded in, and therefore attached to, occurrence reports, or ought to have been kept longer than the police submit. I accept the police's submission that, while responsive records may have existed at one time, they no longer do because of the police's records retention practices at the time. I also accept the police's submission that emails that related to specific occurrences would have been added to the relevant occurrence reports.

[31] I am satisfied that the reasonableness of the police's search is not undermined, in the circumstances, by the fact that the responsive records appear to no longer exist. In my view, the police have provided a reasonable explanation regarding record storage capacity issues up to 2013. In any event, the issue before me is not the police's retention practices but whether their search for responsive records was reasonable. I find that it was. The police conducted multiple searches in their database that houses occurrence reports (including attachments that may include emails), and engaged their IT department to search their email database and servers for emails responsive to the appellant's request. Based on the police's representations, two analysts searched the RMS, the police's BIS department searched the police's email servers, and the detective identified by the appellant searched her computer drive.

[32] For the reasons set out above, I find that the police have met their obligation to have an experienced employee knowledgeable in the subject matter of the request expend a reasonable effort to locate records that are reasonably responsive to the request. I find that the appellant has not provided me with a reasonable basis to conclude that additional responsive records might exist but were not located by the police in their searches. As a result, I find that the police have conducted a reasonable search as required by section 17 of the *Act* and I dismiss this appeal.

ORDER:

I uphold the police's search for responsive records as reasonable and dismiss this appeal.

Original Signed By: July 29, 2021

Jessica Kowalski
Adjudicator