

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4124

Appeal MA19-00826

Owen Sound Police Services Board

November 9, 2021

Summary: The Owen Sound Police Service (the police) received an access request under the *Municipal Freedom of Information and Protection of Privacy Act* for the identities of the complainants who caused the appellant's vehicle to be pulled over by the police. The police located this information for one incident, but did not locate any information regarding the other incident.

In this order, the adjudicator finds that the police conducted a reasonable search for responsive records and dismisses the appeal.

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

OVERVIEW:

[1] This order determines the issue of whether the police conducted a reasonable search for the identity of the complainants who caused the requester's vehicle to be pulled over by the police.

[2] Specifically, the Owen Sound Police Service (the police) received the following access request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*):

On or about, my vehicle was pulled over on [date]. I wasn't driving, my daughter was. Roughly two weeks later I was pulled over. I was driving. I did nothing wrong. One week later, I was pulled over again. I did nothing wrong.

I would like information regarding the first two incidents. I am requesting the names of the persons that called into the Owen Sound Police Department or [the Ontario Provincial Police] and notified the police that I was doing something wrong.

[3] The police issued a decision granting partial access to the records responsive to the request. Access to the withheld information was denied pursuant to the discretionary law enforcement exemption in section 8 of the *Act*. The police noted that no responsive records were located for the first incident. With regard to the second incident, the police advised the requester of the name of the police officer who was listed as the complainant.

[4] The requester (now the appellant) appealed the police's decision on only the issue as to whether the police conducted a reasonable search for responsive records to the Information and Privacy Commissioner (the IPC) and a mediator was appointed to explore resolution. The application of section 8 to the responsive records was not at issue at adjudication.

[5] During the course of mediation, the appellant advised the mediator that he believed there were errors in the records disclosed. The mediator advised the appellant how to file a correction request under section 36(2) of the *Act*.¹

[6] The appellant believed that further records responsive to his request exist in police record holdings and wished to proceed to the next stage of the appeal process. As no further mediation was possible, this appeal proceeded to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry. I decided to conduct an inquiry on the sole issue of reasonable search.

[7] I sought the representations of the police initially, which were provided to the

¹ The right of correction in section 36(2) provides that:

Every individual who is given access under subsection (1) to personal information is entitled to,

(a) request correction of the personal information if the individual believes there is an error or omission;

(b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made; and

(c) require that any person or body to whom the personal information has been disclosed within the year before the time a correction is requested or a statement of disagreement is required be notified of the correction or statement of disagreement.

appellant. The appellant provide representations in response. Although I sought reply representations from the police, the police did not submit any.

[8] In this order, I uphold the police's search for responsive records and dismiss the appeal.

DISCUSSION:

Did the police conduct a reasonable search for records?

[9] 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 17.² 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.

[10] 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.³ To be responsive, a record must be "reasonably related" to the request.⁴

[11] 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.⁵

[12] 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.⁶

[13] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.⁷

Representations

[14] The police provided representations on the searches that were conducted for

² Orders P-85, P-221 and PO-1954-I.

³ Orders P-624 and PO-2559.

⁴ Order PO-2554.

⁵ Orders M-909, PO-2469 and PO-2592.

⁶ Order MO-2185.

⁷ Order MO-2246.

responsive records. Their representations included an affidavit from their Director of Corporate Services/Freedom of Information Coordinator detailing the searches performed.

[15] The police state that the only place that responsive records would be located is within their electronic records management system (the RMS).

[16] The police state that when a vehicle stop/traffic stop is conducted, an officer will request that the dispatch operator create a Computer Aided Dispatch (CAD) event or will create a field event themselves on the mobile dispatch terminals. Alternatively, if a traffic complaint is received from a third party, an event is created by a dispatcher within the CAD system and an officer is dispatched. In so doing, a record of the person and/or vehicle stopped is recorded within the RMS. The police state that, in this case, multiple query searches were conducted, including:

1. Initial query traffic complaints/enforcement between [dates in the request].
2. Person query - name of appellant.
3. Licence plate query - [appellant's licence plate number].
4. Person query - [appellant's daughter's name (driver of vehicle)].
5. Advanced Search query - traffic events/traffic enforcement between [expanded dates] which resulted in 303 events being returned, two of which pertained to the appellant and were previously disclosed.
6. Advanced wildcard searches⁸ for the licence plate ... for [driver first name]/[driver last name], ...for [appellant's first name]/[appellant's last name].

[17] The police state that there were no additional records located as a result of these searches, other than the ones already disclosed. The police also state that there are currently no retention schedule time periods stipulated within the RMS with respect to potential purge deadlines for traffic events, suggesting that the records sought by the appellant would not have been destroyed in accordance with them.

[18] The appellant states that he believes that the police were contacted on three separate occasions. He explains that it was not until the third time that he became concerned after his vehicle was pulled over by police while doing nothing wrong.

[19] The appellant states that the first incident led to a police officer waiting for his

⁸ The police state that the wildcard search queries any combination of the name or plate where the wildcard is inserted.

car approximately a half a block away from his residence and he submits that obviously someone called police dispatch.

[20] The appellant refers to the decision letter he received from the police, stating they have no information on the first incident, and he states his belief that the requested information does exist. He does not believe the search was performed reasonably and questions whether records were deleted.

Analysis/Findings

[21] In their decision letter in response to the appellant's request for records about the two incidents involving his vehicle, the police stated:

...with respect to [the first] incident involving your vehicle being pulled over on or about [date], wherein you have advised your daughter was driving. You requested the name of the person who contacted Owen Sound Police or [the] OPP⁹ and notified police that you were doing something wrong. Following a thorough search by [the] Director of Corporate Services for the Owen Sound Police Service records you are hereby notified that the search concluded that no records exist. We were unable to find an incident [report] that outlined your vehicle, your name and your daughter's name ... [for a two week date range].

[With respect to the second] incident two weeks later wherein you were pulled over in your vehicle. Within this request you indicate you are looking for the names of the persons that called into the Owen Sound Police Department or OPP and notified police that "I was doing something wrong."

In this incident we are able to advise that we located a suspicious vehicle incident [report] on the [date] wherein the Owen Sound Police Service was made aware that a possible suspended person was operating a motor vehicle with licence plate [#]. In this instance [named police constable] was listed as the complainant. I have attached a copy of the occurrence summary report that has been identified as responsive to your request.

[22] As evidenced by the decision letter, regarding the two driving incidents listed in the appellant's request the police state that no responsive records exist for the first incident. However, the police located records regarding the second incident and provided him with the responsive records.

⁹ The Ontario Provincial Police.

[23] As a basis for believing that additional responsive records exist, the appellant indicated that he thought the police were waiting for his vehicle during the first incident. However, this alone does not amount to a reasonable basis for believing that further records exist.

[24] In the first incident, the police searched for responsive records related to both the appellant's name and his daughter's name, the driver of his vehicle. I find that they considered whether responsive records could be located under either his name or his daughter's name.

[25] Based on my review of the police's decision letter and the parties' representations, I find that the police conducted a reasonable search for responsive records. I find that the appellant has not provided a reasonable basis for me to find that additional responsive records exist. Nor has he provided a reasonable basis for me to conclude that such records existed but no longer exist within the police's record holdings.

[26] Accordingly, I uphold the police's search for responsive records as reasonable and I am dismissing the appeal.

ORDER:

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

Original Signed by: _____
Diane Smith
Adjudicator

_____ November 9, 2021