

Information and Privacy Commissioner,  
Ontario, Canada



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

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## INTERIM ORDER MO-4266-I

Appeal MA20-00024

Toronto Police Services Board

October 28, 2022

**Summary:** The appellant made a request to the Toronto Police Services Board (the police or TPS) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for copies of documents relating to the protocols and procedures for the preparation of “Wanted Posters,” including those using photographs obtained from the Ministry of Transportation as well as the specific records used to create the “Wanted in Canada” poster using the personal information of the appellant. The police issued a decision providing him with access to some records and informing him that they did not have specific training or procedures for creating the posters. The appellant appealed to the Information and Privacy Commissioner of Ontario (the IPC) taking the position that the police did not conduct a reasonable search and further responsive information exists. In this order, the adjudicator finds that the police’s search was not reasonable and orders it to complete a further search for responsive information.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M.56, section 17.

### OVERVIEW:

[1] Following disclosure from an earlier access request, the appellant became aware of a bulletin prepared by the Toronto Police Services Board (the police or TPS) which had been created by acquiring his photo from his driver’s license issued by the Ministry of Transportation (MTO). As a result, the appellant submitted a new access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act* or *MFIPPA*) to the police, as follows:

Under the powers of the *MFIPPA*, I am requesting copies [of] Institutional documentation related to the protocols of the service-wide application related to the supervision, authorization, production and filing procedures established by the Toronto Police Service through its Administration and Corporate Communications Unit or other Units related to the preparation by Constables of "Wanted Posters", including those using photographs obtained from the Ontario Ministry of Transportation Drivers License electronic data base as part of the graphic design. The general records requested under this access request further relate specifically to records to the procedural authorization, ITO warrant applications, preparation, printing, publishing, and distribution of multiple copies of the attached "Wanted in Canada" poster created by personnel of the Toronto Police Service using the personal employment ad contact information of the requestor, prepared between 01 August 2000 and its issuance nationally and internationally on or about 06 April 2001 by a member of the Toronto Police Service, [specified badge number], assigned to 53 division and as reported by the Constable in the Toronto Globe and Mail as part of "extradition efforts". [reference IPC Order MO-5841-I, PP 63-65].

[2] In response, the police sent a decision letter to the appellant which stated that it was providing him with access to some records. However, the letter also stated the following:

After consultation with involved stakeholders, please be advised that the Toronto Police Service does not have specific training or a specific procedure for creating "Wanted Posters" and as such, none can be provided.

[3] The police also noted that part of the information that the appellant was seeking is in the custody and control of the Ministry of Transportation.

[4] The appellant appealed the police's decision to the Information and Privacy Commissioner of Ontario (the IPC). He alleged that the police had not conducted a reasonable search for records that are responsive to his access request and claimed that further records exist.

[5] This appeal was not resolved during mediation and was moved to adjudication where an adjudicator may conduct an inquiry. At the outset, the appellant requested that the adjudicator originally assigned to the appeal be recused from adjudicating this appeal because he was "biased" and failed to be "impartial" in a previous matter. This was dismissed by the adjudicator.

[6] The original adjudicator confirmed that the sole issue to be resolved in this appeal is whether the police conducted a reasonable search for records that are responsive to the appellant's access request. He sought and received representations

from the police and the appellant on this issue.

[7] The file was then assigned to another adjudicator who sought representations in reply from the police and provided the appellant with an opportunity to provide representations in sur-reply which he did. The file was then assigned to me to continue with the adjudication of the appeal.<sup>1</sup>

[8] In this order, I find that the police's search is not reasonable and order it to conduct another search for responsive records relating to parts one and two of the request.

## **DISCUSSION:**

### **Preliminary Issue**

[9] The appellant made lengthy submissions in this appeal. Although he addressed the issue in dispute, he also addressed issues that, in my view, are not relevant to the sole issue before me, if the police's search for responsive records was reasonable. The appellant has had a number of appeals with the IPC, and in his representations he refers to a number of them, discussing the adjudicator's findings and the unfair way he feels he was treated including in Order MO-3841-I where the adjudicator's findings led to the "fresh request" in this appeal. He also addresses many other issues, including the actions of adjudicators who had been assigned to this appeal, by claiming that one negligently created a "deficient and haphazard Notice of Inquiry" which was sent to the police, and that another adjudicator shared the attachments he provided to his representations with the police, despite his objections. These submissions will not be set out in this order in any further detail, and although I reviewed them, I find that they are not relevant to a finding concerning the reasonableness of the police's search.

[10] In his sur-reply representations, the appellant refers to the ongoing contempt by the police for the duty and obligations of its officers under the *Act*. He asks that this order address the "multiple offences" of the police in acting contrary to section 48(1) of the *Act*, by recommending to the Commissioner that the permission of the Attorney General be sought to commence a prosecution of the police for offences against section 48(1). However, as discussed below, although I find that the police's search was not reasonable and order it to conduct a further search for responsive records relating to parts one and two of the request, I do not see sufficient evidence that would warrant my making this sort of recommendation to the Commissioner.

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

[11] As stated, the sole issue in this appeal is whether the police conducted a

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<sup>1</sup> I reviewed the representations submitted by the parties and have decided that I do not require further representations.

reasonable search in regards to the appellant's request.

[12] If a requester claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act*.<sup>2</sup> If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision. Otherwise, it may order the institution to conduct another search for records.

[13] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.<sup>3</sup>

[14] The *Act* does not require the institution to prove with certainty that further records do not exist. However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;<sup>4</sup> that is, records that are "reasonably related" to the request.<sup>5</sup>

[15] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are reasonably related to the request.<sup>6</sup> The IPC will order a further search if the institution does not provide enough evidence to show that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.<sup>7</sup>

### **Police's representations**

[16] The police provided an affidavit sworn by the assigned analyst in its access and privacy section (the analyst). The analyst attests that she has served in this function since 2012 and part of her role as an analyst is to search and provide records for requests for information pursuant to the *Act*. The analyst attests that upon receiving the request, the police assigned it to the Disclosures Analyst (the original analyst). The analyst attests that the contents of the affidavit are based solely on the contents and notes made by the original analyst in processing the file, as the original analyst is no longer employed by the police. The analyst attests that the original analyst was assigned to the file on the day the request was received and the following was completed in the first thirty days:

- TPS Governance unit and the Intelligence Services unit (Intell) were contacted via email to conduct the searches necessary for this request

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<sup>2</sup> Orders P-85, P-221 and PO-1954-I.

<sup>3</sup> Order MO-2246.

<sup>4</sup> Orders P-624 and PO-2559.

<sup>5</sup> Order PO-2554.

<sup>6</sup> Orders M-909, PO-2469 and PO-2592.

<sup>7</sup> Order MO-2185.

- TPS College was contacted via email to conduct the searches necessary for this request
- TPS Corporate Communications and Intell were contacted via email to conduct the searches necessary for this request<sup>8</sup>
- the original analyst received an email from the first contact at Intell providing new contact with a brief update of the request, and advising that he did not believe anything that pertained directly to Intell existed
- the original analyst was provided with the "News Media" procedure (17-0I) and "Community Safety Notification" procedure (17-04) that was valid in the years 2000-2001 from TPS Governance unit
- the original analyst was informed by the TPS College to contact a specified individual at Strategy Management
- the original analyst received an email from TPS Corporate Communications advising that Corporate Communications does not have a specific procedure for "Wanted Posters"
- an email was sent to TPS Legal Services, requesting any Memorandum of Understanding between the TPS and the Ministry of Transportation (MTO), responsive to this request
- a call was made to TPS Traffic Services to inquire about accessing/utilizing MTO photographs and was advised that all sworn TPS members have access and to contact the MTO Liaison (a civilian member of the TPS)
- a call was made to the MTO Liaison, and was advised to speak with the TPS Information Security Officer (ISO)
- an email was sent to the ISO regarding to the request, who in turn advised the original analyst that the MTO had a procedure in the year 2000, where a TPS officer would fill out a form making a request, and the MTO would conduct a manual search for the relevant photo<sup>9</sup>
- a follow up email was sent to TPS Legal Services in regards to the search for a Memorandum of Understanding that may be responsive
- TPS legal services advised the original analyst by email that they require more time to conduct the necessary searches

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<sup>8</sup> The affiant attests that Intell was contacted again due to a change in personnel

<sup>9</sup> The analyst notes that today, TPS officers can check the MTO themselves.

- The original analyst withdrew the request for TPS Legal Services to conduct searches, as this request was coming due, and the information relating to the Memorandum of Understanding was for background information only
- the responsive records and the decision letter were prepared and forwarded to stakeholders.

[17] The analyst attests that shortly after the 30-day period the responsive records and decision letter were mailed to the appellant.<sup>10</sup> She confirms that the decision letter advised that, “[a]fter consultation with involved stakeholders, please be advised that the Toronto Police Service does not have specific training or a specific procedure for creating ‘Wanted Posters’ and as such, none can be provided.” She also attests that pursuant to the request, the decision letter set out that “full access has been granted to the remaining requested Procedures, as held by this Police Service.” The analyst attests that 28 pages of TPS Procedures - 17-01 News Media (1998), 17-04 Community Safety Notification (1999), 17-04 Community Safety Notifications (2000), and 02-17 Obtaining a Search Warrant (2000) were enclosed with the decision letter.

[18] The analyst attests that the original analyst received a telephone call from a mediator at the IPC, informing her about this appeal. She attests that the police had not yet received any documentation that indicated an appeal was underway by this point. The analyst attests that the mediator advised the original analyst that notice had been sent and the appeal is based on “reasonable search.”

[19] The analyst attests that upon receiving the Notice of Inquiry, the APS coordinator re-assigned the appeal to herself and an extension was requested for provision of its representations so that she could acquaint herself with the file.

### **Appellant’s representations**

[20] The appellant submits that the affidavit provided by the police is based on second hand hearsay and represents no first-hand knowledge of a search having been conducted by the affiant. He submits that the affidavit is based solely on a review of “unverified and unconfirmed remnants of the ‘contents and notes’ of a previous analyst.” The appellant submits that the police have not provided sufficient evidence in relation to question three from the Notice of Inquiry, which reads,

Please provide details of any searches carried out including: by whom were they conducted, what places were searched, who was contacted in the course of the search, what types of files were searched and finally, what were the results of the searches? Please include details of any searches carried out to respond to the request.

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<sup>10</sup> The analyst attests that the police were informed of a deemed refusal despite releasing the records and as a result the deemed refusal appeal was closed.

[21] The appellant suggests that since the analyst was relying on second hand unverified information from an incomplete search, a further search should be ordered.

[22] The appellant submits that the current analyst confirms in her affidavit that the original request made to Legal Services was withdrawn and therefore the decision letter was sent in the absence of a completed search. The appellant submits that even with gaps, the new analyst did not undertake any further reasonable efforts to complete the search.

[23] The appellant refers to the Notice of Inquiry sent to the police and the specific question the original adjudicator asked them. He submits that the police did not address question 4 from the Notice of Inquiry, which states:

Is it possible that such records existed but no longer exist? If so please provide details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.

[24] The appellant submits that there is sufficient evidence, much acquired by himself from other institutions, that records for part one of the request (general records of protocols and procedures of access) and for part two (records of a specific application and exercise of the protocols by a named officer during a specified period who gained access and used the appellant's driver license photo) should be located.

[25] The appellant submits that while some records (especially under part two of the request) are historic, they are still maintained under the applicable sections of Toronto Municipal Code, Chapter 219, Records Corporate (local boards) and section 4.1 of the *Act*. The appellant refers to 219-22 of Chapter 219 and submits that it confirms that circulars, bulletins, wanted posters (crime, rewards, etc.) are to be stored, and not destroyed.

[26] The appellant refers to access requests he made to other institutions and submits that they have produced responsive records that directly relate to the request in this appeal and confirm that the records either sent from the Ministry of Transportation or received by other municipal police services have been retained permanently.

[27] The appellant refers to the background for the request in this appeal. He references Order MO-3841-I, and submits that the information that was finally accessed through disclosure in that appeal identified that the police had used the appellant's driver's license photo to create a circulated "Wanted" bulletin. In Order MO-3841-I, the adjudicator found that records concerning the production of the "wanted" poster fall outside of the scope of the request in that appeal. The appellant submits that as a result, he made the request that is at issue in this appeal.

[28] The appellant submits that the request for records in this appeal consists of two

severable but narrowly focussed parts. He submits that there is enough evidence, much acquired from other institutions, that shows that records for both part one of the request (general records of protocols and procedures of access) and part two (records of a specific application and exercise of the protocols by a named officer during a specified period who gained access and used the appellant's driver's license photo) would be found in a reasonable search.

[29] The appellant refers to the affidavit provided by the police and notes that the legal department had informed the original analyst that more time was required for the search in that department. The appellant submits that since the police issued its decision letter before the legal department had conducted a search, this is evidence that the search was not reasonable. The appellant notes that the police's affidavit sets out that the original analyst withdrew the request from TPS legal services even though, as he submits, the Memorandum of Understanding that had been requested was key to the request.

[30] The appellant refers to question 2 in the Notice of Inquiry sent to the police, which reads:

If the institution did not contact the requester to clarify the request, did it:

(a) choose to respond literally to the request?

(b) choose to define the scope of the request unilaterally? If so, did the institution outline the limits of the scope of the request to the requester? If yes, for what reasons was the scope of the request defined this way? When and how did the institution inform the requester of this decision? Did the institution explain to the requester why it was narrowing the scope of the request?

[31] The appellant submits that when he read the police's decision letter, it was clear to him that they had unilaterally redefined the request, eliminating specific parts of the request without seeking clarification from him. He submits that no records provided to him in the decision letter address information referring to the access of his own driver's license photo and the creation of the bulletin.

[32] The appellant submits that among the 28 documents provided by the police in their decision letter, were protocols and procedures headed:

02-17 Obtaining a Search Warrant

17.01 News Media

[33] The appellant submits that the decision letter did not include copies of the warrants or copies of the news media prepared by the officer named in part two of the request. The appellant submits that since there is a policy for the preparation of such



bulletins, and given the retentions schedule of Regulation 219, records must exist. The appellant refers to the procedure for creating “community safety notification” set out in TPS 17.04, and provided with the decision letter. He submits that if all steps were followed, records would have been created at each step of the procedure.

[34] The appellant submits that because of the nature of the types of charges laid by the specified constable, Municipal Regulation 219 will have ensured that all records will still exist. Therefore, the appellant submits that records attached to the actions of the specified constable in creating the bulletin using the appellant’s personal information, if done following the set procedure, must still exist. The appellant also refers to the existence of a protocol for public notification<sup>11</sup>, noting that his request included records prepared for the media “as reported by the Constable in the Toronto Globe and Mail as part of the extradition efforts.” He submits that the police excised this from his request.

[35] The appellant submits that none of the records he received from the police were records responsive of the protocols regarding how the named constable acquired and used the photographs of the appellant retrieved from the MTO database. The appellant refers to the decision letter which states:

After consultation with involved stakeholders, please be advised that the Toronto Police Service does not have specific training or a specific procedure for creating “Wanted Posters” and as such none can be provided. Pursuant to your request full access has been granted to the remaining requested Procedures as held by this Police Service

[36] The appellant submits that this statement is clearly at odds with the records produced which sets out the mandatory procedural steps.

[37] The appellant submits that as a result of the decision letter, he made a request to the MTO for information as suggested by the police in its decision letter. He notes that the police did not take steps to transfer part of the request to the MTO in accordance with section 18(2) of the *Act*.

[38] The appellant submits that he cannot reconcile the records provided by the MTO with those provided by the police. He submits that in the disclosure from the MTO, he received unsigned copies of the faxes from the police officer requesting the appellant’s driver’s license, which were not disclosed by the police. He submits that there is no actual copy of his driver’s license or what format or formatting it was sent and received by in the police’s disclosure. The appellant submits that the decision letter from the MTO and attached records provide reasonable grounds to conclude that the original copies of records sent by the named officer were still maintained in the care and control of the police.

[39] The appellant also submits that in response to a similar access request (similar to

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<sup>11</sup> The appellant attached the Protocol for Public Notification to Appendix C of his representations.

part one of the request that is the subject of this order) to another municipal police service, he received notice that a *MTO Inquiry Services System Oversight Framework Audit* was developed jointly with the Ontario Association of Chiefs of Police to implement an oversight framework audit before the MTO allocated additional photo accounts to police services in Ontario. The appellant submits that since the oversight framework was developed jointly, it should be self-evident that the police's chief was, on balance, part of the creation of the oversight framework and records should exist.

[40] The appellant submits that there is considerable evidence to conclude that further records in response to parts one and two exist and will be found in a reasonable search. In support of his position that the police did not locate all responsive records, the appellant included the following attachments with his representations:

- Copies of records related to the access procedures used by the specified constable (#1440 from the request) to create the bulletin, including a steno note, a memorandum books entry, a copy of the
- MTO responsive records and a copy of the enlarged driver's license photo and bulletin created from the photo
- A copy of a letter from the acting deputy minister of the MTO addressed to all chiefs of police indicating a memorandum is attached
- A copy of pages extracted from an audit carried out for the MTO by a municipal police service, referring to the background to various protocols and agreements in place with that service
- Copies of various access forms for photo requests disclosed by the MTO and a municipal police service
- A procedural manual from August 2000 disclosed by the MTO.

[41] The representations and attachments were shared with the police<sup>12</sup> who in turn provided reply representations. In their reply, the police submit that all relevant stakeholders were contacted in the search. They submit that they cannot comment on the record maintenance policies and practices of other institutions.

[42] The police submit that the searches outlined in the affidavit were based on the appellant's original request. The police submit that it adheres to the former assigned analyst's interpretation of the scope - that the appellant was seeking records that are general in nature only.

[43] The police submit that, as noted by the appellant, its search by its Legal Services for a "Memorandum of Understanding between the TPS and the Ministry of

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<sup>12</sup> The attachments to his representations were shared with the police, despite the appellant's objections.

Transportation,” was incomplete and that they are willing to follow through with this search effort - should it be determined necessary in this adjudication.

[44] The adjudicator shared the police’s reply with the appellant and he chose to provide sur-reply representations. In my view, the sur-reply representations were unnecessary given the submissions to date. In his sur-reply submissions, the appellant raises a number of issues and concerns that are not relevant to the issue before me, being the police’s search. Given, that I find that the police’s search was not reasonable (as explained below) it is unnecessary for me to elaborate on the appellant’s sur-reply representations.

### **Analysis and finding**

[45] Having reviewed the representations of the parties, and for the reasons that follow, I am not satisfied that the police conducted a reasonable search for records as required by section 17.

[46] I find that a careful reading of the appellant’s request reveals that he is seeking two categories of records:

1. General records of protocols and procedures of the police related to the creation of “Wanted Posters”
2. Specific records pursuant to the protocols and procedures concerning the “Wanted in Canada” poster created by the police and containing the appellant’s personal information prepared and issued on specified dates by a specified member of the police.

[47] It appears that the police unilaterally narrowed the scope of the appellant’s request, which encompassed both general records and specific records related to the creation of the poster containing the appellant’s personal information. I find that the original analyst misinterpreted the scope of the request and only searched for records of a general nature, misinterpreting the second part of the request and processing only the part of the request for general records. This was confirmed by the police in their reply representations when they stated that the appellant was seeking records that were of a general nature only.

[48] While the appellant submits, in his sur-reply representations, that this misinterpretation is indicative of his treatment by the police in other appeals and an example of its ongoing contempt for the duty and obligations they have under the *Act*, it is more apparent when reviewing the actual request, that the police simply misinterpreted it. When reading the request, it is not immediately apparent what the appellant is seeking other than general records. In my view, the request was not abundantly clear and it was incumbent on the police to contact the appellant for clarification of the verbose request to ensure a proper search was conducted. Instead, the police conducted a search for only records of a general nature without search for all

of the specified information and, therefore, did not complete a reasonable search for records as required by section 17 with regard to the second part of the appellant's request. In addition, because the police did not search for information concerning part two of the request, it did not put its mind to whether records it created were retained in accordance with its own retention policy. I will order the police to address this issue in its affidavit concerning a future search.

[49] In my view, the appellant's representations demonstrate that the police ought to have in their custody or control additional records, responsive to part two of his request, including records documenting the process or procedure for creating the "Wanted" poster containing his personal information. I will order the police to conduct a search for this information.

[50] Also, with regard to the first part of the request, it is apparent from their representations that the police did not have their legal services complete a search for a memorandum of understanding between the police and the MTO relating to the transfer of driver's licence information. They also did not complete this search during the inquiry, once it became apparent that this record could be located and was not. Despite the appellant's statement in the document provided when he filed his appeal, that the first part of his request has been complied with by the police, he points to the police's affidavit, provided during the inquiry, which confirms that they did not complete the search for this memorandum. As a result, I find that the police's search with its legal services department concerning part one of the request was not reasonable, and I will order the police to conduct a further search for this information.

[51] Also, since the police did not address the appellant's submission concerning their chief's involvement with the oversight framework (mentioned at paragraph 39 of this order), I find it is possible that records relating to the oversight framework may exist and the police should conduct a search for same.

[52] However, I find that the remainder of the police's search for records relating to part one of his request is reasonable and the police are not required to search again for records in response to this part of the request, except the already mentioned memorandum and records relating to the oversight framework. Although the appellant points to documents received from other municipal police services, this is not evidence that similar records exist with the police. I accept the analyst's submission that the original analyst, was also a disclosures analyst whose role is to search and provide records for requests under the *Act*. Despite her misinterpretation of the request, the search for general records proceeded and what was located was provided to the appellant. I do not accept the appellant's submission that because a new analyst was assigned to the file a new search is required; a new analyst assigned to a file, is not a proper reason to find that an institution's search is not reasonable.

[53] As a result, I find that the police's search for responsive information should not be upheld and further searches should be conducted. If the police locate additional

responsive records as a result of these searches, they must issue an access decision to the appellant. To be clear, if the police locate no records as a result of the searches, an access decision must also be issued to the appellant.

**ORDER:**

1. I uphold the police's search for records reasonably related to part one of the appellant's request, with the exception of their search with Legal Services and any records involving the police with the *MTO Inquiry Services System Oversight Framework Audit* mentioned in paragraph 39 and 51.
2. I find that the police did not search for information relating to part two of the appellant's request and order it to conduct a search for responsive information relating to same. In particular:

I order the police to conduct another search for responsive information with their Legal Services with respect to parts one and two of the request

I order the police to conduct a search for responsive information relating to the *MTO Inquiry Services System Oversight Framework Audit*

I order the police to conduct a search for responsive information relating to part two of the request

The police are to provide me with representations on these searches by November 28, 2022. These representations are to be provided in the form of an affidavit signed and sworn or affirmed by the person or persons with knowledge of the search, and should include:

- the names and positions of the person(s) who conduct the searches (or who are contacted in the course of the searches)
  - details of the searches carried out, including the date(s) of the searches and nature and locations of the files searched
  - the results of the searches, and
  - whether it is possible that responsive records existed but no longer exist. If so, the police must provide details of when such records were destroyed and any relevant record maintenance policies and practices, such as evidence of retention schedules.
3. I may provide the appellant with a copy of the police's representations described in order provision 2, unless there is an overriding confidentiality concern. If the police believe that portions of their representations should remain confidential,

the police must identify these portions, and must explain why the confidentiality criteria in Practice Direction 7 of the IPC's *Code of Procedure* apply to these portions.

4. If the police locate additional records (or do not locate records) as a result of these further searches, they must issue a decision to the appellant in accordance with the *Act*. The police are to treat the date of this order as the date of the request for administrative purposes only. I direct the police to provide me with a copy of any decision provided to the appellant.

Original Signed by: \_\_\_\_\_

Alec Fadel  
Adjudicator

October 28, 2022 \_\_\_\_\_