

Information and Privacy Commissioner,
Ontario, Canada



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

FINAL ORDER MO-4280-F

Appeal MA20-00444

Toronto Police Services Board

November 23, 2022

Summary: The appellant made a request under the *Municipal Freedom of Information and Protection of Privacy Act* to the Toronto Police Services Board (the police) for records arising from a 2001 meeting between the police and their Shanghai counterparts that included a presentation about the appellant. The police searched for and located responsive records, granting partial access to them. The appellant appealed the police's decision and in Interim Order MO-3841-I the police were ordered to conduct further searches for responsive records. The police conducted these searches and the adjudicator upheld their search as reasonable in Final Order MO-3956-F.

The appellant sought a reconsideration of Final Order MO-3956-F. In Reconsideration Order MO- 4065-R (the reconsideration order), the adjudicator found that there was an omission or other similar error in the final order under section 18.01(c) of the IPC's *Code of Procedure* and allowed the reconsideration, in part. The adjudicator ordered the police to provide affidavit evidence about their retention of records as ordered in Interim Order MO-3841-I. The police provided affidavit evidence and the appellant was provided with an opportunity to respond to the evidence provided in the affidavit

In Interim Order MO-4196-I, the adjudicator found that the police had not complied with the relevant order provisions of the reconsideration order and ordered the police to provide the evidence required by the reconsideration order as to their retention of responsive records.

In this final order, the adjudicator finds that the police have complied with the terms of Interim Order MO-4196-I, upholds the police's search for 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.

Orders Considered: Orders MO-3841-I, MO-3956-F, MO-4065-R, and MO-4196-I.

OVERVIEW:

[1] This order is a follow up order to Interim Order MO-4196-I, which was issued further to Reconsideration Order MO-4065-R (the reconsideration order). The reconsideration order dealt with the appellant's request for a reconsideration of Interim Order MO-3841-I and Final Order MO-3956-F.¹

[2] These four orders concern the Toronto Police Services Board's (the police) search for certain records responsive to the appellant's request for records related to meetings held between the Toronto Police Service - Detective Bureau, the Combined Forces Asian Investigation Unit, and the Shanghai Municipal Public Security Bureau.

[3] Specifically, the appellant had made the following request to the police under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*):

Under the powers of [the *Act*], I am requesting copies of all records (including transcripts) of all meetings held between the Toronto Police Service – Detective Bureau, the Combined Forces Asian Investigation Unit, and the Shanghai Municipal Public Security Bureau [PSB].

This will include records of the preparatory arrangements made by the [police] for arranging the trip of the Shanghai PSB to Canada. It will include records of airport pickup, accommodation, meeting venues, and costs of hosting the event (including hotel bills and meal receipts) directly related to hosting the Shanghai PSB officials.

The request for responsive records will include copies of all presentations made to the Shanghai PSB by [three of the four police officers named in the agenda] (as they then were) and all others who made presentations at the meetings. It will also include records of these meetings as recorded in the [police] officers' official memorandum books and internal communication on the meetings between the [police] and the Shanghai PSB.

The dates of these arrangements and meetings will be from March 20, 2001 (and/or earlier) or dates prior to April 6, 2001, and records created subsequent to the meeting by way of review or follow-up responses to the

¹ All of these orders were issued after representations were sought in accordance with the Information and Privacy's Commissioner's (the IPC) *Practice Direction 7*.

meeting. This request will also include the personal information about me, in transcript, published and distributed at the official meeting.

[4] The appellant filed an appeal with the Information and Privacy Commissioner (the IPC) based on the police's failure to respond to his request in accordance with the procedures set out in the *Act*. Appeal MA17-8 was opened. That appeal file was closed after the police issued a decision letter to the appellant.

[5] The police's decision letter stated that no responsive records existed. The appellant was dissatisfied with the police's decision and appealed it to the IPC. Appeal MA17-8-2 was opened and a mediator was appointed to attempt resolution of the issues in the appeal.

[6] During the mediation stage of that appeal process, the police agreed to conduct another search for records.

[7] During mediation, the police issued a revised decision letter dated September 6, 2017 to the appellant setting out the results of the further searches conducted at the mediation stage and disclosed records to the appellant.

[8] Mediation did not resolve this appeal and the appellant confirmed that he wanted to proceed to adjudication on the issues of search and access to severed information. An adjudicator decided to conduct an inquiry.²

[9] After the exchange of representations, an adjudicator issued an Interim Order MO- 3841-I (the first interim order). In that order, concerning the police's search for records, the adjudicator found that the police had not expended reasonable efforts to locate certain records responsive to the appellant's request and ordered the police to conduct another search for two items (the two items) as follows:

- police email and network accounts for responsive records containing the key words "Shanghai" or "Combined Forces Asian Investigation Unit," and covering the time period March 1, 2001 to September 6, 2017 (the date of the police's revised decision to the appellant); and,
- the Office of the Chief [of Police] for records responsive to the appellant's request. Responsive records may include records that do not contain personal information of the appellant [for March 1, 2001 until September 6, 2012].

[10] This adjudicator ordered the police to provide representations on the specific

² Originally, an adjudicator was assigned to this appeal, however, they were unable to continue the appeal. This adjudicator did not issue any orders in this appeal. Then another adjudicator was assigned to continue this appeal. After reviewing all the file material and representations, this adjudicator issued the first interim order, Interim Order MO-3841-I, as well as a reconsideration decision letter order. I was then assigned to continue to adjudicate this appeal.

details of the searches they conducted.³

[11] The police conducted the searches as ordered in Interim Order MO-3841-I and additional records were located. The police issued two decisions letters, as they had conducted the searches separately for service-wide email and for network accounts. (The appellant also sought a reconsideration of Interim Order MO-3841-I, which the adjudicator denied by letter order.)

[12] The appeal was then assigned to me to continue the inquiry. After reviewing all the file material and representations, I issued Final Order MO-3956-F (the final order), where I upheld the police's search in response to Interim Order MO-3841-I as reasonable, and dismissed the appeal.

[13] The appellant then filed a request to have both Interim Order MO-3841-I and the final order (MO-3956-F) reconsidered. This file, Appeal MA20-00444, was opened for this purpose.

[14] After review of the appellant's reconsideration request representations, I issued Reconsideration Order MO-4065-R,⁴ where I denied the appellant's reconsideration request of the interim order on the basis that the appellant had already sought a reconsideration of the interim order and the previous adjudicator had denied this request by letter order dated October 16, 2019.

[15] I did, however, allow the appellant's reconsideration request of the final order (MO-3956-F), in part, as it related to my finding in the final order regarding the police's retention of records for the two items. I found that there was an error or omission in the final order, as I had not recognized that the police had not addressed their retention of records in their affidavit made in response to Interim Order MO-3841-I. I found that this finding constituted an omission or other similar error in Final Order MO-3956-F under section 18.01(c) of the IPC's *Code of Procedure* (the *Code*).⁵ I ordered the police to provide affidavit evidence (the affidavit) to the IPC and the appellant about their retention of responsive records.

³ The adjudicator also upheld the police's decision to withhold one discrete portion of a one-page note under section 38(b) of the *Act* and upheld the police's decision to withhold portions of a memorandum notebook page on the basis they are not responsive to the appellant's request.

⁴ In Reconsideration Order MO-4065-R, I considered whether there were grounds to reconsider the final order, not the interim order as, after the issuance of the interim order, the appellant had already sought a reconsideration of the interim order by letter dated October 3, 2019. In this letter, the appellant had sought to have certain portions of the interim order amended as, in his view, they contained misinformation. The adjudicator denied this request for the interim order to be reconsidered, as she found that the appellant was seeking to have her either consider the same submissions as she had already considered or was seeking to have her describe the records or the police's conduct in a different way, which had no bearing on the determinations made in the interim order.

⁵ Section 18.01(c) of the *Code* reads:

The IPC may reconsider an order or other decision where it is established that there is:
a clerical error, accidental error or omission or other similar error in the decision.

[16] In response, the police provided affidavit evidence on their retention of records.

[17] I then invited the appellant to respond to the police's affidavit. The appellant provided representations challenging the information in the police's affidavit, disputing that the police had provided the requisite affidavit evidence as to whether further responsive records possibly existed but no longer exist.

[18] In Interim Order MO-4196-I (the second interim order), I found that the police had not complied with the relevant order provision in Reconsideration Order MO-4065-R, as they had not adequately explained whether it was possible that records responsive to the two items existed but no longer existed. I ordered the police to provide additional evidence on their retention of records responsive to the two items ordered to be searched for in the first interim order, Interim Order MO-3841-I.

[19] The police then provided a letter explaining, clarifying and detailing their retention of the responsive records at issue with reference to the attached affidavit they had provided previously.

[20] In response, the appellant provided a lengthy 67-page response, in which he claimed that the police had not complied with the terms of the second interim order, Interim Order MO-4196-I, and also appeared to challenge all of the previous orders issued in this appeal.

[21] In this final order, I find that police have complied with the order provisions of the reconsideration order, as directed in the second interim order, and I uphold the police's search for responsive records and dismiss the appeal.

DISCUSSION:

Have the police conducted a reasonable search?

[22] The sole issue in this order is whether the police conducted a reasonable search for records responsive to the appellant's request as required by section 17 of the *Act*.

[23] 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.

[24] 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; that is, records that are "reasonably related" to the request.

[25] As outlined above, the police's search has been upheld as reasonable except for the information that it provided about its searches for the two items (defined above).

[26] In Reconsideration Order MO-4065-R, I allowed the appellant's reconsideration request, in part, regarding the provisions of the final order where I upheld the police's search as reasonable. I did not order the police to conduct further searches, despite the appellant's submissions that the police should be required to do so. I found that there had been an omission or other similar error in the final order, Order MO-3956-F, under section 18.01(c) of the *Code*, because I failed to address in the final order that the police had not provided the required sufficient evidence in response to the first interim order about whether records responsive to the two items possibly existed but no longer did.⁶

[27] In the reconsideration order, I ordered the police to provide the IPC and the appellant with an affidavit as to whether it is possible that responsive records existed but no longer exist in:

- the police email and network accounts containing the key words "Shanghai" or "Combined Forces Asian Investigation Unit," and covering the time period March 1, 2001 to September 6, 2017; and,
- the Office of the Chief of Police.

[28] I also gave the following direction to the police in the reconsideration order:

If responsive records existed but no longer exist, the police must provide details in its affidavit as to when such records were destroyed and any relevant record maintenance policies and practices, such as evidence of retention schedules.

[29] The reconsideration order provisions contemplated that the appellant would be given an opportunity to provide representations in response to the police's affidavit.

[30] The police responded to the reconsideration order and the appellant was provided an opportunity to make representations. In Interim Order MO-4196-I, I found that the police had not addressed in their affidavit what the retention policies would be for any responsive records that may have existed, which I had ordered them to provide in the reconsideration order.

[31] Specifically, in Interim Order MO-4196-I, I found that the police had not provided sufficient evidence as ordered to do in the reconsideration order related to the retention of records responsive to the two items ordered to be searched for in the first interim order.

⁶ I also considered whether the appellant's representations established the ground in section 18.01(a) (fundamental defect) at paragraphs 49 and 50 of Reconsideration Order MO-4065-R. However, I concluded that the appellant's arguments, being directed at the police's compliance with the interim order provisions, did not form the basis for a finding that there was a breach of fairness in the adjudication process as the police's compliance with the interim order was related to the police's, not the IPC's, processes.

[32] In Interim Order MO-4196-I, I also found that the police's evidence appeared to have internal contradictions, as they had indicated in their affidavit filed in response to the reconsideration order that no records were located from their two searches following the interim order, however, their November 22, 2019 decision letter indicated that records were located from their first of these two searches.

[33] As the police appeared not to have complied with the order provisions of the reconsideration order, I ordered them in the second interim order to provide the evidence about their retention of records that they were ordered to do in the reconsideration order.

[34] The order provisions of Interim Order MO-4196-I read:

1. I order the police to provide the IPC and the appellant with an affidavit by June 13, 2022, as to whether it is possible that responsive records existed but no longer exist in:

- the police email and network accounts containing the key words "Shanghai" or "Combined Forces Asian Investigation Unit," and covering the time period March 1, 2001 to September 6, 2017; and,
- the Office of the Chief of Police.

If responsive records existed [that are responsive to these two items] but no longer exist, the police must provide details in its affidavit as to when such records were destroyed and any relevant record maintenance policies and practices, such as evidence of retention schedules.

2. The appellant is to provide me with any response he has to the police's affidavit by 30 days from the date of his receipt of the police's affidavit.

3. I remain seized of this appeal to deal with any issues arising from the police's affidavit and the appellant's response to this affidavit.

[35] In response, the police provided the appellant with the following letter dated June 13, 2022, which they copied to the IPC:

The Information and Privacy Commissioner (IPC) Appeal and Interim Order, MO-4196-I, ordered the Toronto Police Service (TPS):

"to provide the IPC and the appellant with an affidavit ... as to whether it is possible that responsive records existed but no longer exist in:

- **the police email network accounts containing the key words "Shanghai" or "Combined Forces Asian Investigation Unit" ...**
- **the Office of the Chief of Police.**

If responsive records existed [that are responsive to these two items] but no longer exist, the police must provide details in its affidavit as to when such records were destroyed and any relevant record maintenance policies and practices, such as evidence of retention schedules ... " [Emphasis in original].

The Toronto Police Service Board - Record Retention Schedule (RRS) does not stipulate the destruction/deletion of records according to a specific timeline. The RRS does, however, speak to the minimum time for which a record must be maintained by the organization.

Further to the above, TPS has a broad, service-wide policy relating to the scheduled/automatic maintenance, deletion and archiving of records in email network accounts. Generally speaking, emails within TPS members' email network accounts that are older than six (6) months are automatically moved to their online archive folder, and, emails moved to their online archive will subsequently be deleted after a period of three (3) years.

This automatic archiving mechanism does not replace the need for ongoing maintenance/purging of the TPS members' email mailboxes. Individual TPS members have the capability to archive and/or delete records from their assigned email network accounts at any time, and, consequently, have the ability to "tag" certain emails with "never delete."

TPS's Information Security Unit (ISU) has advised this office that the capacity to track, review and audit the deletion of such records by individual TPS members is limited, and cannot produce a timeline of deletions, nor see/search deleted records by keyword.

Accordingly, we ask that you refer, again, to Item #15 of our Affidavit, dated July 27, 2021 [of the Disclosure Analyst (the analyst) in the police's Access and Privacy Section (APS)], and trust that the above explanation clarifies this matter...

Background

[36] Before turning to the remaining issue in this appeal, I will provide some further background information about the steps taken by the police to respond to the search,

much of which has been canvassed in the prior IPC orders issued in response to the appellant's request.

[37] In the police's July 27, 2021 affidavit (referred to above), the analyst detailed the searches undertaken for records in this appeal following the issuance of the first interim order, as follows:

1. I am currently assigned to the Access and Privacy Section (APS) of the Toronto Police Service (TPS) in the position of Disclosures Analyst and have served in this function since August 2012. Part of my role as a Disclosures Analyst is to search and provide records for requests for information pursuant to the *Municipal Freedom of Information and Protection of Privacy Act*. Therefore, I have knowledge of the facts as set out in this affidavit.
2. On September 25, 2019, APS received Interim Order MO- 3841-I.
3. On or about October 11, 2019, Coordinator [name] consulted with [the police's] Information Security [Unit] regarding the search criteria set out in Interim Order MO-3841-I.
4. On or about October 31, 2019, the results of the additional searches conducted by Information Security of police email, containing the keywords: "Shanghai" or "Combined Forces Asian Investigation Unit," for the expanded search time frame to March 1, 2001 to September 6, [2017] were provided to APS by Information Security Officer [name].
5. The above-mentioned searches, of service wide email only, for these keywords and the expanded time frame, were conducted by Security Examiner [name] of Information Security.
6. On November 22, 2019, a decision was rendered by [name], Coordinator, APS, and full access was granted to records resulting from the above-mentioned search of service wide email for the specified time frame and key words outlined in Interim Order MO-3841-I. At that time, the appellant was also advised that searches of [the police's] network accounts remained ongoing.
7. On or about February 20, 2020, myself and [the Coordinator] met with members of Information Security, and discussed the searches of the network accounts as outlined in Interim Order MO-3841-I. Based on the direction of [the interim] order, [six different] network accounts were searched, with the expanded time frame [of March 1, 2001 to September 6, (2017)].
8. On or about February 27, 2020, Security Examiner [name], with the assistance of Information Technology Services, provided APS with the results of the searches of the abovementioned network accounts.

9. [The analyst] and Coordinator [name] reviewed the results of these searches, and based on the parameters of [Interim Order] MO-3841-I no responsive records were located.
 10. On or about July 27, 2020, a decision regarding the results of the searches of the network accounts was rendered by [the Coordinator], and access was not provided, as no responsive records were located.
 11. On or about June 24, 2021, APS received [IPC] Reconsideration Order MO-4065-R, regarding Interim Order MO-3841-1 and Final Order MO-3956-F.
 12. Reconsideration Order MO-4065-R has ordered the [police] to provide details in this affidavit as to when the records at issue in Interim Order MO-3841-I, were destroyed and any relevant maintenance policies and practices, such as evidence of retention schedules.
 13. Pursuant to this institution's decision letters dated, November 22, 2019 and July 27, 2020, in response to Interim Order MO- 3841-I and the additional searches and expanded time frame, all located records were provided to the appellant and the Information and Privacy Commissioner.
 14. In [the] decision letter dated July 27, 2020, the appellant was advised by this institution that the search of the service wide email accounts and the network accounts (which included, that of the Office of the Chief, with the keywords and the expanded time frame, as outlined in Interim Order MO-3841- I, failed to locate any responsive records. Access, therefore cannot be provided.
 15. As our searches yielded no results, this institution cannot speak to the destruction or retention of records that we are unable to confirm to have existed.
 16. Information in regards to this institution's record maintenance policies and practices, including retention schedules, is publicly available at: [link provided]
- [38] The police's affidavit refers to their decision letter dated November 22, 2019 issued after the first interim order. The police provided the IPC with this decision letter and the following letter to the IPC dated November 22, 2019 explaining their searches:

In response to Interim Order MO-3841-I, dated September 25, 2019, the following representations are being made by this institution in relation to "another search for responsive records that may be contained in police email and network accounts, and in the Office of the Chief ...

Outline of Search:

Interim Order MO-3841-I was received by this office on October 3, 2019.

On October 7, 2019, the Information Security Unit (ISU) and the Office of the Chief of Police (OCP) of the Toronto Police Service (TPS) was notified of Interim Order MO-3841-I, with a due date for response of October 24, 2019, as follows:

1. Order the police to conduct another search of police email and network accounts for records containing the key words "Shanghai" ... (Combined Forces Asian Investigation Unit) over the expanded time frame of March 1, 2001 to September 6, 2017...;
2. ...the analyst indicates that she asked the Office of the Chief to conduct a search for records pertaining to the meeting of interest to the appellant, where those records relate to the appellant's case...; and,
3. Order the police to conduct another search of the Office of the Chief of Police for records responsive to the appellant's request. Responsive records may include records that do not contain personal information of the appellant.

On October 24, 2019, the Information Privacy Commissioner (IPC) was contacted, and a time extension was requested. A new date of October 31, 2019 was received.

On October 25, 2019, this office was notified by the Correspondence Coordinator, of the OCP, that a search of all emails and letter file systems, within the OCP, was conducted and completed. This office was advised that no responsive records were located.

On November 1, 2019, members of ISU advised this office that searches were conducted for this request, and all were service-wide email searches, for the timeframe requested. Results were provided by ISU to this office, for the search as follows:

- keyword(s): "combined forces Asian investigation unit" OR (shanghai AND [appellant's name])

On November 21, 2019, this office was advised by members of ISU of technical issues relating to searches of service-wide network accounts.

On November 21, 2019, this office advised members of ISU to conduct a search of the network accounts of 53 Division and the OCP, only, for the following keywords:

1. [appellant's name]

2. Combined Forces Asian Investigation Unit

3. Shanghai

On November 22, 2019, this office notified the IPC ([name], Adjudication Review Officer) that technical issues have been identified related to searches of service-wide network accounts, and that searches of the network accounts of 53 Division and the OCP, only, remain ongoing...

[39] The police's decision letter to the appellant dated November 22, 2019 stated:

Subsequent to the Information and Privacy Commissioner (IPC) Interim Order MO-3841-I, dated September 25, 2019, new searches were conducted by the Toronto Police Service (TPS).

Further to the records provided to you by this office on September 6, 2017 (document numbers: 1 - 11), full access is now being granted to responsive records resulting from the Information Security Unit's search of police email (document numbers: 12-286), as outlined below:

- Search: Service-wide emails
- Timeframe: 2001.March.01 to 2017.September.06
- Keyword(s): "combined forces Asian investigation unit" OR (shanghai AND "[appellant's name]")

Please be advised, however, certain information has been redacted from the abovementioned records, provided herein, as it does not pertain to your request.

Additionally, searches of TPS network accounts by the Information Security Unit remains ongoing. Responsive portions (if any), will be forwarded to you as soon as practicable.

Lastly, searches were completed for responsive records that may be in the Office of the Chief. Access cannot be provided, as these searches yielded negative results.

[40] As such, as set out in these November 22, 2019 letters, all of the searches ordered to be conducted in the first interim order had been conducted, other than those of the service-wide network accounts for both items of the request.

[41] As a result of the searches that had been conducted as referred to in the November 22, 2019 letters, the police had located and disclosed to the appellant records related to the email accounts for item 1. They had searched the email accounts

of the Office of the Chief of Police (item 2), but did not locate any responsive records.

[42] The police went on to search the network accounts related to the two items. They then issued a July 27, 2020 decision letter to the appellant regarding the results of the searches, which reads:

...In relation to the Information and Privacy Commissioner (IPC) Appeal and Interim Order, MO-3841-I, which ordered the TPS "to conduct another search of police email and network accounts for records containing the key words "Shanghai" or ... "Combined Forces Asian Investigation Unit," over the expanded timeframe of March 1, 2001 to September 6, 2017... ," service-wide email accounts and the following TPS network accounts, were searched by Information Security, with the assistance of Information Technology Services:

- Chief's Office
- 53 Division
- Intelligence
- Constable [name]
- Senior Officer [name]
- Senior Officer [name]

Please be advised, R.R.O. 1990, Regulation 823, section 1, states:

A record capable of being produced from machine readable records is not included in the definition of "record" for the purposes of the Act if the process of producing it would unreasonably interfere with the operations of an institution.

As such, only the above-mentioned network accounts (identified through consultation with Information Security and through the review of records related to your arrest), where your charges may have been investigated, were searched.

Lastly, this search of the service-wide email accounts and the above-mentioned network accounts, with the keywords and the expanded time frame, as outlined in MO-3841-I, failed to locate any responsive records. Access, therefore, cannot be provided.

[43] Therefore, in response, to the first interim order, the police located responsive emails but did not locate records in the network accounts or in the Office of the Chief of

Police.

The remaining issue in the appeal

[44] The issue to be decided in this order is whether the police have provided sufficient evidence about the retention of records responsive to the two items. If I find that they have, there are no remaining issues to be addressed about the reasonableness of the police's search.

[45] I find that the police have now provided sufficient evidence about the retention of records responsive to the two items. Concerning the email records ordered to be searched for by the first interim order, they have explained that emails within the police members' email network accounts that are older than six months are automatically moved to their online archive folder, and, emails moved to their online archive will subsequently be deleted after a period of three years.

[46] Therefore, the police's position concerning the emails they located is that these responsive emails existed but no longer exist as they would have been deleted after 3 and half years. I find that the police have provided details as to when the responsive email records were destroyed and any relevant record maintenance policies and practices regarding these emails, such as evidence of retention schedules.

[47] The police explained in their letter of June 13, 2022 and attached affidavit, as well as in their previous decision letters of November 22, 2019 and July 27, 2020, that no responsive records were located in the network accounts or in the Office of the Chief of Police. Therefore, as no such records existed, the police cannot, and are not required to by the reconsideration order, to provide details as to when such records were destroyed.

[48] As noted above, the appellant provided lengthy representations in response to the police's letter of June 13, 2022 and the affidavit provided in response to the second interim order. The appellant's representations extend beyond the sole issue remaining in this appeal – the police's compliance with the reconsideration order.

[49] In my view, the appellant's representations rehash all of his grievances with the police and appear to reiterate much of the representations that he previously made that formed the basis of the four IPC orders (MO-3841-I, MO-3956-F, MO-4065-R, and MO-4196-I), as well as the reconsideration decision letter order of October 16, 2019 that have already been issued in this appeal.

[50] In his representations, the appellant accuses the police of various types of misconduct and seeks disclosure of a wide range of additional records and seeks a wide- range of remedies. However, nowhere does he clearly address whether it is possible that responsive records existed but no longer exist in:

- the police email and network accounts containing the key words "Shanghai" or "Combined Forces Asian Investigation Unit," and covering the time period March 1, 2001 to September 6, 2017; and,
- the Office of the Chief of Police [for March 1, 2001 until September 6, 2012].

[51] The remedies the appellant is now pursuing include seeking:

- to have disclosed and returned, without redactions, [the appellant's records⁷ the IPC] provided to the police...;
- the return from the police of the copies received by them either directly or through the IPC, with attachments, of his submissions of April 28, 2017 to the mediator, to the adjudicators dated November 7, 2017 [and] December 12, 2019, all of which were forwarded to the police by the IPC;
- the full dossier of the Intelligence Unit files about him disclosed, including the attachments about him appended to the letter of Deputy Chief [name] to the Chinese Embassy (warrant, photo, synopsis of charges[,),] which are records created subsequent to the meeting by way of review or follow-up responses to the meeting, records related to the second meeting with the Chinese delegation referred to in the dossier, and the replies received by the police from the Chinese Embassy in Ottawa, Interpol, the RCMP, and the records entered by [name] in the CPIC database, entering wrongfully and with malicious intent incorrect records of "convictions;"
- the entire memorandum book of former Constable [name], located and stored by the police in the "Chinese Folder" file...;
- a sworn declaration from the Toronto Police (legal) as to the authenticity and legitimacy of the records of the Toronto Police Services Board "Agenda", and the Toronto Police Services "Wanted in Canada" bulletin...;
- the conduct of [the adjudicator who issued the first interim order] reviewed in her decision to withhold from the appellant the critical records that were responsive to the request recorded on a page of a police memorandum books she upheld as non-responsive...; and,
- to continue the search using correct terms that are connected with reality, not invention, despite the resistance of the police in turning to ad hominem attacks on the appellant attempting to bring his character into disrepute before the Tribunal. The search directing the police to use terms on a record that may have been fabricated (seeing that the records could not be corroborated as verifiably true), foreseeing that no results were likely be found, was unreasonable...

⁷ The appellant describes the word "records" as "pink sheets" but does not explain what these are.

[52] I find that these remedies do not address the narrow issues being determined in this order, which solely concerns the police's response to the order provisions of the second interim order, Interim Order MO-4196-I. As the remedies the appellant now seeks do not address what the police were ordered to provide in the second interim order, I decline to consider them.

[53] I find that the police have now, in compliance with the order provisions in the reconsideration order, provided sufficient evidence about the possibility that records responsive to the two items at issue exist. Considering the police's evidence and their efforts to search to date, I am persuaded that further searches will not yield further records responsive to the two items.

[54] Therefore, I am satisfied that the police's search for records responsive to the appellant's request was reasonable in the circumstances and I will dismiss the appeal.

ORDER:

I uphold the police's search as reasonable and I dismiss the appeal.

Original Signed By: _____
Diane Smith
Adjudicator

_____ November 23, 2022