

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-4373

Appeal MA21-00312

Durham Regional Police Services Board

April 28, 2023

**Summary:** The Durham Regional Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for access to records relating to a police report. The police issued a decision granting partial access to the responsive records. The appellant appealed the police's decision to the Information and Privacy Commissioner of Ontario, because he believes further records responsive to his request should exist. 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] The Durham Regional Police Services Board (the police) received the following request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for:

A report of [named officer #1] (May 10, 2017) and that of [named officer #2] (May 25, 2017)

[2] The police issued a decision granting partial access to the responsive records withholding information under the mandatory personal privacy exemption at section 14(1) of the *Act*.

[3] The appellant appealed the police's decision to the Information and Privacy Commissioner of Ontario (IPC) and a mediator was appointed to explore resolution.

[4] During mediation, the appellant advised that he was pursuing access to the third party's response to an email sent by a named officer on May 25, 2017 (May 5<sup>th</sup> email). The appellant confirmed he was not pursuing access to any of the withheld information in the responsive records.

[5] The police contacted the named officer, and he conducted another search but did not locate any further records. The police maintained their position that no further records exist.

[6] The appellant maintained his position that the third party's response to the May 25<sup>th</sup> email should exist.

[7] As a mediated resolution was not possible, the appeal was transferred to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. I commenced an inquiry by inviting representations from the police, initially. I sought and received representations from the parties about the issues in the appeal.

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

## **DISCUSSION:**

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

[9] The appellant claims that further records responsive to his request should exist. Where a requester claims 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.<sup>1</sup> If I am satisfied 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 it has made a reasonable effort to identify and locate responsive records.<sup>2</sup> 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 (responsive) to the request.<sup>3</sup>

[11] Although a requester will rarely be in a position to indicate precisely which

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<sup>1</sup> Orders P-85, P-221 and PO-1954-I.

<sup>2</sup> Orders P-624 and PO-2559.

<sup>3</sup> Orders M-909, PO-2469 and PO-2592.

records the institution has not identified, the requester still must provide a reasonable basis for concluding such records exist.<sup>4</sup>

***Representations of the parties***

[12] The appellant takes the position that further records responsive to his request should exist. Specifically, he believes that a third party's response to the May 25<sup>th</sup> email should exist. The appellant alleges that the named officer received a response to his May 25<sup>th</sup> email, but he is refusing to provide it. The appellant asks that I order the named officers to conduct further searches and one of the named officers to confirm his statements under oath.

[13] The appellant's representations include background information and allegations related to the police's investigations. They also include documents related to the investigations and the disputes that led to them. I have reviewed the appellant's representations in full, but I have determined that these portions of his representations are not relevant to my determination of whether the police conducted a reasonable search for responsive records. The appellant also made allegations of wrongdoing against the police and other individuals, which are outside the scope of this appeal, and I will not refer to them either.

[14] The police submit that they conducted a reasonable search for responsive records. In their representations, the police described the search they conducted for records in response to the appellant's request. The police described the staff involved in the search, the places that were searched, and the results of the search. The police claim that there was no further response from the third party to the May 25<sup>th</sup> email, other than an affidavit received months later that was partially disclosed to the appellant.

[15] The police submit that officers involved in the investigation conducted further searches of their email accounts and records for any further response to the May 25<sup>th</sup> email, but they did not find any. The police further submit that the officers do not recall any further correspondence from the third party.

***Analysis and findings***

[16] Based on the representations of the parties, I am satisfied that the police conducted a reasonable search for responsive records.

[17] The police have described the staff involved in the search, where they searched, and the results of the search. I am satisfied that the police carried out a search involving experienced employees knowledgeable in the subject matter of the request and that those employees expended a reasonable effort to locate records which are

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<sup>4</sup> Order MO-2246.

reasonably related to the request.<sup>5</sup> I am satisfied that the police have provided sufficient evidence to establish this. The police's search was sufficiently thorough and logical in response to the appellant's request.

[18] When I consider the appellant's position, with the context of the police's search and the records that were located, I can understand why he believes a response to the May 25<sup>th</sup> email may exist. However, from his representations, I am unable to conclude that further searches will locate such additional records. As noted above, 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 such records exist.<sup>6</sup> The officers involved in the investigation have already conducted additional searches to locate a further response from the third party to the May 25<sup>th</sup> email, and they have been unable to locate any. Moreover, they have indicated why they are unable to locate such a response. I accept the police's evidence that a further response to the email does not exist, and therefore, further searches would not locate one.

[19] For the reasons above, I find that the police conducted a reasonable search for responsive records.

**ORDER:**

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

Original Signed by: \_\_\_\_\_  
Anna Truong  
Adjudicator

\_\_\_\_\_ April 28, 2023

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<sup>5</sup> Orders M-909, PO-2469 and PO-2592.

<sup>6</sup> Order MO-2246.