

Information and Privacy Commissioner,
Ontario, Canada



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

FINAL ORDER MO-4478-F

Appeal MA20-00024

Toronto Police Services Board

December 22, 2023

Summary: The police received a request under the *Act* for records 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. In Interim Order MO-4266-I, the adjudicator found that the search for records in response to the request was not reasonable and ordered the police to conduct a further search for responsive records. In this final order, the adjudicator finds that the police’s search is reasonable and dismisses the appeal.

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

OVERVIEW:

[1] As described in Interim Order MO-4266-I, 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] After conducting their search and providing the appellant with access to some records, the appellant was of the view that the police's search for responsive records was not reasonable and that further responsive information should exist.

[3] In Interim Order MO-4266-I, at paragraph 47, I summarized the appellant's request as follows:

Part 1: General records of protocols and procedures of the police related to the creation of "Wanted Posters"

Part 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.

[4] Ultimately, I found that the police's search for responsive records was not reasonable because they did not complete a search for records relating to the second part of the request. With regard to the first part of the request, although I found that the police's search was reasonable, after reviewing the representations, it was apparent that they had not searched for records relating to the *MTO Inquiry Services System Oversight Framework Audit* and I ordered them to do so.

[5] I also dealt with the appellant's claim that the police were acting contrary to section 48(1), the offence provision of the *Act*, and that I should therefore recommend to the Commissioner that the permission of the Attorney General be sought to commence a prosecution against the police. I dismissed this claim as there was not sufficient evidence that would warrant my making this sort of recommendation to the Commissioner.

[6] Interim Order MO-4266-I required the police to conduct further searches and provide representations about their searches. After a significant delay and follow ups by the Office of the Information and Privacy Commissioner of Ontario (the IPC) staff members and the appellant, the police carried out further searches and advised the appellant that no further responsive records were located. The police provided an affidavit about their searches.¹

[7] During the delay, the appellant requested that the IPC seek the consent of the Attorney General as provided for in section 48(3) of the *Act* to commence a prosecution against the police for the delay in responding. I addressed this submission in a letter to the parties indicating that I found that there was no reason to suggest that a prosecution be commenced against the police.

[8] Representations were provided to the IPC by the appellant and the police and were shared in accordance with the IPC's Code of Procedure.

[9] In this order, I find that the police's search for responsive records is reasonable.

DISCUSSION:

Preliminary Issue

[10] In his representations, the appellant continues to argue that section 48(1) of the *Act* is relevant in this appeal and that a recommendation should be made 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).

[11] The appellant now points to the police's delay in conducting their search after the interim order which was not conducted in accordance with the timeline set out in the interim order. He also refers to other issues which he claims is further evidence of the police's offences against section 48(1), which were not shared with the police.²

[12] Based on the circumstances in the appeal and my review of the appellant's representations, I find that there is insufficient evidence to warrant my making this sort of recommendation to the Commissioner. Despite the delay on the part of the police, they contacted the IPC about not being able to meet the deadline set out in the interim order and committed to carrying out the searches ordered, which they did. In my view,

¹ The appellant noted that the police cited an incorrect IPC appeal number on their affidavit. I responded indicating that it appeared that the reference to another appeal number was inadvertent but that the appellant may address the issue in his representations. The police were notified of the error and a new affidavit with the correct appeal number was issued by them.

² The appellant provided submissions that he did not want to share with the police dealing with a number of issues. Ultimately, I decided that these submissions did not need to be shared with the police as they did not address whether further records would exist and were therefore not relevant to a decision concerning the police's search in this appeal.

the police's actions do not rise to the level where I would make the sort of recommendation to the Commissioner as suggested by the appellant.

Did the police conduct a reasonable search for responsive records?

[13] The only issue in this appeal is the reasonableness of the police's search for responsive records.

[14] 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 17.³ If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[15] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.⁴ To be responsive, a record must be "reasonably related" to the request.⁵

[16] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.⁶

[17] 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 the responsive records within its custody or control.⁷

[18] 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.⁸

Representations

[19] The police provided an affidavit concerning their further searches ordered in Interim Order MO-4266-I. The affidavit is sworn by an agreement specialist in legal services.

[20] The affiant attests that on December 9, 2022, she was advised of the interim order and the requirement to search for information responsive to the request. The affiant refers to paragraph 47 of the interim order where I set out the two parts of the

³ Orders P-85, P-221 and PO-1954-I.

⁴ Orders P-624 and PO-2559.

⁵ Order PO-2554.

⁶ Orders M-909, PO-2469 and PO-2592.

⁷ Order MO-2185.

⁸ Order MO-2246.

appellant's request (see above).

[21] With regard to the first part of the request, in the interim order, I found that the bulk of the police's search was reasonable but found that it was apparent from reviewing the parties' representations that the police did not search for records relating to the *MTO Inquiry Services System Oversight Framework Audit* relating to the transfer of driver's licence information. The police were ordered to search for this information.

[22] In the police's affidavit, the agreement specialist addressed the subsequent search relating to the first part of the request. The affiant sets out that she conducted additional queries and searches of the legal services database and the agreement specialist master tracking tool. She also confirmed with the police's Access and Privacy Section that in 2010 the police and MTO entered into an addendum highlighting the parameters around the police's direct access to driver photos in the MTO database and was not able to locate any responsive records for 2001.

[23] The affiant attests that on January 23, 2023, she completed additional queries and searches of the legal services database and the agreement specialist master tracking tool for any responsive records relating to the *MTO Inquiry Services System Oversight Framework Audit* and also for any records specific to the second part of the appellant's request. The affiant affirms that no responsive records were located.

[24] The affiant also attests that she searched for records relating to part two of the appellant's request by conducting searches of the legal services database and the agreement specialist master tracking tool. The affiant attests that no records were located and confirmed this with the police's Access and Privacy Section.

[25] The appellant suggests that the affidavit provided by the police does not meet the required standard or provide sufficient detail to show that the search was reasonable. He submits that the affiant is not an experienced employee. The appellant submits that the affiant misleads by attesting that she has been an "agreement specialist" for the past 11 years. The appellant submits that this is contradicted by reliable online evidence as it was entered by the affiant herself. The appellant submits that this online information shows that the affiant was only appointed to the position of "agreement specialist" in April 2022 and therefore had been in that position for only eight months.

[26] The appellant also suggests that the affiant is not knowledgeable in the subject matter of the request. The appellant notes that initially the police's affidavit was filed with the IPC under an erroneous appeal number and suggests this is one of multiple errors appearing in the provision of the affidavit. He suggests that since the affiant was working with the wrong IPC appeal file number, a search using the key words and the wrong file number would, on balance of probabilities, have provided no records. He submits that record group #1 of the submissions provided to the police would not have been filed under the erroneous number. The appellant suggests that given this basic

searching error, there is no evidence that the affiant could have informed herself of the record associated with the background of the online search completed by two prior analysts.

[27] The appellant submits that the affiant provided no indication that she informed herself of the connections to and whereabouts of the records of a specified officer at his various divisional units or that the affiant had received training for accessing and searching archived officer's notes and memorandum books stored offsite, or that she had visited records storage units to conduct the search or contacted the subject officer.

[28] The appellant submits that when the specialist confirmed the agreement in 2010 between MTO and the police, this would have resulted in locating a responsive record which was not referenced by the police in an access decision.

[29] The appellant suggests that the only reliable evidence and proof of time spent on a reasonable search, will be on time stamps on emails related to the search downloaded to a CD confirming if time was spent on any search at all.

[30] The appellant also provides submissions on other issues that he did not want shared with the police. Initially the appellant did not consent to any of his representations being shared with the police and he objected to my suggestion that his submission did not meet the confidentiality criteria in *Practice Direction 7*. After considering his representations further, I issued a sharing decision and agreed not to share portions of his representations with the police. In doing so, I concluded that many of the issues raised in the appellant's representations were not relevant to the issue in dispute in this appeal, being the reasonableness of the police's search. Therefore, these portions of the appellant's representations were not shared with the police and are not considered in this order.

[31] A severed version of the appellant's representations was shared with the police who provided a reply. The police submit that the issues raised by the appellant have already been addressed in the Interim Order MO-4266-I. They suggest that the actions taken by the police have been done in good faith and in adherence to the *Act*.

Analysis and finding

[32] For the reasons that follow, I find that the police's search following Interim Order MO-4266-I is reasonable.

[33] The police's search is reasonable because they have provided sufficient evidence to show that they have made a reasonable effort to identify and locate responsive records that reasonably relate to the request.⁹ I accept the affidavit evidence provided by the police, despite the appellant's submissions concerning the affiant. I accept that the affiant who conducted the search is an experienced employee knowledgeable in the

⁹ Orders P-624, PO-2554 and PO-2559.

subject matter of the request. The affiant has served in the function of agreement specialist for more than ten years and her role is to create, review, edit and finalize contracts that the police wish to enter into. She also explained in the affidavit what her understanding is of the parameters of the search.

[34] In deciding to accept the affidavit evidence, I considered but rejected the appellant's arguments that I should not rely on it because the first affidavit submitted by the police referred to an incorrect IPC appeal number. I accept that this reference was inadvertent and, in any event, the police filed a fresh affidavit with the correct appeal number.

[35] The affiant confirmed that she searched for records relating to part one of the request, the *MTO Inquiry Services Oversight Framework Audit*, and located no responsive records. She confirmed her understanding after speaking with the police's Access and Privacy Section that in 2010, the police and MTO entered into an addendum highlighting the parameters around the police's direct access to driver photos in the MTO database. She confirmed that she did not locate any responsive records for 2001.¹⁰

[36] Also, the affiant indicated that she searched for records relating to part two of the appellant's request by conducting searches of the legal services database and the agreement specialist master tracking tool. The affiant attests that no records were located and confirmed this with the Access and Privacy Section. In my view, records relating to 2001 would be located with a master tracking tool if they exist.

[37] I find that the police have conducted a reasonable search because they understood what they were searching for and conducted searches to locate responsive records. The interim order was clear that the police were to search for the *MTO Inquiry Services Oversight Framework Audit*, relating to part one of the request, and for records relating to part two of the request. The fact that no records were located is not a reason to order a further search unless there is some reasonable basis to conclude that a further search would yield records. The appellant must provide some basis to conclude that further records may exist. His criticism of the police's conduct is not sufficient basis for me to conclude that records may be located should I order further searches.

[38] The appellant suggests that the agreement specialist should have reviewed the notes and searches of the prior two analysts prior to commencing her search. In my view, there would be no need for the specialist to review the prior work of the two analysts to conduct a search for the records relating to the *MTO Inquiry Services System Oversight Framework Audit* since I had found that the police did not perform a search for this information in the interim order.

¹⁰ The appellant submits that the information the affiant identified in 2010 is responsive. It is not clear if the affiant located actual records or received information orally. If the police determine an access decision is warranted, they should issue one for any information located relating to 2010.

[39] I also find that the agreement specialist would not be assisted by reviewing the two prior analysts' notes when searching for records relating to the second part of the request because, as I found in the interim order, the police did not conduct a search for this information. Since the police failed to search for records relating to the second part of the request and the records relating to the *MTO Inquiry Services System Oversight Framework Audit* from the first part of the request, I find that the appellant's suggestion that the agreement specialist should have reviewed the search of the prior analysts is irrelevant to my considerations concerning their subsequent search.

[40] Part of the reason why the appellant argues that the police's search was unreasonable is because he argues that the police had a duty to maintain these records. In certain situations, an institution can provide a requester with information to assist with understanding about why certain records are not able to be located. In this appeal the police have not provided such an explanation; however, their duty under the *Act* is to conduct a reasonable search. While an explanation may have assisted the appellant, I am unable to conclude that the lack of an explanation is reason to order the police to conduct further searches for a second time. As explained above, the searches undertaken were thorough and methodical and there is simply no basis for me to conclude that further searches will yield additional records.

[41] After considering the appellant's submissions concerning the actual search, I find that he has not provided a reasonable basis to conclude that further records would be located if the police are ordered to conduct another search.

[42] As a result, I find that the police's further search was reasonable.

ORDER:

I dismiss the appeal.

Original signed by: _____

Alec Fadel
Adjudicator

December 22, 2023
