

Information and Privacy Commissioner,
Ontario, Canada



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

INTERIM ORDER MO-4488-I

Appeal MA21-00092

Toronto Police Services Board

February 9, 2024

Summary: Under the *Act*, the appellant made a request to the Toronto Police Services Board (the board) for a line-by-line breakdown of the 2020 Toronto Police Service budget for six specified units. He asked that the breakdown be organized by individual program area, function, and service delivered, in accordance with a recommendation of the board chair tabled at an August 2020 public meeting of the board. He also requested any related correspondence between the board and the police service. The board denied the request based on a claim that responsive information is publicly available. The board also asserted that line-by-line budget information is exempt under certain discretionary law enforcement exemptions at section 8 of the *Act*. After the appellant appealed the board's decision to the IPC, the board issued a revised decision and disclosed certain budget information in full.

In this interim order, the adjudicator finds that the newly disclosed record containing aggregate budget information does not fully respond to the appellant's request for a detailed breakdown organized by individual program area, function, and service delivered. She orders the board to issue a decision on access to the requested budget information, and, in the circumstances, that it do so without recourse to a time extension. The adjudicator also dismisses a number of other issues raised by the appellant, including allegations of bias on the part of the police chief. She finds no reasonable basis to order further searches for the requested correspondence between the board and the police service. She remains seized of the appeal to address issues arising from the board's new access decision.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M.56, sections 2 (definitions), 3(2), 17, and 49(1).

OVERVIEW:

[1] At an August 18, 2020 public meeting, the Toronto Police Services Board (the board) received presentations and reports on the topic of policing reform. One of those reports was an August 10, 2020 report of the board chair titled "Police Reform in Toronto: Systemic Racism, Alternative Community Safety and Crisis Response Models and Building New Confidence in Public Safety" (the chair's report).

[2] Appendix A to the chair's report contained a number of recommendations to the board. Recommendations 15 and 18 read as follows (emphasis in original):

15. Direct the Chief of Police to immediately post a line-by-line breakdown of the 2020 Toronto Police Service Budget to the Service's website in a machine readable, open format that would facilitate further analysis of the information. (City Council #4)

18. Direct the Chief of Police to organize all line-by-line breakdowns by individual program area, function and service delivered, subject to the need to protect investigative techniques and operations, and in such a way as to provide maximum transparency to the public. (Board #6; ARAP #12; MHMP #27)

[3] The board's discussion of the chair's report during that meeting is captured in the publicly available minutes of the meeting, at item P129(a).

[4] On November 7, 2020, the appellant made a request to the board, under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), seeking the following information relating to the 2020 budget of Toronto Police Services (the police) (emphases in original):

(A) A "*line-by-line breakdown of the 2020 [police] budget*" (as set out in August 18, 2020 [board] Minutes, at Item #P129, in Appendix A of the [chair's report], at recommendation No. 15) – but **to the extent** that the "*line-by-line breakdowns*" (as set out in August 18, 2020 [board] Minutes, at Item #P129, in Appendix A of the [chair's report], at recommendation No. 18) have since August 18, 2020 been organized "*by individual program area, function and service delivered*" and are so organized on the date of the processing of this request, such more particularized "*line-by-line breakdowns*" - for the following six (6) units and services identified in the organizational chart provided by the [police] on or about August 18, 2020 (a copy of which is appended to this request as "Schedule B") within the "Specialized Operations Command," under "Detective Operations":

1. "Intelligence Services," as a unit,

2. "Organized Crime Enforcement" as a unit, **and** broken down into the following four additional units and/or services, as identified in the organizational chart (see "Schedule B"):

- a) "Integrated Gun & Gang Task Force"
- b) "Drug Squad"
- c) "Financial Crimes"
- d) "Prov. ROPE, Bail & Parole, Fugitive Squad."

(B) All

- 1. correspondence issued by the [board] to the [police], and
- 2. correspondence issued by the [police] to the extent that such correspondence was received by the [board],

which references the information described in paragraph (A) of this request, including any references to rationale as to why the disclosure made on or about August 18, 2020 to the [police]'s website omits the information described in paragraph (A).

This request covers the period beginning January 1, 2020 and continues to the day on which this request is processed by the institution.

[5] As described in the request, Schedule B to the request is a police organizational chart that appears to be a publicly available document.

[6] On January 12, 2021, the board advised the appellant that after considering his request, the board had "determined that both the [police] and the [board] are record holders and we therefore split this request." The board explained this meant it had referred paragraph "A" of the appellant's request (Part A) to the police for a response, while the board would respond to paragraph "B" of the request (Part B).

[7] The police and the board then responded separately to the appellant on the different parts of his request.

[8] On January 18, 2021, the police wrote to the appellant regarding Part A. The police stated (emphasis in original):

Please note that the release of information, such as the [police] 2020 budget, may be denied pursuant to section 15(a) of the [Act], where the information is publicly available. As you are aware, data regarding the yearly budgets are publicly available for viewing and downloading at <http://www.tpsb.ca>.

Further, as noted, in the online budget disclosure introductory page, under "How to Read Our Budget," the following caveat is noted:

The information presented is the raw data that has been extracted from the [police]'s financial system. This information has been presented to show maximum transparency, **subject to the need to protect investigative techniques and operations in some areas.**

[9] The police then stated that in response to the appellant's Part A request for line-by-line budget information, the police deny access based on the discretionary law enforcement exemptions at sections 8(1)(c) and (l) of the *Act*.

[10] On January 20, 2021, the board wrote separately to the appellant regarding Part B of the request. The board stated that it had located no records responsive to Part B, asserting that the public minutes of the August 18, 2020 board meeting (to which the appellant had referred in his request, and which are available on the board's website) address this portion of the request.

[11] The appellant appealed both decisions to the Office of the Information and Privacy Commissioner of Ontario (IPC).

[12] Shortly after filing his appeal, the appellant served a Notice of Constitutional Question on the IPC, and on the Attorneys-General of Canada and Ontario. In this Notice, the appellant challenges the constitutional validity or applicability of sections 8(1)(c) and/or (l) of the *Act* claimed by the police to deny access to the requested information about the 2020 police budget. In particular, the appellant asserted that the denial of access violates his right to freedom of expression under section 2(b) of the *Canadian Charter of Rights and Freedoms*.

[13] The parties were unable to resolve the issues through mediation. The appellant continued to take issue with the police's denial of access to the requested line-by-line budget information under the claimed law enforcement exemptions, and he asserted a public interest in disclosure of the information withheld under these exemptions. As described above, the appellant also raised a constitutional question about the police's reliance on these exemptions to deny access.

[14] The appellant also took issue with the police's and the board's statements that the information he seeks is publicly available. His position is that the publicly available information to which he was referred is not responsive to his request. The appellant also asserts that the board and the police have not conducted reasonable searches for responsive records.

[15] In addition, the appellant alleges a conflict of interest on the part of the police chief, as "decisionmaker" in the context of his access request.

[16] As these issues could not be resolved through mediation, the appeal proceeded to the adjudication stage, where an adjudicator may conduct a written inquiry under the *Act*. I conducted an inquiry into this matter, during which I shared the parties' representations in accordance with the IPC's *Code of Procedure* and *Practice Direction 7*.

[17] During the inquiry stage, the board issued a revised decision in which it advised the appellant and the IPC that it had reconsidered its initial position and now grants full access to the budget information requested by the appellant in Part A of his request.

[18] The appellant maintains that the new disclosure, consisting of budget information presented in the aggregate, does not satisfy his request for a line-by-line budget breakdown, including specified components. He also asserts that there are outstanding issues with the board's responses to his concerns about the reasonableness of the searches conducted by the board and the police; the constitutional question he raised regarding the board's reliance on the section 8 exemptions; and the allegation of conflict of interest on the part of the police chief.

[19] Also during the inquiry stage, the Ministry of the Attorney General wrote to the IPC and the parties to advise that it would participate in the appeal in respect of the constitutional question filed by the appellant. The Canadian Civil Liberties Association (CCLA) also asked to participate in the appeal to address this issue. Because of developments in this appeal and my findings below, I found it unnecessary to invite representations from these parties on this issue at this stage.

[20] For the reasons that follow, I find that the newly disclosed record does not respond to the appellant's request for a line-by-line breakdown of the 2020 police budget for six specified police units and services, "organized by individual program area, function, and service delivered." I order the board to issue a decision on access to the detailed budget information responsive to the appellant's request. In addition, I do not permit the board to seek an extension of time to issue this decision.

[21] I also address some other matters raised by the appellant during the inquiry, including about the scope of the request, the reasonableness of the searches conducted by the board and the police, and the allegations of bias on the part of the police chief. I find no reasonable basis for these additional claims made by the appellant. However, I remain seized of the appeal to address issues that may arise from the board's new access decision.

RECORDS:

[22] At issue is a line-by-line breakdown of the 2020 police budget, "organized by individual program area, function, and service delivered," for each of the following six police units and services:

- Intelligence Services unit;
- Organized Crime Enforcement (“as a unit”); and
- the following additional units/services within the Organized Crime Enforcement unit:
 - Integrated Gun & Gang Task Force,
 - Drug Squad,
 - Financial Crimes, and
 - Prov. ROPE, Bail & Parole, Fugitive Squad.

[23] Also at issue are records of correspondence exchanged between the board and the police that refer to the budget information described above. The appellant specifies this includes “any references to rationale as to why the disclosure made on or about August 18, 2020 to the [police]’s website omits” the budget information described above.

[24] The request covers the period January 1, 2020 to “the day on which this request is processed by the institution.”

ISSUES:

Preliminary issues regarding the identity of the institution, the constitutional question raised by the appellant, and the allegation of conflict of interest

- A. What is the scope of the request? Is the disclosure made by the institution responsive to the request?
- B. Did the institution conduct a reasonable search for records?

DISCUSSION:

Preliminary issues regarding the identity of the institution, the constitutional question raised by the appellant, and the allegation of conflict of interest

[25] Before turning to the main issues raised by the appeal, I will briefly address some preliminary matters arising from the positions taken by the parties during the inquiry.

The institution in this appeal is the board

[26] As noted above, the board explained to the appellant that it had “split” his access request between the police and the board because each is a “record holder” in respect of the requested records. The board advised the appellant that the police would respond to Part A of the request (the request for budget information), while the board would respond to Part B (the request for correspondence between the board and the police).

[27] In my correspondence to the parties during the inquiry, I said that I would follow the board’s terminology by referring to the “board” and to the “police,” as if they were separate bodies, as the context required. However, I confirmed for the parties that the board (i.e., the Toronto Police Services Board) is the institution within the meaning of the *Act* (section 2(1) of the *Act*),¹ and that for the purposes of the *Act*, the police (i.e., the Toronto Police Service) are part of the board.² During the inquiry, I asked the board, as the respondent institution, to address the issues under appeal, including issues concerning the searches and decisions that the board had attributed to the police.

[28] Neither party took issue with my statements during the inquiry, and I confirm them here. Thus, while for ease of reference I will refer in this order to the board and to the police as separate bodies where the context requires, the respondent institution in this appeal is the board.

It is unnecessary at this stage to address the constitutional question raised by the appellant

[29] During the appeal, the appellant filed a Notice of Constitutional Question (NCQ) asserting that the board’s reliance on certain exemptions in section 8(1) of the *Act* to deny access to the requested budget information violates his right to freedom of expression under section 2(b) of the *Canadian Charter of Rights and Freedoms*.³ In addition to serving the IPC, the appellant served the NCQ on the Attorneys-General of

¹ Paragraph (b) of the definition of “institution” in section 2(1) of the *Act* includes, among other bodies, a “police services board.”

² This approach has been confirmed in past IPC orders, including Orders MO-3812-I and MO-3998.

³ Section 2(b) of the *Charter* states: “Everyone has the following fundamental freedoms: [...] freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.”

The Supreme Court of Canada has recognized that the section 2(b) *Charter* right to freedom of expression includes a right of access to government records in some circumstances—namely, “where access is necessary to permit meaningful discussion on a matter of public importance, subject to privileges and functional constraints”: *Ontario (Public Safety and Security) v. Criminal Lawyers’ Association*, 2010 SCC 23 (CanLII), at para 31.

In this appeal, the appellant asserts that the denial of access to the budget information he seeks precludes meaningful public discussion about particular police expenditures, and about the police budget more generally, which he characterizes as a matter of public interest.

Canada and Ontario, in accordance with section 109 of the *Courts of Justice Act* and section 12 of the IPC's *Code of Procedure*.

[30] As noted above, the Ontario Ministry of the Attorney General and the CCLA asked to participate in the inquiry in respect of the constitutional question raised by the appellant. However, to this point I have found it unnecessary to seek representations from these parties on the constitutional question. I also find it unnecessary to address in this interim order the representations filed by the appellant and the board on this topic. This is because, among other developments at the adjudication stage, the board issued a revised decision purporting to disclose the requested information in full, without reliance on any exemptions in the *Act*.

[31] As will be seen below, I find that the board's new disclosure does not respond to the appellant's request, and I order it to issue a new decision on access to responsive information. At this stage, any constitutional challenge in respect of the access decision to come is premature.

There is no reasonable basis for the allegations of bias

[32] During the appeal, the appellant raised as an issue bias on the part of the police chief, as a "decisionmaker" on the appellant's access request.

[33] In my correspondence to the parties, I noted that the access decisions at issue in this appeal were made by the board (by the board administrator), to address Part B of the request, and by the police (by the coordinator of the police's Access and Privacy Section), to address Part A. As the extent of the police chief's involvement in these decisions was unclear to me, I asked the board to clarify what role, if any, the police chief had in addressing the appellant's request. I also asked the appellant to specify the nature of his allegations, and to provide any supporting evidence.

[34] The board states that while the chief of police is the designated "head" of the institution (i.e., the board) for the purposes of the *Act*, the duties of the head have been delegated to other decisionmakers within the institution.⁴ The board says that the police chief does not engage in close monitoring of the day-to-day work of the police's Access and Privacy Section (which section addresses access requests made to the board), and that the police chief is not personally involved in decisions made on access requests.

[35] In support of his allegations of bias, the appellant states that the person in the role of police chief "tends to be closely involved in budgetary planning and approval processes." The appellant proposes that given this role, the police chief has an incentive

⁴ Section 3(2) of the *Act* permits members elected or appointed to a police services board to designate from among themselves an individual to act as head of the institution for the purposes of the *Act*. Section 49(1) allows for the delegation of the head's powers or duties to an officer of the institution or of another institution (subject to any limitations or other conditions set out in the head's delegation).

to minimize the disclosure granted by the board, because this would minimize public scrutiny of police expenditures on items that could include assault-style weapons and vehicles. The appellant also suggests there is a heightened apprehension of bias in this case, because although the board has an obligation to review the police budget, it has claimed in this appeal that certain records responsive to the request do not exist.

[36] In summary, the appellant's position is that the police chief's "proximity to the budgetary process" is sufficient to give rise to a reasonable apprehension of bias. I disagree.

[37] It is a well-established principle of administrative law that there is a presumption, absent evidence to the contrary, that an administrative decisionmaker will act fairly and impartially. The onus of demonstrating bias lies on the person who alleges it, and mere suspicion is not enough.⁵ Furthermore, while actual bias need not be proven, the threshold for establishing a reasonable apprehension of bias is a high one.⁶

[38] The IPC has adopted the test applied by the courts in assessing whether given circumstances give rise to a reasonable apprehension of bias on the part of a head (or delegate).⁷ Specifically, in deciding whether there is a reasonable apprehension of bias, the test is whether a well-informed person, considering all the circumstances, could reasonably perceive bias on the part of the decisionmaker. The test is not whether the "very sensitive or scrupulous conscience" would perceive bias. To be reasonable, the grounds for the apprehension must be "substantial."⁸

[39] Here the appellant's evidence of bias consists of speculation about the police chief's motives in seeing a particular outcome on the appellant's access request, based on the appellant's understanding of the police chief's role in the budgeting process. By contrast, the board has explicitly denied that the police chief was involved in addressing the appellant's access request. The appellant's evidence does not establish any actual bias on the part of the police chief influencing the access decision, nor of any actual involvement by the chief in the decisionmaking process. The appellant's evidence also fails to meet the high threshold of establishing a reasonable apprehension of bias in the circumstances.

[40] As I find no reasonable basis for the appellant's allegations of bias, I will not

⁵ See Blake, S., *Administrative Law in Canada*, (3rd ed.), (Butterworth's, 2001), at page 106, cited in Order MO-1519. See also Orders MO-3513-I, MO-3642-R, MO-4003-R, and PO-3925-I, among others.

⁶ *Ontario Medical Association v. Ontario (Information and Privacy Commissioner)*, 2017 ONSC 4090 (Div. Ct.) at paragraph 40, citing *Martin v. Martin* (2015), 2015 ONCA 596 (CanLII) at paragraph 71; appeal dismissed 2018 ONCA 673.

⁷ The test and the cases from which the test is derived are discussed at length in Order MO-2227, citing (among others) the Supreme Court of Canada's decisions in *Wewaykum Indian Band v. Canada*, 2003 SCC 45 (CanLII), [2003] 2 SCR 259, and *Committee for Justice and Liberty et al. v. National Energy Board et al.*, 1976 CanLII 2 (SCC), [1978] 1 SCR 369.

⁸ *Committee for Justice and Liberty et al. v. National Energy Board et al.*, cited above, quoting from *Re Canadian Arctic Gas Pipeline Ltd. et al.*, 1975 CanLII 2250 (FCA), [1976] 2 FC 20.

further address them in this order.

A. What is the scope of the request? Is the disclosure made by the institution responsive to the request?

[41] In its initial decisions denying the appellant's access request, the board and the police claimed that the information he seeks is publicly available on the board and police websites. In doing so, they cited section 15(a) of the *Act*, which permits an institution to deny access if the information sought has been published or is already available to the public, or is soon to be published.

[42] Specifically, in respect of Part A of the request (the request for a line-by-line budget breakdown), the police asserted that the publicly available budget data on its website addresses the request. In respect of Part B of the request (the request for correspondence between the board and the police relating to the information sought in Part A), the board stated that the public minutes of the August 18, 2020 board meeting contain responsive information. The board also indicated that there are no further responsive records.

[43] The appellant's appeal to the IPC was based, in part, on his assertion that the publicly available information to which he had been referred is not responsive to his request. During the inquiry, I sought representations from the parties on whether the publicly available information is, in fact, responsive to the appellant's request. (A related issue is the reasonableness of the searches conducted for responsive records, which I address under Issue B.)

[44] The board's representations in this inquiry were made by the coordinator of the police's Access and Privacy Section. In the discussion that follows, I will attribute these representations to the respondent board, and will refer to the police, as a body separate from the board, only where relevant—for example, to address specific evidence regarding the different bodies' actions in response to the access request.⁹

[45] In its initial representations, the board maintained that the "line-by-line" budget information requested by the appellant is publicly available on the police's website. It provided with its representations a copy of this publicly available data, stating (emphases mine):

Amongst other things, the breakdown includes expenditure information on salaries, benefits, equipment, materials and supplies with subcategories within each. The budget breakdown for these units can be found at <https://data.torontopolice.on.ca/datasets/budget-2020/explore>, a copy of the relevant records is attached as Appendix A to these submissions. For greater clarity, the document in Appendix A titled "Detective Operations –

⁹ See the discussion at paragraphs 26-28, above.

Confidential Summary” is a line-by-line breakdown of all the units requested by the appellants as an aggregate.

The Units outlined in the appellant’s request deal with highly sensitive intelligence information and investigate sophisticated criminal actors who threaten existing laws and work outside of legal means to counter police tactics. Any disclosure of our budget information that is more granular will provide these individuals with the information that can undermine and jeopardize law enforcement efforts. ...

For these reasons and balancing the desire for transparency of budgets, the TPS has made the deliberate decision to aggregate the line-by-line breakdown of these specialized units.

[46] Appendix A contains an itemized list of expenditures under the global heading “Detective Operations” for the year 2020, organized into the following categories: Salaries; Benefits; Premium Pay; Materials & Supplies; Equipment; Services; and Revenues. Each of these categories is further broken down into several subcategories called “cost element descriptions.” For example, the category “Salaries” is composed of cost elements including Regular Salaries Uniform Senior Officers; Regular Salaries Uniform; and several subcategories of civilian salaries. As another example, the category “Services” is composed of cost elements including public relations/promotions; investigative expense; and rewards & information.

[47] Appendix A does not contain a breakdown by the organizational units and services specified in the appellant’s access request.¹⁰

[48] Based on these representations, the board appeared to be taking the position that the publicly available aggregate budget information for 2020 responds to the appellant’s request. At the same time, the board appeared to recognize that the appellant may be seeking “more granular information,” and to assert that the latter information would be exempt under law enforcement exemptions in the *Act*.

[49] When I asked the appellant to address the board’s representations on this topic, he confirmed that the aggregate information does not satisfy his request. He also challenged the board’s claim that the more detailed budget information he seeks would be exempt under law enforcement exemptions in the *Act*.

[50] When I invited the board to reply to the appellant’s representations, it requested a lengthy extension of time to respond, which I granted on the appellant’s consent. At the extended deadline date, in lieu of reply representations on the issues under appeal (including the application of the law enforcement exemptions claimed by the board),

¹⁰ Being Intelligence Services; Organized Crime Enforcement as a unit; and, within Organized Crime Enforcement, the following four additional units: Integrated Gun & Gang Task Force; Drug Squad; Financial Crimes; and Prov. ROPE, Bail & Parole Fugitive Squad.

the board issued a revised decision to the appellant. In this decision, the board stated that it had reconsidered its initial position, and “[f]ull access is now granted to the budgetary information as outlined in [Part A] of your original information request.”

[51] The board’s new disclosure consists of a nine-page document setting out approved 2020 expenditures, this time organized by spending for each of the six police units and services specified in the appellant’s access request.¹¹ The expenditures by each of these police units and services is broken down into the same categories and subcategories that appeared in Appendix A—namely, the following broad categories: Salaries; Benefits; Premium Pay; Materials & Supplies; Equipment; Services; and Revenues; and subcategories called “cost elements.” As described above (at paragraph 46), cost elements include such items as public relations/promotions, investigative expense, and rewards & information in the category “Services.”

[52] The appellant’s position is that the board’s new disclosure does not respond to his request for budget information that is more detailed than the aggregate information the board has released to date.

[53] The appellant notes that his access request was based on recommendations tabled at the August 2020 board meeting directing the chief of police to “immediately post a line-by-line breakdown of the 2020 police budget organized by individual program area, function, and service delivered, subject to the need to protect investigative techniques and procedures.” The appellant’s access request, which I reproduced above, adopts this language. Specifically, the appellant states in his request that the line-by-line breakdowns for the six specified police units and service areas should be organized “*by individual program area, function and service delivered*” (emphasis in original). The appellant states that the board’s new disclosure fails to break down the requested budget information to this level of detail.

[54] The appellant explains that the purpose of his request is to seek data that would enable him and the public to readily ascertain how much money the police are spending to deliver specific programs and services within each of the six named police units and service areas. For example, he says, responsive information would include the dollar amounts allocated to programs and services such as situation tables; the mobile crisis intervention program; the body-worn camera program; conducted energy weapons, including tasers; facial recognition technology; AI development; and race relations initiatives. Citing a number of police media releases and other public documents,¹² the appellant says it is public knowledge that these programs exist and that the police allocate money to them. He thus challenges a claim that the board appears to make, at certain points during the inquiry, that budget information relating to these specific

¹¹ Being Intelligence Services; Organized Crime Enforcement as a unit; and, within Organized Crime Enforcement, the following four additional units: Integrated Gun & Gang Task Force; Drug Squad; Financial Crimes; and Prov. ROPE, Bail & Parole Fugitive Squad.

¹² The appellant cites documents indexed online on the websites of the Toronto Police Service (at www.tps.ca) and the Toronto Police Services Board (www.tpsb.ca).

programs does not exist.

[55] In response, the board observes that the chair's recommendation cited in the appellant's access request reads, in full, as follows (emphasis board's):

Direct the Chief of Police to organize all line-by-line breakdowns by individual program area, function and service delivered, **subject to the need to protect investigative techniques and operations**, and in such a way as to provide maximum transparency to the public. (Board #6; ARAP #12; MHMP #27).¹³

[56] The board notes that this recommendation was taken up in a board motion, in response to which the police prepared a Recommendation Completion Report that "fulfill[ed] the direction criteria while adhering to the parameters necessary for effective policing."¹⁴ The board observes that the police's publicly available report and 2020 public budget disclosure are subject to the following caveat:

The information presented is the raw data that has been extracted from the [police's] financial system. This information has been presented to show maximum transparency, subject to the need to protect investigative techniques and operations in some areas.¹⁵

[57] The board states that the above caveat forms part of its "policy and commitment to increase budget transparency," and that the disclosure it has made to the appellant in the current appeal "meets the requirements laid out by the [board] in the budget transparency policy." Furthermore, while acknowledging that the police's compliance with Recommendation #18 is not at issue in this appeal, the board notes that board members raised no concerns about the adequacy of the police's public disclosure made in response to this recommendation.

[58] At the same time, the board asserts that there are no further records responsive to the appellant's request.

[59] In response, the appellant observes that the board appears to be taking inconsistent positions on the existence of information responsive to his request for detailed budget information. He notes that the board appears to acknowledge that it has limited its disclosure to him based on a need to protect investigative techniques and operations, while also claiming that the particular information he seeks (i.e., police spending on individual program areas, functions, and services) does not exist.

¹³ Recommendation 18 in Appendix A to the chair's report. See paragraph 2, above.

¹⁴ The board cites the police's January 6, 2021 "Recommendation Completion Report," available online here: https://www.torontopolice.on.ca/tpsb-reform-implementation/docs/R18_COMPLETION_Report_-_TPS_Budget_by_Program_Function_Service.pdf.

¹⁵ The board says this extract is a qualifier that appears in a section titled "How to Read Our Budget" that accompanies the police's public budget disclosures.

[60] In reply to this point, the board says that while its initial decision (i.e., the decision first appealed to the IPC) was to deny access to the requested budget information on law enforcement grounds, it no longer relies on these exemptions, because (through its revised decision) the board has now disclosed the responsive information in full.

[61] Addressing the appellant's examples of specific programs of interest (i.e., programs for which he seeks budget information), the board says the appellant now seeks information outside the scope of his original access request. The board states:

The desired records are now being re-defined in the Appellant's response of May 23, 2023 whereby they stated that the records being sought are as follows:

- The Mobile Crisis Intervention Program
- The Body-worn Camera Program
- The Conducted Energy Weapons, including tasers; and
- Facial Recognition Technology, including analysis, software, and hardware

This newly worded request is a more concise and narrowed version than the vague wording in the original request of a line-by-line breakdown of the 2020 Toronto Police Service budget...organized by individual program area, function and service delivered; namely for the 6 identified units. ...

It was made clear in our representations, that pursuant to consultation with stakeholders, specialized policing units often engage in sensitive operations such as undercover work or counterterrorism efforts. The items mentioned are all specific tools within law enforcement's arsenal to battle crime. Disclosure of the costs associated with the budgets could compromise the effectiveness by revealing our operational strategies, resource allocations and potential vulnerabilities. The law enforcement exemptions were claimed on these criteria and should not be considered an over claim.

[62] The board also says:

While the institution is continually seeking to provide as much transparency as possible, it would be irresponsible of this agency to release records that could have strong law enforcement repercussions solely to appease a request while dismissing any potential fall-out.

The institution has never sought to deny that the noted programs areas exist.

[63] I have considered the parties' contrasting positions on this issue, and the record newly disclosed by the board. I conclude that the board's new disclosure does not respond to the appellant's request for certain budget information organized to a specified level of detail.

[64] To begin, I accept the appellant's assertion that the program-specific budget information he seeks falls within the scope of his original access request. I reject the board's submission that the appellant is improperly seeking to "re-define" or otherwise expand the scope of his original request.

[65] On the issue of responsiveness, section 17 of the *Act* is relevant.¹⁶ To be considered responsive to the request, records must "reasonably relate" to the request.¹⁷ Institutions should interpret requests liberally in order to best serve the purpose and spirit of the *Act*. Generally, if there is ambiguity in the request, it should be resolved in the requester's favour.¹⁸

[66] The appellant's request was for a "line-by-line breakdown of the 2020 [police] budget," organized "by individual program area, function and service delivered," for six organizational units and service areas within the police. The board's new disclosure sets out, for each of the specified police units and services, the police's 2020 spending in broad categories (such as Salaries and Services) and subcategories (such investigative expense and rewards & information). During the inquiry, to support his position that the board's disclosure to date does not respond to his request, the appellant identified some programs whose 2020 budget allocation is of especial interest to him (e.g., the Mobile Crisis Intervention program and the body-worn camera program) but are not contained in the disclosure he received. The appellant made clear, however, that his request was not limited to budget data for these particular programs.

[67] The board characterizes the appellant's clarification during the inquiry as an attempt to re-define and expand his original request, which the board says contained "vague wording." I disagree. The appellant's access request clearly identifies that he seeks detailed information about the 2020 police budget, broken down into components, including program areas, for six specified police units and services. The appellant did not identify any restrictions or limitations for this breakdown—he did not, for example, exclude any particular program areas within the six identified police units and services.

[68] While the board proposes that budget information for the programs cited by the

¹⁶ Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records.

¹⁷ Orders P-880 and PO-2661.

¹⁸ Orders P-134 and P-880.

appellant falls outside the scope of his request, it has not explained to my satisfaction why this would be the case. For example, the board has not explicitly stated that these programs operate outside the auspices of the six particular police units and services identified by the appellant. If this were the case, it would be incumbent on the board to make this clear.

[69] I recognize that the board's representations contain this statement: "If the appellant now seeks records beyond the 6 units identified in their original request, this is properly the subject of a new request and new considerations for exemptions to be applied." However, given the changing, and at times inconsistent, positions the board has appeared to take in its representations during this inquiry (some examples of which I gave above), I do not take this to be a clear statement or explanation of a board position that the requested program information is not responsive to the request.

[70] In these circumstances, I defer to a plain reading of the appellant's access request, which in my view clearly encompasses program budget information of the kind the appellant describes. On this point, I find irrelevant the fact that the board has not itself raised any objection about the level of detail of the police's budget disclosure through a different process (i.e., through the police's January 2021 Recommendation Completion Report submitted to the board to address an August 2020 board motion). The issue for me to decide in this appeal is whether the budget information disclosed to the appellant under the *Act* responds to his access request made under the *Act*. I have found that it does not.

[71] In summary, given that the appellant's original access request clearly identifies his interest in obtaining a line-by-line breakdown of the 2020 police budget for six specified police units and services, organized into components including program areas, I do not accept the board's assertion that detailed budget information for specified programs falls outside the scope of the request. As this information is responsive to the appellant's request, the board must issue a decision on access to it under the *Act*.

[72] The appellant also submits that the board's new disclosure is not responsive because it fails to contain a line-by-line breakdown as of the date of processing his request (emphasis appellant's). In the appellant's submission, this means that any responsive disclosure must contain detailed budget information as of the date of the board's revised decision (i.e., January 2023).

[73] The appellant's original access request includes a statement that the request "covers the period beginning January 1, 2020 and continues to the day on which this request is processed by the institution." However, the timeframe captured by his request is explicitly bounded by the opening language of his request to cover budget information (presented as a "line-by-line breakdown") for the 2020 police budget only. On this point, I agree with the board that the appellant's access request is limited to detailed budget information for the 2020 police budget and does not cover similar information for budget years post-dating 2020. If the appellant seeks similarly detailed

budget information for budget years post-dating 2020, he must make a fresh access request.¹⁹

[74] The effect of this interim order is to require the board to locate the detailed budget information I have found to be responsive to the request, and to issue a decision on access to it in accordance with the requirements of the *Act*. To be clear, this is not an order for disclosure of information. However, the board must comply with the *Act* in identifying the responsive information and specifying the ground(s) in the *Act* for any decision to withhold this information in full or in part.

[75] I acknowledge that in certain portions of its representations, the board appears to propose that the detailed budget information the appellant seeks should be withheld based on a “need to protect investigative techniques and operations” and because disclosure “could have strong law enforcement repercussions.” In doing so, the board appears to be alluding to the law enforcement exemptions it raised in its initial access decision (in addition to its claim about section 15(a) of the *Act*) and in its initial representations in this inquiry.²⁰ At the same time, however, the board has explicitly denied that it is currently relying on any exemptions to withhold information. It has also asserted that “there are no further responsive records to the original request.”

[76] Pending the board’s new access decision in compliance with this interim order, I make no findings about the potential application of any exemptions to the responsive information. Further, to the extent the board is claiming in its representations that the detailed budget information the appellant seeks does not exist, or otherwise cannot be produced for the purposes of an access decision, I find the claims to date to be insufficiently articulated, and unsubstantiated, by the board.

[77] In support of his assertion that the detailed budget information he seeks must exist within the board’s record holdings, the appellant produced public documentation about the programs he describes,²¹ and an affidavit from a former board chair about the police budget approval process.²² The former board chair says that in his experience, the process of approving the police’s annual operating budget involved board scrutiny of line-by-line (not aggregate) breakdowns of the police chief’s budget proposals, organized by command, unit or service, and individual program, function, or service area. The former board chair also states that the information necessary to prepare or to consider such proposals was retained on several databases over which

¹⁹ However, the appellant’s present access request would cover any 2020 police budget information that was revised up to the date of processing his request. The board notes in its representations that the data it deemed responsive was “uploaded on September 16, 2021.”

²⁰ The police initially cited sections 8(1)(c) and (l) of the *Act*, in addition to the section 15(a) exemption for publicly available information. Later, during the inquiry, the board also raised sections 8(1)(d) and (e) of the *Act*. The section 8(1) exemptions are discretionary exemptions that permit an institution like the board to withhold information if its disclosure could reasonably be expected to result in certain harms to law enforcement interests.

²¹ See footnote 12.

²² The appellant provided an affidavit of Alok Mukherjee, chair of the board from 2005 to 2015.

both the police and the board had access and control.

[78] The board does not address the evidence on this point provided by the appellant, except to say it does not deny that the programs identified by the appellant exist.

[79] In the absence of a clear statement and supporting evidence from the board, I am not persuaded that the board cannot produce the detailed budget information requested by the appellant. If it is in fact the board's position that responsive budget information does not exist within its custody or control, or that this information is exempt or otherwise inaccessible under the *Act*, it is the board's obligation to make this clear in its new access decision, and to explain the basis for its position.

[80] In addition, in the circumstances, I will not permit the board to seek an extension of time to issue this new access decision.

[81] Throughout the inquiry, the police (which made representations in this inquiry on behalf of the respondent board)²³ have consistently sought to extend, or have disregarded, deadlines to respond to correspondence from the IPC. Some of the explanations offered for the delays have been lacking in detail.

[82] I found above that the revised decision issued during this inquiry does not respond to the appellant's access request. I also noted some lack of clarity about the precise nature of the respondent's position on the appellant's right of access under the *Act* to the detailed budget information he seeks. While this interim order will require the respondent to issue a new decision on access to information responsive to the appellant's request, the substance of the new access decision and other factors will determine whether it is necessary to continue the inquiry.

[83] This means that as of the date of this interim order, the appellant's November 7, 2020 access request, for police budget information from the year 2020, has yet to be properly addressed under the *Act*.

[84] I am mindful that delays in the appeal process may prejudice all parties to an appeal, beginning with the fact that any delay may undermine a requester's ability to have timely access to information subject to the *Act*. It is evident that the appellant's ability to have timely access to 2020 budget information has been severely prejudiced.

[85] I have also considered that the respondent has had carriage of this request since November 2020, so has had ample time, both on processing the request initially and during this appeal process, to identify and to search relevant record holdings and to consider any proper grounds for denying access to responsive information under the

²³ The police are part of the board, which is the respondent institution in this inquiry: see paragraphs 26-28, above. For the purposes of the discussion that follows, I will refer where appropriate to the police (in place of the board), because it is the coordinator of police's Access and Privacy Section who made representations for the institution during the inquiry.

Act. During the inquiry process, the police on more than occasion cited a need to engage in extensive consultations with stakeholders as a reason for their delay. I granted several of these requested extensions based on my understanding that the police were making diligent efforts to locate and to make an access decision on responsive information following appropriate consultations with bodies whose interests may be affected by the decision. The police ought by now to be able to readily compile the requested information (or to provide a detailed explanation about why such information does not exist), and to issue a decision on access in accordance with the *Act*, without further delay.

[86] Having regard to all these circumstances, I have decided not to permit the respondent to claim any extensions of time to comply with my interim order for a new access decision. This is set out in order provision 1, below.

B. Did the institution conduct a reasonable search for records?

[87] Above, I ordered the board to issue a new access decision in respect of Part A of the appellant's request. The reasonableness of any new searches conducted in relation to Part A is premature at this stage, and I will not address it in this interim order.

[88] Under this heading, I will consider issues only around the reasonableness of the board's searches for records responsive to Part B of the appellant's request—namely, the request for:

All

1. correspondence issued by the [board] to the [police], and
2. correspondence issued by the [police] to the extent that such correspondence was received by the [board],

which references the information described in paragraph (A) of this request, including any references to rationale as to why the disclosure made on or about August 18, 2020 to the [police]'s website omits the information described in paragraph (A).

[89] As noted above, the board "split" the appellant's request between the board and the police. The search for Part B records was conducted by the board's administrator, who reported locating no records responsive to Part B. In the decision to the appellant, the board administrator asserts that the public minutes of the August 18, 2020 board meeting address this part of the request. The appellant's appeal to the IPC was based, in part, on a claim that the board failed to conduct a reasonable search for records responsive to Part B.

[90] If a requester claims that additional records exist beyond those found by an institution, the issue is whether the institution has conducted a reasonable search for

records as required by section 17 of the *Act*.²⁴ If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision. If the IPC is not satisfied that a reasonable search was conducted, it may order the institution to conduct another search for records. 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.²⁵

[91] During the inquiry, I asked the board to provide a written explanation of the steps it had taken in response to the request. With its representations, the board provided an affidavit from the board administrator who conducted the search for Part B records. The board administrator reports that she conducted queries and searches of the board's electronic and physical files, as well as emails and related correspondence folders, and that these searches encompassed records dating back to 2000. Board office staff also checked their emails, folders, and other correspondence for responsive records.

[92] The board administrator says that the only responsive records are those that were already released publicly in connection with the board's public meeting on August 18, 2020. For this reason, she says, she provided the appellant with a link to the public meeting minutes for that date.²⁶

[93] I have examined the publicly available material from this board meeting, including the meeting agenda and the meeting minutes to which the board referred the appellant. These publicly available materials do not include records of correspondence between the board and the police concerning the detailed police budget information described in Part A of the appellant's request, nor any "references to rationale as to why" the police's public budget disclosure (in response to an August 18, 2020 board motion) "omits the information described" in Part A of the request.

[94] The appellant does not accept that there are no records responsive to his Part B request. He notes that in the former board chair's affidavit, the former chair describes the annual police budget approval process as a collaborative, iterative process, involving multiple rounds of back-and-forth between the board and the police chief. The appellant believes it is unlikely this process would not yield any communications between the board and the police chief. In addition, while the appellant accepts that the board administrator is an experienced employee, he challenges the scope of her searches, which he says appear to have limited. He says she has provided insufficient evidence of the specific search strategies or search terms used, and that there is "no suggestion that physical notes or communications were sought out."

[95] I accept the appellant's submission, supported by the evidence of the former

²⁴ Orders P-85, P-221, and PO-1954-I.

²⁵ Orders M-909, PO-2469 and PO-2592.

²⁶ Minutes of board meetings, including the August 18, 2020 meeting discussed in this order, are available online here: <https://www.tpsb.ca/meetings>.

board chair, that the police budget approval process typically involves numerous rounds of communications between the board and the police. However, I am not persuaded this evidence establishes a reasonable basis to believe the particular records the appellant seeks must exist.

[96] The appellant's Part A request for particularized budget information, reproduced at paragraph 4 of this interim order, is extremely detailed; I found above that this level of detail makes clear what information is responsive to Part A of the request. The appellant's Part B request is for correspondence between the board and the police that explicitly refers to the extremely detailed information described in Part A, including any discussions between the board and the police about a decision not to publicly disclose any information described in Part A. While I accept that the budget approval process would generate records of communications between the board (which approves the police budget) and the police (who submit budget proposals to the board for approval), I am not persuaded by the evidence before me that there must exist records of communications about the 2020 police budget described so precisely.²⁷

[97] 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.²⁸ I am satisfied that the evidence provided by the board meets this standard. Given there are no reasonable grounds to believe that records responsive to Part B must exist, I see no basis to require the board to provide additional details about the search terms and strategies it employed to locate Part B records. I also note that the board administrator indicates in her affidavit that the records searched included physical records, and not only electronic records. In the circumstances, I see no basis to question the sufficiency of searches conducted by the board administrator, or to believe that an order for further searches would yield records responsive to Part B of the appellant's request.

[98] I thus uphold the board's search in response to Part B of the request.

INTERIM ORDER:

1. I find that the board's January 31, 2023 disclosure is not responsive to the appellant's "Part A" request for a line-by-line breakdown of the 2020 police budget, organized by "individual program area, function and service delivered," for six specified organizational units and services.
2. I therefore order the board to issue an access decision in respect of information responsive to the relevant part of the appellant's access request, as set out more

²⁷ I.e., Records of communications about a line-by-line breakdown of the 2020 police budget, organized by individual program area, function and service delivered, for the six particular police units and services of interest to the appellant; and of the rationales for not disclosing this particular information.

²⁸ Orders P-624 and PO-2559.

particularly in paragraph 4 of this interim order. The board is to issue this access decision to the appellant, with copy to me, without recourse to the provisions of the *Act* concerning extensions of time, and no later than **March 4, 2024**.

3. I uphold the board's search for records responsive to "Part B" of the appellant's request.
4. I remain seized of this appeal to address issues arising from order provision 1.

Original signed by: _____

Jenny Ryu
Adjudicator

February 9, 2024 _____