

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4492

Appeal MA22-00211

Toronto Police Services Board

February 22, 2024

Summary: The appellant alleges that the Toronto Police Services Board (the police) failed to conduct a reasonable search for records responsive to his request made under the *Act* for records relating to him, including all videos pertaining to a specified occurrence report. The adjudicator finds that the police conducted a reasonable search for responsive records within their custody or control. The appeal is dismissed.

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

OVERVIEW:

[1] The Toronto Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to the requester, and particularly all videos pertaining to a specified occurrence report.

[2] The police identified responsive records and granted partial access to them.¹

[3] The requester, now the appellant, appealed the police's decision to the Information

¹ The police relied on the discretionary exemption at section 38(b) (personal privacy) and the exclusion at section 52(2.1) (ongoing prosecution) of the *Act*, to deny access to the portions they withheld.

and Privacy Commissioner of Ontario (the IPC).

[4] At mediation, the appellant advised that he was no longer seeking access to any of the withheld information. Accordingly, access to the withheld information was removed from the scope of the appeal.

[5] However, the appellant takes the position that other records ought to exist, thereby raising the issue of the reasonableness of the police's search for responsive records. The appellant also advised that a video he received of him in a cell has portions blacked out, cut out frequently and has sections missing. It appears that he believes that another, more complete video should exist.

[6] After conducting an additional search, the police advised that additional records did not exist and that no severances were made to the video of him in a cell.

[7] Mediation did not resolve the appeal and it was moved to the adjudication stage of the appeals process where an adjudicator may decide to conduct an inquiry under the *Act*.

[8] I decided to conduct an inquiry and sought representations from the parties. The police provided representations. The appellant did not provide representations.

[9] In this order I find that the police conducted a reasonable search for responsive records within its custody or control. The appeal is dismissed.

DISCUSSION:

[10] As explained in the Overview, the appellant takes the position that the police's search failed to locate all the responsive records. This includes a video he received of him in a cell that he says has portions blacked out, cut out frequently and has sections missing. It appears that he believes that another, more complete video should exist.

[11] If a requester claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act*.²

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

[13] 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

² Orders P-85, P-221 and PO-1954-I.

³ Order MO-2246.

made a reasonable effort to identify and locate responsive records;⁴ that is, records that are “reasonably related” to the request.⁵

[14] 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.⁶ The IPC will order a further search if the institution does not provide enough evidence to show that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.⁷

The representations

[15] The police maintain that they conducted a reasonable search for records within their custody or control and that no additional records exist.

[16] In their representations the police set out the multiple steps that they took to locate responsive records, identifying the employee who conducted the various searches, the places that were searched, what records were searched and finally, the results of the searches. The police also reference the additional searches that they conducted at mediation, which failed to locate any additional video footage. The police also state that no severances or modifications were made to the “video in a cell” and it was disclosed to the appellant unaltered. The police add that there is no indication that any other video footage may have existed.

[17] The appellant provided no submissions on the reasonableness of the police’s search for responsive records.

Analysis and finding

[18] Based on the information before me, I find that the police made a reasonable effort to identify and locate all responsive records within their custody or control. I accept the police’s evidence that it provided the “video in a cell” footage to the appellant in an unaltered state and that no other versions of that video footage exist.

[19] In the absence of representations from the appellant, I find that there is no reasonable basis to conclude that further searches would yield additional responsive records or a different version of the “video in a cell” footage that the appellant advised the mediator that he believes should exist.

[20] Accordingly, I find that the police have conducted a reasonable search for responsive records that is in accordance with the requirements of the *Act*.

⁴ Orders P-624 and PO-2559.

⁵ Order PO-2554.

⁶ Orders M-909, PO-2469 and PO-2592.

⁷ Order MO-2185.

ORDER:

I uphold the reasonableness of the police's search for responsive records and dismiss the appeal.

Original Signed By: _____
Steven Faughnan
Adjudicator

February 22, 2024 _____