Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER MO-2378

Appeal MA07-306

Toronto Police Services Board

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NATURE OF THE APPEAL:

The Toronto Police Services Board (the Police) received the following access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

> We require copies of all occurrences, disclosures to dispatch, and dispositions and any contact the Toronto Police Services has had with the residents [specific surname, (the Neighbours)] of [specified address] to do with us, [the requesters], who reside at [specified address adjacent to first specified address].
>
> No matter how brief, copies of all calls to TPS from [the Neighbours] regarding [requesters' address and surname].

In the decision letter, the Police provided the following statement clarifying the request, based on discussions with the appellants:

> You also clarified that you require occurrence reports regarding disputes at the aforementioned [requesters'] address, memorandum book notes of the attending officers from 2005 to present and the history of the calls for service placed to the aforementioned address.

The Police identified 65 pages as responsive to the request and granted partial access to the records, denying access to the remainder pursuant to section 38(a), taken together with section 8(1)(l) (law enforcement), and section 38(b) (discretion to refuse requester's personal information), together with the presumption in section 14(3)(b) (personal privacy) of the *Act*. The Police advised the requesters that some information had been removed from the records as it was not responsive to the request. The requesters, now the appellants, appealed the Police's decision.

This office appointed a mediator to try to resolve the issues between the parties. During mediation, the appellant's representative conveyed the opinion that additional records should exist, particularly ones that relate to complaints made against the appellants by the Neighbours. The Police responded by advising that all responsive records had been identified. Accordingly, the adequacy of the Police's search for records responsive to the request was added as an issue in this appeal.

The appellant's representative also requested that the Police provide them with an index of records. Although the Police had prepared an index for the purposes of this appeal, the Police declined to provide it to the appellants. Since the appellants maintained that they should be given a copy of the index to assist them in responding to the other issues in this appeal, I added this as an issue in this inquiry.

Finally, the appellant's representative confirmed that they wished to pursue access to all information severed from the records, except for police codes and those portions identified as non-responsive by the Police. In view of this position, the possible application of section 38(a), in conjunction with section 8(1)(l), was removed from the scope of this appeal.

No further resolution of the issues through mediation was possible, and this appeal was transferred to adjudication where it was assigned to me to conduct an inquiry. I sent a Notice of Inquiry to the Police initially, outlining the facts and issues and seeking representations, which I received. These representations referred to two additional records, copies of which were not provided, but were eventually obtained by this office. In view of the representations offered by the Police on these records, I concluded that their responsiveness is at issue in this appeal.

It was necessary to address the sharing of the Police's representations through a sharing decision issued to the Police. I then sent a modified Notice of Inquiry, and a copy of the non-confidential representations of the Police as determined by the sharing decision, to the appellants to invite submissions from them. Pursuant to the terms of the sharing decision, I also provided the appellants with a copy of the index of records the Police had previously declined to provide to them. Accordingly, I will not be addressing the index of records as an issue in this order.

The appellants declined to submit representations in response to the Notice of Inquiry, and asked that their letter of appeal serve as their statement of position.

RECORDS:

The information at issue in this appeal consists of the withheld portions of police officers' handwritten notes (41 pages), occurrence reports (22 pages), and address history reports (2 pages). In addition, there are two records identified during the inquiry (3 pages), for a total of 68 pages.

DISCUSSION:

RESPONSIVENESS OF THE RECORDS IDENTIFIED BY THE POLICE

Background

As noted in the previous section of this order, the appellants are not interested in access to police codes or other portions of the records identified by the Police as non-responsive, and these items will not be addressed in this order.

Access to pages 59 to 65 was denied in full pursuant to section 38(b), together with sections 14(1) and 14(3)(b), and because there were non-responsive portions of pages 59, 62, 63 and 65. However, there was no indication on the copies of those four pages which portions were considered to be non-responsive and which were claimed to be exempt under section 38(b). Although I asked the Police to provide marked copies with their representations, they did not do so. It should be noted that when I made this request of the Police, I inadvertently omitted to include page 63 in the request for clarification. Nonetheless, I will review pages 59, 62, 63 and 65 to determine the issue of responsiveness, as well as the possible exemption of information under section 38(b) of the *Act*.

Finally, following receipt of the Notice of Inquiry in this appeal, and my request that the Police query the database for calls made from the Neighbour's address, two additional records were located. I will review the responsiveness of these records in this order.

General Principles

Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

> (1) A person seeking access to a record shall,
>
> (a) make a request in writing to the institution that the person believes has custody or control of the record;
>
> (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and
>
> . . . . .
>
> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour [Orders P-134, P-880].

Representations

With regard to the pages for which the demarcation between non-responsive and information claimed to be exempt was lacking, the Police submit:

> Portions of the records were released to the appellants where they are entitled to calls made from their home in addition to portions of the text of calls involving them. On those pages [59, 62, 63 and 65], the address of [the appellants] is mentioned, but only peripherally. The incident did not involve the appellants but merely their home as a location. … It is for this reason that the institution did not [originally] release an Index of Records which would clearly indicate another incident, despite the appellants' non-involvement.

Most of the representations provided by the Police regarding the two records identified during adjudication were largely kept confidential, and were not shared with the appellants. However, for the purposes of this order, a brief statement of the Police's position is necessary. Briefly put,

the Police take the position that these records documenting calls made by the Neighbour are not responsive to the request because no officer was dispatched to the scene.

The Police also submit that event numbers were removed from the two Address History Reports at pages 57 and 58, and in related officers' notes, "where they are not calls initiated by the appellants." The Police submit that "event numbers are as much an identifier as a person's phone number, address, date of birth." As I understand it, the event numbers were removed from the records because the Police considered them to be personal information. I will address this submission under the discussion of the definition of "personal information," below.

As previously mentioned, the appellants did not submit representations in response to those submitted by the Police during the inquiry. However, in their letter of appeal, the appellants paraphrase the request, and point out that most of the records received in response to the request actually relate to calls made by them, when they were seeking calls made by the Neighbour.

Analysis and Findings

I agree with the appellants that some of the records that have been identified as responsive to the request do not appear to fit within the scope of the request. The manner in which the Police interpreted the request appears to have suffered from some ambiguity that was not adequately clarified during the processing of the appeal. On a reading of the information provided by the appellants, I accept that they were seeking only those records that involved calls made by the Neighbours in reference to them, or their address. Nevertheless, as other records have been identified and addressed throughout the appeals process, I will deal with all of them in this order.

In advance of providing my findings as to the responsiveness of information on pages 59, 62, 63 and 65, the event numbers, and the responsiveness of the two records identified during adjudication, it is important, in my view, to confirm the scope of the appellants' request. I find that the request contemplates "all occurrences, disclosures to dispatch, and dispositions and any contact" between the Police and the Neighbours adjacent to the appellants' home regarding them and/or their address.

This confirmation of the scope of the request is important, in my view, because the Police appear to have initially excluded responsive records related to some, if not all, calls made by the Neighbours. It was, instead, presented as a foregone conclusion that these records would be unavailable to the appellants under the *Act*. In my view, it should be emphasized that the possible release of, or denial of access to, records under section 38(b), or any other of the exemptions under the *Act*, should not be confused with the process of identifying a record as responsive to a request.

Previous orders have established that, to be considered responsive to a request, the records must "reasonably relate" to the request [Order P-880]. Viewed in this context, I find that the two newly identified records, which document calls made by the Neighbours to the Police, fall within the scope of the request and are, therefore, responsive to it. In the circumstances of this appeal, I

have decided that I will consider pages 66 to 68 along with the other previously identified records that are subject to a claim for exemption under section 38(b).

Access to the information relating to the incident represented by pages 59 to 65 was denied in full. The Police submit that these records are not responsive because "the incident did not involve the appellants but merely their home as a location." However, in the index and other parts of the representations of the Police, the position taken on those records is identical to that taken in relation to the other pages for which partial access was granted. The Police submit that their initial reasoning in not releasing the index of records was that it would "clearly indicate another incident, despite the appellants' non-involvement." In my view, however, this represents an unduly strict, even contradictory, reading of the request. The incident described at pages 59-65 reasonably relates to the ongoing disputes between the Neighbours and the appellants for which a service call was placed to the Police, who in turn had contact with the Neighbours, and I find that pages 59 to 65 are responsive to the request overall.

However, it must be noted that portions of pages 59, 62, 63 and 65 contain information about other investigations or activities of the police officers, including police codes, which is not reasonably related to the appellants' request. Accordingly, I find that there are non-responsive parts of pages 59, 62, 63, and 65, and I will provide copies of these pages with the non-responsive parts clearly marked to the Police with this order. I also will review the responsive portions of pages 59 to 65 under section 38(b).

Finally, as noted previously, the Police submit that event numbers related to calls not made by the appellants are non-responsive. In my view, however, if the Police considered event numbers *as a category* to be non-responsive, then all event numbers should have been severed from the records, and representations offered accordingly. Instead, the Police have withheld only those that relate to calls that were not made by the appellants, on the grounds that the event numbers are "personal identifiers". Again, in my view, this represents an unfortunate confusion between the determinations of responsiveness and possible exemption. As stated, I will be addressing the personal information basis for withholding the event numbers in the next section of this order. However, based on my review of the records, I find that all of the event numbers are responsive to the request as they appear in the records generally, and the address history and event detail reports on pages 57, 58 and 66 to 68, in particular.

PERSONAL INFORMATION

For the purpose of deciding whether or not the disclosure of the information would constitute an unjustified invasion of personal privacy under section 38(b) of the *Act*, it is necessary to determine whether the records contains personal information and, if so, to whom it belongs. Only "personal information" can be exempt under the personal privacy exemption. That term is defined in section 2(1) as follows:

Section 2(1) of the *Act* defines "personal information", in part, as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except if they relate to another individual,
>
> …
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

Representations

The Police submit that the records contain the personal information of "an identifiable individual," including their opinions or views, as contemplated by paragraph (e) of the definition

of the term in section 2(1). The Police state:

> [The appellants] were provided with access to the majority of the incidents in their entirety. Any calls that did not involve contact with the appellants are just the opinion or view of the individual (in this case, the neighbour). As nothing became of these incidents, and does not specifically address the appellants [sic], release would constitute an unjustified invasion of the neighbour's personal privacy.

In addition, as previously noted, some, but not all, of the event numbers were withheld from pages 57, 58 and 66 to 68, and where these numbers appear in corresponding officers' handwritten notes. The Police submit that the event numbers constitute "personal information" for the purposes of paragraph (c) of the definition. The Police argue that "event numbers are as much an identifier as a person's phone number, address, date of birth." As I understand it, the Police are arguing that the event number is an "identifying number assigned to an individual" because each ICAD (Intergraph Computer Aided Dispatch) event is assigned a unique number which can identify the caller. The Police refer to Orders MO-1173 and MO-1314 in support of the assertion that a unique number, such as the event numbers in this appeal, constitutes "personal information," as did the license plate numbers in those appeals.

In their letter of appeal, the appellants object to the severances made on the grounds that

> an individual's name does not constitute "personal information" as interpreted in section 2(h) [sic] of the *Act* unless it appears with other personal information. Hence, the name of the complainant should not have been filtered, unless it appeared with other personal information about that individual, which, for the most part, is not the case in these documents.

Analysis and Findings

I have reviewed the records to determine whether they contain personal information and, if so, to whom it relates. Having done so, I find that the records contain information pertaining to the appellants that qualifies as their personal information, within the meaning of paragraphs (a), (b), (d), (e), (g) and (h) of the definition in section 2(1) of the *Act*.

The records also contain information relating to 10 other individuals, and I find that the information relating to them satisfies the definition of personal information under, variously, paragraphs (a), (b), (d), (e), (g) & (h) of section 2(1).

In circumstances where a record contains both the personal information of the appellants and other individuals, the request falls under Part II of the *Act* and the relevant personal privacy exemption is the exemption at section 38(b) [Order M-352]. Some exemptions, including the personal privacy exemptions at sections 14(1) and 38(b), are mandatory under Part I but discretionary under Part II and thus, in the latter case, an institution may disclose information that it could not disclose if Part I is applied [Order MO-1757-I].

However, it is not necessary for me to consider whether the appellants' own personal information qualifies for exemption under section 38(b) since its disclosure to them cannot be an unjustified invasion of another individual's personal privacy, as required under that section. Accordingly, I will order the disclosure of the appellants' own personal information to them.

With respect to the ICAD event numbers, I find that these do not fit within the definition of "personal information" in section 2(1) of the *Act*. Previous orders of this office have established that information is identifiable if there is a *reasonable expectation* that an individual may be identified by the disclosure of the information [see *Pascoe*, cited above, and Order P-230]. This suggests that there must be a means of connecting the information with an identifiable individual. I find that I have not been provided with evidence to substantiate that some means of connecting the event number to a specific individual without reference to the Police database, which is not accessible to the public, exists. In my view, therefore, the event number cannot identify any individual, and accordingly, it cannot accurately be described as an "identifying number." More generally, the number is not information about an "identifiable individual". This would change if the Police ICAD database was disclosed, but that has not occurred. Accordingly, I find that in the circumstances of this appeal, the ICAD event number is not "personal information." As I have found that the event numbers are not personal information for the purposes of the definition of that term in section 2(1), that information cannot be exempt under the personal privacy exemptions under the *Act*, and I will order it disclosed to the appellants.

In addition, there are small snippets of text withheld from the occurrence reports and officers' notes that do not fit within the definition of "personal information" in section 2(1), and I will also be ordering these disclosed to the appellants.

I will now consider whether the personal information about the other 10 individuals qualifies for exemption under the discretionary exemption at section 38(b) of the *Act*.

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/PERSONAL PRIVACY OF ANOTHER INDIVIDUAL

Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

The Police take the position that the undisclosed portions of the record are exempt under the discretionary exemption in section 38(b). Under section 38(b), where a record contains the personal information of both the requester and another individual, and disclosure of the information would constitute an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester.

If the information falls within the scope of section 38(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the requester's right of access to his or her own personal information against the other individual's right to protection of their privacy.

Sections 14(1) to (4) provide guidance in determining whether the "unjustified invasion of personal privacy" threshold under section 38(b) is met. If one of the presumptions contained in paragraphs (a) to (h) of section 14(3) apply, the disclosure of the information is presumed to constitute an unjustified invasion of privacy, unless the information falls within the ambit of the exceptions in section 14(4), or if the "public interest override" in section 16 applies [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

In the circumstances of this appeal, it appears that the presumption at section 14(3)(b) of the *Act* may apply. This section states:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> > was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

Representations

Although the Police claimed in the decision letter and in the index of records that the denial of access to the undisclosed information was based on the exemption in section 38(b), taken together with the presumption against disclosure in section 14(3)(b), no submissions specific to this presumption were provided with their representations.

However, the Police submit that if the appellants are given access to information about calls to the Police that they did not make, this would violate the Neighbours' privacy. The Police also assert that disclosure of this information would expose the Neighbours "unfairly to possible pecuniary or other harm as noted by [the] exemption [in section] 14(2)(e)."

As noted, the appellants provided no submissions during adjudication, but stated the following in their letter of appeal:

> The information sought includes records of complaints filed against our client by [the Neighbour] concerning allegations of violations of various Ontario provincial statutes and/or Municipal by-laws.

Analysis and Findings

Based on my review of the records, I find that the presumption in section 14(3)(b) applies to the undisclosed information in the records. The information was compiled by the Police, an agency that has the function of enforcing the law, as part of investigations into various possible violations of municipal by-laws or provincial statutes, involving the appellants and the Neighbours, and other identifiable individuals. Past orders have established that even if no

criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply since the presumption only requires that there be an investigation into a possible violation of law [Order P-242].

Once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the "public interest override" at section 16 applies. Section 14(4) does not apply in this appeal and the appellants have not raised the application of section 16. Similarly, in view of my finding that the presumption against disclosure in section 14(3)(b) applies, it is unnecessary to review the factors in section 14(2).

Accordingly, subject to my discussion of the Police's exercise of discretion in the next section, disclosure of the information at issue is presumed to constitute an unjustified invasion of personal privacy of the identifiable individuals other than the appellants, and is exempt under section 38(b).

Absurd result

In this appeal, many of the records relate to incidents in which the one or both of the appellants were present or involved in some way. Whether or not the factors or circumstances in section 14(2) or the presumptions in section 14(3) apply, where the requester originally supplied the information, or the requester is otherwise aware of it, the information may be found not exempt under either section 38(b) or section 14(1), because to find otherwise would be absurd and inconsistent with the purpose of the exemption [Orders M-444, MO-1323].

The absurd result principle has been applied where, for example:

- the requester sought access to his or her own witness statement [Orders M-444, M-451, M-613]

- the requester was present when the information was provided to the institution [Order P-1414]

- the information is clearly within the requester's knowledge [Orders MO-1196, PO-1679, MO- 1755]

Previous orders have also stated that, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is otherwise known to the requester [Orders M-757, MO-1323, MO-1378].

Former Senior Adjudicator David Goodis reviewed the issue of the consistency of disclosure with the purpose of the section 21(3)(b) (the provincial equivalent to section 14(3)(b)) exemption in Order PO-2285. He stated:

> Although the appellant may well be aware of much, if not all, of the information

> remaining at issue, this is a case where disclosure is not consistent with the purpose of the exemption, which is to protect the privacy of individuals other than the requester.

In Order MO-1378, the former Senior Adjudicator explained the importance of a balanced approach to the issue:

> [It] recognizes one of the two fundamental purposes of the *Act*, the protection of privacy of individuals [see section 1(b)], as well as the particular sensitivity inherent in records compiled in a law enforcement context. The appellant has not persuaded me that I should depart from this approach in the circumstances of this case.

I adopt the approach taken to the absurd result principle in Orders MO-1378 and PO-2285 for the purposes of this appeal.

The Police provided only very general and brief submissions in opposition to the application of the absurd result principle to the undisclosed information. The appellants have provided no submissions at all. Accordingly, I have carefully reviewed the circumstances of this appeal, including the specific records at issue, the background to the creation of the records, and the nature of the relationship between the appellants and their Neighbour.

In these circumstances, there is a particular sensitivity inherent in the personal information contained in the records, and I find that disclosure would not be consistent with the fundamental purpose of the *Act*, as identified by Senior Adjudicator Goodis in Order MO-1378. Accordingly, I find that the absurd result principle does not apply in this appeal.

EXERCISE OF DISCRETION UNDER SECTION 38(b)

My finding that the personal information of other identifiable individuals qualifies for exemption under section 38(b) does not conclude the matter. The section 38(b) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

The Commissioner, or her delegate, may also find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations

In either case this office may send the matter back to the institution for an exercise of discretion

based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 43(2)].

This office has identified a number of considerations that may be relevant in exercising its discretion. A list of these considerations was provided to the Police in the Notice of Inquiry and may include those listed below. It should be noted that not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant [Orders P-344, MO-1573]:

- the purposes of the *Act*, including the principles that
    - information should be available to the public
    - individuals should have a right of access to their own personal information
    - exemptions from the right of access should be limited and specific
    - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the historic practice of the institution with respect to similar information

Representations

The Police submit that in deciding the extent of the disclosure in the present appeal, they considered the balancing between the right of access and the protection of privacy and concluded that it must weigh in favour of privacy protection, especially in light of the antagonistic nature of the relationship between the appellants and the Neighbours.

The Police note that the nature of the institution, as a law enforcement agency, was considered in exercising their discretion to deny access to the personal information of third parties. Quoting

from what appears to be an order of this office, but with no reference cited, the Police submit that "We generally view the spirit and content of the *Act* as placing a greater responsibility to safeguard the privacy interests of individuals where personal information is being collected."

The appellants did not respond to the representations of the Police regarding their exercise of discretion in this matter.

Analysis and Findings

I have considered the submissions provided by the Police on the factors taken into consideration in exercising its discretion to not disclose the records, or portions of records, for which it had claimed exemption under section 38(b). I have also considered the circumstances of this appeal, including the content of the records, in relation to the Police's exercise of discretion under section 38(b).

In the circumstances of this appeal, I am satisfied that the Police exercised their discretion with consideration of relevant factors and principles. I take note that the Police considered the balancing of the appellant's right of access and the protection of privacy of other individuals. In my view, this is evident by the amount of information the appellants received through the initial, and subsequent, disclosures. Overall, I am satisfied that the Police exercised their discretion under section 38(b) of the *Act* properly, and I will not interfere with it on appeal.

Consequently, I find that disclosure of the personal information of the other identifiable individuals in the records would constitute an unjustified invasion of their personal privacy and that the information is exempt under section 38(b) of the *Act*.

REASONABLE SEARCH

The appellants claim that the Police have not conducted an adequate search for records responsive to their request.

General Principles

In appeals, such as this one, that involve a claim that additional responsive records exist, the issue to be decided is whether the Police conducted a reasonable search for the records as required by section 17 of the *Act*. If I am satisfied that the search carried out was reasonable in the circumstances, the Police's search will be upheld. If I am not satisfied, further searches may be ordered.

The *Act* does not require the Police to prove with absolute certainty that further records do not exist. However, the Police must provide sufficient evidence to show that a reasonable effort was made to identify and locate responsive records. A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request [Orders M-282, P-458, M-909, PO-1744 and PO-1920].

Furthermore, 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.

As noted previously, in view of the appellants' claim that the Police had not identified all records related to complaints made against them by the Neighbours, and my consideration of the Address History Reports (at issue), I put the following question to the Police in the Notice of Inquiry:

> Did the Police query the Neighbours' address to determine if other occurrence reports and/or officers' handwritten notes respecting complaints made against the appellants by the Neighbours were identified as a consequence?

Representations

The appellants state that the records identified in response to the request do not correspond with their own documentation of their Neighbours complaining about them to the Police. The appellants submit that:

> Their records indicate that [a specific] officer visited their residence quite often and on a regular basis. The information provided in response to the access request does not include any record of these complaints, visits and investigations. In addition, we have been advised by individuals with the Toronto Police that their files include documents with the requested information, which have not been produced.

According to the Police, "excellent and regular contact" was maintained between the analyst and the appellants, and this allowed for clarification of the request. The Police state that they explained the parameters of the searches conducted in response to the request to the appellants.

The Police describe the steps taken in response to the request, as follows:

> [We] ran all checks on the Toronto Police Service databases utilizing the information provided – address, names, in addition to telephone calls made through the ICAD (Intergraph Computer Aided Dispatch) system. This system deals with all calls via the 911 system. As noted in mediation, calls that go directly to a Division are not recorded. This is particularly noteworthy as only telephone calls directly to/from Divisions/individual members of the Service are not recorded. If an officer was dispatched as a result of a telephone call to 911, the officer(s) dispatched are recorded on the ICAD database. The memo books of all attending officers noted for the various incidents were called in to the FOI unit. Please note that the transcripts of telephone calls made to [a specified] Division cannot be provided as no such record exists. Telephone calls transferred to a Division are not recorded, and therefore no transcript exists.
> Each Division, unit and bureau of the [Police] has an individual assigned to locate and forward memorandum books and any other material requested by the [FOI]

> Unit. The Unit received all memorandum book notes for attending officers to each 911 call that was detailed as responsive. …

The Police add that officers do not record every minute of every day and that:

> There are some officers' notations which are only added to the occurrence report itself, or (especially in the instance of follow-up calls and paperwork), only a general notation is made in the memorandum book to the effect that the officer completed work or made call backs …, without further elaboration.

The Police maintain that every effort was made to locate additional responsive records following receipt of the Notice of the Inquiry, particularly in light of the appellants' claim that they had been told there were more calls. The Police state:

> Despite an unknown officer at the Division's assertion that more calls exist, there is no way to determine the parameters used in the officer's search.… During the process of the research for responding to this [Notice of Inquiry], all systems were rechecked. The neighbour's address was queried, … [but] the majority of these calls did not directly relate to the appellants and therefore were not included.

The Police submit that every effort was made "to locate any additional responsive records, particularly in light of the appellant's assertion that she had been told that there were more calls."

Analysis and Findings

As previously stated, in appeals involving a claim that additional records exist, the issue to be decided is whether an institution has conducted a reasonable search for responsive records as required by section 17 of the *Act*. Furthermore, although requesters are rarely in a position to indicate precisely which records an institution has not identified, a reasonable basis for concluding that additional records might exist must still be provided.

I have considered the representations of both parties, and the overall circumstances of this appeal in order to decide whether or not I am satisfied that the Police made a reasonable effort to identify and locate any records that might be responsive to the appellants' request.

Based on the representations provided by the Police, including their indication that additional searches were conducted consequent to the receipt of the Notice of Inquiry, I am satisfied that the Police performed searches armed with knowledge of the nature of the records said to exist. I have also considered whether the Police engaged an experienced employee or employees to undertake to locate the specific records. Based on the information provided by the Police, I am satisfied that the Police did so.

Based on the evidence before me, I am satisfied that the Police have made a reasonable effort to identify and locate responsive records. Accordingly, I find that the Police have conducted a

reasonable search for the purposes of section 17 of the *Act*, and I dismiss this part of the appeal.

ORDER:

1. I uphold the Police's decision to deny access to the information withheld under section 38(b) that is highlighted in orange on the copy of the records sent to the Police with this order.

2. I order the Police to disclose all those portions of the records not marked with orange highlighter and to send them to the appellants by **January 27, 2009** but not before **January 22, 2009.**

3. In order to verify compliance with the terms of this order, I reserve the right to require the Police to provide me with a copy of the records which are disclosed to the appellants pursuant to Provision 2.

4. I uphold the Police's search for responsive records and dismiss this part of the appeal.

Original Signed by: December 17, 2008
Daphne Loukidelis
Adjudicator