

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2690

Appeal MA11-64

Toronto Police Services Board

February 7, 2012

Summary: The appellant made a request to the police for pictures and police reports about himself. The police identified a report and withheld a name pursuant to the discretionary personal privacy exemption in section 38(b). The appellant appealed the police's decision and advised the mediator that while he was not pursuing access to the withheld information, he believes that the police should have located photographs of him in its record holdings. The police conducted a search during mediation but no photographs of the appellant were found. The appellant did not provide a reasonable basis for his belief that photographs of him were taken or should exist. The police's search is upheld as reasonable.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 17.

OVERVIEW:

[1] The appellant made a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Toronto Police Services Board (the police) for:

...need full report, pictures and all police reports about [me] on [specified date]. All names of police on [specified date]. Names of police that arrested me.

[2] The police located the responsive report and issued a decision providing partial access to it, severing the name of another individual and citing the discretionary personal privacy exemption in section 38(b) of the *Act*.

[3] The appellant appealed the police's decision to this office. During mediation the appellant advised that he was not appealing access to the name of the other individual. However, the appellant believed that the police should have photographs of him in its record holdings. The mediator asked the police to search for photographs of the appellant. The police advised that they had spoken to both of the officers involved in the incident who indicated that photographs were not taken as no charges were laid against the appellant. The police's photo unit also indicated that no photographs of the appellant were on file.

[4] The appellant insisted that photographs exist and the police's search for responsive records was not reasonable. The file was moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*. During my inquiry I sought representations from the appellant only. The appellant did not provide representations and I was unable to contact the appellant as the appellant did not provide a phone number.

[5] In this decision, I uphold the police's search as reasonable.

DISCUSSION:

Did the police conduct a reasonable search for photographs?

[6] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17 [Orders P-85, P-221 and PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[7] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Orders P-624 and PO-2559]. To be responsive, a record must be "reasonably related" to the request [Order PO-2554].

[8] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request [Orders M-909, PO-2469, PO-2592].

[9] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control [Order MO-2185].

[10] 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 [Order MO-2246].

[11] The appellant was asked to provide his reasons for believing that the police have photographs of him in their record holdings. As stated above, the appellant did not provide representations in response to the Notice of Inquiry mailed to him. The notice was not returned to this office so I assume the appellant received it. As the appellant did not provide a contact number he could also not be reached by phone.

[12] During mediation, the police conducted the search for photographs of the appellant and informed the mediator that no photographs exist. The police confirmed that photographs were not taken of the appellant as no charges were laid. The police also confirmed that its photo section where all photographs are maintained did not have any photographs of the appellant. This information was provided to the appellant in the mediator's report and in person when the appellant attended this office to speak to the mediator.

[13] The police contacted the police officers involved and also searched its photograph archives. I am unable to establish a basis for the appellant's belief that photographs of him exist and the police have provided sufficient evidence to demonstrate it made a reasonable effort to locate the records. Based on the police's representations on their search and the fact that the appellant did not provide a reasonable basis for his belief that photographs exist, I find the police's search to be reasonable.

ORDER:

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

Original signed by: _____
Stephanie Haly
Adjudicator

February 7, 2012 _____