Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3022

Appeal MA13-36-2

Toronto Police Services Board

March 12, 2014

Summary: The appellant sought access under the *Act* to any records maintained by an identified police officer who swore an Information in 2001 containing a number of charges against him. The police stated that no responsive records exist and maintained that the officer who swore the Information was doing so in her role as "Common Informant" in its Court Services office and that, at that time, officers serving in that role did not maintain independent notebook entries or create occurrence reports in relation to those duties. In this decision, the adjudicator accepts that the police conducted a reasonable search for responsive records and have provided a reasonable explanation as to why such records do not exist.

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 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 information about the requester held by the Police. The request specifically stated:

> I am requesting access through the authority of the *MFIPP Act* to all my personal records, copies of all personal records and copies of all written and electronic records, including all log books, flipbooks, notebooks, files,

> telephone messages, inter and intra office emails, court applications, records of appointments with Justices of the Peace, any Outlook Express records, or any similar proprietary internal and external communication system used by the [police] in whatever format, of or generated by [**a specified police officer**].
>
> This will include all internal and external records, of any and all sorts and formats of communications between "[a second specified police officer] (a specified case file), currently subject of and included in two Judicial Reviews) and [the first specified police officer]. The period during which the officer generated the records is 01 August 2000 to present.
>
> . . .
>
> For better clarification of the identity of the Officer and more specific representations of the chronology of the records generated by [the first specified officer], I enclose a copy of a registered Court document "Information" generated by [the first specified police officer] to which many of the above requested records will attach.

[2] In response, the police advised the requester that the named officer held a position within the police service's Court Services office known as a "Common Informant" and that due to the nature of the job, common informants did not, at that time, keep records such as notebooks, occurrence reports or other personal records relating to their responsibilities as common informants. As a result, the police advised the requester that no records responsive to the request exist.

[3] The requester, now the appellant, appealed that decision on the basis that additional records should exist.

[4] During the mediation process, the appellant informed the mediator that he believed that many additional records existed and provided several letters to the mediator stating the reasons for this belief. The appellant asserts that the specified police officer must have generated some records in the course of her swearing the Information in question, such as notebook entries.

[5] Further, the appellant asserts that the "Information" presented to the court by the specified officer should be provided to him by the police. The appellant contends that the "Information" must exist as the police state in their decision that, "Due to the nature of their job and the sheer volume of cases sworn in by the common informant daily, there are no records kept by them, **beyond the Information itself.** [emphasis added]" I note that the appellant provided a copy of the Information along with his original request, demonstrating that he has a copy of this document. I will not, accordingly, address this aspect of the search further in this order.

[6] The mediator advised the police of the appellant's position. In response, the police confirmed that no records related to the appellant exist in relation to the specified police officer. Further mediation was not possible and the appeal was moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*. The police submitted representations in response to the Notice of Inquiry, a complete copy of which was shared with the appellant, who also provided me with representations.

[7] I note that, in addition to his representations on the search issue, the appellant also raised a number of other issues relating to allegations that the police tampered with documents and other complaints relating to the conduct of the investigation against him. I find that these issues are outside my jurisdiction and are unrelated to my review of the adequacy of the police search for responsive records. Accordingly, I will not be addressing these issues in this order.

DISCUSSION:

[8] The sole issue for determination in this appeal is whether the police search for records responsive to the request was reasonable.

[9] 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.

[10] 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].

[11] 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].

[12] 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].

[13] 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].

[14] The appellant takes the position that the officer who swore the Information ought to have created records relating to that action. He argues that in the Information the informant officer attests "on reasonable grounds" that the appellant committed certain offences, which are delineated in the Information he provided to this office. The appellant reasons that because the officer swore that she had reasonable grounds to believe that the appellant committed these offences, she must have had some involvement in the investigation of the crimes he was accused of and that records of such involvement should exist "deriving from her personal knowledge of investigations".

[15] The appellant provides no other basis for this belief and fails to describe whether or how this officer was involved in giving evidence at various court proceedings which followed. The appellant also offers no explanation as to why the officer who swore the Information does not appear in any of the documents disclosed to him and his counsel throughout the prosecution of the appellant over several years, beyond this sole reference which arose in her capacity as an informant officer on this occasion in 2001.

[16] The police have described in their representations the steps taken to respond to the request and to locate any records which might contain responsive information. In their representations, the police included an affidavit sworn by a Disclosure Analyst within the Access and Privacy Section in which he deposes as to the actions taken to locate information that might assist in responding to the appellant's request.

[17] The affidavit includes an email exchange between the analyst and the police officer who is currently serving as the common informant for the police, as well as the Manager of Court Services, explaining the nature of the responsibilities of the individual holding that position at the time the Information respecting the appellant was filed in 2001. The Manager also states that in 2001, the Court Services section, which includes the common informant position, "did not move to memo books until January 2009", which post-dates the time period referred to in the appellant's request by some eight years.

[18] Based on the information provided by the police about the activities of the officer who was serving as the common informant with its Court Services office in 2001, I am satisfied that the police conducted a reasonable search for responsive records and have provided a reasonable explanation as to why responsive records were not located.

[19] I accept the evidence of the police that the involvement of the common informant officer was limited to swearing the Information setting out the charges brought against the appellant. Accordingly, it is reasonable that this individual would not have prepared an occurrence report or made notebook entries respecting her

involvement in swearing the Information against the appellant. I accept the submissions of the police that officers performing the common informant function in 2001 did not keep notebook entries or occurrence reports relating to their work in the Court Services office.

[20] I find further support for this finding because this individual's name does not appear in and she did not participate in the preparation of any of the documents made available to the appellant and his counsel as part of the Crown's disclosure obligations, nor was she involved in giving evidence about the investigation of the charges against him at the appellant's trial.

[21] The appellant expresses concerns that the police did not make sufficient effort to locate the officer who swore the Information and to obtain her independent recollection of the events which gave rise to the swearing of the document. In my view, this would be an unreasonable exercise on the part of the police. The Information was sworn in 2001, some 13 years ago. As indicated above, the police have provided me with evidence that common informant officers in the Court Services office at that time did not keep notebook entries or create occurrence reports relating to their duties. Rather, their function only involved swearing to the best of their knowledge as to the veracity of the descriptions of the offences outlined in the Information. I find that the police made a reasonable effort to obtain information about the record-keeping practices of common informant officers in 2001 and have provided me with a reasonable explanation of why the records sought by the appellant do not exist.

[22] On this basis, I conclude that the police have made a reasonable effort to locate records responsive to the request. Based on the evidence provided to me by the police and the materials received from the appellant, I am satisfied that the police have conducted a reasonable search for responsive records and I dismiss the appeal.

ORDER:

I dismiss the appeal.

Original signed by: March 12, 2014
Donald Hale
Adjudicator