

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3291

Appeal MA14-162-2

Durham Regional Police Services Board

February 26, 2016

Summary: The Durham Regional Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* for records related to a specific incident involving the requester. The police denied access to the records in part, citing the discretionary personal privacy exemption in section 38(b). The police also applied the labour relations and employment related exclusion in section 52(3)3 to one record. The appellant raised the reasonableness of the police's search for responsive records. This order upholds the police's decision concerning the application of the section 38(b) exemption and the section 52(3)3 exclusion, as well as upholding its search for responsive records.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of personal information), 38(b), 14(3)(b), 52(3)3, 17.

Orders and Investigation Reports Considered: Order PO-2248.

OVERVIEW:

[1] The Durham Regional Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA or the Act)* for the following records related to a specific incident:

1. Copy or transcript of the 911 call.

2. Any audio/video recordings pertaining to the traffic stop of the incident.
3. Copies/transcripts of any radio and/or electronic communications (computer, police vehicle work stations or terminals) during, prior or subsequent to this incident.
4. Police report/occurrence.
5. Copies/transcripts of statements or information taken:
 - a. from myself [named individual]
 - b. from cab driver [named individual]
 - c. from the female suspect pointed out at the traffic stop,
 - d. from the other two females who had been at the scene of the original incident, and the other vehicle occupants,
6. Any and all results of information/evidence discovered and any and all canvassing of businesses at the original scene of this incident,
7. The suspect's information, in order that I can lay a charge/information before a Justice of the Peace.
8. The name of the officer that took my statement, [named individual], and copies of his notebook entries, internal email, memos and any computer and/or work station and any subsequent written entries in any form that refer to this incident.
9. Notebook entries of [two named police officers] regarding attending the incident, any subsequent notebook entries, internal email, memos, computer and/or work station entries referring to this incident.
10. Any and all notebook entries, notations, memos, internal email, computer/and or work station entries or other correspondence by/from [two named staff sergeants with] reference to this incident.
11. Transcript/copies of phone conversations between [named staff sergeant] and my father, [named individual] made on [two dates], regarding this incident.
12. Any notations, memos, internal email, computer entries or other correspondence in reference to this incident made by [named chief] and/or by his designate.
13. A copy of the Durham Regional Police Services policies and/or procedures regarding the taking of witness statements.

14. The names of the two crown attorneys that [named police officer] had informed me that had been consulted and had examined any documents or case file of this incident regarding the laying any charges.
15. A copy of the case file, documents or other related evidence of this incident that was presented to the same two crown attorneys.
16. The days and hours worked by the following officers [for a specific two week period for four named police officers].

[2] The police advised the requester that his request may affect the interests of affected persons, and that they were being given an opportunity to make representations concerning disclosure of their personal information. The police advised that a decision regarding access to the requested records would be made within 30 days, in accordance with section 21(4) of the *Act*.

[3] The requester, now the appellant, appealed indicating that the police were in a deemed refusal situation as he had not received a final decision regarding access. The appeal was resolved shortly thereafter by the issuance of the police's decision.

[4] The police issued a decision granting partial access to the records. The police advised in part that:

With respect to the number 11 portion of your request, be advised a thorough search of Durham Regional Police records produced negative results. Therefore, we are advising you that with respect to this portion of your request, no records exist.

With respect to the number 16 portion of your request, a decision has been made that the said records fall outside the scope of the ... *Act*. I am relying on Section 52(3) of the *Act* in making this decision.

[5] The police also denied access to the remaining portions of the withheld records pursuant to the discretionary personal privacy exemption in section 38(b) of the *Act*.

[6] The appellant¹ appealed the police's decision to deny access to the withheld parts of the records and raised his concern that a reasonable search for records had not been conducted.

[7] Shortly after the appeal was transferred to the mediation stage of the appeal process, the police issued a supplementary decision regarding access. The police noted that a copy of the appellant's written statement had inadvertently been omitted from

¹ The appellant is being represented by his father in this appeal.

the original release of records. Accordingly, the police granted full access to the appellant's written statement.

[8] At the request of the appellant, the mediator notified the affected persons of the request. As a result, an individual agreed to the disclosure of his witness statement. The police then issued a revised decision granting partial access to the individual's witness statement and an officer's notes. Access was denied to the withheld portions of these records pursuant to the discretionary personal privacy exemption in section 38(b) of the *Act*.

[9] Concerning the search issue, the police advised that there were no audio or video statements that existed with respect to this matter. Photographs were taken of the appellant's injuries and the police advised the appellant of an alternate procedure for obtaining the photographs. As such, access to the photographs is not at issue for this appeal.

[10] The appellant maintained that his video statement should exist, along with dispatcher records regarding the 911 call to the police. As a result, the police conducted another search and located the appellant's videotaped statement and the dispatch communication tape. Partial access was granted to these records. Access was denied to the withheld portions of the records pursuant to section 38(b) of the *Act*.

[11] The appellant remained concerned that one year after he submitted his request, the police continued to find additional records. Accordingly, the appellant was not satisfied that a reasonable search for records has been conducted. In particular, the appellant believed that a videotaped statement of the cab driver should exist and be disclosed to him. The police maintained that a videotaped statement was not taken from the cab driver and that they have conducted a reasonable search for records that included several consultations with the police officers involved in this incident.

[12] The appellant advised that in addition to his belief that the police have not conducted a reasonable search for records, he wanted to pursue access to the withheld parts of the records.

[13] I sought representations from the police, the appellant, and the affected persons as to the information remaining at issue in the records in accordance with section 7 of the *IPC Code of Procedure* and *Practice Direction 7*. I only received representations from the police and the appellant.

[14] In this order, I uphold the police's decision to deny access to the records in part under the discretionary personal privacy exemption in section 38(b). I also uphold the police's decision to apply the labour relations and employment related exclusion in section 52(3)3 to the record responsive to part 16 of the request. I also uphold the reasonableness of the police's search for responsive records.

RECORDS:

[15] The records remaining at issue consist of the withheld portions of the dispatch recordings, occurrence reports, written statements, and police officers' notes.

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the discretionary personal privacy exemption at section 38(b) apply to the information at issue?
- C. Did the institution exercise its discretion under section 38(b)? If so, should this office uphold the exercise of discretion?
- D. Does section 52(3)3 labour relations and employment records exclusion exclude the part 16 records from the *Act*?
- E. Did the institution conduct a reasonable search for records?

DISCUSSION:

A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[16] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) 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,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (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;

[17] 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.²

[18] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.³

[19] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.⁴

[20] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁵

[21] The police state that the records contain names, addresses, phone numbers, dates of birth, driver's licence numbers, ethnicity, occupations and employers, physical

² Order 11.

³ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁴ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁵ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

descriptors, as well as personal views and statements of the involved parties.

[22] The appellant did not provide direct representations on this issue.

Analysis/Findings

[23] The records are police reports and notes about the appellant's interaction with them and other individuals with respect to a specific incident. Based on my review of the information at issue in the records, I agree with the police that they contain the personal information of the appellant and other identifiable individuals in their personal capacity as set out in the police's representations. Accordingly, this information meets the section 2(1) definition of "personal information".

B. Does the discretionary personal privacy exemption at section 38(b) apply to the information at issue?

[24] 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.

[25] Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester. Since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.⁶

[26] Sections 14(1) to (4) provide guidance in determining whether disclosure of the information would be an unjustified invasion of personal privacy.

[27] If the information fits within any of paragraphs (a) to (e) of section 14(1) or paragraphs (a) to (c) of section 14(4), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). Based on my review, I find that none of the information fits within these paragraphs.

[28] In determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), this office will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.⁷

[29] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the

⁶ See below in the "Exercise of Discretion" section for a more detailed discussion of the institution's discretion under section 38(b).

⁷ Order MO-2954.

information is presumed to be an unjustified invasion of personal privacy under section 38(b).

[30] The police rely on the presumption at section 14(3)(b), which reads:

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;

[31] The police state that they are a law enforcement agency that is mandated under the *Police Services Act* with the responsibility of investigating offences under the *Criminal Code of Canada*.

[32] The police state that the information in the records was recorded by them and used as an investigative tool during the process of investigating an assault allegation, which may lead to charges being laid under the *Criminal Code of Canada*.

[33] The police state that the records at issue consist of the other involved parties' information which was gathered during the course of an assault allegation made by the appellant. They state that these involved parties were asked for their consent to release their information and only one agreed to have all of their information released, and another one agreed to have a portion of their information released. They state that these consents were applied to the records at issue and they were released accordingly.

[34] The police state that the appellant has a right to access his own personal information; however, the severed information at issue belongs to the other involved parties who did not consent and they also have a right to privacy. Should this information be released to the appellant, they state that it would be an unjustified invasion of the other involved parties privacy.

[35] The appellant did not provide representations on this issue.

Analysis/Findings

[36] I find that the presumption in section 14(3)(b) applies to the information at issue in the records. This section reads:

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;

[37] I agree with the police that the records were compiled and are identifiable as part of an investigation into a possible violation of law, namely an incident of assault under the *Criminal Code of Canada*.

[38] Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.⁸ The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.⁹

[39] Section 14(3)(b) does not apply if the records were created after the completion of an investigation into a possible violation of law.¹⁰

[40] Section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.¹¹

[41] The list of factors under section 14(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2).¹²

[42] The appellant did not raise any factors that favour disclosure in his representations. Based on my review of the information at issue, which was compiled during an incident where both the appellant and other individuals claimed they were assaulted, I find that no factors favouring disclosure of the personal information of other individuals to the appellant exist.

[43] Therefore, I find that the presumption in section 14(3)(b) applies and the information at issue in the records is exempt under section 38(b), subject to my review of the police's exercise of discretion.

C. Did the institution exercise its discretion under section 38(b)? If so, should this office uphold the exercise of discretion?

[44] The section 38(b) exemption is discretionary and permits an institution to

⁸ Orders P-242 and MO-2235.

⁹ Orders MO-2213, PO-1849 and PO-2608.

¹⁰ Orders M-734, M-841, M-1086, PO-1819 and PO-2019.

¹¹ Order P-239.

¹² Order P-99.

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.

[45] In addition, the Commissioner may 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.

[46] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.¹³ This office may not, however, substitute its own discretion for that of the institution.¹⁴

[47] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:¹⁵

- 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
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons

¹³ Order MO-1573.

¹⁴ Section 43(2).

¹⁵ Orders P-344 and MO-1573.

- 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 age of the information
- the historic practice of the institution with respect to similar information.

[48] The police state that they did not exercise their discretion in bad faith or for an improper purpose but only to protect the privacy of the other involved parties. They state that they are aware that the appellant should have a right of access to his own personal information. In this case of shared personal information, they submit that the appellant's right of access was weighed against the other involved parties' expectation of privacy. The police took into account the nature of the records at issue and the extent to which they are significant and sensitive to the other involved parties was a major factor in exercising discretion to deny access to some of the records.

[49] The appellant did not provide representations on this issue.

Analysis/Findings

[50] I find that in denying access to the record, the police exercised their discretion under section 38(b) in a proper manner taking into account relevant considerations and not taking into account irrelevant considerations. The information at issue in the records is information about assault allegations made between the appellant and the other individuals and is sensitive information. It is the personal information of other individuals and I find that disclosure will result in an unjustified invasion of the personal privacy of these individuals. In addition, the appellant has not provided evidence of a compelling need to receive this information.

[51] Accordingly, I will uphold the police's exercise of discretion and find that the information at issue is exempt under section 38(b).

D. Does section 52(3)3 labour relations and employment records exclusion exclude the part 16 records from the *Act*?

[52] Section 52(3)3 states:

Subject to subsection (4), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:

Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest.

[53] For section 52(3)3 to apply, the institution must establish that:

1. the records were collected, prepared, maintained or used by an institution or on its behalf;
2. this collection, preparation, maintenance or usage was in relation to meetings, consultations, discussions or communications; and
3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest.

[54] If section 52(3)3 applies to the records, and none of the exceptions found in section 52(4) applies, the records are excluded from the scope of the *Act*.

[55] For the collection, preparation, maintenance or use of a record to be "in relation to" the subjects mentioned in this section, it must be reasonable to conclude that there is "some connection" between them.¹⁶

[56] The term "employment of a person" refers to the relationship between an employer and an employee. The term "employment-related matters" refers to human resources or staff relations issues arising from the relationship between an employer and employees that do not arise out of a collective bargaining relationship.¹⁷

[57] If section 52(3) applied at the time the record was collected, prepared, maintained or used, it does not cease to apply at a later date.¹⁸

[58] Section 52(3) may apply where the institution that received the request is not the same institution that originally "collected, prepared, maintained or used" the records, even where the original institution is an institution under the *Municipal Freedom of Information and Protection of Privacy Act*.¹⁹

[59] The exclusion in section 52(3) does not exclude all records concerning the actions or inactions of an employee simply because this conduct may give rise to a civil action in which the Crown may be held vicariously liable for torts caused by its

¹⁶ Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).

¹⁷ Order PO-2157.

¹⁸ *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 507.

¹⁹ Orders P-1560 and PO-2106.

employees.²⁰

[60] The type of records excluded from the *Act* by section 52(3) are documents related to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue. Employment-related matters are separate and distinct from matters related to employees' actions.²¹

[61] The police state that they are relying on section 52(3)3 of the *Act* as the appellant is requesting access to the days and hours worked by four named police officers for a specific two week period.

[62] Concerning part 1 of the test, the police state that they prepare, maintain and use the work schedules of all their police officers employed in order to provide the Region of Durham (the Region) with adequate police coverage to ensure the protection and safety of the Region's residents.

[63] Concerning part 2 of the test, the police state that police schedules are prepared in meetings held in consultation and discussion with many members of the institution. These schedules are then communicated to the members to provide the Region with adequate police coverage to ensure the protection and safety of the Region's residents.

[64] Concerning part 3 of the test, the police state that they have an interest in the scheduling of days and hours their officers work in order to provide the Region with adequate police coverage to ensure the protection and safety of the Region's residents.

[65] The police further state that the exception in section 52(4) does not apply as the responsive records all relate to an employment schedule and have nothing to do with an expense account submitted by an employee of the institution.

[66] The appellant did not provide representations on this issue.

Analysis/Findings

[67] The phrase "labour relations or employment-related matters" in section 52(3) has been found to apply in the context of:

- a job competition²²
- an employee's dismissal²³

²⁰ *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.).

²¹ *Ministry of Correctional Services*, cited above.

²² Orders M-830 and PO-2123.

- a grievance under a collective agreement²⁴
- disciplinary proceedings under the *Police Services Act*²⁵
- a “voluntary exit program”²⁶
- a review of “workload and working relationships”²⁷
- the work of an advisory committee regarding the relationship between the government and physicians represented under the *Health Care Accessibility Act*.²⁸

[68] The phrase “labour relations or employment-related matters” has been found *not* to apply in the context of:

- an organizational or operational review²⁹
- litigation in which the institution may be found vicariously liable for the actions of its employee.³⁰

[69] The phrase “in which the institution has an interest” means more than a “mere curiosity or concern”, and refers to matters involving the institution’s own workforce.³¹

[70] The records collected, prepared maintained or used by an institution are excluded only if the meetings, consultations, discussions or communications are about labour relations or “employment-related” matters in which the institution has an interest. Employment-related matters are separate and distinct from matters related to employees’ actions.³²

[71] The records at issue for which section 52(3)3 has been claimed in this appeal are the days and hours worked for a specific two week period for four named police officers.

[72] I agree with the police that the records were prepared, maintained and used by

²³ Order MO-1654-I.

²⁴ Orders M-832 and PO-1769.

²⁵ Order MO-1433-F.

²⁶ Order M-1074.

²⁷ Order PO-2057.

²⁸ *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, cited above.

²⁹ Orders M-941 and P-1369.

³⁰ Orders PO-1722, PO-1905 and *Ontario (Ministry of Correctional Services) v. Goodis*, cited above.

³¹ *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)*, cited above.

³² *Ministry of Correctional Services*, cited above.

them in consultations and discussions about employment-related matters in order to provide the Region with adequate police coverage to ensure the protection and safety of the Region's residents.

[73] I rely on the findings in Order PO-2248, where the records at issue were a summary of the overtime hours and amounts paid to OPP³³ officers who accompanied the Premier on his trips to the United States for the period from January 1, 2000 to January 22, 2001. The records in that appeal are similar to the record at issue in this appeal for which the exclusion has been claimed. Those records included the names of the officers, the dates worked, the number of hours worked, the rate of pay and the amount of overtime paid per officer (and the total).

[74] In Order PO-2248, the adjudicator stated:

To begin with, I am satisfied that the Ministry has established that the information in the record was collected, prepared, maintained or used by the Ministry in relation to discussions and communications with respect to employment-related matters in which the Ministry, as the employer of OPP officers, has an interest. The recording of information about overtime worked for scheduling and payment purposes is so clearly a part of standard personnel management practices that it hardly requires any more specific an explanation of why such information was so collected, prepared, maintained or used. Even the appellant agrees that it is "obvious" that such information would be routinely communicated to scheduling and payroll staff of the Ministry. Accordingly, I am satisfied that the information in the record is covered by the provisions of section 65(6)3.³⁴

Further, it is significant that the Ministry created the record solely for the purpose of responding to the request under the *Act*, as a convenient means of isolating the specific information sought by the appellant. The record was not created for any other purpose, nor has it been used for any other purpose. The information taken from the source records has not been incorporated with other types of information, nor been made part of a larger document used for non-labour relations or employment purposes. In a sense, the record before me is merely a vehicle for the presentation of the information which the appellant seeks. In such circumstances, I find that there is no purpose under the *Act* to be served by making a distinction between the *record* and the *information* contained in it. On the

³³ The Ontario Provincial Police.

³⁴ Section 65(6)3 of *Freedom of Information and Protection of Privacy Act (FIPPA)*, the provincial equivalent to section 52(3)3 of *MFIPAA*.

facts before me, the record has no independent purpose or status apart from the presentation of responsive information...

[75] In this appeal, the record at issue was created in response to the request and lists the days and hours worked by specific officers for a specific time period. Similar to the case with Order PO-2248, the record's information is clearly a part of the police's standard personnel management practices. As none of the exceptions in section 52(4)³⁵ apply, I find that the information responsive to part 16 of the appellant's request is excluded from the *Act* by reason of section 52(3)3.

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

[76] 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 17.³⁶ 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.

[77] 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.³⁷ To be responsive, a record must be "reasonably related" to the request.³⁸

[78] 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.³⁹

[79] 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

³⁵ Section 52(4) states:

This Act applies to the following records:

1. An agreement between an institution and a trade union.
2. An agreement between an institution and one or more employees which ends a proceeding before a court, tribunal or other entity relating to labour relations or to employment related matters.
3. An agreement between an institution and one or more employees resulting from negotiations about employment related matters between the institution and the employee or employees.
4. An expense account submitted by an employee of an institution to that institution for the purpose of seeking reimbursement for expenses incurred by the employee in his or her employment.

³⁶ Orders P-85, P-221 and PO-1954-I.

³⁷ Orders P-624 and PO-2559.

³⁸ Order PO-2554.

³⁹ Orders M-909, PO-2469 and PO-2592.

of the responsive records within its custody or control.⁴⁰

[80] 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.⁴¹

[81] The police provided a response to each of the appellant's concerns about their search, as follows:

Part 5(b) of the request – video statement of cab driver

[82] The police state that upon receiving the appellant's request, an email was submitted to their Video Disclosure Unit for all video or audio records relating to this incident, as this is the unit that retains all these types of records. The police state that this unit's response was that it had no records on file for this incident.

[83] The police state that after the appellant received a copy of this affected person's written statement, the appellant requested the video portion of this statement. The police state that they then asked the officer who took the statement whether a video statement existed, as their Video Disclosure Unit had previously advised that no records were on file with respect to this incident. The officer then advised that only a written statement was taken from this affected person, as he was never put on video.

Part 8 of the request – other records of the officer that took the appellant's statement

[84] The police state that the specific officer who took the appellant's statement was working at the front desk of the police station and was only tasked to do that. Therefore, no notebook entries, emails, memos or computer entries were made by this officer.

Part 9 of the request – other records of an officer that took notebook entries

[85] The police state that as this officer was the lead investigator, he had no other involvement other than to accompany another officer on the evening of the incident; therefore, there are no responsive emails, memos, or computer entries for this officer.

Part 10 of the request – records of two named officers

[86] The police state that they emailed the first officer who advised them that he had absolutely no notebook entries in this matter, as he conducted no investigation, nor did he submit any witness or text pages of any kind to the incident.

⁴⁰ Order MO-2185.

⁴¹ Order MO-2246.

[87] The police state that they emailed the second officer and requested any notebook entries, internal emails or memos relating to the incident in the records. They state that this officer submitted copies of his notebook notes and emails, which have already been released to the appellant with the first decision letter.

Part 14 of the request – records of a second Crown Attorney

[88] The police refer to a supplementary police report, which was already released to the appellant, where the officer who wrote the report received a telephone call only from one Crown Attorney. This Crown Attorney advised that she had consulted with another Crown attorney (whose name was not mentioned to the officer), however, at no time did the officer speak or correspond with the other Crown Attorney, which is why no other Crown's name was included in the records.

Part 15 of the request – other records of the Crown

[89] The police refer to a specific supplementary report already provided to the appellant as evidence that all documents related to the incident referred to in the request were given to the Crown Attorney. They state that if the appellant feels the Crown had access to records other than what they had already released to him, then he may wish to make an access request for the Crown's records through the Ministry of the Attorney General.

Part 16 of the request – days and hours worked by four officers

[90] This information is excluded from the application of *MFIPPA* as set out above. The police also state that the times and dates when all investigations with respect to this matter were completed are all plainly documented on the officer's supplementary reports and notes that have all been previously released to the appellant.

[91] The police further state that no other records exist with respect to this incident and they would have no reason to withhold any other records if indeed they did exist. They state that a complete and thorough search was conducted based on the information on their computer system and the involved parties. They further state that no information has been destroyed and no records involved in this incident have met their Retention and Purge Schedule.

[92] In reply, the appellant seeks the records of an officer not mentioned in his request, as well as providing comments about how, in his view, the police's record-keeping practices should be conducted.

Analysis/Findings

[93] I find that the police have provided a detailed explanation in response to the appellant's concerns about the existence of additional responsive records. Based on my

review of the parties' representations and the records already disclosed, I find that the appellant has not provided a reasonable basis for concluding that additional responsive records in the police's custody or control exist.⁴² I find that the police have conducted a reasonable search for responsive records as required by section 17; therefore, I uphold their search.

ORDER:

I uphold the police's decision and dismiss the appeal.

Original Signed by: _____

Diane Smith
Adjudicator

February 26, 2016 _____

⁴² Order MO-2246.