

Information and Privacy Commissioner,
Ontario, Canada



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

FINAL ORDER MO-3452-F

Appeal MA14-408-2

Toronto Police Services Board

May 30, 2017

Summary: The appellant's request to the City of Toronto under the *Act* for financial records was transferred to Toronto Police Services Board. In Order MO-3361-I, the police were ordered to conduct a further search for records regarding their legal expenses in addition to other financial information the police undertook to locate during mediation. The adjudicator finds that the police's further search is reasonable.

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

OVERVIEW:

[1] The appellant submitted a request to the City of Toronto (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The city determined that the Toronto Police Services Board (the police) had a greater interest in the records relating to financial information and transferred this portion of the request to the police under section 18(3). The police issued a decision to the appellant denying access on the basis that the records are publicly available under section 15(a). The appellant appealed the police's decision to this office and claimed that additional records should exist.

[2] During mediation, the appellant clarified the request and the police agreed to conduct a further search for records. The police subsequently wrote to the appellant but the appellant was not satisfied with the police's search and the file moved to the adjudication stage of the appeals process.

[3] In Interim Order MO-3361-I, I ordered the police to conduct a new search for records responsive to the appellant's request for legal expenses incurred from 2009 to 2014. The police were also ordered to conduct a search for "filed annual and other reports or statements" they undertook to locate in their letter to the appellant. I remained seized of the appeal.

[4] In compliance with Interim Order MO-3361-I, the police conducted a further search and submitted representations along with an affidavit detailing their further search efforts. The police also issued a further decision to the appellant granting him full access to financial records and partial access to legal expense records. The police advised that disclosure of the withheld information in the legal expense records would constitute an unjustified invasion of personal privacy under section 14(1). The police also advise that some portions of the legal expense records contain non-responsive information.

[5] The appellant did not appeal the police's further decision and the time to file an appeal with this office has expired. I invited the appellant's representations in response to the police's submissions regarding their further search but did not receive a response.

[6] In this order, I find that the police's further search is reasonable.

DISCUSSION:

[7] The sole issue remaining in this appeal is whether the police's further search for responsive records is reasonable.

[8] In Interim Order MO-3361-I I ordered the police to conduct a further search for:

- records reporting the police's legal fees and expenses incurred from 2009 to 2014; and
- the financial reports the police undertook to locate in their letter to the appellant.

[9] Accordingly, my review of the police's further search is restricted to these two categories of records. Following the issuance of Interim Order MO-3361-I, the police conducted a further search for records and provided representations detailing their search efforts to this office. The police also submitted an affidavit in support of their position that their further search was reasonable.

[10] The affidavit submitted by the police was prepared by a senior staff member in their Access and Privacy Section. This individual advises that searches were conducted in the police's network drives, SAP system and files of the Budget and Financial Analysis unit.

[11] In addition, the police issued a decision letter to the appellant granting him access to records located as a result of their further search. As noted above, the police

granted the appellant full access to financial records and partial access to legal expense records located as a result of their further search.

[12] The appellant did not provide representations in response to the police's submissions or further access decision.

Decision and Analysis

[13] 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 17.¹ 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.

[14] 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.² To be responsive, a record must be "reasonably related" to the request.³

[15] 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.⁴

[16] 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.⁵

[17] 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.⁶

[18] In Order MO-3361-I I found that the police provided insufficient evidence to demonstrate that they made a reasonable effort to identify and locate the requested legal expense information along with the financial reports they identified in their letter to the appellant. My decision, in part, found that the police had failed to outline the steps they took to locate the financial records referenced in their letter. I also found that the website links the police provided the appellant did not respond to the appellant's request for legal expense information.

[19] I have reviewed the police's submissions, along with their new decision letter and supporting affidavit and am satisfied that the police's further search was conducted by

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Order PO-2554.

⁴ Orders M-909, PO-2469 and PO-2592.

⁵ Order MO-2185.

⁶ Order MO-2246.

an experienced employee knowledgeable about the subject-matter of the request and a reasonable effort to locate responsive records was expended. Accordingly, and in the absence of representations of the appellant, I find that the police's further search was reasonable and close this appeal file.

ORDER:

1. I find that the police's further search for responsive records was reasonable.

Original Signed by: _____
Jennifer James
Adjudicator

_____ May 30, 2017