

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-3704

Appeal MA17-351

Toronto Police Services Board

December 10, 2018

**Summary:** The appellant made a request to the Toronto Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to parking tickets issued by the police. The police issued a decision providing full access to all responsive records. The appellant argued that additional responsive records should exist and appealed the police's decision. In this order, the adjudicator finds that the police's search was 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 following request was made to the Toronto Police Service Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

I want all notes and information that was sent to [named officer] [specified badge number] in regards to [a specified file number] and what action was taken. I [attach] letter dated December 1, 2014.

[2] The police conducted a search and issued a decision granting full access to the records that were responsive to the request. The police also noted that the action that was taken was addressed in a letter to the appellant dated December 1, 2014.

[3] The requester (now the appellant) appealed the police's decision.

[4] During the course of mediation, the appellant advised the mediator that he believes further records responsive to his request should exist.

[5] As mediation did not resolve the dispute, this appeal was transferred to adjudication. As the adjudicator in this appeal, I sought and received representations from the parties.<sup>1</sup> Representations were shared in accordance with *Practice Direction 7* and section 7 of the IPC's *Code of Procedure*.

[6] For the reasons that follow, I uphold the police's search and dismiss the appeal.

## **DISCUSSION:**

[7] As the appellant claims that additional records exist beyond those identified by the police, the sole issue for me to determine is whether the police conducted a reasonable search for records as required by section 17 of the *Act*.<sup>2</sup> If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the police's decision. If I am not satisfied, I may order further searches.

[8] 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 they have made a reasonable effort to identify and locate responsive records.<sup>3</sup> To be responsive, a record must be "reasonably related" to the request.<sup>4</sup>

[9] 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.<sup>5</sup>

[10] 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.<sup>6</sup>

[11] 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.<sup>7</sup>

## **Representations**

[12] The appellant provided representations in this appeal.<sup>8</sup> In his representations, the appellant addresses other issues that do not relate to whether the police's search

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<sup>1</sup> The police only provided reply representations.

<sup>2</sup> Orders P-85, P-221 and PO-1954-I.

<sup>3</sup> Orders P-624 and PO-2559.

<sup>4</sup> Order PO-2554.

<sup>5</sup> Orders M-909, PO-2469 and PO-2592.

<sup>6</sup> Order MO-2185.

<sup>7</sup> Order MO-2246.

<sup>8</sup> The appellant submitted 16 pages of representations, plus attachments.

for responsive records was reasonable. As a result, the parts of the appellant's representations that are not relevant to the reasonable search issue will not be addressed here.

[13] Much of the detail in the appellant's representations consists of listing of various tickets received by the appellant and his contact with the police and court system in dealing with those tickets. The appellant gives no context as to how his list is relevant to a reasonable search appeal. My assumption is that he is alleging that the police should have records for each of the various tickets referred to as well as records pertaining to his dealings with the police.

[14] There are instances throughout the appellant's representations where it appears that he is referencing records that should exist with the police.

[15] The appellant refers to receiving a parking ticket in a specified parking lot noting that a specified officer was laughing about it. He submits that he was allowed to park there and has asked the police many times for the name of the individual that gave permission to tow his trailer. The appellant alleges that this information was never provided to him.

[16] The appellant again refers to tickets that he received at a specified parking lot. He notes that he had permission to park there, but the tickets he received were for parking without the owner's consent. The appellant submits that he would like to know who signed the private property authorization card in November 2013.

[17] The appellant refers to a ticket issued in January 2014 and submits that his vehicle was not on that particular street for 72 hours. The appellant submits that he believes a story was made up by a specified officer about someone calling for a heavy tow. The appellant submits that he would like to meet the person that phoned in the complaint and further submits that the police are hiding that information.

[18] The appellant refers to an occasion when his vehicle was towed yet a ticket was not issued. He submits that he was told by a specified officer that they were allowed to "piggy-back" tickets. The appellant submits that someone called in about the trailer on private property and he was informed that a specified individual and a police officer did not keep notes. The appellant submits that he would like to know the name of the person that called in about the trailer.

[19] The appellant submits that the officer specified in his request and another individual were trying to "cover things up" and that he is being defrauded for money and vehicles. The appellant submits that the police sent misleading information to this office about the specified officer and the other individual. He submits that he knows that these two individuals "went into a room and put a false and misleading letter together to cover things up". The appellant submits that although the specified officer may have retired, he had a file. The appellant alleges that another specified officer had stated that she left her notes for that officer. The appellant also submits that another specified officer likely has some information as she worked with one of the officers

specified in his request.

[20] A copy of the appellant's representations was forwarded to the police, who in turn provided reply representations. In reply, the police submit that during mediation, they confirmed that no memo book existed or notes of the officers in question. The police indicate that any notes would not be detailed unless a significant event occurs and normally the entries in memorandum notebooks are general in nature, and in this case not responsive to the request. They also submit that after reviewing the appellant's representations, their access and privacy staff conducted a further search for responsive records. The police submit that they attempted many times to search for additional records but no such records exist.

[21] The police also submit that the appellant's representations seem to be based on complaints about the tickets he has received rather than evidence about additional records that ought to exist. The police submit that it is not clear what the appellant is seeking at this time aside from complaining about how he feels his matters were dealt with by the police.

[22] A copy of the police's reply was sent to the appellant who was invited to reply. No further representations were received.

### **Analysis and finding**

[23] As set out above, in appeals involving a claim that further responsive records exist, the issue to be decided is whether the police conducted a reasonable search for records as required by section 17 of the *Act*. As mentioned, if I am satisfied that the police's search for responsive records was reasonable in the circumstances, the police's search will be upheld. If I am not satisfied, I may order that further searches be conducted.

[24] In this appeal, I have considered the appellant's representations where he identifies what he believes as evidence to show that further responsive records exist. I have also considered the police's reply representations. In the circumstances of this appeal, I find that the appellant has not provided a reasonable basis for concluding that further responsive records exist.

[25] As noted above, although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response, the appellant must, nevertheless, provide a reasonable basis for concluding that such records exist. The appellant suggests that there should be notes regarding the various tickets that he received and his dealings with the police regarding those tickets. While the appellant has referred to incidents suggesting that records should exist, I find that he has not provided a reasonable basis for me to conclude that additional records exist. I agree with the police that much of the appellant's representations do not address what additional records should exist, but instead set out complaints concerning how he feels his matters were dealt with by the police. This is not relevant to the issue of whether or not the police's search was reasonable. Further, when the police addressed

the existence of police notes, they explained that their notes are not detailed unless a significant event occurs, and the entries in their memorandum notebooks are general in nature, and in this case not responsive to the request.

[26] The police maintain that they conducted a reasonable search for responsive records. As stated above, the *Act* does not require the police to prove with absolute certainty that further records do not exist.

[27] Having reviewed the representations of the police, I am satisfied that they conducted a reasonable search for responsive records in this appeal. I am satisfied that the search was conducted by the access and privacy staff who are experienced in dealing with the *Act* and who expended a reasonable effort to locate records related to the request. Further, after being provided with a copy of the appellant's representations, they confirmed that another search for responsive records was conducted resulting in no further records being located.

[28] Accordingly, I am satisfied that the police provided sufficient evidence to demonstrate that they made a reasonable effort to address the appellant's request and locate all records reasonably related to the request. In addition, I find that the appellant has not provided a reasonable basis for me to conclude that the searches conducted by the police were not reasonable, and the appellant has also not provided cogent evidence to support the position that further records exist.

[29] Accordingly, I uphold the police's search for responsive records.

**ORDER:**

The appeal is dismissed.

Original Signed by: \_\_\_\_\_  
Alec Fadel  
Adjudicator

December 10, 2018 \_\_\_\_\_