Information and Privacy Commissioner,
Ontario, Canada

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

INTERIM ORDER MO-3831-I

Appeals MA16-746-2 and MA17-214

Owen Sound Police Services Board

September 12, 2019

Summary: The appellant submitted two requests under the *Act* to the police for records relating to him and specific incidents he was involved in. The police located responsive records and conducted third party notification pursuant to section 21 of the *Act*. The police then issued two access decisions to the appellant granting him partial access to the records. Relevant to this order, the police advised the appellant that portions of the records were withheld under the discretionary exemptions in sections 38(a), read with section 8(1)(l) (facilitate commission of an unlawful act), and 38(b) (personal privacy). The police also withheld certain portions of the records as not responsive to the request. The appellant appealed the police's decision, taking issue with the police's exemption claims and raising reasonable search as an issue. In this order, the adjudicator upholds the police's decision in part. The adjudicator finds that certain information is not exempt from disclosure under section 38(a), read with section 8(1)(l), and orders the police to disclose it to the appellant. In addition, the adjudicator reserves her findings with regard to certain portions of the officers' notes pending the police providing her with a clean and unsevered version of these records. The adjudicator upholds the police's decision to withhold the remainder of the information at issue and finds that the police conducted a reasonable search for responsive records.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M56, as amended, sections 2(1) (definition of *personal information*), 8(1)(l), 14(1)(f), 14(2)(f), 14(2)(h), 14(2)(i), 14(3)(b), 17, 38(a) and (b).

Order Considered: Order MO-2871

OVERVIEW:

[1] The appellant submitted two requests under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Owen Sound Police Services Board (the police) for access to records relating to all incidents involving the appellant. In particular, the appellant identified the following dates of the incidents: July 15, 2015; August 10, 11, 16, and 23, 2016; September 15 and 16, 2016; October 6, 2016 and December 3, 2016.

[2] After locating responsive records, the police notified individuals whose interests may be affected by their disclosure under section 21 of the *Act*. Some of the affected parties responded to the notice and advised that they do not consent to the disclosure of personal information relating to them.

[3] The police then issued two decision letters, one for each request, to the appellant granting him partial access to the responsive records. The police advised the appellant that they withheld portions of the records under the discretionary exemptions in section 8(1)(a), (b), (c), (d), (e) and (l)[1] (law enforcement), 8(2)(a) (law enforcement report) and 38(b) (personal privacy). In support of their personal privacy exemption claim, the police advised the appellant that they claimed the application of the presumption in section 14(3)(b) as well as the factors weighing against disclosure in sections 14(2)(e), (f), (h), and (i) to the personal information contained in the records. The police also noted that they withheld certain information as not responsive to the appellant's request.

[4] The appellant appealed the police's decisions and Appeals MA16-746-2 and MA17-214 were opened.

[5] During mediation, the mediator raised the possible application of section 38(a) of the *Act* (discretion to refuse requester's own personal information) in relation to the police's section 8 claim. The police agreed that section 38(a) applies and issued a revised decision to the appellant confirming their exemption claim.

[6] The appellant advised the mediator that he believed that additional responsive records ought to exist and provided the mediator with further information to clarify his requests. The mediator provided this information to the police and the police conducted further searches in response to the appellant's original and clarified requests. The police located additional records and granted the appellant partial access to them. The police withheld portions of the records under sections 38(a), read with sections 8(1)(a), (b), (c), (d), (e) and (l) and 8(2)(a), and 38(b) of the *Act*. The police also provided the

[1] I note the police originally claimed sections 8(2)(e) and (l). However, these sections do not exist. The police later confirmed that they rely on sections 8(1)(e) and (l) to withhold portions of the records.

appellant with a description of their searches for responsive records.

[7] The appellant confirmed that he pursues access to all of the information withheld by the police, including the information identified as not responsive to his request. The appellant also confirmed that he believes additional responsive records should exist.

[8] Mediation did not resolve the issues under appeal and the appeals transferred to the inquiry stage of the appeal process, where an adjudicator may conduct an inquiry. Because the appeals relate to access decisions involving the same parties and overlapping records, I decided to conduct a single inquiry and issue a single order with respect to both appeals. I began my inquiry by inviting the police to submit representations in response to a Notice of Inquiry, which outlines the facts and issues under appeal. After receiving a number of extensions, the police did not submit representations in response to the Notice of Inquiry. Given the circumstances, I decided to proceed with the inquiry and invite the appellant to submit representations. After receiving a number of extensions, the appellant did not submit representations.

[9] I then sought representations from the police in response to the Notice of Inquiry. The police submitted representations after receiving a number of extensions. Finally, I sought and received representations from the appellant, in response to the police's representations which were shared in accordance with Practice Direction Number 7 of the IPC's *Code of Procedure*.

[10] In the discussion that follows, I uphold the police's decision in part. I find that certain information is not exempt from disclosure under section 38(a), read with section 8(1)(l), and order the police to disclose it to the appellant. In addition, I reserve my findings with regard to certain portions of the officers' notes pending the police providing me with a clean and unsevered version of these records. Finally, I uphold the police's decision to withhold the remainder of the information at issue and find that the police conducted a reasonable search for responsive records.

RECORDS:

[11] There are a number of occurrence summaries, general occurrence reports, arrest reports, and officers' notes concerning fifteen incidents involving the appellant at issue in this appeal.

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 exemption at section 38(a), read with sections 8(1)(a), (b), (c), (d), (e) or (l) or 8(2)(a), apply to the records?

C. Does the discretionary exemption at section 38(b) apply to the records?

D. Did the police exercise their discretion under sections 38(a) and (b)? If so, should this office uphold the exercise of discretion?

E. What is the scope of the request? What records are responsive to the request?

F. Did the police conduct a reasonable search for records?

DISCUSSION:

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

[12] In order to determine which sections of the *Act* may apply to the records, it is necessary to decide whether they contain *personal information* and, if so, to whom it relates. That term is defined in section 2(1) of the *Act* 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;

[13] 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] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[3]

[14] 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.[4] 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.[5]

[15] The police submit that the notes and general occurrence reports gathered in response to the appellant's request contain personal information relating to the appellant and other identifiable individuals involved in the incidents. Specifically, the police state that the records contain the names, addresses, dates of birth, telephone numbers, genders, origin, and personal views and opinions of the appellant and other identifiable individuals.

[16] The appellant does not directly address this issue in his representations. However, it is clear that he believes the records contain personal information relating to him.

[17] I have reviewed the records at issue. I find that all of the records contain personal information relating to the appellant, including information about his sex and age (paragraph (a) of the definition of *personal information* in section 2(1)), his address and telephone number (paragraph (d)), his personal views or opinions (paragraph (e)), the views or opinions of another individual about the appellant (paragraph (g)), and his name as it appears with other personal information relating to him (paragraph (h)). In addition, I find that the records contain information relating to the appellant that falls within the introductory wording of the definition of *personal information* in section 2(1) of the *Act*.

[18] In addition, I find that the records contain information relating to other

---

[2] Order 11.
[3] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).
[4] Orders P-257, P-427, P-1412, P-1621, P-980015, MO-1550-F and PO-2225.
[5] *Supra* note 2.

identifiable individuals, such as witnesses, including information about their sex and age (paragraph (a)), their addresses and telephone numbers (paragraph (d)), their personal views or opinions (paragraph (e)), the views or opinions of other individuals about them (paragraph (g)), and their names where they appear with other personal information relating to them (paragraph (h)). In addition, I find that the records contain information relating to identifiable individuals that falls within the introductory wording of the definition of *personal information* in section 2(1) of the *Act*.

[19] I note that the personal information relating to an identifiable individual includes a portion of UCR (Uniform Crime Reporting) clearance check information on page 42 of the records relating to Appeal MA17-214. Based on my review of this information in conjunction with the record in its entirety, I find that this information, if disclosed, constitutes recorded information about an identifiable individual within the meaning of section 2(1) of the *Act*.

[20] Accordingly, I find that the records contain the personal information of the appellant and other identifiable individuals. Because the records contain personal information relating to the appellant, I will consider access to the withheld portions of these records under Part II of the *Act* and determine whether the discretionary exemptions at sections 38(a), read with sections 8(1)(a), (b), (c), (d), (e) or (l) or 8(2)(a), and 38(b) apply to them.

Issue B: Does the discretionary exemption at section 38(a), read with sections 8(1)(a), (b), (c), (d), (e) or (l) or 8(2)(a), apply to the records?

[21] The records at issue contain personal information relating to the appellant. Accordingly, I will consider whether section 38(a), read with sections 8(1)(a), (b), (c), (d), (e) or (l) or 8(2)(a), applies to the information withheld from disclosure.

[22] Section 38(a) provides a number of exemptions to an individual's general right of access to their own personal information. Section 38(a) reads,

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > if sections 6, 7, 8, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information.

[23] According to the police's Index of Records and access decisions, the police claimed the exemptions in sections 8(1)(a), (b), (c), (d), (e) and (l) and 8(2)(a) to withhold portions of the records. However, the police's representations appear to support their section 8(1)(l) claim only.

Section 8(1)(l)

[24] Section 8(1)(l) states,

> A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> > facilitate the commission of an unlawful act or hamper the control of crime.

[25] Generally, the law enforcement exemption in section 8(1) must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[6]

[26] However, it is not enough for an institution to take the position that the harms under section 8 are self-evident from the records or that the exemption applies simply because of the existence of a continuing law enforcement matter.[7] The institution must provide sufficient evidence to demonstrate a reasonable expectation for harm. The institution must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and the seriousness of the consequences.

[27] The police submit that, other than the personal information of other identifiable individuals, they only severed internal police 10-code information and information relating to specific beats and zones that officers are assigned in relation to geographical locations within the Computer Aid Dispatch (CAD). The police submit that police agencies and other emergency personnel use these codes to facilitate their confidential communications. The police submit that these messages are encoded to avoid those involved in criminal activity from attempting to counter police action, thereby reducing the risk of harm to law enforcement and the general public. The police submit that the security of these encoded messages would be compromised if they were disclosed and disclosure would negate the utility of the codes in the future. The police acknowledge that the 10-codes referred to in the records do not, in isolation, provide a specific meaning, but when read in the context of the records at issue, their corresponding meaning would be revealed.

[28] The police refer to Order MO-2871, in which the adjudicator stated that, "this office has issued numerous orders with respect to the disclosure of police codes and has consistently found that section 8(1)(l) applies to "10 codes" as well as other coded information such as 900 codes."

[29] The appellant did not address the application of section 38(a), read with section 8(1)(l), to the records at issue.

---

[6] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[7] *Ibid*. and Order PO-2040.

[30] In order to justify the application of section 8(1)(l), the police must provide evidence of how disclosure could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. This office has consistently held that the disclosure of police codes could reasonably be expected to lead to the harms considered in section 8(1)(l).[8] Given this office's approach to section 8(1)(l), and subject to my findings on the police's exercise of discretion below, I find that the police codes that appear in the records qualify for exemption under section 38(a), read with section 8(1)(l), of the *Act*.

[31] Given my findings, I do not need to consider whether the police code information is also exempt under section 38(a), read with sections 8(1)(a), (b), (c), (d) or (e) or 8(2)(a).

[32] However, I find that the information relating to the "UCR clearance status" is not exempt under section 38(a), read with section 8(1)(l). The police did not address the application of this exemption to this UCR information in its representations. As referred to above, the police are required to provide evidence of how disclosure of this information could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.

[33] I have reviewed the UCR information at issue and in the absence of any representations from the police on this type of information, I find that I have not been provided with sufficient evidence to demonstrate that the disclosure of this information could reasonably be expected to lead to the harms contemplated by section 8(1)(l). For similar reasons, I find that the UCR information is not exempt under the other law enforcement exemptions initially claimed by the police. Therefore, I find that the UCR information is not exempt under section 38(a), read with sections 8(1)(a), (b), (c), (d), (e) or (l) or 8(2)(a), of the *Act*. I will order the police to disclose this information to the appellant, with the exception of a portion of the UCR information identified in paragraph 19, above, on page 42 of the records relating to MA17-214. Because I found that a portion of the UCR information on page 42 constitutes personal information within the meaning of section 2(1), I will consider whether it is exempt under section 38(b), below.

Issue C: Does the discretionary exemption at section 38(b) apply to the records?

[34] 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

[8] See Order M-757. See also, MO-1715, MO-2414, MO-2446, MO-3393 and PO-1665.

discretionary, the institution may also decide to disclose the information to the requester.[9]

[35] In determining whether disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), sections 14(1) to (4) provide guidance. The information at issue in this appeal does not fit within any of paragraphs (a) to (e) of section 14(1) of the *Act*.

[36] For records claimed to be exempt under section 38(b), this office will consider and weigh the factors and presumptions in both sections 14(2) and (3) and balance the interests of the parties in determining whether disclosure of the personal information in the records would be an unjustified invasion of personal privacy.[10] Additionally, if any of paragraphs (a) to (c) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b).

[37] The police submit that the information at issue was compiled as part of an investigation into possible violations of the *Criminal Code of Canada* and *Liquor License Act*. While the police do not cite it directly, it is clear they claim the application of the presumption in section 14(3)(b). Section 14(3)(b) states,

> 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;

The police submit that the disclosure of the personal information that remains at issue would constitute an unjustified invasion of personal privacy.

[38] In addition, the police submit that the factors favouring privacy protection in section 14(2)(f), (h) and (i) apply to the personal information that remains at issue. These sections state,

> A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
>
> > (f) the personal information is highly sensitive;

---

[9] See below in the "Exercise of Discretion" section for a more detailed discussion of the institution's discretion under section 38(b).
[10] Order MO-2954.

> (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
>
> (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

The police submit that the personal information is highly sensitive and may unfairly damage the reputation of the individuals identified in the record. As such, the disclosure of the personal information and/or statements of the other involved individuals would constitute an unjustified invasion of their privacy. In addition, the police submit that information taken in the course of a police investigation is considered confidential. The police submit that it is reasonable that the individuals whose personal information is contained in the record may be identified if their personal information is disclosed to the appellant. The police submit that there is a history of violence, harassment and disputes between the appellant and other parties. The police state that they notified a number of the individuals identified in the records and they did not consent to the disclosure of their personal information. In some cases, these individuals advised the police that they were fearful of the appellant.

[39] The appellant did not specifically address whether disclosure of the personal information that remains at issue would amount to an unjustified invasion of personal privacy.

[40] The information that remains at issue consists of the personal information of a number of identifiable individuals who are not the appellant.

[41] On my review of the records at issue, I accept that the presumption at section 14(3)(b) applies. The records clearly relate to the police's investigation into various incidents to determine whether a violation of law occurred. 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.[11] The presumption can also apply to records created as a part of a law enforcement investigation where charges are subsequently withdrawn or not laid at all.[12] In my view, none of the other presumptions at section 14(3) are relevant in the circumstances of this appeal.

[42] With respect to the factors in section 14(2), I accept that the factors at paragraphs (f) (highly sensitive) and (h) (supplied in confidence) are both factors weighing against the disclosure of the information that has been withheld. The information at issue relates to various witnesses or other individuals involved in the

---

[11] Orders P-242 and MO-2235.
[12] Orders MO-2213, PO-1949 and PO-2608.

incidents. Based on its contents, I find that it could reasonably be expected that this information is highly sensitive and was supplied to the police by these individuals in confidence. However, I am not satisfied that the disclosure of the information at issue may unfairly damage the reputations of the individuals referred to in the record and the police did not provide any evidence to substantiate their claim. Therefore, I find that section 14(2)(i) has no application to the personal information that remain at issue. From my review, and considering the evidence before me, I find that no factors weighing in favour of disclosure, whether listed or unlisted, apply.

[43] For section 38(b) to apply, the factors weighing against disclosure must outweigh the factors weighing in favour of disclosure. Given the application of the presumption at section 14(3)(b), and the fact that no factors favouring disclosure have been established, and balancing all the interests, I am satisfied that disclosure of the personal information that remains at issue would constitute an unjustified invasion of the personal privacy of the individuals to whom that information relates. Subject to my review of the police's exercise of discretion, I find that the personal information at issue is exempt from disclosure under the discretionary personal privacy exemption at section 38(b).

Issue D: Did the police exercise their discretion under sections 38(a) and (b)? If so, should this office uphold the exercise of discretion?

[44] The exemptions in sections 38(a) and (b) are discretionary and permit an institution to 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] 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, takes into account irrelevant considerations or 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] The police submit they exercised their discretion properly. The police submit they balanced the appellant's right to access the information at issue and the need to protect sensitive third party information. In addition, the police state that they considered the following factors in exercising its discretion:

- Whether the information should be made available to the public;

[13] Order MO-1573.
[14] Section 43(2).

- If the individual should have a right of access to their own personal information;
- The relationship between the requester and any affected persons;
- The nature of the information at issue;
- The extent to which the information is significant and/or sensitive to the police, the requester or any affected person;
- The age of the information; and
- The historic practice of the police with respect to similar information.

The police submit that they applied the exemptions claimed in a limited and specific manner and the appellant was granted access to the majority of the responsive records.

[48] The appellant did not directly address the police's exercise of discretion in his representations. However, it is clear the appellant believes the police have acted in bad faith in relation to him, generally, and raises a number of concerns in relation to their behaviour in responding to his request.

[49] Upon review of the parties' submissions and the information remaining at issue, I find that the police exercised their discretion under sections 38(a), read with section 8(1)(l), and 38(b) properly. Based on the evidence before me, I am satisfied the police did not exercise their discretion in bad faith or for an improper purpose. From my review of the records, the police disclosed the vast majority of the records to the appellant and severed only the personal information relating to third party individuals and coding information that is exempt under section 38(a), read with section 8(1)(l). I find the police considered the privacy interests of these third party individuals in their exercise of discretion. In addition, I find the police properly considered the law enforcement interests protected by section 8(1)(l). Upon review of the records at issue and the parties' representations, I am satisfied the police took relevant factors into consideration and did not take into account irrelevant factors. Accordingly, I uphold the police's exercise of discretion to apply sections 38(a), read with section 8(1)(l), and 38(b) of the *Act* to the information I found qualifies for those exemptions.

Issue E: What is the scope of the request? What records are responsive to the request?

[50] The police withheld portions of the officers' notes as not responsive to the appellant's original request. The appellant takes the position that the information that has been withheld as not responsive to the request is, in fact, responsive and should be disclosed to him.

[51] This office has determined that institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally,

ambiguity in a request should be resolved in the requester's favour.[15] To be considered responsive to the request, records must *reasonably relate* to the request.[16]

[52] The appellant's original requests state that he seeks access to "all incidents of police contact with myself since and including, but not limited to incidents or contacts with police, on" a number of specific dates.

[53] The police withheld certain information contained in the attending officers' notebooks as not responsive. The police submit that the information identified as not responsive is not related to the appellant's request but concern other matters responded to by the attending officers during their tour of duty.

[54] The appellant submits that he should receive a complete copy of the officers' notes for the incidents in which he was involved. The appellant believes he is entitled to a complete copy of the notes at issue.

[55] I have reviewed the officers' notes at issue in both appeals. For a number of the notes, the police appear to have blacked out or covered the information they claim to be not responsive in the clean (unredacted) versions. The notes that contain this severing are found on

- Pages 10, 16-20, 22-23, and 43 of the records at issue in Appeal MA17-214;
- The notes dated July 15, 2016 at issue in Appeal MA16-746-2[17];
- The notes dated July 23 and 24, 2016 at issue in Appeal MA16-746-2;
- The two pages of notes dated August 10, 2016 at issue in Appeal MA16-746-2;

As discussed above, the appellant pursues access to all of the information withheld from disclosure in the officers' notes, including the portions withheld as not responsive. Accordingly, I am required to review the portions withheld from disclosure to determine whether they are responsive. However, the manner in which the police severed the pages listed above does not allow me to review these notes to determine their responsiveness. Prior to issuing this order, I contacted the police and asked them to provide me with clean copies of the notes that were blacked out or covered. The police did not respond to my request. Given these circumstances, I will order the police to provide me with clean copies of the pages identified above so that I can determine whether they are responsive. Accordingly, I reserve my findings on these records pending my review of the clean and unredacted copies.

---

[15] Orders P-134 and P-880.
[16] Orders P-880 and PO-2661.
[17] The police did not number the pages at issue in Appeal MA16-746-2.

[56] With regard to the remainder of the officers' notes identified by the police as not responsive to the appellant's request, I accept that it is not responsive. Based on my review, the information withheld as not responsive is related to matters that are unrelated to the incidents identified in the request or the appellant. Accordingly, I uphold the police's decision to withhold this information as not responsive to the request.

Issue F: Did the police conduct a reasonable search for records?

[57] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution conducted a reasonable search for records as required by section 17 of the *Act*.[18] If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the police's search. If I am not satisfied, I may order further searches.

[58] 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 it made a reasonable effort to identify and locate responsive records.[19] To be responsive, a record must be *reasonably related* to the request.[20]

[59] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester must still provide a reasonable basis for concluding that such records exist.[21]

[60] The appellant submits that he should receive copies of cell phone videos and other digital recordings. The appellant also submits that there should be additional responsive officers' notes.

[61] The police submit that they conducted a reasonable search for the responsive records and attached an affidavit sworn by their Freedom of Information Coordinator (the FOIC) that explains the searches conducted in response to the appellant's requests. The police submit that when they received the requests, they did not seek further clarification from the appellant because the requests were sufficiently clear. The FOIC advises that she has been employed with the police since April 1995. Upon receipt of the request, the police state that they reviewed the Records Management System (RMS) for records relating to the timeframe specified in the appellant's requests. The request was also sent to the officers identified within the Niche RMS system for all records on file relating to the incidents identified in the requests. The police then reviewed the officers' responses and reviewed the information contained in the property

---

[18] Orders P-85, P-221 and PO-1954-I.
[19] Orders P-624 and PO-2559.
[20] Order PO-2554.
[21] Order MO-2246.

tab for DVD/Audio/Written statements, photographs and related records.

[62] After the appellant filed his appeal, the police submit that they requested that all members of the police review their notebook entries for the time periods specified in the request. The police also requested that the officers provide any additional information or notes on file relating to the appellant. The FOIC then reviewed these officers' entire notebooks to determine whether there were any responsive records that were not previously identified. Upon this review, the FOIC determined that there were no additional responsive notes.

[63] With regard to the digital format media, the FOIC and the police's IT director conducted a review to determine if the responsive information was still on file or if it had been purged in accordance with the police's Retention By-Law. During mediation, the police conducted a search and issued a revised access decision to the appellant, confirming that the digital format media relating to dispatch records and cell phone videos had been destroyed in accordance with the six-month non-disclosure date set in their retention by-law.

[64] Based on my review of the parties' representations, I am satisfied the police conducted a reasonable search for responsive records. I am satisfied that an experienced employee knowledgeable in the subject matter of the request and the police's records holdings expended a reasonable effort to locate records reasonably related to the request.[22] It is clear that the FOIC is an experienced employee knowledgeable in the subject matter of the request and she expended a reasonable effort to locate the responsive records, given her detailed explanation of the searches conducted. As set out above, the *Act* does not require the police to prove with absolute certainty that additional responsive records do not exist, but only to provide sufficient evidence to establish that it made a reasonable effort to locate responsive records. In my view, the police demonstrated that they expended a reasonable effort to identify and locate records responsive to the appellant's request. Furthermore, I find that the police have provided a sufficiently detailed explanation regarding their search for the officers' notes and I am satisfied the police have demonstrated that they conducted a reasonable search for those notes. Finally, I am satisfied that the police have conducted a reasonable search for the digital format media that the appellant submits is outstanding.

[65] In conclusion, I am satisfied that the police conducted a reasonable search for records responsive to the appellant's request.

---

[22] Orders M-909, PO-2469 and PO-2592.

ORDER:

1. I order the police to disclose the UCR information contained in the Occurrence Summaries to the appellant **with the exception** of the portion I described above in paragraph 19. For greater certainty, with this order, I am providing the police with a copy of a highlighted copy of this page to confirm what information should not be disclosed to the appellant. To be clear, the police are **not** to disclose the highlighted information.

2. I order the police to disclose the information identified in Order Provision 1 by **October 15, 2019**.

3. I order the police to provide me with clean (i.e. no black out and uncovered) copies of the following pages of officers' notes:

    - Pages 10, 16-20, 22-23, and 43 of the records at issue in Appeal MA17-214;
    - The notes dated July 15, 2016 at issue in Appeal MA16-746-2;
    - The notes dated July 23 and 24, 2016 at issue in Appeal MA16-746-2;
    - The two pages of notes dated August 10, 2016 at issue in Appeal MA16-746-2;

    The police are required to provide me with these records by **October 15, 2019** so I may review them and determine whether this information is responsive to the appellant's requests. I reserve my findings on whether the information identified as not responsive in these records is, in fact, responsive or not pending my review of the clean and unredacted copies of these records.

4. I uphold the police's decision to withhold the remainder of the information at issue.

5. I uphold the police's search as reasonable.

6. I reserve the right to require the police to provide me with a copy of the records disclosed to the appellant in accordance with Order Provisions 1 and 2.

Original signed by | September 12, 2019

Justine Wai
Adjudicator