

Information and Privacy Commissioner,  
Ontario, Canada



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

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## FINAL ORDER MO-3956-F

Appeal MA17-8-2

Toronto Police Services Board

September 22, 2020

**Summary:** In Interim Order MO-3841-I, the Toronto Police Services Board (the police) were ordered to conduct another search under the *Municipal Freedom of Information and Protection of Privacy Act* for responsive records containing the key words “Shanghai” or “Combined Forces Asian Investigation Unit,” for a specified time period, and for responsive records located in the Office of the Chief of Police. In this order, the adjudicator upholds the police’s search in response to the interim order as reasonable and she dismisses the appeal.

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

**Orders Considered:** Orders MO-3841-I and PO-4054-I.

### OVERVIEW:

[1] The appellant made the following request to the Toronto Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

Under the powers of [the *Act*], I am requesting copies of all records (including transcripts) of all meetings held between the Toronto Police Service – Detective Bureau, the Combined Forces Asian Investigation Unit, and the Shanghai Municipal Public Security Bureau [PSB].

This will include records of the preparatory arrangements made by the [police] for arranging the trip of the Shanghai PSB to Canada. It will include records of airport pickup, accommodation, meeting venues, costs of hosting the event (including hotel bills and meal receipts) directly related to hosting the Shanghai PSB officials.

The request for responsive records will include copies of all presentations made to the Shanghai PSB by [three of the four police officers named in the agenda] (as they then were) and all others who made presentations at the meetings. It will also include records of these meetings as recorded in the [police] officers' official memorandum books and internal communication on the meetings between the [police] and the Shanghai PSB.

The dates of these arrangements and meetings will be from March 20, 2001 (and/or earlier) or dates prior to April 6, 2001, and records created subsequent to the meeting by way of review or follow-up responses to the meeting. This request will also include the personal information about me, in transcript, published and distributed at the official meeting.

[2] The appellant filed an appeal to this office based on the police's failure to respond to his request in accordance with the procedures set out in the *Act*. That appeal file was closed after the police issued a decision to the appellant.

[3] The police's decision stated that no responsive records exist. The decision letter contained details of the police's search efforts, including inquiries made with the former units of the three officers (now retired) named in the appellant's request. The police also reported that many record types are not retained permanently, and provided a link to their records retention policies.

[4] The appellant was dissatisfied with the police's decision and appealed it to this office, giving rise to this appeal.

[5] During the mediation stage of the appeal process, the appellant provided the mediator with additional information in support of his belief that the police had not conducted a reasonable search for records. The mediator provided this information to the police, who agreed to conduct another search for records.

[6] The appeal was then transferred to the adjudication stage at the appellant's request. An adjudicator with this office decided to conduct an inquiry into this matter by first seeking representations from the police on the issue of the reasonableness of the police's search for records.

[7] In response, the police provided representations, along with a copy of a revised

decision letter to the appellant setting out the results of some further searches conducted after receiving the additional information at the mediation stage. This letter enclosed responsive information from one newly located record.

[8] The appellant advised the adjudicator that he wished to continue the appeal on the issues of reasonable search and the police's severances to the officer's note and notebook.

[9] After the exchange of further representations, another adjudicator issued an interim order, Interim Order MO-3841-I (the interim order). In that order, she found that the police had not expended reasonable efforts to locate certain records responsive to the appellant's request and ordered the police to conduct another search of:

- police email and network accounts for responsive records containing the key words "Shanghai" or "Combined Forces Asian Investigation Unit," and covering the time period March 1, 2001 to September 6, 2017 (the date of the police's revised decision to the appellant); and,
- the Office of the Chief [of Police] for records responsive to the appellant's request. Responsive records may include records that do not contain personal information of the appellant.

[10] The adjudicator also ordered the police to provide representations on the specific details of the searches it conducted.

[11] The police conducted the searches as ordered in Interim Order MO-3841-I and additional records were located by the police. All the responsive information in these records was disclosed to the appellant.

[12] The police provided the appellant with two decision letters and an affidavit detailing the searches it performed. The appellant provided representations in response.

[13] In this order, I uphold the police's search in response to Interim Order MO-3841-I as reasonable, and I dismiss the appeal.

## **DISCUSSION:**

### **Did the police conduct a reasonable search for responsive records in response to Interim Order MO-3841-I?**

[14] The appellant has requested specified types of records arising from a 2001 meeting between the police and their Shanghai counterparts that included a presentation about the appellant. The appellant appealed the police's initial decision that no responsive records exist. However, prior to the issuance of the interim order,

the police located and partially disclosed some records.

[15] In the interim order, the adjudicator previously assigned to this appeal largely upheld the police's search for records reasonably related to the appellant's request, with three exceptions. She ordered the police to conduct another search for responsive records in their email and network accounts and in the Office of the Chief to remedy certain deficiencies in their searches of those areas. Specifically, she ordered the police to conduct another search for responsive records located in:

1. police email and network accounts for responsive records containing the key words "Shanghai" or "Combined Forces Asian Investigation Unit," and covering the time period March 1, 2001 to September 6, 2017 (the date of the police's revised decision to the appellant); and,
2. the Office of the Chief [of Police] for records responsive to the appellant's request. Responsive records may include records that do not contain personal information of the appellant.

### ***Representations***

[16] The police state that for the first item, searches for responsive records were conducted of the police's service-wide email for records containing the keywords: "Shanghai" or "Combined Forces Asian Investigation Unit," covering the expanded search time frame in the interim order.

[17] The police list the following service-wide email and network accounts that were searched by their Information Security staff, with the assistance of Information Technology Services:

- Intelligence Department
- [specific named] Division
- Chief's Office
- two named police officers
- one named constable

[18] The police granted full access to the responsive information in the records resulting from the above-mentioned search of service-wide email for the specified time frame and key words outlined in Interim Order MO-3841-I. They submit that they identified these accounts through consultation with Information Security and through the review of records related to the appellant's arrest, where charges may have been investigated.

[19] The police also advise that the Office of the Chief of Police's email and letter file systems were searched and that no responsive records were located in the Office of the Chief in response to the second item of the interim order.

[20] The appellant did not provide representations directly as to the reasonableness of the search for the two items in the provisions of the interim order. Instead, his representations focus on his history with the police, including his other requests for access to information.

[21] The only submission that appears to address the police's search in response to Interim Order MO-3841-I is the appellant's request that the police expand their search for records created by a specific named police officer (the police officer), a presenter at the Conference with the Chinese delegation. He is now seeking records of the charges laid by this police officer against him, records of his arrest and records related to his prosecution on the charges from this arrest.

### ***Analysis/Findings***

[22] In Interim Order MO-3841-I, the adjudicator determined that the scope of the appellant's request was for:

...records about discussions at or arising out of any meeting held between the identified bodies [the Toronto Police Service – Detective Bureau, the Combined Forces Asian Investigation Unit, and the Shanghai Municipal Public Security Bureau] around the specified time frame, as well as for certain types of records relating to arrangements for and costs of the meeting...

[23] The adjudicator in the interim order rejected the appellant's assertion that his request covers memorandum book entries and other records of any officers that were created in advance of, or in preparation for, the meeting, such as presentation drafts. She also rejected the appellant's claim that records of any of the various named officers' involvement in the appellant's case are responsive simply because the meeting included, as one component, a presentation about the appellant's case.

[24] As such, I do not accept the appellant's submission that the police have not conducted a reasonable search because they have not searched for records of the charges laid against him by this particular police officer or records of the resulting arrest and prosecution.

[25] I find that the police conducted a reasonable search for the records that were ordered to be searched for in the interim order, namely:

... records containing the key words "Shanghai" or "Combined Forces Asian Investigation Unit," and covering the time period March 1, 2001 to

September 6, 2017 (the date of the police's revised decision to the appellant).

... [records in] the Office of the Chief [of Police] ...Responsive records may include records that do not contain personal information of the appellant

[26] 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>1</sup>

[27] In the affidavit and two decision letters provided by the police in response to the interim order, the police provided representations as to the extent of the searches for records related to the two items ordered to be searched for in the interim order. This affidavit included details about who conducted the searches, the databases searched and the expertise of the persons who conducted the searches.

[28] I find that the police have provided sufficient evidence to establish that they made a reasonable effort to identify and locate responsive records as directed in the interim order.

[29] I disagree with the appellant that the police's search for responsive records was not reasonable. I find the appellant's expectations about the required search to be undertaken are related to other requests he has made to the police and not to the request in this appeal, particularly the two items set out in the interim order's provisions.

[30] The appellant admits that the records he claims have not yet been located by the police are related to other requests he has made to the police and are not the records ordered to be searched for in the interim order. This is evidenced by the appellant's submission that:

These requests were for copies of the records related to the proposed prosecution of the appellant purportedly recorded in the [police] officer's official memorandum books and for copies of the legal forms (e.g. Canada Wide Warrants) which had been entered by the [police] officer on several law enforcement data bases including CPIC, MANIX and ECOPS. Arrest Records and "Occurrence Reports" were created about the appellant and entered on the police system server.

[31] In that regard, the appellant submits that the police should have located the following records:

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<sup>1</sup> Orders P-624 and PO-2559.

- ITOs,<sup>2</sup>
- Warrants,
- Informations,
- RTO's,<sup>3</sup>
- prosecution records, and
- other entries of daily duty in the official memorandum books of the police officer, recording hours on duty or off duty, parade calls, meetings, interviews and assignments.

[32] I find that the listed records are unrelated to those ordered to be searched for in the interim order.

[33] The appellant also relies on a recent order, Interim Order PO-4054-I. In that order, the adjudicator ordered a new search to be conducted for a record that was accidentally deleted. She found that the institution had not provided the requested evidence of when the record sought was destroyed, such as information about record maintenance policies and practices, including retention schedules.

[34] In this appeal, I do not have evidence about records being accidentally deleted, such as was the case in Interim Order PO-4054-I. Nor do I have evidence that records fitting within the order provisions in Interim Order MO-3841-I have been deleted or destroyed.

[35] The issue being decided in this order is whether the police have conducted a reasonable search for the responsive records listed in the interim order provisions. Based on the evidence before me, I find that the police have conducted a reasonable search for these records.

[36] 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. In this case, the appellant has not provided a reasonable basis upon which I could conclude that further responsive records exist. In my view, the appellant is seeking to require the police to search and locate records that are not responsive to the request, in particular not responsive to the two items ordered to be searched in the interim order.

[37] A reasonable search is one in which an experienced employee knowledgeable in

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<sup>2</sup> Information to Obtain a Search Warrant

<sup>3</sup> The appellant did not indicate what an "RTO" is nor can I ascertain what this acronym stands for.

the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request. The *Act* does not require the police to prove with absolute certainty that further records do not exist.<sup>4</sup>

[38] I find, with respect to Interim Order MO-3841-I, that experienced police employees knowledgeable in the subject matter of the request and the items ordered to be searched for by the interim order, expended a reasonable effort to locate responsive records.

[39] Accordingly, I find that the police's search for records in response to the provisions of Interim Order MO-3841-I, was reasonable under section 17 of the *Act*, and I will not require them to conduct another search for those records.

**ORDER:**

I uphold the police's search for records responsive to the order provisions in Interim Order MO-3841-I and I dismiss the appeal.

Original signed by \_\_\_\_\_

Diane Smith  
Adjudicator

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September 22, 2020

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<sup>4</sup> See Order MO-3577.