

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3977

Appeal MA19-00290

Peel Regional Police Services Board

November 27, 2020

Summary: The appellant was a passenger in a taxi that became involved in a collision. She made a request to the Peel Region Police Services (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for all details relating to the relevant taxi driver. Initially, the police could not find responsive records. The appellant appealed the police's access decision to this office. During mediation, the police conducted a further search and located responsive records. The police partially withheld the responsive information in the records under the discretionary exemptions at sections 38(a) (discretion to refuse requester's own information) in conjunction with section 8(1)(l) (law enforcement), and 38(b) (personal privacy). The appellant raised reasonable search as an issue.

In this order, the adjudicator upholds the police's access decision and the reasonableness of the police's search, and dismisses the appeal.

Statute 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"), 8(1)(l), 14(3)(b), 14(3)(d), 17, 38(a) and (b).

OVERVIEW:

[1] The Peel Region Police Services Board (the police) received the following request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

I have a copy of a police report and I am looking for all details relating to the driver of the taxi I was involved in an accident with.

[2] In response, the police stated:

Based on the information you have provided, I was unable to locate any responsive records. I was able to obtain a copy of Cst. [specified last name] notes from [a specified date] but there was no reference to this motor vehicle accident. This is not unusual as the Motor Vehicle Accident Report that you possess would be considered the officer's notes.

[3] The requester, now the appellant, appealed that decision to the Office of the Information and Privacy Commissioner of Ontario (the IPC, or this office).

[4] The IPC mediation process led to the following:

- The police conducted a follow-up search and located two pages of officer notes. The police then issued a supplemental decision providing partial access to that record, and refusing access to some information, relying on the exemptions in sections 8(1)(l) (law enforcement) and 14(1) (personal privacy) of the *Act*. A portion of the record was identified as non-responsive to the request.
- After discussions with the mediator, the police agreed that the discretionary exemptions at sections 38(a) (discretion to refuse requester's own information) and 38(b) (personal privacy) of the *Act* should be at issue.
- The appellant advised that she is seeking access to all the information withheld, including the information marked as non-responsive.
- The appellant advised that she believes additional records exist. The police confirmed to the mediator that no additional record exists and no additional records may be disclosed. Therefore, reasonable search was added to the scope of the appeal.

[5] The appellant asked that the file proceed to the next stage of the appeals process.

[6] Accordingly, the file was referred to adjudication, where an adjudicator may conduct a written inquiry.

[7] As the adjudicator of this appeal, I began my inquiry under the *Act* by sending a Notice of Inquiry, setting out the facts and issues on appeal, first to the police, then to the appellant. I received written representations from the parties in response, which I shared amongst them, on consent.

[8] For the reasons that follow, I uphold the police's access decision and find that the search conducted by the police was reasonable in the circumstances. As a result, the appeal is dismissed.

RECORDS:

[9] There are two records at issue (Records 1 and 2). They are the handwritten notes of a police officer, over the course of two days (five pages total).

ISSUES:

- A. Which portions of the records are responsive to the request?
- B. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- C. Does the discretionary exemption at section 38(a) in conjunction with the section 8(1)(l) exemption apply to the information at issue?
- D. Does the discretionary personal privacy exemption at section 38(b) apply to the personal information at issue?
- E. Did the police exercise their discretion under sections 38(a) and 38(b)? If so, should this office uphold the exercise of discretion?
- F. Did the police conduct a reasonable search?

DISCUSSION:

Issue A: Which portions of the records are responsive to the request?

[10] The request is for records relating to a specified collision in which the appellant was a passenger in a taxi. To be considered responsive to the request, records must "reasonably relate" to the request.¹

[11] The police did not initially recognize that Record 1 contained any responsive information. However, during the inquiry, when I reviewed Record 1, it appeared to me that certain portions of this record were responsive to the request. Through staff from this office, the police were asked to re-examine Record 1, and they did so, confirming that the portions that I had flagged are, in fact, responsive to the request.² The police take the position that the remaining portions of Record 1 are not responsive to the request.

¹ Orders P-880 and PO-2661.

² The police advised that they would not be submitting further representations specifically with respect to those portions of the record.

[12] With respect to Record 2, the police have also identified portions of it that are not responsive to the request.

[13] The appellant seeks the information designated as non-responsive.

[14] I have reviewed both records in their entirety, and based on my review of them, I can confirm that portions of each record are not responsive to the appellant's request. The non-responsive information concerns matters such as police involvement in other people's cases. It is clear from the dates in the records and the times noted in the margins of the records (which are police officer's notes) that the officer took notes throughout the day, chronicling their activities as those activities occurred. Therefore, because I have reviewed the records, I find that the information withheld as non-responsive does not reasonably relate to the subject matter of the request.

[15] Accordingly, I uphold the police's decision to deny access to the portions of each record that are non-responsive to the request, and I will only consider the exemptions claimed by the police in relation to the responsive information in the records.

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

[16] The police withheld information on the basis of the discretionary personal privacy exemption at section 38(b), so I must first decide whether the records contain "personal information" as defined in section 2(1) of the *Act*, and to whom it relates. For the reasons that follow, I find that the records contain the appellant's personal information as defined in section 2(1) of the *Act*, as well as personal information belonging to other identifiable individuals.

[17] The term "personal information" 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[.]

[18] 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.³

[19] In this case, the police submit, and I find, that the records contain the personal information of the appellant and other identifiable individuals, as defined under section 2(1) of the *Act*. I find that the personal information in the records includes the names of individuals appearing with their contact information,⁴ identifying numbers or other particulars assigned to them,⁵ their statements to police,⁶ and the fact of their interactions with police.⁷

[20] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed,⁸ and based on my review of the nature of the information withheld and the representations of the parties, I find that that is the case here.

[21] 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

³ Order 11.

⁴ Paragraphs (d) and (h) of the definition of "personal information" at section 2(1) of the *Act*.

⁵ Paragraph (c) of the definition of "personal information" at section 2(1) of the *Act*.

⁶ Paragraphs (e) and (g) of the definition of "personal information" at section 2(1) of the *Act*.

⁷ This is personal information under the introductory wording of the definition of that term at section 2(1) of the *Act*.

⁸ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

individual.⁹

[22] 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.¹⁰ Based on my review of the information at issue, I find that that is the case here.

[23] Since the records contain the appellant's personal information, I must assess any right of access she may have to them under section 38 of the *Act*.

Issue C: Does the discretionary exemption at section 38(a) in conjunction with the section 8(1)(l) exemption apply to the information at issue?

[24] The police withheld police coding information found in the records, under section 38(a) in conjunction with the law enforcement exemption at section 8(1)(l). For the reasons set out below, I uphold that decision.

[25] Section 36(1) 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.

[26] Section 38(a) reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

if section 6, 7, 8, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information.

[27] Section 38(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information.¹¹ Where access is denied under section 38(a), the institution must demonstrate that, in exercising its discretion, it considered whether a record should be released to the requester because the record contains his or her personal information.

[28] As mentioned, the police rely on section 38(a) in conjunction with the discretionary law enforcement exemption at section 8(1)(l) to withhold "10-codes, patrol zone information and/or statistical codes."

⁹ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

¹⁰ Orders P-1409, R-980015, PO-2225 and MO-2344.

¹¹ Order M-352.

[29] Section 8(1)(l) allows the police to withhold information if disclosure could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.

[30] The term “law enforcement” is defined in section 2(1) of the *Act* as follows:

“law enforcement” means,

(a) policing,

(b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or

(c) the conduct of proceedings referred to in clause (b)[.]

[31] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.¹²

[32] It is not enough for an institution to take the position that the harms under section 8 are self-evident from the record or that the exemption applies simply because of the existence of a continuing law enforcement matter.¹³ The institution must provide detailed evidence about the potential for harm. It 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 seriousness of the consequences.¹⁴

[33] For section 8(1)(l) to apply, the police must establish that disclosure of the records could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.

[34] In support of their decision to withhold “10-codes, patrol zone information and/or statistical codes,” the police submit that a long line of orders¹⁵ has found that police operational codes qualify for exemption under section 8(1)(l), due to the reasonable expectation of harm that could result from their release. This office has held that the use of operational codes by law enforcement is an effective and efficient means of conveying a specific message without publicly identifying its true meaning,

¹² *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

¹³ Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

¹⁴ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

¹⁵ Citing Orders M-393, M-757, M-781, MO-1428, PO-1665, PO-1777, PO-1877, PO-2209, PO-2339 and PO- 2409 as examples.

and that if the public were to learn these codes and their meanings, the effectiveness of the codes would be compromised. This could result in the risk of harm to police personnel and/or members of the public with whom the police engage, such as victims and witnesses. As a result, given the nature of the information withheld, I accept the police's submission that there is no reason why I should depart from that approach in this case.

[35] Accordingly, subject to my findings on the exercise of discretion, I find that the police coding information at issue is exempt under the law enforcement exemption at section 8(1)(l), and the police were allowed to refuse to disclose it to the appellant under section 38(a).

Issue D: Does the discretionary personal privacy exemption at section 38(b) apply to the personal information at issue?

[36] The police submit that the mandatory exemption at section 14(1) applies to the personal information at issue because in their view, this information does not pertain to the appellant. However, since the records themselves contain the appellant's personal information, I must assess any right of access she may have to the information at issue in those records under the discretionary personal privacy exemption at section 38(b) of the *Act*.

[37] 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.¹⁶

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

Do any of paragraphs 14(1)(a) to (e) apply?

[39] If the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b).

[40] Based on my review of the records themselves and the representations of the parties, I find that none of the exceptions at paragraphs (a) to (e) of section 14(1) are relevant in this case.

¹⁶ See below in the "Exercise of Discretion" section for a more detailed discussion of the institution's discretion under section 38(b).

Sections 14(2), (3) and (4)

[41] Sections 14(2) and (3) also help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 38(b). In addition, section 14(4) lists situations that would not be an unjustified invasion of personal privacy.

[42] 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.¹⁷

Do any of the section 14(3) presumptions apply?

[43] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 38(b).

[44] In this case, the police rely on the presumption at section 14(3)(b) (investigation into possible violation of law).¹⁸ The police state that the information pertains to law enforcement matters.

[45] 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.¹⁹ The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.²⁰ Furthermore, the presumption can apply to a variety of investigations, including those relating to by-law enforcement²¹ and violations of environmental laws or occupational health and safety laws.²²

[46] In the circumstances of this case, I am satisfied that the personal information withheld was compiled and it is identifiable as part of an investigation into a possible violation of law. As a result, I find that the presumption at section 14(3)(b) applies.

[47] In my view, the presumption at section 14(3)(d) (employment or educational

¹⁷ Order MO-2954.

¹⁸ In their representations, the police appear to rely on this presumption regarding both the non-responsive information (that is, law enforcement matters unrelated to the appellant's case) and responsive information. Since the appellant has no right of access to non-responsive information, arguments about the applicability of the exemption to non-responsive information will not be considered.

¹⁹ Orders P-242 and MO-2235.

²⁰ Orders MO-2213, PO-1849 and PO-2608.

²¹ Order MO-2147.

²² Orders PO-1706 and PO-2716.

history) also applies. A person's name and professional title, without more, does not constitute "employment history."²³ However, in this case, based on my review of the information withheld, I find that it goes beyond a person's name and professional title. The information withheld relates to and reveals an affected party's involvement in a vehicle collision while working as a taxi driver. I find that this is highly relevant to the work history of the individual involved, given the nature of their employment. Therefore, I find that section 14(3)(d) applies.

[48] In summary, two section 14(3) presumptions apply to the personal information at issue.

[49] While the police state that because section 14(3)(b) applies, it cannot be rebutted by the factors in section 14(2), that would be the case if the responsive records did not contain both the personal information of the appellant and of other identifiable individuals. However, as discussed, the records at issue (each as a whole) contain personal information belonging to the appellant and others. 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. For that reason, I will now proceed to consider whether there are any section 14(2) factors that weigh in favour of disclosure in this case.

Do any of the section 14(2) factors apply?

[50] 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.²⁴ 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).²⁵

[51] The section 14(2) factors typically favouring disclosure are listed at sections 14(2)(a) to (d). These sections say:

14 (2) 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,

(a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;

²³ Order P-216.

²⁴ Order P-239.

²⁵ Order P-99.

(b) access to the personal information may promote public health and safety;

(c) access to the personal information will promote informed choice in the purchase of goods and services;

(d) the personal information is relevant to a fair determination of rights affecting the person who made the request[.]

[52] The appellant did not directly address any listed or unlisted factors favouring disclosure in her representations. Instead, she listed a number of questions that she wanted the police to answer, and made comments about the effect of the collision on her life.

[53] Although the appellant did not directly address any factors favouring disclosure, I have considered her statements about the impact of the collision on her life as a factor favouring disclosure. The evidence presented by the appellant was very limited, but I can conclude from it that she does not have closure regarding the collision. Due to the pursuit of some legal action involving the taxi driver, it is likely that disclosure of the records at issue will not reveal anything additional to the appellant relating to the collision. In these circumstances, I give the possibility of granting the appellant closure moderate weight.

Does section 14(4) apply?

[54] 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).

[55] Section 14(4)(a) applies to the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution.

[56] Section 14(4)(b) applies to financial and other details of contracts for personal services between an institution and a consultant or independent contractor, if that information is found to qualify as personal information.²⁶

[57] Finally, section 14(4)(c) applies to situations involving disclosure of personal information of a deceased individual based on compassionate reasons.

[58] Based on the evidence before me, none of the listed as exceptions under section 14(4) are relevant in this case.

²⁶ Orders MO-1361 and PO-2435.

Weighing the presumption and factors

[59] Since the records contain the personal information of the appellant and other identifiable individuals, the factors and presumptions at sections 14(2) and 14(3) must be considered and weighed. The purpose of that exercise is to determine whether disclosing the information withheld would be an unjustified invasion of the personal privacy of the identifiable individuals (other than the appellant) to whom the record relates. I have found that the presumptions at sections 14(3)(b) and 14(3)(d) apply. These sections weigh against disclosure of the withheld personal information. I have also found that the stated long-lasting impact on the appellant arising out of the incident to which the withheld information relates is a factor that moderately favours disclosure. However, this unlisted factor is outweighed by the application of sections 14(3)(b) and 14(3)(d).

[60] Considering these findings, and weighing the interests of the appellant and the affected parties, I find that the personal information at issue is exempt under section 38(b).

[61] Although I have found the information at issue to be exempt under section 38(b), I have considered whether the police could sever the records to provide further disclosure to the appellant. I find that the personal information of the appellant and other individuals is inextricably intertwined in that it relates to a collision in which they were involved. I find that it cannot be further severed to disclose anything further to the appellant without disclosing information that is exempt under section 38(b).

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

[62] The exemptions at sections 38(a) and 38(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.

[63] 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.

[64] In either case, this office may send the matter back to the institution for an

exercise of discretion based on proper considerations.²⁷ This office may not, however, substitute its own discretion for that of the institution.²⁸

[65] Based on the evidence before me, I find that the police exercised their discretion under both sections 38(a) and 38(b) in denying access to the information withheld under those exemptions.

[66] Based on the information disclosed to the appellant, I find that the police exercised their discretion and took the following factors into consideration in deciding to withhold the police operational codes and personal information of other individuals at issue:

- the purposes of the *Act*, including the principles that individuals should have a right of access to their own personal information, that exemptions from the right of access should be limited and specific, and that the privacy of individuals should be protected;
- the wording of the exemptions and the interests they seek to protect;
- whether the appellant is seeking her own personal information;
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the appellant or any affected person; and
- the historic practice of the institution with respect to similar information.

[67] I find that the above-noted factors were proper and relevant considerations, and I am satisfied that the police exercised their discretion in good faith and not in bad faith. I find that by partially disclosing the record, the police balanced the right of the appellant to have access to her own personal information with the need to protect information that has confidential uses by law enforcement, as well as the personal privacy of others. Furthermore, I find that there is no evidence before me that the police took into consideration any irrelevant factors, or exercised their discretion in bad faith, in refusing to disclose the information at issue. Therefore, I uphold the exercise of discretion by the police to do so.

Issue F: Did the police conduct a reasonable search?

[68] The appellant claims that additional responsive records exist beyond those identified by the police, so the issue to decide is whether the institution has conducted

²⁷ Order MO-1573.

²⁸ Section 43(2).

a reasonable search for records as required by section 17.²⁹ 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.

[69] 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.³⁰ To be responsive, a record must be "reasonably related" to the request.³¹

[70] 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.³²

[71] 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.³³

The police's evidence

[72] The police submitted representations and an affidavit in support of their position that their search was reasonable in the circumstances.

[73] The police explain that upon receipt of the appellant's request, a named civilian employee holding the position of Freedom of Information analyst since 2011 (and now supervisor), took steps to conduct a search for responsive records. This employee attested to having attended seminars and conferences pertaining to relevant topics on freedom of information in order to stay current with the police's obligations under *MFIPPA*. Based on the evidence provided by police, I am satisfied that the employee who conducted the search is an experienced employee knowledgeable in the subject matter of the request.

[74] The employee who conducted the search explained that the appellant's initial request was for all police notes and all the details relating to the driver of the taxi in the accident she was involved in, and that the appellant had initially provided a Ministry of Transportation (the MTO) report with her request, but it was only a partial one. Based on this partial report, the police employee confirmed that the request provided only partial detail to identify the responsive records. As a result, she contacted the appellant for any further information, as more information was necessary to locate the responsive

²⁹ Orders P-85, P-221 and PO-1954-I.

³⁰ Orders P-624 and PO-2559.

³¹ Order PO-2554.

³² Orders M-909, PO-2469 and PO-2592.

³³ Order MO-2185.

records. I find that these were reasonable steps to take in the circumstances, in order to maximize the chance of finding responsive records.

[75] The employee who conducted the search also attested to interpreting the scope of the request liberally to include any record containing information regarding contact with the appellant involved in an accident. This liberal approach to interpretation is expected of institutions in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.³⁴

[76] In order to search for responsive records, the employee in question searched the databases, including audio and communications databases, which might have responsive records, without restricting the search to a particular timeframe. She explains that she searched two specified databases by the appellant's name, and the MTO database by the taxi driver's name and license plate number (with negative results). Given the employee's experience, I am satisfied that she searched for responsive records in databases that might yield responsive results. I also find that the search terms she used were reasonable, and that the decision not to limit the searches to a particular timeframe was also reasonable.

[77] After conducting this search, the employee sent a letter to the appellant advising her that she was unable to locate any responsive records. She also advised the appellant that despite obtaining a copy of the officer's notes, there was no mention or reference to the subject motor vehicle accident, and that this was not unusual because the Motor Vehicle Accident Report would be considered the officer's notes.

[78] However, the employee also noted that in the course of IPC mediation, she received a complete copy of the Motor Vehicle Accident report that provided an accident number and the officer's name and badge number, which was not previously provided. The employee states that this new information allowed her to conduct a search for responsive records. Accordingly, she made a request for any officer's notes related to the accident. She identified any individuals within the police who had involvement in "any responsive occurrences" regarding the accident, and directed the request to them. I find that these steps were reasonable to take. Police personnel provided responses to the employee in charge of the search. The employee in charge of the search attests to reviewing those responses to ensure that a fulsome search was conducted, and that upon her review, she was satisfied that there were no further outstanding responsive records.

[79] As mentioned, this office took steps to clarify with the police that there was in fact responsive information in the three pages of officer's notes initially located, not just on the two pages of notes that the employee found and identified as responsive. The

³⁴ Orders P-134 and P-880.

police confirmed that portions of the three-page set of notes also consisted of responsive information, in addition to the portions of the two-page set of notes.

The appellant's evidence

[80] Although an appellant will rarely be in a position to indicate precisely which records the institution has not identified, the appellant still must provide a reasonable basis for concluding that such records exist.³⁵ Here, I find that the appellant has not done so.

[81] Rather, the appellant submitted a set of questions relating to the accident, and specifically regarding the taxi driver in question.

[82] The police submit that these questions expand on her request, and that if the appellant would like to pursue this information, she should file a new request for it under the *Act*. I am persuaded to accept this argument. The wording of the appellant's request ("... all details relating to the driver of the taxi I was involved in an accident with") is quite broad. I find that this wording cannot reasonably be interpreted to be a request for the information sought in relation to the questions listed in response to the police's representations. If the appellant would like records relating to such specific information, she is free to make another request under the *Act* for it.

[83] In her response to the police's representations, I find that the appellant has not provided a reasonable basis for concluding that the police's search was not conducted by an employee experienced in the subject matter of the request, or that the locations searched, or search terms used, were unreasonable.

[84] Since I have found that the police provided sufficient evidence explaining the steps that they took to conduct a search, and that these steps were reasonable, and since I have found that the appellant did not provide sufficient evidence to call the police's search efforts into question, I will uphold the police's search as reasonable.

ORDER:

I uphold the police's access decision and the reasonableness of their search, and dismiss the appeal.

Original Signed by: _____
Marian Sami
Adjudicator

November 27, 2020

³⁵ Order MO-2246.