

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-3986-F

Appeal MA19-00359

Shelburne Police Services Board

December 14, 2020

**Summary:** This final order follows Interim Order MO-3958-I and disposes the remaining issue in this appeal: whether the police conducted a reasonable search in response to a request under the *Municipal Freedom of Information and Protection of Privacy Act* for records relating to two specified complaints made to the OIPRD. The adjudicator finds that the police conducted a reasonable search for responsive records and 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.

### BACKGROUND:

[1] The Shelburne Police Services Board (the police) received an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to two specified complaints made to the Office of the Independent Police Review Director (the OIPRD). The request states:

I kindly request copies of any correspondence that you received or sent to the Shelburne Police or the Orangeville Crown Attorney's Office...regarding my complaints or the sharing of information about the criminal charges that [named police constable] laid against...on [specified date] for an alleged occurrence from [another specified date]. [Part 1]

I am also requesting a copy of the "in camera session" from [specified date] where my case was discussed amongst the members of the

Shelburne Police Services Board. Also confirmation of who exactly was present for that in camera session. [Part 2]

[2] The police issued a decision denying access to the responsive records relating to Part 2, relying on section 6(1)(b) (closed meeting) of the *Act*. With respect to Part 1, the police advised the requester that no records responsive to his request for correspondence between the OIPRD and the Crown Attorney's office exist with them.

[3] The requester, now the appellant, appealed the police's decision to this office.

[4] In Interim Order MO-3958-I, I ordered the police to conduct a further search, specifically for any records that may reside with the remaining former board member.

[5] In compliance with the interim order, the police conducted a further search and submitted an affidavit from a named former board member, detailing her search efforts.

[6] I invited and received the appellant's representations in response to the police's representations.

[7] In this final order, I find that the police's further search is reasonable and dismiss the appeal.

## **DISCUSSION:**

[8] In Interim Order MO-3958-I, I found that the board chair had contacted all the board members (except for one former board member) who were present at the in-camera meeting in question.

[9] In order provision #1 of Interim Order MO-3958-I, I ordered the police to conduct a further search for records with the remaining former board member.

[10] Accordingly, my review of the police's further search is limited to this aspect. Following the issuance of Interim Order MO-3958-I, the police conducted a further search for records and provided an affidavit from a named former board member in support of their position that the further search was reasonable.

[11] The affidavit submitted by the police was sworn by a named former board member. The affiant attests that she attended the May 22, 2018 board meeting in question. She states that she was contacted by the board chair, whom requested that she undertake a search to determine if she had any responsive records pertaining to that meeting. The affiant states that between October 7, 2020 and October 21, 2020, she spent a considerable amount of time searching for any notes, correspondence or recordings that may have been in her possession. However, she was unable to locate any records beyond the in-camera motion.

[12] As well, the affiant attests that she did not take notes, nor make any recordings,

nor send any correspondence in relation to the board meeting in question.

[13] As mentioned above, the appellant submitted representations in response to the police's affidavit from the named former board member. The appellant submitted the following:

- A forwarded email with his first email.
- Six attachments with his second email.
  - Two attachments are part of a supplementary police occurrence report.
  - Two attachments appear to be part of a general police report.
  - Two attachments are "Income Withholding for Support Form" dated June 21, 2017 and February 14, 2019 involving two named individuals.

[14] The appellant submits it is highly unlikely that the affiant would require any considerable amount of time to search for any notes/correspondence/recordings that may have been in her possession. He submits that the affiant only had to review her records from May 18, 2018 to May 22, 2018. The appellant also submits that if she was in the habit of not taking any notes at board meetings then all she only had to look for was emails or correspondence sent/received during a 4-day period.

[15] As well, the appellant reiterates his concern about how the police was able to include information in their report that was not provided in his OIPRD complaint.

[16] Finally, the appellant submits that it is disappointing that municipal police services boards are not required to have any records or recordings of in-camera sessions that obviously may implicate them in "wrong doing". He states:

It is the equivalent of not recording an "arrest interview". So far all the members of the Board including the secretary say that no-one made even one note about the lengthy discussion about this OIPRD complaint. The OIPRD is the institution charged under the [*Police Service Act*] to investigate the conduct of the police. The Board in this case "investigated" their Chief's involvement in this matter when they were instructed not to do so by the OIPRD.

### **Analysis and findings**

[17] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a

reasonable search for records as required by section 17.<sup>1</sup> If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[18] 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.<sup>2</sup> To be responsive, a record must be "reasonably related" to the request.<sup>3</sup>

[19] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.<sup>4</sup>

[20] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.<sup>5</sup>

[21] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.<sup>6</sup>

[22] In Order MO-3958-I, I found that the police did not conduct a reasonable search because it did not contact a remaining former board member to ascertain whether she had any records.

[23] I now find that the police has conducted a reasonable search for responsive records. In my view, the police's further search complied with Order MO-3958-I, where I ordered it to contact the remaining former board member.<sup>7</sup> As such, I find that a former employee (the named former board member) knowledgeable in the subject-matter of the request conducted a search for responsive records in her possession.

[24] I have considered the appellant's submissions that it should not have taken the affiant a considerable amount of time to search for any notes/correspondence/recordings that may have been in her possession. Although the affiant took two days (non-consecutive) to search for records, I do not hold this fact against her. She may have simply wanted to do a thorough job at searching for records

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<sup>1</sup> Orders P-85, P-221 and PO-1954-I.

<sup>2</sup> Orders P-624 and PO-2559.

<sup>3</sup> Order PO-2554.

<sup>4</sup> Orders M-909, PO-2469 and PO-2592.

<sup>5</sup> Order MO-2185.

<sup>6</sup> Order MO-2246.

<sup>7</sup> The board was unsuccessful at contacting this named former board member during the police's initial search for records (prior to issuing their decision).

in her possession.

[25] As discussed in Interim Order MO-3958-I, the *Police Services Act (PSA)* does not state that municipal police services board meetings (all or part of) in which the public is excluded need to be recorded. As such, the board was not required to record their in-camera meetings, specifically the in-camera meeting in question. I understand that the appellant believes that this is wrong but the *PSA* does not require it and it is outside of my jurisdiction to order municipal police services boards to do otherwise.

[26] Accordingly, I find that the police conducted a reasonable search for records responsive to the appellant's request as required by section 17 of the *Act*.

**ORDER:**

I uphold the police's search as reasonable and dismiss the appeal.

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

December 14, 2020 \_\_\_\_\_

Lan An  
Adjudicator