

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-4018

Appeal MA20-00003

Toronto Police Services Board

March 5, 2021

**Summary:** The appellant seeks access to records relating to the use of a specific Taser on a specific date. The appellant claims the police did not conduct a reasonable search for records. In this order, the adjudicator finds that the police conducted a reasonable search 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.

### OVERVIEW:

[1] The appellant filed a three-part access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) with the Toronto Police Services Board (the police) for records relating to an incident involving the use of Tasers. Specifically, the appellant seeks access to a Use of Force Report, a Taser Report for a specific Taser the appellant alleges was used by a named police officer in 2006, and the named officer's memo book entries regarding his use of the identified Taser.

[2] Originally, the police did not issue an access decision to this request and the appellant filed a deemed refusal appeal. The appeal was resolved when the police issued an access decision granting the appellant partial access to some records. However, the police advised the appellant,

Please note that many record types are not retained permanently by the Toronto Police Service and become subject to purging once the retention period has been exceeded. According to the Toronto Police Services Board Record Retention Schedule, Use of Force Reports are retained for 2 years (Part A) and 30 days (Part B), after the incident.

The police advised the appellant they would respond to the third part of the appellant's request (i.e. the request for the officer's memo book entries) in their response to a related request. Therefore, the third part of the appellant's request is *not* at issue in this appeal.

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

[4] During mediation, the appellant claimed that additional responsive records should exist. The police advised the mediator that any other responsive records would have been destroyed in compliance with the police's record retention schedule. The appellant maintains that further responsive records ought to exist.

[5] No further mediation was possible and the appeal transferred to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry. The adjudicator originally assigned to the appeal began the inquiry by inviting the police to make submissions in response to a Notice of Inquiry, which summarizes the facts and issue under appeal. The police submitted representations. The adjudicator invited the appellant to submit representations in response to the Notice of Inquiry and the police's representations, which were shared with the appellant in accordance with Practice Direction Number 7 of the IPC's *Code of Procedure*. The adjudicator then sought and received reply representations from the police and then further sur-reply representations from the appellant.

[6] I note the appellant makes submissions on the records responsive to the third part of his request, that is, an identified police officer's memo book entries. These records and the police's search for them are not at issue in this appeal. As stated above, the police informed the appellant they would deal with the third part of his request in their response to a related request. It appears the appellant did not take issue with this aspect of the police's decision. In his January 2, 2020 appeal letter, the appellant filed two separate appeals: the first addressing the Use of Force report and Taser report regarding the Taser identified in his request and the second in relation to the memorandum book entries for the officer who allegedly deployed the Taser in question. Therefore, the only matter before me is whether the police conducted a reasonable search for the Use of Force and/or Taser Reports relating to a specific Taser that may have been deployed in 2006.

[7] The appeal was then transferred to me to complete the inquiry. In the order that follows, I find the police conducted a reasonable search for responsive records and dismiss the appeal.

## **DISCUSSION:**

[8] The sole issue before me is whether the police conducted a reasonable search for responsive records.

[9] Where a requester claims additional responsive 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*.<sup>1</sup> If, after conducting an inquiry, the adjudicator is satisfied the institution carried out a reasonable search in the circumstances, they will uphold the institution's search. If the adjudicator is not satisfied, they may order further searches.

[10] The *Act* does not require an institution to prove with absolute certainty that further records do not exist. However, the police must provide sufficient evidence to show they 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>

[11] 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 reasonably related to the request.<sup>4</sup> An adjudicator will order a further search if the institution does not provide sufficient evidence to demonstrate it made a reasonable effort to identify and locate all of the responsive records within its custody or under its control.<sup>5</sup>

[12] Although the 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.<sup>6</sup>

### **The Parties' Representations**

[13] The police submit they conducted a reasonable search for responsive records. The police state they did not contact the appellant to clarify his request because it was clearly formulated and unambiguous. Upon receipt of the request, the police state the analyst assigned to the request searched the police's Legacy Data Search (LDS) database for the related occurrence report. The police state the LDS stores occurrence reports for incidents prior to 2014. Upon locating the relevant report, the analyst reviewed and verified the details of the incident, specifically the appellant's role in the incident, the date of the incident and the deployment of a Taser.

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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.

[14] The analyst contacted the Toronto Police College (TPC) which receives the Use of Force Reports (UFRs) and Taser Reports that are generated subsequent to an incident. The police state the TPC advised that the reports were no longer at their location.

[15] The police then consulted Legal Services Unit (LSV) to see whether LSV had the information requested, provided it was not already purged, because the LSV is the "final repository for records of this nature." LSV consulted with two civil litigators who acted as external legal counsel in relation to two civil suits involving the appellant and the police. The police state the LSV retrieved the UFRs and forwarded them to external counsel. The external counsel located the UFRs and returned them to LSV, which then forwarded the UFRs to the Access and Privacy Section (APS). The police submit APS was advised that these electronic copies were the only existing records and the hardcopies, as well as any other related records, were likely purged.

[16] Upon review of the UFRs, the police determined two Tasers were deployed in the incident and neither was the Taser identified in the appellant's request.

[17] The police state they consulted further with LSV to locate any additional records. In addition, the police searched the City of Toronto Records Centre, where case files relating to the civil suits involving the appellant and the police are archived. The police state the analyst reviewed the entire contents of two boxes containing the relevant case files for responsive records but did not locate any. It appears the appellant is aware of or already has access to the records the police located during their searches. The appellant did not address these records in his representations.

[18] The police state they did not locate any records relating to the Taser identified by the appellant. Further, none of the records that were located contained any reference to the specific Taser number identified by the appellant in his request.

[19] Generally, the police state its Record Retention Schedule governs the retention period for UFRs and related Taser reports. The police state that Taser Reports and Part A of UFRs may be retained for 2 years and Part B of UFRs for 30 days after the incident date. The police refer to section 14.5 of the *Police Services Act*, which states that Part B of a UFR may be kept for an additional period not to exceed two years. Part B of a UFR contains the names of the officer(s) and parties involved in the incident and the serial number of the deployed Taser. The police note that their Record Retention Schedule requires the police to keep records for a minimum period. However, the schedule does not require the destruction of those records after the period has passed. With respect to UFRs in particular, the police state the LSV retains the records for ten years after they receive them from the Professional Standards Unit (PRU).

[20] With respect to the UFRs related to the incident that is the subject of the appellant's request, the police state they were retained beyond the usual ten-year retention schedule due to the civil litigation process. The police submit the UFRs were still available in electronic form after the conclusion of the civil cases involving the

incident. The police submit the Taser identified by the appellant may not have been deployed at the incident because the records did not contain any information relating to that specific Taser.

[21] The police submit that the results of the search for this request are corroborated with the results of a related request. None of the records located in response to the related request indicate that the specified Taser was assigned or deployed on the date identified in the appellant's request. The police state the only references to the specified Taser are in the documents provided by the appellant.

[22] The police submits the appellant may believe that the specific Taser exists due to a conversation he had with a detective. The detective advised the appellant on December 3, 2019 that information on the Tasers deployed during the incident in question was still available. However, the detective later realized this error and the police advised the appellant of this error.

[23] In his representations, the appellant maintains his position that the Taser identified in his request was deployed during the incident in question and records relating to that Taser ought to exist. The appellant submits the police conducted a "literal and unilateral search" for responsive records and failed to assist him in reformulating the request where there may have been any doubts regarding the interpretation of the request. The appellant submits the police's search was too limited and they failed to search their archives and the Professional Standards Information System (PSIS). The appellant alleges the information from Part A of the UFRs is stored permanently in the PSIS and the police should have located the relevant records there. In addition, the appellant submits the police should have questioned the officer who deployed the Taser in question to see whether they prepared and submitted a Use of Force Report. The appellant also submits the police failed to review the documents he provided in support of his request and claim that additional responsive records should exist.

[24] Further, the appellant submits the police failed to make "any effort" to identify the officer that deployed the Taser identified in his request. The appellant also made a number of submissions in relation to his other requests and issues with the police. I note the appellant addressed a number of matters and outstanding records that do not relate to the appeal before me. I confirm the only issue before me is whether the police conducted a reasonable search for the UFRs and/or Taser reports relating to a specific Taser that may have been deployed in an incident in 2006. Therefore, I will only address the relevant submissions in this order, but confirm that I have reviewed all of the appellant's representations and attachments.

[25] The police maintain they conducted a reasonable search for responsive records. The police confirm they reviewed all of the appellant's documentation in conducting their search. The police assure the appellant that they conducted the search for the specified Taser on the premise that records relating to that Taser ought to exist. The

police state they did not, and do not, hide relevant information or records as the appellant suggested in his representations.

[26] The police confirm they reviewed a letter regarding Tasers the appellant provided them and alleged they did not consider in their search. The police state they reviewed these documents and found nothing proving the deployment of the Taser identified in the appellant's request in the incident. Rather, the documents suggest that two Tasers, including the identified Taser, *could* have been used. Similarly, the police submit that the other information provided by the appellant does not prove the identified Taser was used in the incident.

[27] The police submit they conducted a thorough and reasonable search for the UFRs responsive to the request. In his representations, the appellant identified three specific areas in which he believes the police's search was deficient. With regard to the police archives, the police submit that all case files relating to the incident were kept at their archival repository at the City of Toronto Records Centre. The police state they searched the Records Centre in a final attempt to locate responsive records after searches for the UFRs were unsuccessful at the Toronto Police College, the PSIS database, and the Legal Services Unit.

[28] The police state the appellant is incorrect in his statement that Part A of the UFRs are stored permanently at the PSIS. In any case, the police confirm they searched the PSIS for relevant records and could not locate relevant records.

[29] With regard to the officer who allegedly deployed the Taser in question, the police submit that none of the records identify this officer. Therefore, it is not possible to question this officer. In any case, the police state that questioning an officer is outside of the Access and Privacy Section's mandate. In addition, the incident took place fourteen years ago and the police submit it would be difficult to question the officers involved in order to substantiate certain information. Instead, the police state there are procedures and formal systems in place to ensure the efficient and consistent storing and tracking of data. Following these systems, the police state the analyst conducted the search for the additional records responsive to the appellant's request but was unable to locate them.

[30] The police conclude that they conducted a thorough and reasonable search for responsive records.

[31] In his sur-reply representations, the appellant maintains his position that the police did not conduct a reasonable search for responsive records. The appellant reiterates his argument that the Taser identified in his request could have been deployed during the incident. The appellant provided documentation to substantiate this claim.

## **Analysis and Findings**

[32] I am satisfied the police have demonstrated they made a reasonable effort to locate responsive records in fulfilment of their obligations under the *Act*. I am satisfied that an experienced employee knowledgeable in the subject matter of the request expended a reasonable effort to locate the UFRs and/or Taser reports relating to the identified Taser and incident in 2006. I find the analyst with the Access and Privacy Section is an experienced employee knowledgeable in the subject matter of the request. I am also satisfied the analyst made a reasonable effort to locate records responsive to the appellant's request. The police confirm the analyst searched a number of locations, including the police's Legacy Data Search database, the Professional Standards Information System, the Legal Services Unit, the Toronto Police College archives, and the City of Toronto Records Center. Despite the searches of both electronic and physical files, the police were unable to locate the relevant records relating to the Taser identified in the appellant's request.

[33] As noted above, the *Act* does not require an institution to prove with absolute certainty that additional records do not exist. Additionally, the institution is not required to go to extraordinary lengths to search for responsive records. Upon review of the police's representations, I am satisfied an employee knowledgeable in the subject matter of the request expended a reasonable effort to locate records responsive to the appellant's request.

[34] Further, I am not satisfied there is a reasonable basis for the appellant's belief that records relating to the Taser identified in his request should exist. I do not agree with the appellant that the police had an obligation to clarify his request with him. I find the request to be unambiguous and clear. In addition, I find that the police's representations are sufficiently detailed and they responded to each of the appellant's concerns regarding the additional search areas in a satisfactory manner.

[35] It appears the matter of whether the Taser identified in the appellant's request was deployed during the incident remains in dispute between the parties. However, I cannot make a determination on that point. The only issue before me is whether the police conducted a reasonable search for responsive records. Based on my review of the parties' representations, I am satisfied the police conducted a reasonable search for records responsive to the appellant's request. In any case, given the passage of time, the police's Retention Schedule, and the number of locations that were searched, I find no useful purpose would be served if I ordered a further search.

[36] Therefore, in light of the police's submissions regarding the nature and extent of the searches conducted as well as its submissions addressing the appellant's concerns regarding their search, I am satisfied the police's searches were reasonable.

**ORDER:**

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

Original Signed by: \_\_\_\_\_

Justine Wai  
Adjudicator

\_\_\_\_\_ March 5, 2021