

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4437

Appeal MA21-00210

Toronto Police Services Board

September 7, 2023

Summary: The Toronto Police Services Board (the police) received a freedom of information request under the *Municipal Freedom of Information and Protection of Privacy Act* for records related to a fire that broke out at a certain location. The police issued an access decision advising that there is no video record responsive to the request. The requester challenged the reasonableness of the police's search, in large part on the basis of evidence he believes the police should have collected at the time of the fire, as well as a past negative experience involving the same police service and a request for video evidence. In this order, the adjudicator upholds the police's search for a video record responsive to the request as reasonable in the circumstances, and dismisses the appeal.

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

OVERVIEW:

[1] The Toronto Police Services Board (the police) received a freedom of information request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records related to a fire that broke out at a certain location.¹

[2] While the police located various records that are not the subject of this appeal,² they did not locate video footage.

¹ The relevant part of the request is for "[a]ll records, video or written or audio or other," relating to a named police constable's statement to specified media outlet regarding the fire.

² The police withheld records responsive to another part of the request under the mandatory exemption at section 14(1) (personal privacy) of the *Act*. At IPC mediation, the appellant advised that he would no longer be pursuing access to the records withheld under section 14(1). As a result, I will

[3] The requester (now the appellant) appealed the police's access decision to the Information and Privacy Commissioner of Ontario (IPC).

[4] The IPC appointed a mediator to explore resolution. The appellant narrowed the scope of his concern to video footage. Despite a conference call between the mediator, the appellant, and the police, in which the police's search efforts were discussed, the issue of whether the police conducted a reasonable search could not be resolved at mediation. As a result, the appeal moved to the adjudication stage, where an adjudicator may conduct an inquiry.

[5] The adjudicator initially assigned to this appeal asked the appellant for written representations on the issue of reasonable search, and then asked the police for representations and affidavit evidence. The appeal was later transferred to me. On my review of the file, I invited the appellant to reply to the police's representations and he did. Having reviewed his representations, I decided that I did not need to hear further from the police.

[6] For the reasons set out in this order, I uphold the reasonableness of the police's search, and dismiss the appeal.

DISCUSSION:

[7] If a requester (as the appellant does here) claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act*.³ If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision.⁴ I find that to be the case here, for the reasons set out below.

A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are reasonably related to the request.⁵

[8] The *Act* does not require the institution to prove with certainty that further records do not exist. However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;⁶ that is, records that are "reasonably related" to the request.⁷ The institution must provide a written explanation of all steps taken in response to the request regarding information about clarification efforts (if any) at the request stage and details of any searches the institution carried out, including: who conducted the search, the places searched, who was contacted in the course of the search, the types of files were

not refer to this part of the request, and it is outside the scope of the appeal to discuss the police's decision to apply that exemption to the records.

³ Orders P-85, P-221 and PO-1954-I.

⁴ Otherwise, it may order the institution to conduct another search for records.

⁵ Orders M-909, PO-2469 and PO-2592.

⁶ Orders P-624 and PO-2559.

⁷ Order PO-2554.

searched, and the results of the search.⁸

[9] The IPC will order a further search if the institution does not provide enough evidence to show that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.⁹

The police's evidence

[10] The police provided two affidavits setting out details about their search efforts, one from an analyst whose work for the police includes searching for and providing records responsive to requests for information made under the *Act*, and the other from an audio-visual operator in the police's Property and Video Evidence Management Unit. As these affidavits were shared with the appellant, it is not necessary to set out all of the details within them here.

[11] The analyst describes conducting a preliminary query on the Versadex and ICAD systems for responsive records. She also emailed Corporate Communications for information concerning an alleged statement of the officer named in the request. Corporate Communications advised her in writing that that officer did not give a statement, and that a review of the police report and 911 calls regarding the incident did not identify the appellant as involved. The analyst's affidavit says that during mediation, she searched Versadex again for video footage, but no responsive record was identified. She also sent an email to the Property and Video Evidence Management Unit to conduct a search for specific footage of the incident raised as an issue by the appellant. The audio-visual operator (who provided the other affidavit) sent the analyst an email advising that searches yielded negative results. In addition, given the conversation that occurred with the appellant during mediation, the police asked the officer in charge for video footage, by email. He responded that there was no video footage obtained in relation to this incident.

[12] The audio-visual operator's affidavit indicates that he searched for video footage in relation to the fire on a specified date and at a certain park, with the incident number. He states that he conducted a "complete, thorough, and unbiased search" of all relevant police databases, but with negative results.

The appellant's position

[13] The appellant submits that "[m]erely conducting a search to see if a particular video is in a regular police evidence video library is not sufficient."

[14] He submits that there is "no evidence" that the police conducted a reasonable search for the particular record he is seeking. He expresses his views about what the police did or did not do, or should have done, to search for a video of the fire. For example, he notes camera angles in the vicinity of the fire and his views about what "would be basic police work" in that regard.

⁸ If it is possible that responsive records existed but no longer exist, an institution is asked to provide details of when such records were destroyed including information about the institution's record maintenance policies and practices, such as retention schedules.

⁹ Order MO-2185.

However, the only issue in this appeal is whether the police conducted a reasonable search of their record holdings for the video that the appellant believes to exist. It is outside the scope of this appeal (and the legal authority of the IPC) to assess whether the police conducted a search around the time of the incident from other sources – outside of their custody or control – such as from buildings in the vicinity of the fire that occurred.

[15] Furthermore, the appellant states that this is not the first time that he has had to appeal a matter where the police denied a request on the basis of the non-existence of a video record, and that did not turn out to be the case. He provided additional information and a link to a news story describing the matter. I will not elaborate on this or link to the story, so as not to identify the appellant or any affected parties in this public order.

[16] In response to the police's representations and affidavits, the appellant asserts that he has effectively established that video of the area of the fire "does or should exist." He asserts that "absent intentional hiding or destruction or failure to look in reasonable places (as last time, when the video they stored did not exist was supposedly found in off site storage), is or should be in Toronto Police possession." He states that it is "clear" that police had "some sort of evidence of intentional action around the fire" and that a "very prominent camera in the area captured the relevant area of activity."

Analysis/findings

[17] As noted, a reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are reasonably related to the request.¹⁰ I find that the police have provided sufficient evidence that they conducted such a search.

[18] The appellant does not challenge the knowledge and experience level of the analyst and the audio-visual operator, and based on the experience and roles described in the affidavits, I see no basis for doing so either.

[19] When I consider the details contained in the affidavits of the analyst and the audio-visual operator, I am satisfied that they made reasonable efforts to search identify the relevant databases and search them for the video that the appellant believes to exist, and that the results were negative.

[20] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.¹¹ Having considered the appellant's representations, I find that he has not done so here.

[21] In my view, the appellant casts doubt on the locations searched, in large part, on the basis of the past incident that he described in his representations and

¹⁰ Orders M-909, PO-2469 and PO-2592.

¹¹ Order MO-2246.

provided a news story describing it. I acknowledge that the past experience he describes has made him doubtful of the police's position in this appeal, that there is no video record responsive to his request. However, I am not persuaded the police's handling of an unrelated matter several years ago is relevant or determinative of the reasonableness of their search efforts for the video of that the appellant now seeks. Beyond that past experience and passing speculation that the police's off-site storage may be relevant here, I find insufficient basis to conclude that it is. The appellant's representations do not persuade me that the locations described in the police's affidavits were unreasonable places to look for video footage. He seeks video footage and the police searched their Property and Video Evidence Management Unit, which I find reasonable in the circumstances.

[22] In addition, as noted, the appellant's representations address his views about what the police should have done after the fire to search for video footage of what happened. He even included photographs of nearby buildings, and information about angles available on the cameras there to capture the fire. However, those are not the search efforts that I am reviewing (or have the legal authority to review) in this appeal. Rather, I have assessed the reasonableness of the police's search efforts for video footage in the police's record holdings.

[23] I have found, above, that the police engaged experienced employees who searched for video footage in locations that it would be reasonable to expect to find such footage, if police had it. As a result, I uphold the police's search as reasonable in the circumstances, and dismiss the appeal.

ORDER:

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

Original Signed by: _____
Marian Sami
Adjudicator

September 7, 2023 _____