

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4518

Appeal MA21-00388

Toronto Police Services Board

May 9, 2024

Summary: The Toronto Police Services Board received a request under the *Act* for records, including photographs or videos, relating to the marine unit's assistance to another police service's investigation into the disappearance of six teenagers in 1995. The police responded to the request claiming that no records exist. In this appeal, 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] On March 18, 1995, six teenagers were reported missing. Three of them were observed on video surveillance heading towards the Frenchman's Bay Marina in Pickering, Ontario, that night and it is believed that the teenagers boarded a boat that subsequently capsized in Lake Ontario. The teenagers are still considered missing, and the case remains unsolved.¹

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

¹ Durham Regional Police Service's website, crime stoppers bulletin dated December 1, 2021.

All documents, reports and written communications between Toronto Police Marine Unit and DRPS [Durham Regional Police Service] for the period 17-21 March 1995 pursuant to this missing persons case.

Copies of photographs and videos, pursuant to this missing persons case.

[3] Initially, the police took the position that they could not confirm or deny the existence of responsive records, citing section 14(5) of the *Act*.

[4] The appellant appealed the police's decision to the Information Privacy Commissioner of Ontario (IPC) and a mediator was appointed to explore settlement with the parties. Mediation did not resolve the appeal and it was transferred to the adjudication stage of the appeals process where an adjudicator may decide to conduct an inquiry. I decided to commence an inquiry by inviting the police to submit representations.

[5] The police issued a revised decision to the appellant indicating that it no longer took the position that section 14(5) applies. The police now say that they conducted a search for responsive records but no records were located. In response, the appellant questioned whether the police conducted a reasonable search for responsive records. I sought and received representations from both parties on the reasonableness of the police's search.

[6] For the reasons that follow, I find that the police conducted a reasonable search for responsive records and dismiss the appeal.

DISCUSSION:

[7] The sole issue in this appeal is whether the police's search for responsive records was reasonable. If a requester 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*.² If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision. Otherwise, it may order the institution to conduct another search for records.

[8] The appellant's request seeks access to two types of records:

- Any documents, reports or written communication between the police's marine unit and DRPS, and
- Any photographs or videos in the police's custody relating to the missing persons case.

[9] In support of their position that it conducted a reasonable search for responsive

² Orders P-85, P-221 and PO-1954-I.

records, the police say they conducted searches in the following locations:

- the Legacy Data Search (LDS) database which stores reports for incidents prior to 2014, and
- the new Versadex (VDX) database.

[10] The police say that the only records located were an occurrence report and historical missing persons report, which do not respond to the request. However, the police say that the VDX database identified a Toronto police detective in charge of the matter. The police say they contacted the detective who confirmed that the matter was transferred to Durham Regional Police Services (DRPS) in 2019. The detective confirmed that the file was transferred to DRPS at their request and that Toronto police subsequently closed its file.

[11] The police say that they also sent an email to its Information Security section requesting a search for email records between themselves and DRPS for the time-period specified in the request (March 17-21, 1995) but no records were located.

[12] The police say that they spoke with a sergeant in their marine unit who recalled the incident. The sergeant said that in 1995 any request to gain the assistance of another police service would have been handled informally by way of a telephone call. He said that a CPIC message would only be used if there was a formal request for a dive. The police say they reviewed the relevant retention schedule and that any videos or photographs, if taken in 1995, would have not been retained.

[13] The police also say that they contacted DRPS who confirmed that the missing persons case is still open but that there are no emails, faxes or other correspondence which respond to the appellant's request for communication between the police's marine unit and DRPS.

[14] The appellant's representations focus on concerns relating to how the police initially responded to his request. The appellant takes the position that records relating to an open investigation should be retained and regularly reviewed regardless of the length of times referenced in a retention policy. However, the appellant says he has reluctantly concluded that the records he requested no longer exist. He says that the police should apologize to the missing teenagers' families for not retaining records relating to a cold case.

Decision and analysis

[15] As noted above, if I am satisfied that the police's search was reasonable in the circumstances, I will uphold the police's decision. Otherwise, I may order the police to conduct another search for records which would respond to the request. 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.³

[16] 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;⁴ that is, records that are "reasonably related" to the request.⁵

[17] 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.⁶ 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.⁷

[18] I have reviewed the representations of the parties and am satisfied that the police provided a written explanation of the steps it took in response to the request. Their explanation gave details of its searches, including who was contacted in the course of the search and the type of files that were searched. The police's representations also provided an explanation as to why records that may have existed no longer exist in its record holdings. I agree with the appellant's position that police services should retain records relating to an open investigation regardless of the timelines set out in a retention schedule. However, in the circumstances of this appeal the police says it transferred its record holdings to DRPS who is responsible for investigating the missing persons case.

[19] As noted above, the *Act* does not require the police to prove with certainty that further records do not exist. The police must provide enough evidence to show that they have made a reasonable effort to identify and locate responsive records in its record holdings, which I am satisfied that it did. In addition, I am satisfied that the police's search was coordinated and conducted by an experienced individual knowledgeable in the subject matter of the request and uphold the police's search for responsive records.

ORDER:

I uphold the police's search for responsive records and dismiss the appeal.

³ Order MO-2246.

⁴ Orders P-624 and PO-2559.

⁵ Order PO-2554.

⁶ Orders M-909, PO-2469 and PO-2592.

⁷ Order MO-2185.

Original Signed By: _____
Jennifer James
Adjudicator

_____ May 9, 2024