

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4542

Appeal MA21-00096

Halton Regional Police Services Board

July 8, 2024

Summary: The appellant made a request under the *Act* to the Halton Regional Police Services Board (the police) for records revealing inquiries made about him by all police services across Canada on several identified law enforcement databases. The police took the position that they do not have custody or control over the information sought by the appellant. In this order, the adjudicator finds that while the police do not have custody or control over records relating to whether officers or employees of other police services made inquiries about the appellant on the identified databases, they have custody or control over records, if they exist, regarding whether their own officers or employees accessed those databases in relation to the appellant. The adjudicator orders the police to conduct a search for records relating to inquiries made about the appellant on the identified databases by their own officers or employees and to issue a decision on access to the appellant.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M.56, sections 2(1) and 4(1).

Orders considered: Orders MO-1446, MO-1596, MO-1780 and MO-2288-F.

OVERVIEW:

[1] In this appeal the appellant seeks access to information under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from the Halton Regional Police (the police) regarding inquiries made about him on several law enforcement databases.

[2] The appellant's request reads as follows:

I am requesting a report of all police officer inquiries from CPIC [Canadian Police Information Centre],¹ PARAS [Police Automated Record Inquiry System],² etc. from 1968 to 1997 inclusive from all police services across Canada, under my name/D.O.B.

I am requesting a report of all CPIC, PARAS, etc. inquiries from 1997 to present, inclusive, from all police services across Canada, under my name/D.O.B.

On each report, please list the inquiry dates, the name of the police service involved, and the name and badge number of all police officers involved as well as identifying any civilian inquiries.

[3] In response, the police issued a decision letter, stating:

Following careful consideration of your request it has been determined that the type of information you are seeking is in the custody and control of the Royal Canadian Mounted Police (RCMP). Therefore, no records exist. You may wish to contact the RCMP for further information....

[4] The appellant appealed the police's decision to the Information and Privacy Commissioner of Ontario (the IPC). Accompanying his appeal letter was a copy of his request, the police's decision letter and a letter that he had received from the RCMP. The letter from the RCMP provided as follows:

This is in response to your request made under the *Privacy Act*, which was received by this office on March 2, 2015, in which you are seeking a report of all inquiries made by any officer/civilian member of any Canadian or USA police force since 1970 under your identifiers including any inquiries made on CPIC/Paras.

Based on the information provided, a search for records was conducted. Be advised that we can neither confirm nor deny the existence of the information requested. If the information did exist, it would be subject to exemption in its entirety pursuant to Paragraph 22(1)(b) of the *Privacy Act*. A copy of this exemption section has been enclosed for your reference.

The *Privacy Act* has established the right of applicants to access federally maintained records which contain personal information concerning themselves. If you were involved with another police department or service,

¹ CPIC is a centralized computer system managed by the Royal Canadian Mounted Police (RCMP).

² The police explain that PARAS (Police Automated Record Inquiry System) provides access to a Ministry of Transportation (MTO) database and is available as an interface within CPIC.

they may have information that concerns you. The *Privacy Act* does not authorize the RCMP to search files or to disclose information belonging to other police forces.

[5] A mediator was assigned to explore possible resolution of the appeal before the IPC. At mediation, the police agreed to include in the scope of the request any responsive information that may be found in the National Crime Information Centre (NCIC) database.³ However, as with the information sought by the appellant in the other databases, the police took the position that any responsive NCIC records are also outside their custody or control.

[6] Mediation did not resolve the appeal and it was moved to the adjudication stage of the appeals process where an adjudicator may conduct an inquiry under the *Act*. I sought representations from the parties but only received submissions from the police.

[7] In this order, I find that while the police do not have custody or control of records in the specified law enforcement databases regarding other police services, they do have custody or control over records, if they exist, regarding whether their own officers or employees made inquiries in these databases about the appellant. The police are ordered to conduct a search for records containing this information and issue an access decision to the appellant.

DISCUSSION:

[8] In my view, the appellant's request can best be characterized as a request for the police to locate all records that indicate whether a member or employee of police services across Canada, including the RCMP, made inquiries on the specified databases using the appellant's name or date of birth.

[9] Section 4(1) of *MFIPPA* provides, in part, that:

Every person has a right of access to a record or a part of a record that is in the custody or under the control of an institution ...

[10] The courts and the IPC have applied a broad and liberal approach to the custody or control question.⁴ In deciding whether a record is in the custody or control of an institution, a number of factors are considered in context and in light of the purposes of the *Act*.⁵ Through its caselaw, the IPC has developed a list of factors to consider in

³ The police explain that NCIC is the central database used to track crime-related information in the United States of America and is controlled by the Federal Bureau of Investigation (FBI).

⁴ *Ontario Criminal Code Review Board v. Hale*, 1999 CanLII 3805 (ON CA) at paragraphs 33 and 34; *Canada Post Corp. v. Canada (Minister of Public Works)*, 1995 CanLII 3574 (FCA), [1995] 2 FC 110; Order MO-1251.

⁵ *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25; *Ontario Criminal Code Review Board v. Hale*, 1999 CanLII 3805 (ON CA); *City of Ottawa v. Ontario*, 2010 ONSC

determining whether a record is in the custody or control of an institution.⁶ The list is not exhaustive - some of the listed factors may not apply in a specific case, while other unlisted factors may apply.

[11] Section 2(1) of the *Act* defines a "record" to mean any record of information however recorded, whether in printed form, on film, by electronic means or otherwise,⁷ and includes a record capable of being produced from machine readable records unless the process of producing it would unreasonably interfere with the operations of an institution.⁸

[12] The police submit that while they have access to the listed databases, responding to the appellant's request would require the police to conduct multiple "off-line searches" to create many records that would then have to be combined to create reports. The police take the position that they are not obliged to create such records. They assert that the appellant's request should be directed to the institutions that have the custody or control of the databases and records he seeks.

[13] In Order MO-1446, the adjudicator wrote about how a CPIC "off-line search" is conducted:

.... CPIC is a centralized computer system managed by the Royal Canadian Mounted Police (RCMP). Police departments and agencies across Canada enter information into this system which is accessible to other departments and agencies through local computer terminals. An off-line search is a method of processing and searching the computer records on this database. To obtain an off-line search, a police agency submits a request to the RCMP. After the request is approved and a search completed, the RCMP forwards the results to the requesting police department. The search results then become a record in the custody and control of that police department.

[14] The various police agencies do not have direct access to CPIC for the purposes of an offline search.⁹ The procedure involves a designated and approved user in a police agency asking that the RCMP perform a search of CPIC for the information sought. Once fulfilled the results are provided to the approved user. It appears that logs are kept of the enquiries in the specific police agency and the logs can be subject to audit.¹⁰

Access to information in police databases

[15] Several IPC orders have addressed requests for access to information in law

6835 (Div. Ct.), leave to appeal refused (March 30, 2011), Doc. M39605 (C.A.); *Canada Post Corp. v. Canada (Minister of Public Works)*, 1995 CanLII 3574 (FCA), [1995] 2 FC 110; Order MO-1251.

⁶ Orders 120, MO-1251, PO-2306 and PO-2683.

⁷ Section 2(1)(a) and (b) of the *Act* further expand on the definition.

⁸ Section 1 of Regulation 823 under the *Act*.

⁹ See also Order MO-1596.

¹⁰ See the discussion in Order MO-2429.

enforcement databases, including the CPIC and PARAS databases.

[16] Order MO-1596 concerned a request for all information about a requester respecting any North Bay Police Service criminal record check on him using the CPIC database. The police in that appeal conducted a search within the police department for records indicating whether anyone in the North Bay Police had conducted an "off-line search" involving a request to the RCMP's CPIC database concerning the appellant. As the North Bay Police did not have any records of such an off-line search being conducted by anyone in that police service, the police advised that no responsive records existed within their record-holdings. The adjudicator concluded that there was no requirement to ask the RCMP to conduct their own search as to whether anyone within the North Bay Police has initiated an off-line search of the CPIC database concerning the requester. The adjudicator determined that such a request would be tantamount to requiring the North Bay Police to create a record.

[17] In Order MO-1780 the adjudicator accepted that certain information in the PARAS database was provided in confidence. In that appeal, the Toronto Police Service stated that this information was generated through searches of PARAS, an ancillary database available through the CPIC system and that its own access to the system is governed by certain protocols.

[18] In Order MO-2288-F, the IPC addressed a request for access to the logs of anyone in the Toronto Police Services Board who accessed information about the requester held in various databases, including CPIC, during a specified time frame. The adjudicator found that the Toronto Police Services Board had not provided her with sufficient information for her to determine that they conducted a search for records in all their databases that would reveal whether anyone in the Toronto Police Services Board had accessed information about the requester, inputted their information into the CPIC database or had submitted a request to the RCMP for the RCMP to search the CPIC database for information concerning the requester. The adjudicator ordered the Toronto Police Services Board to conduct further searches for responsive records, including a search of all their databases for the records/logs of any officers who accessed information about the requester during the specified time-period.

The police's representations

[19] The police submit that they did not conduct a search for responsive records in the CPIC, PARAS or NCIC databases because it is not appropriate for them to search any databases controlled and operated by external agencies.

[20] The police state that the information stored in, or retrieved from, CPIC is supplied in confidence by the police agency that enters the data for the purpose of assisting in law enforcement and investigations. They state that CPIC's intended use is for public safety and criminal justice matters.

[21] The police also assert that access to the PARAS database is permitted only for law enforcement purposes and that information from PARAS searches is only permitted to be disclosed to individuals who have been authorized to receive it through appropriate procedures authorized by the Ministry of Transportation.

[22] The police add that police services in Canada who have access to NCIC through CPIC are only permitted to access NCIC database information for limited purposes relating to the administration of criminal justice.

[23] The police take the position that the appellant does not seek access to information that already exists in their record holdings but is requesting that the police access databases controlled by other institutions (i.e., the RCMP, the FBI, and MTO) through an "offline search" to create the records.

[24] The police submit that the appellant's request for reports of when police services conducted a search of his name and date of birth would be an unauthorized use of these databases. They submit that a violation of the CPIC, PARAS, and NCIC use limitations could jeopardize their ability to use these databases in the future for their intended purposes and hinder future law enforcement investigations.

Analysis and finding

[25] The appellant's request in this appeal is for records that indicate whether a member or employee of any police service across Canada, including the RCMP, made inquiries on the specified databases using the appellant's name or date of birth.

[26] The IPC orders cited above indicate that police agencies can access records, such as logs, that would provide information whether any specific employee or officer of the specific police agency accessed a database. The police have failed to provide sufficient evidence to satisfy me that they cannot conduct such a search to reveal whether a member or employee of the police (rather than all police agencies across Canada) made inquiries on the specified databases using the appellant's name or date of birth. As a result, the police have failed to satisfy me that they do not have custody or control of a responsive record pertaining to searches conducted by their own officers or employees, if such a responsive record exists.

[27] That said, I have not been provided sufficient evidence to satisfy me that the police can access their databases in such a way that it would reveal that an employee or officer in all other police agencies across Canada, including the RCMP, requested information on the appellant. But even if sufficient evidence was provided, I accept the police's uncontradicted position that the process would contravene the restrictions they must adhere to regarding the use of the databases.

[28] Accordingly, while the police may have custody or control of information, such as a log, that could indicate whether their own officers and employees accessed the identified

databases using the appellant's name or date of birth, I find that they do not have custody or control of information in the specified databases which would reveal whether an employee or officer in other police agencies across Canada, including the RCMP, requested information on the appellant.

[29] Given the police's original position on the custody or control of responsive records, I am not satisfied that the police conducted a reasonable search for records, such as logs, if they exist, showing any police officer or employee within their own police force who accessed information about the appellant (under his name and date of birth) during the time-period set out in the request.

[30] I therefore order the police to conduct a search for records showing any police officer or employee within their own police force who accessed information about the appellant (under his name and date of birth) on the identified databases during the time-period set out in the request.

ORDER:

- 1 I order the police to conduct a search for records such as logs, showing any police officer or employee who accessed information about the appellant (under his name and date of birth) on the identified databases during the time-period set out in the request. Should the police locate responsive records, or find no responsive records, they should provide the appellant with a decision letter in accordance with the provisions of sections 19, 21 and 22 of the *Act*, treating the date of this order as the date of the request for administrative purposes, without recourse to a time extension under section 20 of the *Act*.
- 2 I order the police to provide me with a copy of any decision letter it sends to the appellant in accordance with provision 1 of this order.

Original signed by: _____
Steven Faughnan
Adjudicator

July 8, 2024 _____