

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4595

Appeal MA21-00015

Cornwall Community Police Services Board

November 19, 2024

Summary: An individual made a request to the Cornwall Police under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records from a specified police file. The police file related to a complaint that the individual made relating to events involving her minor daughter. The police provided access to the records requested, but withheld some portions of police officers' notes, stating that these portions did not contain information responsive to the request.

In this order, the adjudicator upholds the police's decision to withhold the information marked as non-responsive in the records and finds that the police conducted a reasonable search for responsive records.

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 Cornwall Community Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to a specified file number. The request was made by an individual on behalf of her minor daughter. The underlying file related to the removal of her daughter from the appellant's custody, and the subsequent chain of events.

[2] The police issued a decision in which it provided partial access to the records. The

police withheld some parts of the records under section 38(b) (personal privacy) of the Act and withheld other information on the basis that it was not responsive to the request. The appellant appealed the decision to the Information and Privacy Commissioner of Ontario (the IPC).

[3] During mediation, the police issued a revised access decision, providing access to information they had previously withheld pursuant to section 38(b) of the Act. However, they continued to withhold some information on the basis that it was not responsive to the request.

[4] As mediation did not resolve this appeal, it was transferred to the adjudication stage where an adjudicator may conduct an inquiry.

[5] I decided to conduct an inquiry and sought and received representations from the police and the appellant.¹

[6] In the discussion that follows, I find that the withheld information in the records at issue is not responsive to the request and I uphold the police's decision not to disclose it. I also find the police's search for responsive records to be reasonable.

RECORDS:

[7] The information remaining at issue in this appeal is the withheld portions of two sets of police officer's notes. The first set of police notes is five pages, with withheld information on pages 1, 3, and 5. The second set of police notes is seven pages, with information withheld on each page, except for the title page which was disclosed in its entirety.

ISSUES:

- A. Is the information identified by the police as not responsive to the request within the scope of the request?
- B. Did the police conduct a reasonable search for responsive records?

DISCUSSION:

Issue A: Is the information identified by the police as not responsive to the request within the scope of the request?

[8] The appellant's position is that she should be provided with the information

¹ The representations provided by the police were shared with the appellant in accordance with the IPC's *Code of Procedure*.

withheld by the police. The appellant specifically asks to be provided with all redacted portions of the records with the same number as her daughter's case, stating that she believes these to be related to her daughter's case. The appellant states that she believes that the police have not disclosed all records pertinent to the complaint involving her daughter.

[9] In her representations to the IPC, the appellant provided information on the situation that led to her complaint to the police. It is not necessary for me to set this information out in detail, and I will not do so out of concerns that to do so could potentially result in identifying the appellant or her family. Briefly, the appellant describes a situation in which her daughter was removed from their family's custody while abroad, and the incidents that arose following that removal. The appellant's description of events includes multiple countries and sets out the appellant's contact with various authorities across those countries, including child protection agencies, police agencies, and consular authorities.

[10] In their efforts to obtain custody of their daughter again, the appellant states that she contacted many Canadian agencies, including the police, but asserts that those authorities refused to get involved. The appellant states that her daughter was eventually returned to Canada, and later, to her family's custody.

[11] The appellant states that they contacted the police during these events and after, and further states that the police refused to open a criminal case regarding the matter. She alleges that the police files contain false information and inconsistencies, and she raises questions about why information regarding these events is missing from the notes. The appellant alleges that her family's telephone lines were tapped and their emails were hacked. The appellant also states that police officers harassed her family.

[12] The police state that the appellant was provided with all records that reasonably relate to her request. The police further state that redacted portions of the records relate to police incidents and actions that have no association with the requester, her family, or the relevant police file.

[13] To be considered responsive to the request, records must "reasonably relate" to the request.² Institutions should interpret requests liberally, in order to best serve the purpose and spirit of the Act. Generally, if there is ambiguity in the request, this should be resolved in the requester's favour.³

[14] The appellant's position is that she should be provided with all redacted portions of the records with the same number as her daughter's case. From my review of the records, the police have already provided her with access to all information in the notes associated with the relevant file number.

² Orders P-880 and PO-2661.

³ Orders P-134 and P-880.

[15] The records are sets of officer's notes from two different police officers. Both sets are organized chronologically, in the order that the officer dealt with events on each day. The portions of both sets of notes that the police have deemed to be non-responsive address matters other than the complaint that the appellant made to the police. The withheld portions of the records are designated by different incident numbers than the file number assigned to the appellant's complaint and describe wholly unrelated parties and events. Based on this, I agree with the police that the information identified as non-responsive does not reasonably relate to the appellant's request.

[16] Therefore, I uphold the police's decision to withhold the information marked as non-responsive in the records.

Issue B: Did the police conduct a reasonable search for responsive records?

[17] If a requester claims that additional records exist beyond those found by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17 of the Act.⁴ If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the police's decision. Otherwise, I may order the police to conduct another search for records.

[18] The Act does not require the police to prove with certainty that further records do not exist. However, the police must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records.⁵

[19] 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

[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.⁷

[21] The police state that they conducted several searches of their electronic records management system and hardcopy filing systems. The police state that, upon receiving the appellant's request, they searched both these systems for responsive records. The records the police located were addressed in the decision letter. The police further state that they conducted several more searches of both the electronic and hardcopy systems during the mediation stage of the appeal but did not locate any additional responsive records.

[22] The police state that they asked both officers whose notes were among the

⁴ Orders P-85, P-221 and PO-1954-I.

⁵ Orders P-624 and PO-2559.

⁶ Orders M-909, PO-2469 and PO-2592.

⁷ Order MO-2246.

responsive records to verify that they had no other records in relation to the appellant's file. Both officers advised that there are no additional responsive records.

[23] The appellant's representations do not directly address the adequacy of the police's search for records. As noted above, they express a belief that the police files contain false statements and a view that the police acted inappropriately in responding to the appellant's complaint. The representations also ask questions regarding the information within the records that the police provided to the appellant. Among other questions, the appellant asked why the police records do not include the following:

- what the appellant describes as the accurate information her family provided to various police officers;
- the locations the appellant's family provided to the police relating to the relevant events (the appellant states that the records instead list nonexistent towns); and
- particular allegations made by the appellant against identified individuals outside of Canada.

[24] In addition, in her representations the appellant asked for the names of police employees who had performed identified functions during her family's contact with the police.

[25] The appellant also asked questions regarding records held by the children's aid society and courthouse.

[26] The police state that they searched for responsive records both when they received the appellant's request, and then later, during the mediation stage of this appeal. The police state that they conducted multiple searches of both their electronic record holdings and their paper records. The police also contacted the officers involved in the investigation and received confirmation that these officers were not aware of any additional records.

[27] As previously noted, 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.⁸ I am satisfied that the police have provided sufficient evidence to establish this.

[28] I have reviewed the appellant's representations, and I am not persuaded that she has established a reasonable basis for concluding that further responsive records exist. A requester will rarely be able to indicate precisely which records the institution has not identified, but still must provide a reasonable basis for concluding such records exist.⁹ The appellant, in her representations, asks why the police included some information in

⁸ Orders M-909, PO-2469 and PO-2592.

⁹ Order MO-2246.

its records and omitted other information that she considers to be more accurate. Questions of this nature are directed at the adequacy of the police's investigation, rather than the adequacy of their search for responsive records.

[29] It is clear that the appellant is dissatisfied with how the police addressed her complaint. At best, she considers the investigation to be deficient, and at worst, she alleges misconduct directed at her and her family by the police. However, the issue before me is limited to whether the police conducted a reasonable search for records relating to her request. The appellant has not established a reasonable basis for why additional records relating to the police's investigation of the appellant's complaint should exist.

[30] For the reasons stated above, I find that the police conducted a reasonable search for responsive records.

ORDER:

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

Original Signed by: _____
Jennifer Olijnyk
Adjudicator

_____ November 19, 2024