Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4603

Appeals MA23-00133 and MA23-00156

Niagara Regional Police Services Board

December 11, 2024

Summary: This order resolves two related appeals. Under the *Municipal Freedom of Information and Protection of Privacy Act*, an individual requested access to records relating to his name being searched through the databases of the Niagara Police Services Board (the police), including the reasons that his name was being searched and underlying associated records. In response to one request, the appellant received access to some information; in response to the other, he was told that there were no responsive records. The requester challenged the reasonableness of the police's searches because he believed other records should exist. In this order, the adjudicator upholds the reasonableness of the police's search efforts and dismisses the appeals.

Statute Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 17.

OVERVIEW:

[1] This order resolves two related appeals. The Niagara Police Services Board (the police) received two requests under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a list containing certain information relating to when the requester's name had been searched in various computer systems of the police during certain timeframes, and the reasons that his name was searched. The requests were also for any records associated with each time his name had been searched in the police's computer system.

[2] In response to one request (for Appeal MA23-00133), the police issued an access

decision granting full access to the responsive records (lists containing the details sought about when the requester's name was searched in a police system). In response to the other appeal (for Appeal MA23-00156), the police stated that there were no responsive records. In response to both requests, the police explained that when police officers or staff conduct a query, they are not required to record the purpose of doing so.

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

[4] I conducted a written inquiry into both appeals under the *Act*, seeking and receiving written representations from the police and the appellant on the issue of reasonable search.[1] When I invited the appellant to provide representations, I shared the non-confidential parts of the police's representations with him and withheld confidential parts of their representations under *Practice Direction 7* of the IPC's *Code of Procedure*. In this order, I refer to relevant parts of the parties' representations, though I have considered them all.

[5] For the reasons that follow, I uphold the police's search as reasonable and dismiss the appeals.

DISCUSSION:

[6] The only issue in each of the appeals is whether the police conducted a reasonable search.

[7] 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] 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]

[9] The *Act* does not require the institution to prove with certainty that further records do not exist.[4] However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;[5] that is, records that

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[1] Appeal MA23-00133 was initiated by another adjudicator, but later the appeal was transferred to me.
[2] Orders P-85, P-221 and PO-1954-I.
[3] Order MO-2246.
[4] *Youbi-Misaac* v. *Information and Privacy Commissioner of Ontario*, 2024 ONSC 5049 at para 9, on the analogous requirement in the provincial equivalent of the *Act*.
[5] Orders P-624 and PO-2559.

are "reasonably related" to the request.[6]

[10] 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.[7] The IPC may 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.[8]

[11] The police provided a written explanation of the steps they took to respond to each request. Limited portions of these representations were not shared with the appellant for confidentiality concerns, under the IPC's *Code of Procedure*. Since the police's representations were largely shared with the appellant, there is no need to set them out in detail here.

[12] It is useful to begin by summarizing the requests in the two appeals, for context. The request in MA23-00133 is similar to the request in MA23-00156, but in MA23-00156, the appellant named specific individuals that searched his name through police databases. The appellant's summary of his request in MA23-00133 is:

1. list of times (dates) my name has been run at all by anyone within [the police] from [date] to [date]

2. list of the name and position of the person who accessed my name in the systems and the stated reason for doing so in each case.

3. to receive copies of any reports, notations, and/or documentation by each person who accessed my information.

[13] The police explain that no clarification was required for either request and that they interpreted each request literally. I find that this was reasonable, given the clear wording of the requests.

[14] The police explained that the individual who conducted the searches in response to each request has over twenty years of experience with the police, and almost ten years in the freedom of information field. I find that for the purpose of responding to the requests, this individual is an experienced employee knowledgeable in the subject matter of each request.

[15] In addition, the police provided other details that are helpful to consider.

[16] In response to the request in Appeal MA23-00133, the police explain that released responsive records from the mobile data terminal (MDT) and the records management

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[6] Order PO-2554.
[7] Orders M-909, PO-2469 and PO-2592.
[8] Order MO-2185.

system (RMS); queries in CPIC are done through the RMS and are included in the records released. The police also explain that they searched audit logs in the legacy records management system, which showed that no records existed (that is, no one had accessed or queried the appellant's information).

[17] The police also note that during IPC mediation of Appeal MA23-00156, they provided several affidavits of police officers indicating that they did not generate notes in association with the queries. One officer did not provide an affidavit for reasons that were shared with me in confidence, but did confirm that he did not produce notes when he queried the appellant.

[18] When I consider the wording of the requests, I am satisfied that searching the MDT and RMS were reasonable steps. Likewise, I am satisfied that it was reasonable to search audit logs in the legacy records management system and to seek responses from the officers named in one of the requests, as described above.

[19] Being satisfied that the searches carried out were comprehensive, I next considered any evidence provided by the appellant about why further searches would yield more records.

[20] In both appeals, the appellant argues that the police did not locate (and consequently disclose to him) records that he requested – records about the reasons his name was searched in the various databases and any records associated with these queries. He argues that police officers or staff who searched his name would have had some kind of underlying record prompting them to do so and would have recorded their reason for querying him. As such, he argues that it is reasonable to believe that one or more records exist to reflect that prompting.

[21] However, I do not accept the assumption made by the appellant that every time the appellant's name was searched, there is a corresponding record associated with that query.

[22] Furthermore, for both appeals, the police provided what I find to be reasonable explanations for why reasons for queries and underlying records were not located:

- Versadex (a law enforcement records management system) does not have a field to put a notation for the reason that information is being accessed; while the Canadian Police Information Centre (or CPIC, which is a system that links law enforcement across Canada), does have such a field, completing it is not a precondition for running a query;

- police policy is that police officers and special constables must maintain notes in police-issued duty books for: all calls for service, investigations where they are required to submit reports that are assigned incident numbers, and anything that may be required for reference in court; and

- police civilian members are not required to maintain notes in police- issued duty books.

[23] While one officer did not provide an affidavit in Appeal MA23-00156 (a point that the appellant raised as undermining the police's search), when I consider the evidence overall, I am satisfied that on balance, the police have adequately explained the reason why there are no records that indicate the reason for the various queries of the appellant's name.

[24] Therefore, based on the evidence before me, I am satisfied that the police have sufficiently addressed the appellant's arguments about why additional records exist. I am satisfied that this means that ordering a further search in response to either request would not yield responsive records.

[25] While I acknowledge the appellant's upset at learning that his name was being searched in the police computer systems so many times, these concerns are separate from the questions of whether police members conducting queries recorded the reasons for doing so.

[26] As a result, I find that the police conducted a reasonable search in response to each request. A sufficiently senior employee carried out a comprehensive and logical search and while the appellant has made specific arguments about why additional records ought to exist, I am not persuaded that further searches will yield additional records.

ORDER:

I dismiss the appeals.

Original Signed by:	December 11, 2024
Marian Sami Adjudicator	