

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4619

Appeal MA22-00652

Toronto Police Services Board

January 27, 2025

Summary: An individual asked the police for specified police records. The police granted access in full to the records. The individual believes that an audio statement should exist. The police said that no more records exist.

In this order, the adjudicator determines that the police conducted a reasonable search for records 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] This order determines whether the Toronto Police Services Board (the police) conducted a reasonable search for specified police records in response to a request made under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] The police granted full access to the responsive records.

[3] The appellant appealed the police's decision to the Information and Privacy Commissioner of Ontario (IPC) because he believes that further records responsive to his request should exist. A mediator was appointed to explore resolution.

[4] During mediation, the appellant advised he seeks access to his audio statement

submitted as part of a specified inquiry, and he believes that this record should exist. The police advised that their search did not locate this record and that no other records responsive to the appellant's request exist.

[5] As mediation did not resolve the appeal, it proceeded to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. I commenced an inquiry in which I sought and received representations from the parties.

[6] In this order, I find that the police have established that they conducted a reasonable search for records responsive to the appellant's request, and I uphold their search.

DISCUSSION:

[7] The sole issue in this appeal is whether the police conducted a reasonable search for responsive records. Where a requester claims additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.¹ If I am satisfied the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[8] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show it has made a reasonable effort to identify and locate responsive records.² 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 (responsive) to the request.³

[9] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding such records exist.⁴

Representations, and analysis and findings

[10] Based on the parties' representations, I am satisfied that the police conducted a reasonable search for responsive records.

[11] The appellant's representations reference many individuals and events that are not related to the audio statement he is seeking. I have reviewed all the appellant's representations, but I will only refer to those most relevant to the issue of reasonable

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Orders M-909, PO-2469 and PO-2592.

⁴ Order MO-2246.

search, the only issue in this appeal.

[12] The appellant takes the position that his audio statement should exist. The appellant's representations do not specifically address the police's search for responsive records, but he alleges that the police are lying and negligent. The appellant states that "the board" heard these "audio tapes" in closed sessions and asked questions during the "deputation."

[13] The police submit that the appellant has already been provided access to 406 pages of records and two audio files that were located in response to his request. The police submit that the record at issue in this appeal is an audio recording the appellant alleges he provided during the specified inquiry. The police state that the inquiry referenced by the appellant was an independent review commissioned by the police board (the board) to evaluate how the police conducted missing person investigations.

[14] The police submit that during the processing of the appellant's request, the board was consulted and asked to provide any responsive records related to the inquiry. The board advised the police that it had no records responsive to the appellant's request and that only the final report of the findings of the inquiry was provided to the board. The police submit that information regarding the inquiry and the report can be found on their website.

[15] The police submit that the appellant advised that he sent the audio statement as an email attachment to the general email of the Office of the Chief. In response, the police submit that an email search was conducted by their Information Privacy & Security unit – Security Section, with the timeline, keywords, and email addresses provided by the appellant. The police submit that various emails were located, later forming the records responsive to the appellant's request, however, no email containing the appellant's audio statement was located as a result of this search. The police submit that they searched all relevant databases and did not locate any additional records responsive to the appellant's request.

[16] The police have described the staff involved in the search, where they searched, and the results of the search. I am satisfied that the police carried out a search involving experienced employees knowledgeable in the subject matter of the request and that those employees expended a reasonable effort to locate records which are reasonably related to the request.⁵ The police have already disclosed 406 pages of responsive records and two audio files to the appellant, and directed him to the considerable amount of information that is publicly available about the inquiry, including the final report, accessible online on the police's website. I am satisfied that the police have provided sufficient evidence to establish the reasonableness of their efforts.

[17] As noted above, although a requester will rarely be in a position to indicate

⁵ Orders M-909, PO-2469 and PO-2592.

precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding such records exist.⁶ The appellant's representations do not directly address the police's search efforts, but he states that he believes the police are lying and his audio statement should exist. However, I find that the appellant has not established a reasonable basis for concluding that this specific audio statement responsive to his request may exist.

[18] The *Act* does not require the police to prove with absolute certainty that further records do not exist. However, the police must provide sufficient evidence to show they have made a reasonable effort to identify and locate responsive records, and I find that they have done so, specifically since the police have outlined their reasonable efforts in trying to locate the audio statement in their email inboxes after the appellant clarified that he sent it as an email attachment.⁷

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

ORDER:

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

Original Signed by: _____

Anna Truong
Adjudicator

January 27, 2025

⁶ Order MO-2246.

⁷ Orders P-624 and PO-2559.