

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4670

Appeal MA23-00141

Toronto Police Services Board

June 20, 2025

Summary: This appeal considers whether the Toronto Police Services Board conducted a reasonable search for records in response to the appellant's request, made under the *Municipal Freedom of Information and Protection of Privacy Act*, for records related to a specified report.

In this order, the adjudicator finds that the police conducted a reasonable search for records responsive to the request and dismisses the appeal.

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

Order Considered: Order MO-2957.

OVERVIEW:

[1] The Toronto Police Services Board (the police) received a request, under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), for access to the following information relating to a specified report including:

... All notes from intake officers, investigators, and anyone who had carriage or involvement in [the] case, including those officers or legal personnel who reviewed the occurrences and who made the decision that no criminal charges will be laid.

[2] As the requester did not receive an access decision letter within the 30-day timeline, she filed a deemed refusal appeal with the Information and Privacy Commissioner of Ontario (IPC) and Appeal MA22-00335 was opened. Once the police issued an access decision, Appeal MA22-00335 was resolved.

[3] In their access decision, the police granted full access to the responsive records.

[4] Dissatisfied with the disclosed records, the requester (now the appellant) appealed the police's decision to the IPC. A mediator was assigned to explore the possibility of resolution.

[5] During mediation, the appellant advised that she was of the view that additional responsive records exist.

[6] Subsequently, the police conducted additional searches, but these searches did not locate any more responsive records.

[7] As a mediated resolution was not reached, the appeal was transferred 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 about the issues in the appeal.¹

[8] For the reasons that follow, I find that the police conducted a reasonable search for records responsive to the appellant's request, in compliance with its obligations under section 17 of the *Act*.

DISCUSSION:

[9] The sole issue to be determined in this appeal is whether the police conducted a reasonable search for records responsive to the appellant's request.

[10] 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.

[11] 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

¹ The parties' representations were shared in accordance with the confidentiality criteria in the IPC's *Practice Direction Number 7*.

² Orders P-85, P-221 and PO-1954-I.

³ MO-2246.

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

[13] 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 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.⁸

Representations

[14] The police submit that they conducted a reasonable search for records related to the request as required by section 17 of the *Act*.

[15] The police submitted an affidavit sworn by a named employee. The named employee attests that, as a result of her experience with the police since 1999, she has personal knowledge of the facts set out in the affidavit.

[16] The affiant attests that she located the specified report, then she emailed the two police officers who were noted in the report requesting direction on who may have been involved in making the decision to close the case. She attests that she heard back from one of the police officers who advised her that they spoke to initial complainants and subsequently added additional complainants to the initial report. Subsequently, that police officer wrote that they were told by Corporate Communications to stop taking any more reports in this matter.

[17] The affiant attests that she then emailed a Detective Sergeant who advised her to check with Corporate Communications, Legal Services and the Command Staff. Consequently, she attests that she received an email from the Manager of Media Relations in Corporate Communications who advised that following discussions between the Corporate Communications Chief of Staff and the Director of Legal Services, it was decided that these reports did not address a criminal matter, and no criminal charges would be laid. This email was sent to a Superintendent, two S/Superintendent, Corporate Communications Chief of Staff, and the Director of Legal Services (the named parties).

[18] The affiant attests that she then sent an email to Information Security to search using the named parties in the email as subjects with key words being "TDSB complainants re vaccine mandate". She attests that she sent emails to the five named

⁴ *Youbi-Misaac v. Information and Privacy Commissioner of Ontario*, 2024 ONSC 5049 at para 9.

⁵ Orders P-624 and PO-2559.

⁶ Order PO-2554.

⁷ Orders M-909, PO-2469 and PO-2592.

⁸ Order MO-2185.

parties for any input/records they could provide that would assist in determining how the decision was made.

[19] The affiant attests that she sent an email to the Privacy Coordinator requesting that he follow up with the named parties to provide input on the potential release of the emailed correspondence between them. She attests that the Privacy Coordinator advised her that the Director of Legal Services has no responsive records.

[20] Subsequently, the affiant received responses from Corporate Communications and Legal Services, along with one of the S/Superintendents, who had no issues with the disclosure of the emails located.

[21] At this point, the affiant had received responses from 3 of the 5 named parties. The remaining two named parties she did not hear back from were the Superintendent and the second of the two S/Superintendents. The affiant attests that both the Superintendent and the S/Superintendent are now retired.

[22] The affiant attests that in December 2023, Legal Counsel advised that another search was conducted and no records responsive to the request were located. She attests that Legal Counsel confirmed that he only had an email chain which was previously disclosed to the appellant. In that email chain, media disclosures versus the underlying decision on whether the occurrences were criminal matters were discussed.

[23] In her representations, the appellant submits that the police have not conducted a reasonable search for responsive records. She raises the following questions in response to the police's affidavit:

- Who made the decision - Corporate Communications or Legal Services?
- Why was there a two-month delay by the named detective sergeant to respond to the affiant?
- The appellant notes that according to paragraph 6 of the affidavit, the affiant used the named parties as subjects with the key words being "TDSB complaints re vaccine mandate". Was this the only search that was done? As these were not TDSB complaints but rather claims of extortion would different key words have yielded different results?
- Did any police officers reviewed the 18 pieces of supporting documentation she attached with her request? Are these supporting documents still in the police's possession?
- The appellant notes that two named police officers called and left messages for her and other complainants that "this is not a criminal matter and we would ask that people do not report this to [the] police". Were these named police officers

contacted about who directed them to communicate this message? Why was there not an investigation done into these allegations?

[24] In their reply representations, the police answered the appellant's questions (in the same chronological order they were asked) in the following way:

- As noted in his email of November 21, 2021, the Superintendent was advised that both Corporate Communications and Legal Services have taken the position that the reports were not police matters.
- The police cannot speak to delays with individual officers responses but note that police officers' schedules fluctuate with days off/annual leave, heavy caseloads and limited resources.
- The wording of the search criteria used was based upon the title of the email to stakeholders, originally sent by the Manager of Media Relations in Corporate Communications. An additional search was requested to Information Security using wording such as "extortion" "TDSB and TCDSB" "21-2065811" for a specified period.
- The police confirmed that the 18 pieces of documentation provided by the appellant with her request were not located. As the decision that these allegations did not constitute a criminal matter, but rather civil, was made in 2020, were the appellant to resubmit this documentation it may not change the outcome.
- The role of the named police officers who contacted the appellant and other complainants was to assist in contacting the large number of complainants to update them that the matter was not deemed to be criminal in nature.

[25] In her sur-reply representations, the appellant stated that the police did not address two conflicting statements made by the Superintendent and Corporate Communications. The first statement is when the Superintendent advised that both Corporate Communications and Legal Services decided that the reports did not address a criminal matter while the second statement is an email from Corporate Communications reiterating that their office has zero decision making on deciding whether the reports addressed a criminal matter.

Analysis and findings

[26] For the following reasons, I find that the police conducted a reasonable search for records responsive to the appellant's request.

[27] In their affidavit, the police identified the individuals involved in the searches, explained where they searched, and described the results of their search. In my view, the police's search was logical and comprehensive. I accept it was conducted by experienced employees knowledgeable in the subject matter of the requested records

who expended reasonable efforts to locate records which are reasonably related to the request. I am satisfied that the police have provided sufficient evidence to establish that their search for responsive records was reasonable and in compliance with their obligations under section 17 of the *Act*.

[28] Moreover, I am not persuaded that the appellant has established a reasonable basis for concluding that further responsive records exist. The appellant submits that additional records should exist. However, she has not provided any explanation as to why additional records should exist, despite the fact that the police did not locate those additional records in their searches.

[29] As noted above, 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.⁹

[30] In this case, I find the appellant has not provided a reasonable basis for concluding that records exist indicating who was involved in making the decision that the occurrences were not criminal matters.

[31] As noted above, the *Act* does not require the institution to prove with certainty that further records do not exist, however, it must provide enough evidence to show that it has made a reasonable effort to identify and locate records that are "reasonably related" to the request. In this case, I have found that the police have done so.

[32] I acknowledge that the appellant is dissatisfied with the police's response to the questions she raised in her representations. In Order MO-2957, former Commissioner Brian Beamish considered an institution's obligation to answer questions or provide explanations about information responsive to an access request. He reviewed Orders MO-2285 and MO-2096, and found the following:

What can be distilled from the above quoted authorities is that a right to "information" does not embrace the right to require the institution to provide an answer to a specific question. However, an institution is obligated to consider what records in its possession might, in whole or in part, contain information which would answer the questions asked in a request.

[33] I agree with and adopt the above reasoning for the purpose of this appeal. Although I understand that the appellant is not satisfied with the police's answers to her questions. I find that the appellant does not have a right to require the police to provide an answer to why the police concluded that the occurrences were not criminal matters or who reached that decision.

[34] For the reasons stated above, I find that the police have complied with their

⁹ Order MO-2246

obligations under section 17 and have conducted a reasonable search for records responsive to the appellant's request. I dismiss the appeal.

ORDER:

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

Original Signed by: _____
Lan An
Adjudicator

June 20, 2025