Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4687

Appeal MA23-00587

Toronto Police Services Board

August 22, 2025

Summary: An individual made a request under the *Municipal Freedom of Information and Protection of Privacy Act* for records relating to a named individual's street gang designation. The police issued a decision granting partial access to a record. The individual appealed the police's decision on the basis of her belief that additional records exist.

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, as amended, section 17.

OVERVIEW:

[1] The Toronto Police Services Board (the police) received a request pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following:

> Records that indicate [named street gang] affiliation.
>
> Any records or communication used to provide Correctional Services of Canada with [substantiation] for street gang affiliation ([named street gang]) to support designation in 2005 while incarcerated at [named correctional facility]. [Named correctional officer] advised that information was provided by the TPS.

[2] The requester included an authorization form from a named individual, in which the named individual consented to the disclosure of their information to the requester.

[3] The police granted partial access to a one-page internal correspondence, citing section 38(b) (personal privacy) to deny access to some information. The police indicated that their decision was made after they obtained additional clarification about the request from the requester.

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

[5] During mediation, the appellant confirmed that she is seeking access to records relating to a telephone call that took place in 2005 between the police and the named correctional officer, which resulted in the named individual being given a street gang designation. The appellant confirmed that she is not seeking further access to the internal correspondence, which she received in part.

[6] Based on discussions that took place during mediation, the police subsequently issued a supplementary decision stating the following:

> Pursuant to mediation, you clarified that you would like access to a record of a telephone call between a Toronto Police Service (TPS) member and a staff member of Correctional Services Canada made in 2005.
>
> Please note, telephone calls made directly to or from a TPS unit are not recorded. Access to this requested record cannot be provided.

[7] The appellant indicated that she believes there should be additional records from 2005, which served as the basis for the telephone call between the police and the correctional officer and the resulting street gang designation.

[8] The police subsequently conducted an additional search for responsive records and confirmed that they could not locate any records from 2005 in their database.

[9] As mediation did not resolve the appeal, the file was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry under the *Act*. I decided to conduct an inquiry and sought and received representations from the parties.

[10] In this order, I uphold the police's search for responsive records and dismiss the appeal.

DISCUSSION:

[11] 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.

[12] 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 of the *Act*.[1] 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.

[13] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they must still provide a reasonable basis for concluding that such records exist.[2] The *Act* does not require the institution to prove with certainty that further records do not exist.[3] However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;[4] that is, records that are "reasonably related" to the request.[5]

[14] 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] 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.[7]

Representations

The police's representations

[15] The police submit that they conducted a reasonable search for responsive records. In support of their position, the police submit an affidavit from an examiner in the police's Access & Privacy section, in which the examiner provides information about the search process and the results of her search.

[16] The examiner submits that upon receiving the request, she queried the named individual in both the current general occurrence database, Versadex, as well as the Global Search database, which contains occurrences from before November 2013. The examiner submits that she reviewed the results and determined that the most recent record was from 2004.

[17] The examiner submits that she then contacted the appellant for clarification and received additional information about the records being sought and the reason for the request. Specifically, the appellant indicated that in 2005, Correctional Services Canada (CSC) received a telephone call from a Toronto police officer, who informed CSC that the

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[1] Orders P-85, P-221 and PO-1954-I.
[2] Order MO-2246.
[3] *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*.
[4] Orders P-624 and PO-2559.
[5] Order PO-2554.
[6] Orders M-909, PO-2469 and PO-2592.
[7] Order MO-2185.

named individual was gang affiliated. The appellant claimed that as a result of this telephone call, a Security Intelligence Officer (SIO) at CSC placed a street gang designation on the named individual. The appellant stated that CSC would remove the designation from the named individual's CSC records if the police provided a letter stating that it could not locate any records supporting the named individual's gang affiliation. The police submit that the appellant did not provide any evidence in support of her interaction with CSC.

[18] Following her telephone call with the appellant and in an attempt to locate records relating to the 2005 telephone call between the Toronto police officer and the SIO, the examiner submits that she contacted a named Detective Sergeant (Detective Sergeant 1) from the Organized Crime Enforcement Unit and asked him to conduct a search for responsive records. The examiner states that she received a response from another named Detective Sergeant (Detective Sergeant 2) from the same unit, who indicated that no responsive records were found.

[19] The examiner submits that she subsequently received a one-page internal correspondence, authored by a Staff Sergeant and dated several days before it was sent to her. The internal correspondence set out the Staff Sergeant's knowledge of the named individual and his affiliation with a named street gang. The examiner issued a decision and disclosed the internal correspondence to the appellant in part.

[20] The examiner submits that during mediation, she conducted another search for records from 2005. The examiner submits that she did not locate any records responsive to the request and reiterates that the most recent entry that was found was from 2004, coinciding with the named individual's sentencing date.

[21] The police submit that they advised the appellant that a recording of the telephone call between the officer and SIO does not exist, as these types of calls are not recorded. The police also submit that without knowing the identity of the officer who is alleged to have spoken with the SIO, they are unable to contact the officer or search for information or records associated with this officer (e.g. notes of the conversation in the officer's notebook, if it exists).

[22] Finally, the police submit that during mediation, the appellant confirmed that she did not want the police to contact the Staff Sergeant who authored the internal correspondence. Instead, the appellant asked the police to produce a letter stating that there is no record of the 2005 telephone call between the Toronto police officer and the SIO. Accordingly, the police issued a supplementary decision letter stating that "telephone calls made directly to or from a [Toronto Police Service] unit are not recorded. Access to this requested record cannot be provided".

[23] The police submit that they have conducted multiple searches for responsive records and that ultimately, there is insufficient detail to enable additional searches.

The appellant's representations

[24] The appellant states that in 2005, several years after the named individual's incarceration, he was given a Security Threat Group (STG) designation by CSC. The appellant submits that CSC records indicate that the designation was placed because of a telephone call from a Toronto police officer to CSC, in which the officer indicated that the police had information to support a street gang designation. The appellant submits that there was no other source or reason on file, and that the officer's name was never disclosed or recorded.

[25] The appellant confirms that during her telephone call with the police, the police advised that they may not have a recording of the telephone call between the Toronto police officer and the SIO as these types of calls are not recorded. The appellant clarified that she was not looking for a recording of the call, but for the information that the officer would have used to support the call in 2005. The appellant indicates that she told the police that "if no information or records could be found from 2005; a written reply that [states] 'no information/records were found' would suffice".

[26] The appellant states that she subsequently received the police's decision to disclose the internal correspondence in part. The appellant submits that the internal correspondence, which was authored by a Staff Sergeant and dated several weeks before the decision, contains factual errors and information from over 20 years ago that was not previously disclosed. The appellant submits that once the police received Detective Sergeant 2's response, they should have issued a decision stating that no responsive records could be located and no further records should have been produced or added to the named individual's file. The appellant submits that in creating the internal correspondence, the police violated the "request parameters".

[27] The appellant argues that the telephone call from 2005 is indicative of historic anti-black and racist police practices, which target low-income and over-policed communities. Specifically, the appellant argues that interactions in these communities are used to assign harmful designations without any regard for "facts, evidence, or actual information". The appellant submits that by creating a new record (i.e. the internal correspondence), the police are perpetuating anti-black and racist practices by "officially documenting" unsubstantiated information from over 20 years ago. The appellant also alleges that the police's actions are in violation of the *Ontario Human Rights Code*.

[28] The appellant submits that the police should provide a letter stating what was true at the time of Detective Sergeant 2's response to the examiner (i.e. no responsive records were found). The appellant submits that the internal correspondence should be deleted from the police's database and the named individual's street gang designation expunged, as there are no records to support the designation.

The police's reply representations

[29] Following the appellant's representations, I contacted the police for their response to the appellant's claim that she is "not looking for a recording of the call, but for the information that the officer would have used to support the call in 2005".

[30] The police submit that the internal correspondence contains information which supports the call. The police also submit that there is no substantive difference between the appellant's original and clarified request, and therefore their initial representations directly apply to the appellant's clarified request. I provided the appellant with a copy of the police's reply representations.

Analysis and findings

[31] For the reasons that follow, I am satisfied that the police have conducted a reasonable search for records responsive to the appellant's request.

[32] I accept that the examiner is an experienced employee who is knowledgeable in the subject matter of the request. Specifically, I accept that the examiner has worked in her role for almost 25 years and that her regular responsibilities include searching for records and responding to access to information requests in compliance with the *Act*.

[33] Based on the information in the examiner's affidavit, which includes the method of the search, the locations that were searched, and the results of the search, I am satisfied that the examiner has made a reasonable effort to locate records responsive to the appellant's request. I accept that the examiner took steps to clarify the request with the appellant and coordinated with other individuals, such as members of the Organized Crime Enforcement Unit, in conducting the search. I find that it is reasonable to expect that the members of the Organized Crime Enforcement Unit who provided responses would be knowledgeable in the subject matter of the request.

[34] I accept that the police have conducted multiple searches for responsive records and that they were unable to locate any records from 2005, as specified in the request. Based on the information before me, I also accept that there does not appear to be sufficient information to enable the police to conduct further searches. I accept that during mediation, the appellant indicated that she did not want the police to contact the Staff Sergeant who authored the internal correspondence. While I understand that the appellant has concerns with the veracity of the information in the internal correspondence, it is not clear how the police can investigate the Staff Sergeant's sources (and whether they include additional records) without speaking with the author. Similarly, both parties appear to agree that the identity of the officer who called CSC in 2005 is not known. As a result, I accept that there is insufficient information for the police to conduct further searches for records relating to or authored by that officer.

[35] As previously indicated, the *Act* does not require the institution to prove with certainty that further records do not exist. The institution must, however, provide enough

evidence to show that it has made a reasonable effort to identify and locate responsive records. I am satisfied that the police have made a reasonable effort, based on the information that is before them, to identify and locate responsive records. Additionally, although the appellant expresses various concerns with the information that she has received, I find that these do not amount to arguments about the reasonableness of the police's search. Consequently, I am not satisfied that the appellant has provided a reasonable basis for concluding that additional records exist, particularly considering the limitations that the police would likely face in conducting further searches.

[36] Finally, I understand that the appellant objects to the creation of the internal correspondence and argues that it should be deleted from the police's database. While the appellant appears to argue that the internal correspondence was created in violation of the *Act*, I do not have evidence as to why this is the case and what specific section(s) of the *Act* are being implicated. As a result, I do not make any findings on this issue.

[37] Similarly, the appellant alleges that the police acted in violation of the *Ontario Human Rights Code* in calling CSC and subsequently creating the internal correspondence. The appellant also submits that the designation placed on the named individual should be expunged, as there are no records to support the designation. As I do not have the jurisdiction to review the police's conduct or to order the police to "expunge" the designation, I do not address or make any findings about these allegations.

[38] For the reasons above, I find that the police's search for responsive records was reasonable in the circumstances and in compliance with its obligations under section 17 of the *Act*.

ORDER:

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

Original Signed by: August 22, 2025

Anda Wang
Adjudicator