



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER 35

Appeal 880092

Ministry of the Solicitor General



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O R D E R

This appeal was received pursuant to subsection 50(1) of the Freedom of Information and Protection of Privacy Act, 1987 (the "Act") which gives a person who has made a request for access to a record under subsection 24(1) or a request for access to personal information under subsection 48(1) of the Act a right to appeal any decision of a head under this Act to the Commissioner.

The facts of this case and the procedures employed in making this Order are as follows:

1. On March 11, 1988, the Ministry of the Solicitor General (the "institution") received a request seeking from the Minden detachment of the Ontario Provincial Police "copies of all data on file with the Department dating back to beginning of 1984". By way of explanation, the requester advised that he had reported numerous thefts, vandalism, trespass, and unlawful hunting incidents to the department over the years, none of which had been resolved.
2. On April 6, 1988, the institution responded that "partial access is granted to documents relating to your request. Access is denied to documents containing personal information under section 21 of the Act. This provision applies because the release of these documents would constitute an unjustified invasion of privacy".

Upon reviewing the records, it appears that the requester was not denied access to any records in their entirety, but rather certain information was severed from the records.

3. By letter dated April 18, 1988, the requester appealed the decision of the head, citing dissatisfaction with the severances, the content of the records and the incompleteness of the records. Regarding the latter, he gave as examples the fact that there was not any record of various thefts he had reported in August, September and October 1984, nor was there any record of a complaint filed against him by a third party. I gave notice of the appeal to the institution.
4. The records were obtained and reviewed by an Appeals Officer. After discussions with the Appeals Officer, the institution located the complaint made against the appellant by a third party and released the record to him.
5. By letter dated July 18, 1988, I sent notice to the institution and the appellant that I was conducting an inquiry to review the decision of the head and enclosing a copy of the Appeals Officer's Report prepared by my office.
6. By letter dated July 27, 1988, I invited the appellant and the institution to make written representations to me. It should be noted that prior to the institution submitting its representations, the institution conducted a further search for records and an additional 5 pages of documentation dating back to 1984 were located and released to the appellant.
7. Written representations were received from both parties and I have considered these representations in making my Order.

The issues arising in this appeal is as follows:

- A. Whether the institution has taken reasonable steps to locate the records; and
- B. Whether the institution's records retention procedures are in accordance with the Act.

ISSUE A: Whether the institution has taken reasonable steps to locate the records.

In his request, the appellant refers generally to some 30 separate complaints he filed with the institution over a 25_year period, including reports of theft, vandalism, trespass, and illegal hunting.

In his representations, the appellant states that the reason he believes that certain records are being withheld from him is "...records have been retained of minor incidents yet data of greater importance such as 13 thefts of building material over a 3_month period, there is 'NOT A SINGLE RECORD'."

At my request, the institution outlined in affidavit form the steps taken by its officials to locate the records. With respect to the original search for the records, the institution states that the appellant's written request was forwarded to #8 District Headquarters of the OPP along with a letter from the Freedom of Information Co_ordinator requesting all original documentation relating to the request. The local official first checked the index card files and then retrieved the available occurrence reports and officer's notebooks where occurrence reports no longer existed. The records were forwarded to the Freedom of Information Co_ordinator for review and then released.

In the later stages of this appeal, the institution located and released more records. The first record was a report of a complaint filed by a third party about the appellant. The institution submits that this record was not part of the appellant's original request but that in the mediation/investigation stage of the appeal, at the request of the Appeals Officer, a further search for this record was conducted, the record was located and subsequently released to the appellant.

Upon reviewing the appellant's request, I find that it is not at all apparent that he had requested this particular record. Nevertheless, the institution subsequently complied with the spirit of the Act and searched for and released this additional information.

The institution conducted a final search for records at the inquiry stage of the appeal and more records were located; specifically, 5 pages from officers' notebooks dating back to August 1984 (vandalism) and October 1984 (follow_up to complaint against appellant). These documents were also prepared for release to the appellant.

In conducting its search for the records (both the original and supplementary searches) the institution states that it relied on the information provided by the appellant: his name, address, date of birth, the general nature of the occurrences he had reported and the detachment where he believed the records were located.

The Freedom of Information Co_ordinator submitted that "given the limited information, I am of the belief that the steps taken to locate the records were reasonable."

In my Orders in Appeal Nos. 880053 and 880067 dated December 28, 1988, I outlined my views on the responsibilities of both the institution and the requester when a request requires clarification. As I noted in those Orders, sections 47 and 48 of the Act place the responsibility for ascertaining the nature or whereabouts of a record of personal information on both the requester and the institution. In this case, the requester was able to identify the records he requested with some precision so as to enable the institution to search its files and, although the institution could not locate all of the records in its custody and control at first instance, they did eventually

locate further records when provided with more details. I find the search undertaken was reasonable, given the nature of the request as clarified and that both the appellant and institution discharged their obligations as to clarification, under the Act.

ISSUE B: Whether the institution's records retention procedures are in accordance with the Act.

The search undertaken by the institution produced certain records corresponding to some but not all of the requester's "older" complaints that were still on file beyond the date when, according to the institution's records retention schedule, they could or should have been destroyed.

The appellant cites this inconsistency in records retention as his basis for believing that other records corresponding to his "older" complaints might still be in existence.

The obligations of the institution in regard to retention of the records at issue in this appeal arise because the institution has organized and intends to retrieve the personal information in these records "by the individual's name or by an identifying number, symbol or other particular assigned to the individual". (Section 44 of the Act.) "Occurrence Reports" are included among those records listed by the institution in the Directory of Personal Information Banks as being stored in personal information banks. This listing is done pursuant to the institution's obligation under section 44 of the Act. I have been advised that the institution has set up a system of index cards on which the names of individuals mentioned in an Occurrence Report are recorded. These index cards are stored in the same data bank as the Occurrence Reports and the card index file gives the number of the corresponding Occurrence Report. Once the Occurrence Report is retrieved, the name of the officer and the date on which the Occurrence Report was created can be determined. With this information, entries in police officers' note books are traced.

While this system may be a cumbersome way of retrieving personal information, in my view, it is a reasonable response to the obligations imposed by the Act, given the difficulties that arise due to the fact that one of the types of records is a police officer's note book. By their nature, note books may be kept with the police officer, or may be stored. Either way, they are not organized in such a way that personal information is retrievable by name, identifying number or other particulars assigned to the individual, nor should they be, given their purpose.

The institution has indicated that their records retention schedule is as follows:

- _ General Occurrence Reports: retained two years plus the current year.

- _ Report location index cards: retained seven years plus the current year.

- _ Officer's note books: retained until the officer leaves the Force or for a minimum of ten years.

Records purged are incinerated each January.

Section 40 of the Act provides that:

(1) Personal information that has been used by an institution shall be retained after use by the institution for the period prescribed by regulation in order to ensure that the individual to whom it relates has a reasonable opportunity to obtain access to the personal information...

(4) A head shall dispose of personal information under the control of the institution in accordance with the regulations and in accordance with any directives or guidelines issued by the responsible minister.

Section 9 of Ontario Regulation 532/87 (as amended) provides that:

Personal information that has been used by an institution shall be retained by the institution for at least one year after use unless the individual to whom the information relates consents to its earlier disposal. (emphasis added)

Obviously, the institution's retention schedules are lengthier than the minimum one year required by the Regulation. However, I understand that to date, no formal directive has been issued that will ensure the institution's personnel understand the minimum retention period specified in the above_noted Regulation. Procedures related to the enforcement of the institution's own retention schedule also appear to be inconsistent.

While departures from the institution's own records retention schedule are clearly evident in this case, they have worked in the appellant's favour and I see no reason to comment further on this issue, as the records have been kept for longer than the minimum time specified in the Regulation.

In conclusion, I find that the institution took reasonable steps to locate the records requested by the appellant. However, discussions with the institution during this appeal have revealed that there are potential problems with the personal information banks kept by the institution. Further, I think that the institution has need of clearly stated guidelines regarding records retention schedules.

To address my concerns with the institution's record_keeping, I have asked that the institution consult with my Director of Compliance in order to produce written guidelines for the maintenance of its personal information banks and for the disposal of records according to both the institution's own retention schedules and the terms of the Freedom of Information and Protection of Privacy Act, 1987. I have asked the institution to produce such written guidelines and to provide me with a copy of them as soon as they are produced. In the

circumstances of this appeal, I believe that is sufficient to dispose of the matter.

Original signed by:
Sidney B. Linden
Commissioner

December 28, 1988
Date