



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

ORDER M-85

Appeal M-9200434

London Police Force



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

The London Police Force (the Police) received a request under the Municipal Freedom of Information and Privacy Act (the Act) for access to information relating to an allegation that the requester's client was improperly in possession of a firearm. The requester indicated in his request that he was informed by an Ontario Provincial Police officer (the O.P.P.) that a named member of the Police "was the source for the recent complaint that [his client] was improperly in possession of a firearm", and asked the Police to provide him "with the information and documentation in support of this complaint".

In its decision letter, the Police advised the appellant that the named officer had made no written report about the incident, but rather that he "relayed information he had received from a confidential informant to the police agency responsible for policing in the jurisdiction of the alleged offence", the O.P.P.

The requester appealed the Police's decision.

In accordance with the usual practice, the appeal was assigned to an Appeals Officer who contacted the appellant and the Police. In the course of the appeal process, the Appeals Officer was advised by the Police that it had informed the appellant that the O.P.P. had within its custody and control, a record that was responsive to the request. The Appeals Officer informed the appellant that he could submit a request for this record. However, the appellant advised that the named officer was "well aware of the source of the allegations but was not prepared to provide the identity to [the requester's client]". The appellant took the position that the Police is required to provide him with this information, despite the fact that no written record of the incident was made by the named officer.

Mediation of the appeal was not successful as both parties maintained their positions. Notice that an inquiry was being conducted to review the Police's decision was sent to the appellant and the Police. Written representations were received from the appellant whereas the Police submitted an affidavit.

The word "record" is defined in section 2(1) of the Act as follows:

"record" means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,

- (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and

- (b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution;

The appellant submits that the word "record", as it is defined in the Act, includes information in the mind of an individual, and argues that "the legislation specifically refers to a 'record' as meaning 'any record of information however recorded ... regardless of physical form or characteristics' and clearly this would include information contained in a person's mind that is not put on paper".

The issue of the extent to which the Act covers information not recorded in any tangible form has been discussed by Commissioner Wright in Order M-33, in which he stated that "the Act does not impose a specific duty on an institution to transcribe oral views, comments or discussions, and that it does not require an institution to produce information from an individual's memory or knowledge". I agree with Commissioner Wright's view.

In his sworn affidavit, the Police's Freedom of Information and Privacy Co-ordinator states:

I personally spoke to [the named officer] who advised me that he made no written record of the complaint as he was off duty at the time the information was received and that he passed on the information by telephone to the Ontario Provincial Police, London detachment, as the alleged offence was occurring in their jurisdiction. It is hereby noted that Force rules, regulations, policy and procedures do not require an-off duty officer to file a written report in the circumstances outlined; therefore, no consideration will be given to creating a record for the purposes of this request.

With respect to the question of the extent to which an institution should respond to a request for information in the absence of a record, former Commissioner Sidney B. Linden made the following statement in Order 99:

While it is generally correct that institutions are not obliged to "create" a record in response to a request, and a requester's right under the Act is to information contained in a record existing at the time of his request, in my view the creation of a record in some circumstances is not only consistent with the spirit of the Act, it also enhances one of the major purposes of the Act i.e., to provide a right of access to information under the control of institutions.

I agree with the former Commissioner's comments, and in that light, I have reviewed the Police's response to the request. In his request the appellant asked for access to information relating to the allegations that have been made against his client. He was informed both by the Police and the Appeals Officer in this office that a record responsive to his request existed in the custody or

under the control of the O.P.P., but the appellant continued to ask that the Police be required to create a record.

It is my view that there is no statutory obligation on the Police to respond to the request in any way different from the way it did. Although, the Police upon initially receiving the request should have forwarded it to the O.P.P., I find that the actions of the Police in responding to the appellant's request were reasonable and satisfactory in the circumstances.

In addition, taking into consideration the circumstances of this appeal, I am satisfied that the search conducted by the Police to locate a record in its custody or under its control that would be responsive to the request was reasonable.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Asfaw Seife
Inquiry Officer

_____ February 12, 1993