



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

ORDER M-89

Appeal M-9200406

Ottawa-Carleton Regional Transit Commission



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ORDER

On September 25, 1992, the Ottawa-Carleton Regional Transit Commission (OC Transpo) received a request under the Municipal Freedom of Information and Protection or Privacy Act (the Act) for a record identified as a letter of reprimand to the requester, allegedly created by OC Transpo during March or April 1990. OC Transpo responded as follows:

after an examination of all relevant personnel files, no letter of reprimand was issued to you during March or April of 1990.

The requester appealed OC Transpo's decision.

Mediation was not successful, and notice that an inquiry was being conducted to review OC Transpo's decision was sent to the appellant and OC Transpo. Written representations were received from OC Transpo. Although the appellant did not submit formal representations, he indicated that he wished to rely on material provided during the course of the appeal.

The sole issue in this appeal is whether OC Transpo's search for the requested record was reasonable in the circumstances.

The appellant believes that the record exists because a report prepared by the Compliance Department of this agency contains a reference to the appellant having been reprimanded for certain employment-related behaviour in March 1990, and the appellant feels that it is reasonable to expect that a record of this reprimand would exist in some file under the custody and control of OC Transpo.

In its representations, OC Transpo provided three affidavits in support of its position that the record in question does not exist. These affidavits, from the designated head of the institution, the Director of Employee Relations, and the Assistant Superintendent of Operating Personnel, outline the steps taken by OC Transpo to locate the record. These steps include manual and computerized searches of the appellant's personnel file, any grievance files relating to the appellant, and all related subject matter files which might contain the record.

OC Transpo does not deny that the record may have existed at one time. However, the designated head points out in his affidavit that the collective agreement between OC Transpo and the bargaining unit which represents the appellant contains terms which require all minor disciplinary entries to be removed from employee files after a two year period, as long as no similar incidents occur during that period. Because the time period identified by the appellant in his request is more than two years from the date of the request, and assuming no similar incidents involving the appellant occurred in the intervening period, it is reasonable to conclude that the record, if it did exist, would have been destroyed.

Having carefully reviewed the representations and materials submitted by both parties, I am satisfied that the search conducted by OC Transpo for the record identified by the appellant was reasonable in the circumstances.

Original signed by: _____ February 26, 1993
Tom Mitchinson
Assistant Commissioner