



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

# **ORDER P-572**

**Appeal P-9200791**

**Ontario Criminal Code Review Board**



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

## BACKGROUND:

The Ontario Criminal Code Review Board (the Board) received a request pursuant to the Freedom of Information and Protection of Privacy Act (the Act) for access to all of the requester's personal information. The request went on to state that:

Disclosure of the records sought is preferred through photocopies ..... The types of records being sought include: Finalized and draft memos, notes, faxes, reports, correspondence, notices, computer records, briefs, transcripts, opinions, verbal transaction records and all other available records.

The Board identified some responsive records and disclosed them to the appellant. The requester subsequently clarified his request by stating that the request:

... encompasses the transcriptions of his review board and therefore access to the record in whatever form it exists, is expected. This falls within the scope of the request regardless of whether it exists in written, audio or some other form.

The Board disclosed further records to the requester. With respect to any records concerning the Review Board Hearing, the Board indicated that "no record is available". The requester appealed claiming that more responsive records exist.

During mediation of the appeal, the Board indicated that, in fact, a record existed with respect to the Review Board Hearing. The record was an audio cassette tape. The Board had a court reporter create a transcript from the tape, and the transcript was disclosed to the appellant. The appellant maintains that he was entitled to receive access to a copy of the tape itself.

The appellant also indicated that the additional records which should exist are those concerning an investigation conducted by the Compliance department of the Commissioner's office. The Board maintained that it could not locate these records.

Further mediation of the appeal was not possible and notice that an inquiry was being conducted to review the decision of the Board was forwarded to the appellant and to the Board. Representations were received from both parties.

## ISSUES:

The issues arising in this appeal are as follows:

- A. Whether the Board has met its obligations under section 48(3) of the Act by providing a transcript of the proceedings rather than by providing a copy of the tape recording from which the transcript was made.
- B. Whether the Board's search for records was reasonable in the circumstances.

## **SUBMISSIONS/CONCLUSIONS:**

**ISSUE A: Whether the Board has met its obligations under section 48(3) of the Act by providing a transcript of the proceedings rather than by providing a copy of the tape recording from which the transcript was made.**

Requests for access to one's personal information are governed by section 48 of the Act which states, in part:

- (1) An individual seeking access to personal information about the individual shall make a request therefor in writing to the institution that the individual believes has custody or control of the personal information and shall identify the personal information bank or otherwise identify the location of the personal information.
- (2) Subsections 10(2) and 24(2) and sections 25, 26, 27, 28 and 29 apply with necessary modifications to a request made under subsection (1).
- (3) Subject to the regulations, where an individual is to be given access to personal information requested under subsection (1), the head shall,
  - (a) permit the individual to examine the personal information; or
  - (b) provide the individual with a copy thereof.

Section 24(2), referred to in section 48(2) reads as follows:

If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

In my view, the determination of whether the Board is obliged to provide the appellant with a copy of the tape, in circumstances in which it has prepared and provided a transcript of the proceedings to the appellant, turns on the interpretation to be given to the request and the obligations of the Board upon receiving the request.

It is my opinion that neither the request, nor the subsequent clarification of the request are clearly for a copy of the tape of the proceedings before the Board. Rather, I believe that both communications are ambiguous enough that the Board could have interpreted them to mean that a transcript of the tape would be responsive to this portion of the request. In my view, this interpretation is one which this correspondence could reasonably bear and that, accordingly, the Board had no obligation, pursuant to section 24(2), to further clarify these matters with the appellant.

Accordingly, I find that the Board satisfied its obligations under section 48(3) of the Act in the circumstances of this appeal.

**ISSUE B: Whether the Board's search for records was reasonable in the circumstances.**

As part of its representations, the Board provided an affidavit sworn by the Freedom of Information Co-ordinator detailing the searches conducted to locate notes taken by Board staff at the Review Board hearing. In his representations, the appellant indicated that he was not pursuing this issue.

The affiant notes that the issue of the reasonableness of the search relates to any records concerning the investigation undertaken by the Compliance department of the Commissioner's office. However, the affidavit does not address the search undertaken for records responsive to this portion of the request. In the absence of any evidence as to the details of the search, I cannot conclude that such a search, even if carried out, was reasonable in the circumstances.

**ORDER:**

1. I find that the Board has met its obligations under section 48(3) of the Act by providing the appellant with a copy of the transcript from the Review Board Hearing.
2. I order the Board to conduct a further search for the records related to the Compliance investigation referred to in the affidavit of the Freedom of Information Co-ordinator and to notify the appellant by letter as to the results, within 15 days of the date of this order.
3. In undertaking this search, the Board should obtain further information about the responsive records from individuals who have knowledge of, and understand, the subject matter of the request.
4. If, as a result of the further search, the Board identifies any records responsive to the request, I order the Board to provide a decision letter to the appellant regarding access to these records in accordance with sections 26 and 29 of the Act, considering the date of this order as the date of the request, without recourse to a time extension.
5. In order to verify compliance with this order, I order the Board to provide me with a copy of the letter referred to in Provision 2 of this order within 20 days of the date of this

order. This notice should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: \_\_\_\_\_  
Anita Fineberg  
Inquiry Officer

\_\_\_\_\_ November 4, 1993