



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

ORDER M-178

Appeal M-9200367

Metropolitan Toronto Police Services Board



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ORDER

The Metropolitan Toronto Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for the file and all personal information relating to a missing person's investigation of the requester. The Police located the records responsive to the request and granted partial access. Access was denied to the balance of the records pursuant to sections 8(1)(c), (i) and (l), 8(2)(a), 9(1)(d), 14(1)(f), 14(3)(b) and 38(b) of the Act. The requester appealed the decision of the Police.

Mediation of this appeal was partially successful in that additional records were disclosed to the appellant. The appellant pursued the appeal with respect to those records that were not disclosed. During mediation, the appellant also raised the issue of the existence of more records responsive to his request.

Notice that an inquiry was being conducted was sent to the appellant, the Police, and an affected person. Representations were received from the appellant and the Police.

In his representations, the appellant indicated that he was not interested in receiving any information dealing with the procedures of the Police or the "R.C.M.P. (the Royal Canadian Mounted Police) computer link" (the Canadian Police Information Centre, C.P.I.C.).

In their representations, the Police withdrew their reliance on the exemptions set out in sections 8(1)(i) and (l), 14(1)(f) and 14(3)(b) and 38(b) of the Act.

On May 6, 1993, while the representations were being considered, Inquiry Officer Asfaw Seife issued Order M-128. This order interprets section 9(1)(d) of the Act as it relates to C.P.I.C. records. Because the decision of Inquiry Officer Seife was potentially relevant to the interpretation of section 9(1)(d) in this appeal, a copy of Order M-128 was provided to the Police who were given the opportunity to supplement the representations previously submitted. The R.C.M.P. were also invited to make representations on the interpretation to be given to section 9(1)(d) of the Act.

The R.C.M.P. declined to submit representations, stating that "We have provided advice to the Metropolitan Toronto Police in this regard."

After reviewing Order M-128, the Police agreed to release portions of additional records to the appellant. The Police also submitted supplementary representations. In their supplementary representations, the Police again claimed the exemptions under sections 38(b) and 8(1)(l) of the Act. They also indicated that two pages of the record for which they had initially claimed the exemptions under sections 8(1)(c) and 9(1)(d) of the Act were not responsive to the request as they contained no "personal information" of the appellant.

The appellant was advised of the new developments in the appeal. He subsequently confirmed that he was continuing to seek access to only the following information:

1. the memorandum book of the police officer who investigated his disappearance (the record the Police initially indicated did not exist);
2. the identity of the "institutions" the Police contacted in the course of their investigation; and
3. the information that was given to the appellant's sister by the Police.

As far as items 2 and 3 were concerned, the appellant wished to receive access to the information contained in those records to which he had been granted partial access.

I have reviewed all the records to which access has been denied in whole or in part by the Police. In my view, none of these records contain information that is responsive to items 2 and 3. In addition, much of the information which has been withheld from the records disclosed to the appellant by the Police as a result of Order M-128, consists of information which the appellant has indicated he is not interested in pursuing (information such as the Police computer codes).

The two pages of the record that the Police now claim are not responsive to the appellant's request consist of information that was electronically retrieved by them from C.P.I.C. These two pages do not contain any personal information of the appellant, nor do they contain any information which would identify the "institutions" the Police contacted during the course of their investigation, or describe information that the Police gave to the appellant's sister. Accordingly, I agree with the position of the Police that these pages are now not responsive to the appellant's request.

The only other record to which the appellant has not received access in full is a letter dated December 16, 1988 from the Chief of Police of another police force to the investigating officer at the Police. The information withheld from disclosure does not respond to either of the items currently at issue in this appeal.

Accordingly, the sole remaining issue in this appeal is whether the search conducted by the Police for the memorandum book was reasonable in the circumstances.

The appellant believes that the memorandum book of a police officer who investigated his disappearance in 1988 should still be in the possession of the Police, as the Police are required by their record retention schedules to retain memorandum books for seven years.

In their representations the Police state that an exhaustive search has been made for the memorandum book in question, but without success. They state in their representations that:

The memorandum books in question are normally taken away from the station where they are stored for the purpose of attendance at the various tribunals by the officer making the notes. Therefore the possibility of loss does exist and from time to time these books are misplaced, misfiled, or inadvertently destroyed if included in the wrong "batch" scheduled for destruction.

There are no other avenues or places which can be searched with any expectations of success in the quest for this missing memorandum book.

In a sworn affidavit submitted with the Police's representations, the sergeant responsible for the station to which the officer in question had been assigned, stated that he had contacted the officer in question, who was now retired. The retired officer searched his residence but was unable to locate the memorandum book.

Having carefully reviewed the representations of the appellant and Police, and the affidavit evidence submitted to me, I am satisfied that the Police have taken all reasonable steps to locate records responsive to the appellant's request, and that the search conducted by the Police was reasonable in the circumstances of this appeal.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ August 24, 1993