



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-207

**Appeals M-9300229, M-9300230, M-9300231
and M-9300264**

Metropolitan Toronto Police Services Board



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ORDER

The Metropolitan Toronto Police Services Board (the Police) received a number of requests under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to a variety of records. The requests were sent to the Police by facsimile transmission, commonly known as "fax". In their letter to the requester, the Police acknowledged receiving the requests and advised that "pursuant to sec. 17(1) of the [Act] we require that requests carry an original signature". The requester did not comply and the Police refused to process his requests under the Act.

The requester appealed four decisions of the Police not to process such requests. Appeal files M-9300229, M-9300230, M-9300231 and M-9300264 were opened to correspond to each file the Police opened upon receiving the faxes. The issue raised in all four appeals is identical and will be disposed of by this order.

The sole issue in these appeals is whether the decision of the Police not to process the requests which they received by fax is in accordance with the Act.

Section 17(1) of the Act states:

A person seeking access to a record shall make a request for access in writing to the institution that the person believes has custody or control of the record and shall provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record.

In their representations, the Police withdrew their contention that a request made under the Act must carry an original signature; instead, they took the position that a request transmitted by fax does not satisfy the requirement of section 17(1) of the Act which provides that a request for access to information must be made "in writing". The Police argued:

1. fax information is transmitted by way of telephone technology, which the drafters of the legislation did not contemplate as a medium for transmitting written requests; otherwise, they would have provided for it specifically,
2. a request transmitted by fax is not an "exact copy" of the original documents; it is only an "approximation". For example, the receiving print may be in a different size, shape or colour from the original "fed" in the fax machine; text quality could be inferior to the original and only part of the original document may be received.
3. the words "in writing" and "written" are used in other parts of the Act; if fax transmissions were acceptable at the request stage, then they should also be acceptable in other parts of the Act where the words "in writing" or

"written" are used. This would mean that notices that are required to be in writing can be sent by fax.

4. a fax transmission can be misdialed and end up in an unintended location.

In his representations, the appellant submits:

It is my opinion that, in the case of this appeal, any "specific requirements" would have to be those as outlined in the Municipal Freedom of Information and Protection of Privacy Act. Thus, as the Act itself does not define the term "in writing", I feel that any text-based request (be that on paper, or computer; via regular mail, courier, computer network or fax) qualifies as acceptable.

...

The courts and lawyers in the Province of Ontario all utilize facsimile transmission of signed, legal documents.

The word "writing" is not defined in the Act itself. However, the Interpretation Act R.S.O. 1990, c. I.11, section 29(1) states:

In any Act, unless the context otherwise requires,

"writing", "written", or any term of like import, includes words printed, painted, engraved, lithographed, photographed, or represented or reproduced in any other mode in a visible form.

The Concise Oxford Dictionary, eighth edition, defines the word "writing" as "a group or sequence of letters or symbols".

The term "facsimile" is defined in the same dictionary as: "an exact copy, esp. of writing, printing, a picture, etc.", "production of an exact copy of a document etc. by electronic scanning and transmission of the resulting data", "a copy produced in this way".

The Act requires that a request for access be in writing; however, in my view, there is nothing in the Act that restricts the method of transmission or delivery of a request. There is also nothing in the Act that requires the filing of a request in its "original writing".

In my view, when the Police receive a request by fax, they have no obligation to ensure that it is identical to the "original" document that was "faxed" to them. However, if they have any concerns or questions about the contents of a request received by fax, it is their responsibility to clarify the request, in accordance with the requirements of section 17(2) of the Act.

I have reviewed copies of the requests at issue, and I find that they satisfy the requirements of section 17(1) of the Act.

ORDER:

I order the Police to process each request in accordance with the provisions of the Act. For the purposes of section 19 of the Act, the date of this order shall be deemed to be the date the requests are received by the Police.

Original signed by: _____

Asfaw Seife
Inquiry Officer

_____ October 27, 1993