



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-216

Appeal M-9300242

Metropolitan Toronto Police Services 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/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

The Metropolitan Toronto Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act for access to "all written documentation and notes" relating to a charge laid against the requester on April 4, 1990. The Police granted partial access to the records and claimed a number of exemptions to those that they withheld. The requester was not satisfied that the Police had identified all of the records responsive to his request. He appealed the decision stating that on the basis of information already disclosed to him, he believed that there was additional information responsive to his request not identified by the Police. Specifically, he stated:

- [1] Involved in the matter is a copy of P.C. Leggett's notebook which refers to being given details from A/Det Sgt. Burke. I am writing to you asking you to supply me with the "details" that Sgt. Burke supplied to P.C. Leggett. This is hilited (sic) on page FI 0009.
- [2] On page FI 0002 (hilited) a P.C Hans #4268 is mentioned, but no copy of his notebook has been supplied. I would like to see P.C. Hans notebook.
- [3] Also no record discussed as to the withdrawal of the charge. While waiting at the courthouse on May 30, 1990, for the hearing, Det. Awde told me that there had been a big mistake and they wanted to withdraw the charges. He didn't reveal what the mistake was or who made it. I am anxious to find the answers to these questions.

During mediation, and in response to requests made by this office, the Police conducted a specific search for the records requested in items 1 to 3, above. They obtained the notebooks of the named officers for April 4 and 5, 1990 and examined them with a view to identify any information that would be responsive to the request. The Police advised that none of the notebooks contained any information that relates to the appellant. The copies of the notebooks were provided to this office and the results of the search were communicated to the appellant; however, the appellant maintained his position and wished to continue the appeal.

Notice that an inquiry was being conducted was sent to the appellant and to the Police. As a result of the inquiry status report and further dates identified by the appellant, another search for responsive records for the period March 25, 1990 to April 10, 1990 was made and eight pages were found. These eight pages were released to the appellant, with some severances. An additional search of the notebook of the police officer in item 3 was also conducted for the period April 11, 1990 to June 4, 1990. Two pages for May 16, 1990 were found to be responsive and severed copies were released to the appellant. The police officer's notebook entry for May 30, 1990 did not contain any information responsive to the request.

Representations were received from the Police. The appellant indicated that he wished all of his correspondence on file, including the letter of appeal to be considered as his representations on the matter.

The sole issue in this appeal is whether the search conducted by the Police for records responsive to the request was reasonable in the circumstances of this appeal.

In their representations, the Police state that the appellant's request was for information related to a specific charge laid against him on a specific date. They submit that all information relating to that date and event was identified and was disclosed to the requester, with some severances. The Police indicate that additional searches were conducted in response to the additional dates provided by the appellant and in response to inquiries initiated by this office. They state that all of the searches were conducted by an experienced employee of the institution.

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 my view, where a requester has provided the Police with sufficient details describing the record sought, section 17(1) imposes an obligation on the Police to make a reasonable effort to identify records responsive to the request. On appeal, the onus is on the Police to demonstrate that it has discharged this obligation. Therefore, in reviewing the decision of the Police, my responsibility is to ensure that they have made a reasonable effort to identify the record, as required under section 17(1). In my view, the Act does not require the Police to prove to the degree of absolute certainty that the requested record does not exist.

In the circumstances of this appeal, the request was clarified through the process of mediation. In response, the Police have conducted numerous searches and have identified records which could contain the additional information sought by the appellant. Where the records contained any responsive information, they were disclosed to the appellant.

I have reviewed the representations of the Police and I have also reviewed the copies of the notebook entries for the relevant dates by the police officers identified in items 1, 2 and 3 above. The notebook entries do not contain any information that is responsive to the request. In my view, the searches conducted by the Police for additional responsive records is reasonable in the circumstances of this appeal.

Original signed by: _____
Asfaw Seife
Inquiry Officer

_____ November 10, 1993