



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-269

Appeal M-9300395

Metropolitan Toronto Police Services Board



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ORDER

On January 4, 1994, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and make orders under the provincial Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

BACKGROUND:

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 access to information related to an incident which involved the requester and another individual and resulted in the arrest of the requester.

The request enumerated ten categories of information to which access was sought. The requester identified (by name and badge number) two police officers who arrested him. He also referred to a third police officer who was in attendance at the time of his arrest (whose identity he did not know), a plain clothes officer who was later involved in the police response to the incident, and a police photographer.

In their initial search for responsive records, the Police located the notes of one of the officers whom the requester had identified as having arrested him, as well as the notes of the photographer. Partial access was granted to the notes of the officer, with portions withheld under section 14(1) of the Act. Access was denied to the photographer's notes under section 14(1). The decision letter also identified that all other records relating to the incident had been destroyed. The requester appealed the denial of access.

During mediation, the Police disclosed the identity and the notes of the police photographer. Also during mediation, the appellant indicated that the basis of his appeal was that he did not accept the position of the Police that the responsive records no longer existed. He also agreed that he did not wish to pursue the issue of the parts of the records which were withheld under section 14(1), and which the Police had identified as the personal information of other individuals.

Further mediation was not successful and notice that an inquiry was being conducted to review the decision of the Police was sent to the Police and the appellant.

During the inquiry stage of the appeal, and prior to submitting their representations, the Police conducted a further search. As a result, they located and disclosed the appellant's record of arrest and related materials, with some portions withheld under sections 14(1) and 38(b) of the Act. These records, while related to the subject matter of the request, do not fall within the classes of records requested by the appellant and, therefore, they are not at issue in this appeal.

ISSUE/DISCUSSION:

The sole issue in this appeal is whether the Police conducted a reasonable search for responsive records.

Representations on this subject were received from the Police. The appellant advised that he wished his letter of appeal and all pertinent material on file to be considered as his representations.

The representations submitted by the Police outline the steps they took to locate responsive records. At the request stage, the Police searched their Records and Information Security Unit microfiche files. They also sent memoranda to the units of the two police officers identified by the appellant as having arrested him, to obtain their notes. They contacted the police photographer by telephone. In addition, they contacted the division where the appellant had been taken after his arrest to determine whether the notes of the officer-in-charge at that time could be located. The records located as a result of these searches are those referred to in the initial decision letter referred to above.

During the inquiry stage the Police also searched the Criminal Records file and, as indicated previously, this resulted in the disclosure of the record of arrest and related materials referred to above.

The Police had also advised the Appeals Officer that, during mediation, they had contacted the arresting officers to see whether they could identify the third officer whom the appellant believed was present at the time of his arrest. These officers were unable to identify any third officer who might have been present. In addition, the record of arrest only referred to the two officers mentioned by the appellant as having been present when the arrest took place.

Where a requester provides sufficient details about the records to which he is seeking access and the Police indicate that no further responsive records can be located, it is my responsibility to ensure that the Police have made a reasonable search to identify any records which are responsive to the request. In my view, the Act does not require that the Police prove to the degree of absolute certainty that such additional records do not exist.

After having reviewed the representations and other materials submitted to me, I am satisfied that the search conducted by the Police for records responsive to the appellant's request was reasonable in the circumstances.

ORDER:

I uphold the decision of the Police.

Original signed by: _____

_____ February 14, 1994

John Higgins
Inquiry Officer