



Information and Privacy
Commissioner/Ontario

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

ORDER M-391

Appeal M-9400380

Barrie Police Services Board

NATURE OF THE APPEAL:

This is appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The requester asked the Barrie Police Services Board (the Police) for access to all records in his personnel file. The Police provided the requester with the records which it located in the file, and denied that there were any further documents which were responsive to the request. The requester appealed the decision of the Police on the basis of his belief that additional records should exist.

The requester had been an auxiliary officer with the Police until his dismissal in 1993. Following receipt of the records provided to him by the Police, the requester informed the Police that he also wished to receive copies of any documentation pertaining to his dismissal as an auxiliary officer. The requester was subsequently informed that further searches had failed to locate any documents pertaining to his dismissal. The requester also appealed this decision of the Police to the Commissioner's office.

A Notice of Inquiry was provided to the appellant and the Police. Representations were received from both parties.

DISCUSSION:

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

In his representations, the appellant stated that he had been informed by a telephone message from his superior officer that his position as an auxiliary officer was being terminated, but that he received neither an exit interview nor a letter of termination.

In an affidavit submitted with its representations, the Freedom of Information and Privacy Co-ordinator outlines the steps which the Police took to locate records responsive to the appellant's request. In the affidavit, the Co-ordinator indicates that she initially located the appellant's personnel file and provided him with complete copies of all records in the file.

When the applicant requested documents pertaining to his dismissal, the Co-ordinator requested that the Superintendent responsible for auxiliary officers search his files. In addition, the Co-ordinator requested that the individual responsible for maintaining the personnel files of regular police officers search her files for records relating to the appellant's dismissal. The Co-ordinator also contacted the Inspector who informed the appellant of his termination and asked that a search for records relating to the dismissal be undertaken.

All of these individuals subsequently informed the Co-ordinator that they had searched their files but had been unable to locate any records pertaining to the appellant's dismissal. The only responsive record located was the hand-written notation "Dismissed 1993" on the folder of the appellant's personnel file.

Where a requester provides sufficient details about the records which he or she is seeking and an institution indicates that additional records do not exist, it is my responsibility to ensure that the institution has made a reasonable search to identify any records which are responsive to the request. While the Act does not require that an institution prove to the degree of absolute certainty that such records do not exist, the search

which an institution undertakes must be conducted by knowledgeable staff in locations where the records in question might reasonably be found.

While the affidavit provided by the Police's Co-ordinator indicates that searches were made of the files of the Superintendent in charge of auxiliary officers, personnel files pertaining to regular officers and the files of the Inspector who terminated the appellant's position, I am not satisfied that all persons who may reasonably be expected to be knowledgeable regarding records which pertain to the appellant's dismissal were contacted.

When an employee is dismissed, it is reasonable to assume that written documentation in support of the dismissal is prepared. I find it unlikely that this action would be undertaken without some written record being created.

Based on the evidence provided to me, I am unable to conclude that the search which the Police undertook for responsive records was reasonable in the circumstances of this appeal. On this basis, it will be necessary for the Police to conduct additional searches of the records held by the individuals responsible for the decision to fire the appellant for documentation relating to his dismissal.

ORDER:

1. I order the Police to conduct a further search for records relating to the appellant's dismissal and to provide me with affidavits from each of the individuals involved in the decision to terminate the employment of the appellant describing the nature and extent of their searches for responsive records.
2. If, as a result of these further searches, the Police identify any additional records responsive to the request, I order the Police to provide the appellant with a decision letter regarding access to these records in accordance with sections 19 and 22 of the Act, considering the date of this order as the date of the request and without recourse to the time extension.
3. In order to verify compliance with this order, I order the Police to provide me with a copy of the decision letter referred to in Provision 2 and the affidavits referred to in Provision 1 within thirty-five (35) days of the date of this order. The decision letter and the affidavits 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: _____
Donald Hale
Inquiry Officer

_____ September 19, 1994