



**Information and Privacy  
Commissioner/Ontario**

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

# **INTERIM ORDER M-386**

**Appeal M-9400278**

**Metropolitan Toronto Police Services Board**



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## **NATURE OF THE APPEAL:**

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The appellant has requested a copy of records from the Metropolitan Toronto Police Services Board (the Police) which relate to himself. In particular, the appellant sought files or information from the intelligence squad.

Following clarification with the appellant, the Police responded that access could not be provided because no responsive records exist.

In appealing the decision of the Police, the appellant indicated that he did not know what search was made of intelligence squad materials. He further suggested that a search should include all files involving surveillance on radicals or dissidents. He also acknowledged that files may not be kept in his name, but rather under subject names.

A Notice of Inquiry was provided to the appellant and the Police. Representations were received from both parties. The Police did not provide affidavits describing their searches for responsive records, despite being requested to do so in the Notice of Inquiry.

## **DISCUSSION:**

### **REASONABLENESS OF SEARCH**

Where the requester provides sufficient details about the records which he is seeking and the Police indicate that such records do not exist, it is my responsibility to ensure that the Police have made a reasonable search to identify any records which are responsive to the request. The Act does not require the Police to prove with absolute certainty that the requested records do not exist. However, in my view, in order to properly discharge their obligations under the Act, the Police must provide me with sufficient evidence which shows that they have made a **reasonable** effort to identify and locate records responsive to the request.

In their representations, the Police provide a cursory and very general outline of the steps taken to locate responsive records. Upon receipt of the request, they searched all computer banks, as well as the files of the Intelligence Services Unit. Three reports were located and the appellant was contacted to determine whether or not he was interested in receiving them. He indicated that he was already aware of these reports and was not interested in them.

The Police further advised the appellant that personal information may exist outside of that maintained in their personal information banks, such as in a police officer's memorandum book. The Police indicated, however, that they would require further information from the appellant in order to know where to look. The appellant was not able to provide information which would assist the Police.

The appellant advised the Police that he was only interested in records which would indicate whether he was a subject of investigation by the Intelligence Services Unit.

The Police indicate that the Intelligence Services Unit maintains a computerized personal information bank on all individuals who are identifiable as a result of a law enforcement matter involving that Unit. They indicate that two searches of this bank were conducted at the initial request stage and once again during the mediation stage of the appeals process.

In his representations, the appellant states that he has been a long-standing political activist and believes that the Police must have a record of his activities in their Intelligence files. He identifies the following specific areas of investigation by the Police which may contain reference to him:

- Red Squad
- New Left
- Communists
- Radical Lawyers
- Anti-war Demonstrators
- Labour Demonstrators
- Police Critics

While a requester's knowledge as to what records may be in the custody and control of the Police may vary, in my view, sections 36(1) and 37 of the Act place some obligation on the requester to provide as much direction to the Police as possible as to where the records that he is requesting may be located and/or to describe the records sought.

The appellant suggests, in his representations, that further searches should now be conducted in specific locations. In my view, this information should ideally have been provided to the Police at the time of the appellant's request. The appellant was contacted by the Police during their original search for responsive records and clarification could have been made at that time. Ordinarily I would not have allowed the appellant to specify new areas to be searched for responsive records at this late stage in the appeal. However, given my conclusions in this appeal, and for the sake of expediency, I consider an expanded search to be reasonable in the circumstances.

The Police have provided a very general description of their file maintenance system and the process they went through in contacting the appropriate personnel to search for responsive records. However, they have not submitted any specific evidence to assist me in understanding how the determination is made to include personal information in the Intelligence Services Unit data bank. Nor have they provided information regarding retention schedules relating to personal information contained in this data bank. Finally, they have not provided details of the steps taken in conducting their search for responsive records.

Having reviewed the representations of the Police, I cannot determine whether the appellant's personal information should be located in the Intelligence Services Unit data bank, or whether it might have been in that bank at one time, but has now been destroyed pursuant to the Police's retention schedule. Nor can I determine whether or not the steps taken by the Police in searching for responsive records were reasonable in the circumstances. I am, therefore, not satisfied that the search conducted by the Police for records responsive to the appellant's request was reasonable.

**ORDER:**

1. I order the Police to conduct a further search for responsive records and to provide me with a detailed affidavit(s) sworn by the employee(s) of the Police who have specific knowledge of and understand the subject matter of the request, within thirty (30) days of the date of this Interim Order.

The Police should specifically focus their search with reference to the following areas:

- Red Squad
- New Left
- Communists
- Radical Lawyers
- Anti-war Demonstrators
- Labour Demonstrators
- Police Critics

At a minimum, the affidavit(s) must contain the following:

- (a) information about the employee(s) swearing the affidavit describing his or her qualifications and responsibilities;
- (b) a statement describing the employee's knowledge and understanding of the subject matter of the request;
- (c) the date(s) the person conducted the search and the names and positions of any individuals who were consulted by the person, if any;
- (d) information about the type of files searched, the nature and location of the search. With respect to this point, the affidavit should include:
  - (i) information specifying how the Police determine that information will be included in the Intelligence Services Unit data bank;
  - (ii) information relating to the Police's retention schedules for this category of personal information;
  - (iii) details of the steps taken in conducting the search.

If a search following the parameters identified by the appellant is not possible, the affidavit(s) must explain why it is not possible.

2. If, as a result of the further search, the Police identify any records responsive to the request, I order the Police to provide a decision letter to the appellant 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 a time extension.
3. The affidavit(s) referred to in Provision 1 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: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ September 9, 1994