



Information and Privacy
Commissioner/Ontario

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

ORDER M-369

Appeal M-9400195

Municipality of Metropolitan Toronto



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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 asked the Municipality of Metropolitan Toronto (the Municipality) to provide him with a copy of a publication entitled "Review of Race Relations Practices of the Metropolitan Toronto Police Force" (the report) on computer disk. The appellant also indicated that if the entire report itself was not available on disk, he would require a disk containing "whatever individual documents/information contained in the review report are available."

The Municipality relies on the following exemption in denying access to the report:

- information published or available - section 15(a)

The requester appealed the decision of the Municipality on the basis that, "although the printed report is a public record, the relevant computerized files are not, and are therefore subject to release under the Act".

The Municipality provided the Commissioner's office with a copy of the printed report and the relevant computer diskette. The printed report consists of 159 pages including indices and cover pages. The diskette consists of three WordPerfect files. The files are titled "RACEREL.REP", "RACEREL.BK!", and "PAGE.92". The contents of the "RACEREL.REP" and "RACEREL.BK!" files contain exactly the same information. For convenience, I will refer only to the "RACEREL.REP" file and all comments about the "RACEREL.REP" file apply equally to the "RACEREL.BK!" file.

The information found on 142 pages of the printed report are contained in the "RACEREL.REP" file. (The 17 pages of the printed report not contained in this file consist of 14 pages provided by the Metropolitan Toronto Police Force, two pages of graphs, and Page 92, which, as I have indicated, is contained in its own separate file). The "PAGE.92" file contains a one-page table (the table) found at Page 92 of the printed report and some 323 words of footnotes that relate to the table.

Notice that an inquiry was being conducted to review the decision of the Municipality was provided to the parties to the appeal.

After receiving this notice, the Municipality indicated that "[a]t the time of the request, the information was contained on a hard drive and not on disk." It was, therefore, confirmed with both the appellant and Municipality that the record at issue was, at the time of the request, files stored on a hard disk drive, rather than on a diskette. The Municipality then agreed to copy the information from its hard disk drive to diskette for the purpose of providing it to this office and for its own review purposes.

Representations were received from the Municipality only.

DISCUSSION:

In order to resolve the issues raised by this appeal, I must first determine whether the information requested constitutes a "record" for the purposes of the Act. If so, I will then consider whether the Municipality properly claimed the exemption in section 15(a) of the Act.

DEFINITION OF RECORD

Section 2 of the Act provides, in part, as follows:

"record" means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,

- (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and
- (b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution;

"regulations" means the regulations made under this Act.

Section 1 of Regulation 823, made under the Act, provides as follows:

A record capable of being produced from machine readable records is not included in the definition of "record" for the purposes of the Act if the process of producing it would unreasonably interfere with the operations of an institution.

As I have stated, the Municipality has indicated that the files contained in the diskette resided in a hard disk drive at the time of the request. In my view, files in a hard disk drive constitute "a machine readable record" in the sense contemplated by section 2 of the Act. A copy of those files on diskette is also a record that is capable of being produced from a machine readable record.

I have reviewed the contents of the diskette and the representations of the Ministry. I find no evidence that would indicate that, in this case, the process of copying the "RACEREL.REP" and "PAGE.92" files onto a diskette from a hard disk drive would unreasonably interfere with the operations of the Ministry.

Therefore, the "RACEREL.REP" and "PAGE.92" files stored on a hard disk drive constitute records for the purposes of the Act and a diskette copy of those files is also a record for the purposes of the Act.

INFORMATION PUBLISHED OR AVAILABLE

Section 15(a) of the Act states as follows:

A head may refuse to disclose a record if,

the record or the information contained in the record has been published or is currently available to the public;

It has been established in a number of previous orders that in order for this exemption to apply, the records must either be published or available to members of the public generally, through a regularized system of access such as a public library or a government publications centre (Orders P-327 and P-496).

In addition, for section 15(a) to apply to a record, it is not necessary that the record itself be published or currently available to the public. This exemption can also be successfully claimed where **information contained in the record** is available in this manner.

In its decision, the Municipality advised the requester that the information contained in the report is currently available to the public in printed form at the Metro Urban Affairs Library. The appellant has been provided with the call number of the printed report, its length, the hours of operation of the Library and its telephone number.

I have compared a representative sample of the files contained on the diskette provided by the Municipality with the printed report. All of the information contained in the sample of the "RACEREL.REP" file is contained in the printed report.

Portions of the table contained in the "PAGE.92" file have also been incorporated into the printed report. However, neither the footnotes, nor the footnote references in the body of the table as found in the "PAGE.92" file appear in the printed report.

It is, therefore, my view that section 15(a) applies to the "RACEREL.REP" file in its entirety and to portions of the table in the "PAGE.92" file. All of this information is contained in the printed report and is, therefore, publicly available for the purposes of this exemption.

Section 15(a) does not, however, apply to the footnote references in the body of the table and the footnotes in the "PAGE.92" file as this information is not reproduced in the printed report.

I have found that the hard drive and diskette copy of the "PAGE.92" file is a record as defined in the Act, and that some portions of the table and the footnotes contained in this file do not qualify for exemption pursuant to section 15(a) of the Act. As no other exemptions have been claimed by the Municipality to deny access to this information, the footnotes and the balance of the table should be disclosed to the appellant.

As I have indicated, the information not reproduced in the printed report takes up about one-quarter page of a 159-page report. In these circumstances, the Municipality may contact the appellant to ascertain if he wishes to receive access to the information which is not publicly available in a diskette format or a printed paper copy of the "PAGE.92" file.

ORDER:

1. I uphold the decision of the Municipality with respect to the information contained in the "RACEREL.REP" file and portions of the table contained in the "PAGE.92" file.
2. I order the Municipality to provide the appellant with the information in the footnotes and the footnote references in the body of the table contained in the "PAGE.92" file, either in diskette or printed paper format, based on the appellant's choice, within fifteen (15) days of the date of this order.
3. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ August 5, 1994

POSTSCRIPT:

As I have indicated, in this case I have compared a representative sample of the materials contained in the "RACEREL.REP" file on the computer diskette with the printed copy of the requested report in order to determine if the information contained in the file is "publicly available". This process was undertaken in this case as neither the printed report, the publicly available information, nor the electronic form of the information, as downloaded onto the diskette, was very lengthy. It may be that in some circumstances such a comparison is not a practical or efficient use of the resources of the institution or the Commissioner's office. As requests for records in electronic form will no doubt increase, other methods may have to be adopted to address the issue of the public availability of electronic records.