



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-406**

## **Appeal M-9400315**

### **Hamilton-Wentworth Regional 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 Hamilton-Wentworth Regional Police Services Board (the Police) received a request for records relating to the appellant. The request was made by the appellant's counsel. The requested records relate to the placement of the appellant in a witness protection programme. In particular, the appellant seeks a copy of an agreement signed in the presence of the Police.

The Police originally denied access to the requested information pursuant to sections 8, 38(a) and 38(b). The appellant appealed this decision.

During mediation, the Police indicated that the original decision was made without having actually conducted a search for responsive records. The Police then provided the appellant with a second decision letter in which access was denied as no records exist. The Police also notified the appellant that records relating to the request were in the custody of the Ontario Provincial Police (the OPP) and that the request was being transferred to the Ministry of the Solicitor General and Correctional Services (the Ministry) pursuant to section 18 of the Act.

The appellant does not object to the transfer of his request to the Ministry. However, he believes that records should also exist within the custody and control of the Police. The sole issue in this appeal, therefore, is whether the Police's search for responsive records was reasonable in the circumstances.

A Notice of Inquiry was provided to the Police and the appellant. Representations were received from both parties. In addition to his representations, the appellant included an affidavit in support of his position.

## **DISCUSSION:**

Where a requester provides sufficient details about the records to which he is seeking access and the Police indicate that the records do not exist, it is my responsibility to ensure that the Police have made a reasonable search to identify the records which are responsive to the request. While the Act does not require the Police to prove to the degree of absolute certainty that such records do not exist, the search which the Police undertake must be conducted by knowledgeable staff in locations where the records in question might reasonably be located.

The appellant states in his representations that the Police should have in their custody both the agreement signed by the appellant and copies of notes made during a telephone conversation with a named Crown attorney regarding the witness protection programme. The affidavit supplied by the appellant, sworn by a witness to the signing of the agreement and the telephone conversation, supports the appellant's position that these events took place.

The Police indicate that, following receipt of the request, the appellant was contacted for clarification. The appellant advised them that the agreement was signed in 1986. The Police then searched their in-house computer for any police occurrence reports relating to the appellant from 1988 to the present, as well as microfilm of occurrence reports from 1971 to 1988.

The individual in the Major Crimes Unit of the Police who was responsible for the witness protection and relocation programme in 1986 was contacted. He indicated that at that time the Police did not have a true witness relocation programme, and that the OPP was responsible for the appellant's agreement.

The investigator at the OPP intelligence branch who worked on the appellant's case was contacted, and he confirmed that the documents were in the custody and control of the OPP. He further indicated that the Police would not have a copy of the agreement.

Finally, the Police reviewed the file relating to the incident which led to the appellant's placement in the witness protection programme. No records were located in this file.

I have carefully reviewed the representations of the parties. I am satisfied that the Police have taken all reasonable steps to locate the records responsive to the appellant's request.

**ORDER:**

I uphold the decision of the Police.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ October 18, 1994