



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-398

Appeal M-9400374

Kingston 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 Kingston Police Services Board (the Police) received a request for access to any and all correspondence from the Ministry of the Solicitor General and Correctional Services (the Ministry) to the Police or correspondence between different levels of the Ministry, currently held by the Police, which relate to a described incident. The Police responded by indicating that access could not be granted as the records have never existed. The requester appealed the decision of the Police.

The sole issue in this appeal is whether the Police have conducted a reasonable search to locate records responsive to the request.

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

DISCUSSION:

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records to which he is seeking access and the Police indicate that no 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 the Police to prove with absolute certainty that the requested records do not exist. However, in order to properly discharge its obligations under the Act, the Police must provide me with sufficient evidence which shows that it has made a **reasonable** effort to identify and locate records responsive to the request (Order M-275).

The representations of the Police include the sworn affidavit of the Freedom of Information and Privacy Co-ordinator who conducted the search for the requested records. The Co-ordinator indicates that he is familiar with the filing system in the Records office as he was the officer in charge of the Information Services Branch between 1989 and 1992. During this time, the filing system was redesigned and a record retention by-law introduced. The Co-ordinator states that he personally searched for responsive records in the Records office and none were located.

The Co-ordinator states that he obtained written confirmation from one of the police officers identified by the appellant that there were no files or correspondence related to the incident. Confirmation was also obtained from the second police officer identified by the appellant. This officer indicated that he has no knowledge of any records received from the Ministry. The Co-ordinator finally states that he also contacted an employee at the Ministry who advised that in such situations, it is highly unlikely that correspondence would have been sent to the Police.

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

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ October 6, 1994