



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-851

Appeal P-9400553

Ministry of the Solicitor General and Correctional Services



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## **NATURE OF THE APPEAL:**

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The appellant requested all information and correspondence from the Ministry of the Solicitor General and Correctional Services (the Ministry) relating to himself with respect to the denial of his re-appointment to a named Police Services Board (the Board), and the subsequent reversal of this decision which led to his re-appointment for an additional two year term. The request also indicated that the appellant wished to receive any references to him made during his tenure as a member of the Board.

The Ministry searched the following areas:

- the Deputy Minister's office (which includes the Minister's office)
- the Public Appointments Unit
- the Policing Services Division
- the Ontario Civilian Commission on Police Services.

The Ministry located records responsive to the request and, with the exception of Pages 48 and 50 of the record, granted full access to them. Some information on Pages 48 and 50 was withheld as non-responsive to the request.

The appellant appealed the Ministry's decision on the basis that more records should exist. In particular, the appellant sought correspondence which he believes was sent to the Ministry by a named individual (the named individual), and documentation which would contain assessments and comments made about his performance as a member of the Board.

During the mediation stage of the appeal, the appellant provided the Commissioner's office with a chronology of events relating to the denial of his re-appointment, which included an attachment of a newspaper clipping, to support his belief that more documentation should have been produced.

The Appeals Officer advised the Ministry of the contents of the above chronology and the Ministry conducted a second search in the above four areas. As a result of this search one further record (the newspaper clipping referred to above) was located. This record was sent to the appellant.

Following further discussions with the Appeals Officer, the Ministry determined that three pages (Pages 48, 50 and 51) were apparently inadvertently omitted from the package of records originally sent to the appellant. These pages were subsequently disclosed to the appellant in accordance with the Ministry's original decision.

The Ministry then provided a second decision letter to the appellant in which it indicated that it had reconsidered its decision with respect to the portion of Page 50 which had originally been withheld as non-responsive. The Ministry determined that this portion of Page 50 was responsive to the request and a copy of the page was sent to the appellant. The responsiveness of Page 50 is, therefore, no longer at issue in this appeal.

The appellant continues to believe that more records should exist. He also believes that the severed portions of Page 48 should be considered as responsive to his request. The issues in this appeal, therefore, are whether the Ministry's search for records was reasonable in the circumstances of this appeal, and whether the portions of Page 48 which have been withheld are responsive to the request.

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

### **PRELIMINARY MATTER:**

In his representations, the appellant requests the opportunity to appear before the decision-maker to provide oral representations with respect to the issues in this appeal. He states:

... to fully understand the comments of this written representation, I should be able to articulate my position as may be requested to support my appeal.

The appellant has provided detailed and well articulated written representations outlining why he believes that more records should exist. He did not, however, respond to the issue of whether the severed portions of Page 48 are responsive to the request.

Although the onus is on the Ministry to detail the steps taken in conducting its search for records and to explain why it considers a portion of the record to be non-responsive, I invited the appellant to supplement his written representations, if he wished to do so, by telephone. This invitation was declined by the appellant, who continued to insist on appearing in person.

In my view, the appellant's written representations are clear, understandable and thorough with respect to the issue of the existence of further records. As I indicated above, although he was provided with the opportunity to address the non-responsiveness of records, he did not provide representations on this issue. Finally, the appellant was offered, at his request, the opportunity to provide oral representations, and he declined to do so.

In view of the above, I have decided that it is not necessary for me to hear oral representations.

### **DISCUSSION:**

#### **RESPONSIVE RECORDS**

In its representations, the Ministry indicates that one portion of Page 48 relates to another individual, and another portion concerns discussions unrelated to the appellant. The Ministry submits that the appellant's request is restricted to information which relates only to him, and in particular to the issues surrounding his re-appointment to the Board.

In reviewing the severed portions of Page 48, I agree that these portions do not relate to the appellant. They are, therefore, not responsive to the appellant's request, and I will not consider them further in this order.

## **REASONABLENESS OF SEARCH**

In his representations, the appellant states that none of the records which were released to him contain the reasons behind the original decision not to re-appoint him to the Board. He does not believe that any decision regarding re-appointment could be made without some internal references to interviews, conversations, observations and reports.

The appellant also refers to unfavourable local media reports made about him and believes that the individuals who were responsible for the remarks had communicated with, and in some way influenced, the Ministry.

Finally, the appellant provides a chronology of events between October 1993 and January 1994 which sets out the sequence in which various activities, such as exchange of correspondence, media reports and meetings occurred.

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

In its representations, the Ministry explains that there is no formal selection system with respect to Board appointments. These appointments are "political appointments" and are at the "pleasure of Her Majesty the Queen". As such, the Ministry indicates that there are no formal rules or obligations relating to appointment or re-appointment decisions, or the reversal of a previous decision. Neither is there any requirement that these decisions be documented.

The Ministry states further that during its search for responsive records it contacted the Special Assistant - Appointments (the Special Assistant) in the Minister's office and the Co-ordinator in the Public Appointments Unit regarding the possible existence of correspondence or performance assessments relating to the appellant that may have been sent to the Ministry.

The Co-ordinator responded that the Ministry sent out a facsimile to various municipalities requesting feedback on Board re-appointments. This facsimile stated that comments should be provided directly to the

Special Assistant and provided his telephone number. The Special Assistant confirmed that although he did not receive any written correspondence, he did have a telephone conversation with the named individual.

The Co-ordinator further indicated that the Public Appointments Unit does not do reference checks nor would a discussion be held with a municipality regarding the performance of a Board member.

Finally, the Ministry's Correspondence Unit was contacted to determine whether any correspondence about the appellant had been received by the Ministry's office, and in particular whether correspondence had been received from the named individual. No records were located.

I have carefully reviewed the representations provided by the Ministry and the appellant, and have concluded that the Ministry's search for responsive records was reasonable in the circumstances of this appeal.

**ORDER:**

I uphold the Ministry's decision.

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

\_\_\_\_\_ January 31, 1995