



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-478

Appeal M-9400640

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) from a decision of the Metropolitan Toronto Police Services Board (the Police).

Originally, the Ministry of the Attorney General (the Ministry) received a request for all information in Crown files pertaining to a charge against two named individuals. The Ministry determined that the information was contained in the "Crown Brief", also referred to as the "Dope Sheet".

The Ministry advised the requester that it no longer had custody of the requested information as the record was returned to the Police upon completion of the matter. The request was, therefore, forwarded to the Police pursuant to section 25(1) of the Act.

The requester appealed the Ministry's decision to forward the request to the Police. In Order P-864, I was satisfied that the Crown Brief had been returned to the Police and I found that the Ministry had properly forwarded the request to the Police.

In response to the forwarded request, the Police denied access on the basis that the requested record does not exist. The requester appealed this decision.

The sole issue to be determined in this appeal is whether the Police conducted a reasonable search for the responsive record.

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

DISCUSSION:

REASONABLENESS OF SEARCH

Where the requester provides sufficient details about the records which she 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 its obligations under the Act, the Police must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records responsive to the request.

The Police have included with their representations, an affidavit sworn by an analyst in the Freedom of Information and Protection of Privacy Unit who searched for the responsive record. The affidavit indicates that the analyst contacted 41 Division, where the record should have been stored, as well as the 41 Division Warrant office, the Police Public Complaints Bureau and the investigating officer. The record could not be located.

The Police indicate that the retention period for Crown Briefs is seven years and acknowledge that the record may exist. However, following a thorough search of locations where the record would or might be stored, they were unable to locate the record.

Following careful consideration of the representations of both parties, I accept the evidence of the Police concerning their search, which I find was reasonable in the circumstances of this appeal.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ February 28, 1995