



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-864

Appeal P-9400627

Ministry of the Attorney General



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télééc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). 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 it no longer has custody of the requested information as the records were returned to the Metropolitan Toronto Police Services Board (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.

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

Section 25(1) of the Act states that:

Where an institution receives a request for access to a record that the institution does not have in its custody or under its control, the head shall make all necessary inquiries to determine whether another institution has custody or control of the record, and where the head determines that another institution has custody or control of the record, the head shall within fifteen days after the request is received,

- (a) forward the request to the other institution; and
- (b) give written notice to the person who made the request that it has been forwarded to the other institution.

This section imposes mandatory obligations on the Ministry in situations where another institution has custody or control of responsive records which the Ministry does not have in its own custody or control. These obligations include making inquiries and, where another institution has a responsive record or records under its custody or control, forwarding the request to that other institution and notifying the requester that this has been done.

In its representations, the Ministry indicates that the requested records pertain to an assault charge which had been laid privately by the appellant against certain named individuals. The Ministry further states that prior to going to trial at Scarborough Provincial Court (the Court), the matter was withdrawn.

The Ministry forwarded the request to the Crown's office at the Court. The Assistant Crown Attorney at the Court advised that the Crown Brief containing the records responsive to the request had been returned to the police force responsible for the charge. The Ministry indicates that it is the practice of the Crown Attorney's office to return all prosecution files (also referred to as the "Crown Brief") in criminal cases

conducted in Provincial Courts to the appropriate police force, in this case the Police, when the matter has concluded.

The Ministry submits that the request, in this case, was properly forwarded to the Police in accordance with section 25(1) of the Act.

Following my review of the Ministry's representations, I am satisfied that the Ministry no longer has custody of the requested records and that it was obliged and did forward the request to the Police according to the requirements of section 25(1) of the Act.

**ORDER:**

I uphold the Ministry's decision.

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

\_\_\_\_\_  
February 14, 1995