



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-564

Appeal M-9500225

Metropolitan Toronto Police Services Board



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/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Metropolitan Toronto Police (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to records relating to an incident which took place on April 3, 1993 involving the requester. The requester later clarified that she was seeking access to information regarding her appearance at 41 Division, the notes taken by the Staff Superintendent and Superintendent at the requester's home, records regarding a telephone call made by a named Sergeant to her home asking her to appear at 41 Division, and any information regarding the former Superintendent being moved from 41 Division to 52 Division. The Police provided the requester with 12 pages of records.

The requester appealed this decision, as it is her belief that additional responsive records do exist, and a Notice of Inquiry was provided to the appellant and the Police. Representations were received from both parties.

DISCUSSION:

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records which he or she is seeking and the Police indicate that such a record does 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 record does 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 they have made a **reasonable** effort to identify and locate records responsive to the request.

The Police have provided affidavits sworn by the named Sergeant, a Superintendent and the Staff Superintendent. The Superintendent who the appellant indicates attended at her home has since retired and the Police submit that an affidavit sworn by him could not, therefore, be obtained. The Police indicate that the individuals named by the appellant, the Police Services Board, and the Chief of Police were asked to search for documentation regarding the appellant, and the memorandum books of two constables were reviewed. Five pages of records were located by the Sergeant, and seven pages were located by the Police Services Board. The Police granted partial access to these records. The Police did not locate any other responsive records.

I have carefully reviewed the representations of both parties and the affidavits and I am satisfied that the Police have taken all reasonable steps to locate the records responsive to the first part of the appellant's request, namely that information which pertains to her involvement with the Police. However, no details have been provided of the search conducted for information regarding the former Superintendent being moved from 41 Division to 52 Division. Accordingly, I am not satisfied that the Police have made a reasonable effort to locate such records, and I order the Police to conduct a further search.

ORDER:

[IPC Order M-564/July 14, 1995]

1. I dismiss the appeal with respect to the adequacy of the search for records relating to the appellant's involvement with the Police.
2. I order the Police to conduct a further search for records responsive to the appellant's request and to advise the appellant in writing of the results of this search within fifteen (15) days of the date of this order.
3. In the event that responsive records are located in the search referred to in Provision 2, I order the Police to render a final decision on access to the records in accordance with the provisions of sections 19 and 22 of the Act, treating the date of this order as the date of the request, without recourse to a time extension under section 20 of the Act.
4. In order to verify compliance with this order, I reserve the right to require the Police to provide me with a copy of the correspondence referred to in Provisions 2 and 3.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ July 14, 1995