



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

ORDER M-730

Appeal M_9500672

Town of Amherstburg Police Services Board



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NATURE OF THE APPEAL:

The Town of Amherstburg Police Services Board (the Police) received a request under the Municipal Freedom of Information and Privacy Act (the Act) for access to information regarding complaints filed against the Police, including complaints allegedly made by the requester and referred to by the Police Chief at a staff meeting on a specific date. The requester also sought access to the number of complaints received and how each complaint was addressed.

The Police sought clarification about the request. The requester responded that the request was specific and therefore, clarification was not necessary. The Police then issued a decision letter, indicating that no responsive records exist. The requester appealed on the basis that records should exist.

The sole issue in this appeal is whether the search conducted by the Police for records responsive to the request was reasonable in the circumstances of this appeal.

A Notice of Inquiry was sent by the Commissioner's office to the appellant and the Police. Representations were received by 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 no records exist, it is my responsibility to ensure that the Police have conducted 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 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 they have made a **reasonable** effort to identify and locate records responsive to the request.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records may, in fact, exist.

The appellant indicates that her request was specific and that she had provided all the relevant information to the Police. The appellant submits that at a staff meeting the Police Chief made reference to "complaints" allegedly received from her and others. The appellant believes that on this basis, records responsive to the request should exist.

The representations of the Police include the affidavits of the Police Chief and the Freedom of Information and Privacy Co-ordinator (the Co-ordinator). In his affidavit, the Police Chief explains that he had received verbal information about complaints sent to other agencies and that he had raised this matter at a staff meeting. The Police Chief states that he searched the files in his office for records responsive to the request and that no records were found.

The Co-ordinator states that records and information of the Police are located in the office of the Chief of Police. The Co-ordinator states that he also personally searched the files in the Police Chief's office and that these files include management operations, training, personnel, strategic planning, harassment policy, personnel meetings and communications files and that no responsive records were found.

As I have indicated previously, the Police do not have to prove with absolute certainty that records do not exist. The Police do have to provide me with sufficient evidence to show that they have made a reasonable effort to identify and locate records responsive to the request. I find that the explanation put forth by the Police, that the complaints were verbal in nature and therefore no records exist, is reasonable. Accordingly, the search conducted by the Police for responsive records was reasonable in the circumstances.

ORDER:

I uphold the decision of the Police and this appeal is dismissed.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ March 12, 1996