



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

ORDER M-724

Appeal M_9500742

Penetanguishene 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 Penetanguishene Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was addressed to the Chief of Police and asked for the following:

- (1) the authority under which the Police Chief asked the requester whether he had spoken to a named individual during a specific time;
- (2) to view all records containing the requester's comments and all records referring to his comments, and
- (3) a list of all institutions/firms/organizations, with addresses, which have or could have the requester's comments in a record.

The Police did not respond to the request and the requester filed an appeal. Appeal Number M_9500519 was opened to address the issue of a deemed refusal. As a result of mediation, the Police issued a decision letter which resolved the issue of the deemed refusal and appeal file M_9500519 was closed.

In their decision letter, the Police state that the information, if it exists, is kept by the Chief of Police and that the request is an abuse of process. The requester appealed, objecting to his request being termed as "an abuse of process". Appeal Number M-9500742 was opened and it is this appeal which is the subject of this order.

Mediation was not successful. The sole issue in this appeal is whether the request constituted an abuse of process by the appellant. A Notice of Inquiry was provided by the Commissioner's office to the appellant and the Police. Representations were received from the appellant only.

DISCUSSION:

ABUSE OF PROCESS

As I have indicated previously, the Police have not submitted any representations.

In Order M-618, Commissioner Tom Wright considered a number of factors in determining whether an individual's use of the Acts constituted an "abuse of process". Commissioner Wright concluded that in the particular circumstances of that appeal, the appellant's actions led him to conclude that this individual's use of the Acts constituted an "abuse of process". The factors considered by Commissioner Wright included the volume of requests, the nature and scope of the requests, the number of requests which were made to many different institutions as well as the rate at which the requests were made by the appellant in the specific case.

Most importantly, the Commissioner also considered the stated intent of the requester in that particular case, which was to burden or break the system, and he commented as follows:

All these factors go to establish a pattern of abuse of process, through the excessive use of that process by this individual **requester**, for purposes unrelated to a genuine or bona fide wish to secure the information requested.

Commissioner Wright's conclusions were based on evidence provided by the institution. In the case before me, the Police have not made any representations. I am therefore obliged to make a determination based on the wording of the request, the decision letter and the evidence presented by the appellant.

In my view, the circumstances of this case are quite distinct from those before Commissioner Tom Wright in Order M-618.

Firstly, the appellant is seeking access to records which contain his own personal information. Secondly, the evidence before me indicates that this office received five appeals from decisions of the Police, filed by this appellant since August 1995, one of which was Appeal Number M_9500519 referred to above. Based on that, it would appear that the appellant made one request for personal information (the current appeal) and four requests for general records. Therefore, not only is the nature of the request in this case different from the nature of the requests made by the appellant in Order M-618 but the volume of requests and rate of requests made cannot compare to the scale encompassed in Order M-618. Finally, the intent of the appellant in seeking access to his own personal information cannot be construed as an intent to break or burden the system.

Therefore, I find that for all the reasons set out above, this request cannot be characterized as an "abuse of process".

Under section 36(1) of the Act, every individual has a right of access to his or her own personal information in the control or under the custody of a government institution, subject to the exemptions applicable under the Act. In my view, based on the evidence before me and for the reasons articulated above, I conclude that the criteria considered by Commissioner Tom Wright in Order M-618 are not applicable in the circumstances of this case and this request cannot be characterized as an "abuse of process".

ORDER:

1. I do not uphold the decision of the Police.
2. I order the Police to issue a decision regarding access to the appellant for each of the items listed in his request on or before **March 20, 1996**.
3. In order to verify compliance with the Provision 2 of this order, I order the Police to send me a copy of the decision letter referred to in Provision 2 on or before **March 20, 1996**. This should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario M5S 2V1.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ March 5, 1996