



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

ORDER M-935

Appeal M_9700026

Woodstock 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 Woodstock Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to “copies of any and all letters, memos, phone bills and any other information in regards to [the appellant’s] request for an investigation regarding perjury on July 29, 1996”, as well as “the names of any other police forces [the Chief] contacted, and the names of the persons [the Chief] spoke to in regards to [the appellant’s] situation”.

The Police responded to the request by granting the appellant access in full to the three records which they identified as responsive to the request. The appellant appealed this decision on the basis that additional records exist.

During the mediation stage of the appeal, the Police conducted a further search, but no additional records were found. The appellant believes that the search undertaken by the Police was not sufficiently thorough. In his view, additional records should exist, particularly, those pertaining to the identity of the other police service contacted by the Chief with respect to the appellant’s request for an investigation into his allegations of perjury. It should be noted that since the time of the request, the Chief has left his position with the Woodstock Police Services Board.

A Notice of Inquiry was provided to the Police and to the appellant. Representations were received from the Police only. The sole issue to be determined in this appeal is whether the search by the Police for records responsive to the appellant’s request was reasonable in the circumstances.

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 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 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.

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.

Attached to his letter of appeal, the appellant provided this office with a copy of one of the records which was disclosed to him by the Police. In this letter, dated July 30, 1996, the former Chief advised the appellant that he had contacted another police organization seeking their advice

with respect to the appellant's allegations. This tends to support the appellant's belief that further responsive records regarding contact with another police agency by the former Chief should exist.

The Police submit that all of the records which are responsive to the request have been provided to the appellant. Their representations include an explanation of the steps which they took to locate any responsive records. These efforts were limited, however, to contacting the former Chief on two occasions, both before and after he left the position, requesting that he make available any records which were responsive to the request. On both occasions, he advised that no other responsive records exist.

The Police submit that they conducted a thorough and complete search and that there are no additional responsive records. I have not, however, been provided with any details of the actual searches of Police record holdings which were undertaken. In my view, the Police are relying solely on the information provided to them by the former Chief about the existence of additional responsive records. I have not been advised as to whether any searches of existing files involving the appellant or his complaint were made.

Having reviewed all of the circumstances of this appeal and considered the representations of the Police, it is my view that the appellant has provided a reasonable basis for concluding that further responsive records may exist. I find that the Police have failed to provide me with sufficient evidence to demonstrate that they have made a reasonable effort to identify and locate records responsive to the request. Therefore, I find that the Police search for records responsive to the appellant's request was not reasonable in the circumstances of this appeal.

ORDER:

1. I order the Police to conduct a further search to locate the records requested by the appellant, which is to include, but is not restricted to, all files involving the appellant and all files regarding his complaint and to advise the appellant of the results of the search no later than **May 29, 1997**.
2. If, as a result of this further search, the Police identify any records responsive to the request, I order the Police to provide a decision letter to the appellant regarding access to these records in accordance with sections 19 and 22 of the Act, considering the date of this order as the date of the request and without recourse to a time extension.
3. In order to verify compliance with this order, I order the Police to provide me with a copy of the letter referred to in Provision 1 and a copy of the decision referred to in Provision 2 (if applicable) no later than **June 9, 1997**. These copies 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: _____
Donald Hale
Inquiry Officer

_____ May 8, 1997