



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

ORDER M-1017

Appeal M-9700188

Waterloo Regional Police Services Board



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NATURE OF THE APPEAL:

The Waterloo Regional Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for “a listing of all police investigations of [the appellant] for the time periods 1988 to the present. This would include a listing of individuals and institutions who requested and took part in said investigations” and “all surveillance, wiretaps, mail searches, judge-court orders and associated actions”.

The Police located three incident reports which they identified as responsive to the request and granted partial access to them, claiming the application of the following exemptions contained in the Act to the undisclosed information:

- law enforcement - section 8(2)(a)
- discretion to refuse requester's own information - section 38(a)
- invasion of privacy - section 38(b)

The Police also claimed that some of the undisclosed information contained in the incident reports was not responsive to the request. The appellant appealed this decision.

During the mediation of the appeal, the appellant clarified that he was appealing only the decision of the Police that further responsive records do not exist. He indicated that he did not require the information which had been severed from the three records provided to him. Also during mediation, the Police conducted a further search and located three additional records relating to an application by the appellant for a Firearms Acquisition Certificate (FAC). The Police disclosed these additional records to the appellant, with the exception of some non-responsive information.

The appellant continued to maintain that the search by the Police had not been sufficiently thorough. He claimed specifically that: (1) records relating to a “* 57” telephone call [to determine the source of a call received by the appellant] which he made to the Police on July 12, 1995; and (2) records relating to investigations by the Police involving him and the University of Waterloo, should exist.

A Notice of Inquiry was provided to the Police and the appellant. Representations were received from both parties. 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 records do not exist. However, in my view, in order to properly discharge their 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.

In the present appeal, the appellant's request is quite detailed and clearly describes the type of information he is seeking. The appellant states that additional records responsive to his request should exist, based on his belief that he has been the subject of a Police investigation undertaken at the request or direction of the University of Waterloo. He also believes that evidence of this investigation has been covered up. In support of his position, he argues that the failure of the Police to locate his FAC records until after he launched this appeal demonstrates that their search for records was not sufficiently thorough. In addition, he states that he made a request to the RCMP for records relating to his FAC application and was advised that any records which they may have held have been destroyed.

Finally, the appellant indicates that he made a "* 57" telephone call to the Police on July 12, 1995. The appellant acknowledges the position taken by the Police that records which may have been created relating to this communication have now been destroyed. He argues, however, that this fact supports his argument that records relating to Police investigations of his activities were also created but have now been destroyed or misplaced.

The Police submit that the appellant's request was clear in describing the records sought and that all records responsive to the request have now been provided to him, with the exception of the severed information described above. The Police have included an explanation of the steps which they took to locate responsive records at the time the request was received. Specifically, they submit that searches were undertaken by the Operational Support Commander and the Records Supervisor.

During the mediation of the appeal, additional searches of the Police filing and computer systems were conducted. In addition, the Communication Supervisor was contacted for information relating to the "* 57" telephone call. This individual advised that the only record which would have been created as a result of that call would be a tape recording but that, in accordance with the Police record retention schedule, this tape would have been destroyed six months following the date of the call. As a result, the Police submit that they have no further responsive records and that, to the best of their knowledge no further records exist.

Having reviewed all of the circumstances of this appeal and considered the representations of the parties, I find that the search by the Police for records responsive to the appellant's request was reasonable in the circumstances of this appeal.

ORDER:

I uphold the decision of the Police and dismiss the appeal.

Donald Hale
Inquiry Officer

October 7, 1997