



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

# **ORDER M-1032**

**Appeal M-9700173**

**Metropolitan Toronto Police Services Board**

## **NATURE OF THE APPEAL:**

The Metropolitan Toronto Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to the notebooks of three police officers and an occurrence report about a specific incident involving the appellant. The Police identified the police officers' notes and granted partial access. Access was denied to one severed portion of a police officer's notebook (page 3 of the record) pursuant to section 14(1)(f) (invasion of privacy) of the Act and to the remaining parts of the notes on the basis that they were not responsive to the request.

The appellant appealed the denial of access and indicated that additional records, specifically, an occurrence report, should exist. He also indicated his belief that two blank lines on page 4 of the record contain information responsive to his request.

During mediation, the Police conducted a further search for additional records and confirmed that none were located. The Police also stated that an occurrence report does not exist because none was filed.

This office provided a Notice of Inquiry to the appellant, the appellant's brother whose interests may be affected by disclosure of the record, and the Police. Representations were received from the appellant and the Police.

In his representations, the appellant included an authorization from his brother, consenting to the disclosure of his information to the appellant. The Police had withheld access to the brother's name and date of birth on page 3 of the record, under section 14(1)(f) of the Act. Since consent to the disclosure of this information has been provided, I do not need to consider the application of section 14(1)(f) to the record and I will order the Police to disclose this information to the appellant.

The issues that I will address in this order are:

- (1) whether the portions of the record that have been identified as non-responsive by the Police are in fact, responsive to the request;
- (2) whether the two blank lines in the middle of each page, including page 4, of the record contain information; and
- (3) whether additional records exist.

## **DISCUSSION:**

### **RESPONSIVENESS OF RECORDS**

The Police state that police officers record all significant events which occur during their tour of duty and that portions of each page of the record contain information which relates to other people and other

incidents. The Police state that, therefore, these portions of the record are not responsive to the request.

The appellant submits that his request requires full disclosure of the record.

In Order P-880, former Inquiry Officer Anita Fineberg considered the standard to be applied in deciding whether records are responsive to a request. She stated:

In my view, the need for an institution to determine which documents are relevant to a request is a fundamental first step in responding to a request. It is an integral part of any decision by a head. The request itself sets out the boundaries of relevancy and circumscribes the records which will ultimately be identified as being responsive to the request. I am of the view that, in the context of freedom of information legislation, "relevancy" must mean "responsiveness". That is, by asking whether information is "relevant" to a request, one is really asking whether it is "responsive" to a request. While it is admittedly difficult to provide a precise definition of "relevancy" or "responsiveness", I believe that the term describes anything that is reasonably related to the request.

I will therefore consider the request:

[access is requested to police notes and records] regarding an incident that occurred on April 15, 1994 at about 3.00 pm at the Miracle Mart Store, renamed Dominion Save Centre, 600 Sheppard Avenue West, North York, Ontario.

I have carefully reviewed the portions of each page of the record which the Police have identified as being non-responsive. I find that the withheld information relates to individuals and incidents totally unrelated to the request. Accordingly, this information is not responsive.

### **WHETHER THE TWO BLANK LINES ON EACH PAGE OF THE RECORD CONTAIN INFORMATION**

In response to the appellant's concern that the two blank lines on each page of the record contain information, I asked the Police to provide me with the police officers' original notebooks for the purpose of viewing and comparing with the photocopies of the record. I have viewed and compared the pages of the original notebooks with the photocopies. The police officers' notebooks measure about 3" by 5" and the blank space or two blank lines on each page mark the space at the top of each page. Therefore, two pages of notes have been photocopied together to make up one page for the record. I confirm that the two blank lines in the middle of each page of the record are blank and do not contain any information.

The appellant also refers to an entry on page 4 of the record which appears as number "1". I have reviewed the record and this mark is an extension of part of a date in a non-responsive item which has been severed.

### **REASONABLENESS OF SEARCH**

Where a requester provides sufficient detail about the records which he 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 further 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 it has 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 by the Police in response to the request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records may, in fact, exist. The appellant submits that an occurrence report relating to the incident should exist.

The Police state that an occurrence report was never filed and therefore, does not exist. The Police point out that the retention period for occurrence reports is five years. Therefore, since the incident occurred in April, 1994, the report, had it been filed, would still be in its Occurrence Processing Unit. The Police state that subsequent to the filing of the appeal, a further search was conducted for such a record and none was found.

I have reviewed the submissions of the Police and I am satisfied that their search for records responsive to the request was reasonable in the circumstances.

### **ORDER:**

1. I order the Police to disclose the withheld portion of page 3 of the record to the appellant by sending him a copy by **December 5, 1997**.
2. I uphold the decision of the Police to withhold access to the remaining parts of the record.
3. I dismiss the appellant's appeal with respect to the reasonableness of search.

Original signed by: \_\_\_\_\_  
Mumtaz Jiwan

\_\_\_\_\_ November 14, 1997

Inquiry Officer