



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

# **ORDER M-1021**

**Appeal M-9700176**

**Hamilton-Wentworth Regional Police Services Board**



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## **NATURE OF THE APPEAL:**

The Hamilton-Wentworth Regional Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all police media releases concerning PCC No. 53-96 Final Report, in their entirety. In a second letter to the Police, the requester specifically requested access to media statements made by the Police to The Hamilton Spectator from January 19, 1995 to January 24, 1995, concerning an incident involving her family and statements made to The Hamilton Spectator by a named police officer on, or about, June 26, 1996 and August 20, 1996. The requester asked to see the media statements in their entirety, without editing.

The Police advised the requester that a records search had been conducted for media statements released from January 19, 1995 to January 24, 1995 and that these records did not exist. The Police explained that they have a Records Retention By-law which states that media releases are kept for "current + 1 year". They advised that as dictated by their Record Retention Schedule, the records had been purged. The Police also stated that a search was conducted for any media release from June 26, 1996 to August 20, 1996 and no records exist for this time period. The Police suggested that the requester may wish to examine old issues of The Hamilton Spectator which may contain the requested information.

The requester (now the appellant) appealed the decision of the Police.

After receiving the Confirmation of Appeal, the Police conducted a further search for records. They advised that they had found three media releases in the Professional Standards Branch. The Police stated that the releases were obtained by the investigating officer on August 24, 1995. Therefore, these copies were not purged when the Media Relations Branch purged their files. The retention period for records in files of this type in the Professional Standards Branch is six years. The Police granted full access to the three media releases and several newspaper articles which were also found. The appellant still believed that additional records should exist.

This office sent a Notice of Inquiry to the Police and the appellant. Representations were received from both parties. The sole issue in this inquiry is whether the Police conducted a reasonable search for the records.

## **DISCUSSION:**

### **REASONABLE SEARCH**

Where an appellant provides sufficient details about the records which he or she is seeking and the Police indicate that further 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 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.

The appellant's representations focus on her belief that a media release dated January 21, 1995 should exist. She is of this view because of information which appeared in The Hamilton Spectator on that date.

The Police state that any releases from January 1995 were shredded by the Media Relations Branch in accordance with the Record Retention policy in January 1997. The Police attached a copy of the retention policy to their representations. It confirms that media releases are to be kept current plus one year.

However, in their representations, the Police state that they conducted a search of all complaint files which relate to the incident involving the appellant's family. They point out that one complaint file relates to a complaint filed by the appellant's daughter against the Police. Because the daughter is now over the age of 18, the Police state that the appellant does not have a right of access to this file. However, the Police state that because media releases contain information which has already been disclosed to the public, they conducted a search of the daughter's complaint file to locate any responsive media releases from either time period.

With respect to the information relating to June and/or August 1996, the Police state that all media releases for 1996 were searched and no media releases were found for the dates specified by the appellant. The Police state that they also reviewed the Occurrence Report to determine if any media releases had been included with the report. Having found the releases for January 1995 in the Professional Standards Branch, the Police rechecked all of these files and did not locate any additional records.

The Police state that they also conducted another search for records at the Media Relations Branch. In addition, the Police spoke with the named police officer to see if she recalled a media release. The Police were advised by the officer that she did not speak to The Hamilton Spectator at that time nor did she issue any media releases.

As I stated above, the Act does not require the Police to prove with absolute certainty that further records do not exist. The Police must provide me with sufficient evidence to demonstrate that they have made a reasonable search to identify any records which are responsive to the request.

A reasonable search is one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request (Order M-909).

Applying this definition of reasonable search to the actions of the Police in the circumstances of this appeal, I find that the Police have conducted a reasonable search to locate the records relating to the appellant's request.

**ORDER:**

I uphold the decision of the Police.

Original signed by: \_\_\_\_\_  
Marianne Miller  
Inquiry Officer

\_\_\_\_\_ October 9, 1997