



Information and Privacy  
Commissioner/Ontario

Commissaire à l'information  
et à la protection de la vie privée/Ontario

# **ORDER M-1081**

**Appeal M-9700302**

**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 all records, reports and notes relating to the requester's allegation that he had been assaulted by two police officers and a specific statement taken by a named officer in connection with that occurrence.

The Police identified 20 pages of records to which they denied access. The requester appealed this decision and Appeal M-9700198 was opened. The records at issue in that appeal consisted of a general occurrence report (two pages) and a supplementary report (18 pages). During the course of the inquiry in that appeal, the appellant claimed that an additional record should exist in the form of a statement taken by a police officer. The Police claimed that no such record existed. The inquiry proceeded with respect to the general occurrence report and the supplementary report and resulted in Order M-1028. With the agreement of the appellant and the Police, Appeal M-9700302 was opened to address the issue of whether the Police had conducted a reasonable search for the statement.

A Notice of Inquiry was sent to the Police and the appellant. The sole issue in the Notice of Inquiry was whether the Police have conducted a reasonable search for the statement.

## **DISCUSSION:**

### **REASONABLE SEARCH**

The appellant has explained the chronology of events that led up to the request and states that he was present as the handwritten notes of the statement were being taken. The appellant acknowledges that information from the statement was transferred to a computer and printed out, however, he is seeking the handwritten notes themselves.

Where a requester provides sufficient details about the records he is seeking, 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 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 appellant's request.

A reasonable search would be 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).

The Police were asked to provide a written summary of all steps taken in response to the appellant's request.

The Police state that their search for the handwritten notes of the statement consisted of speaking with the individual who had taken them. The Police provided me with a signed statement by the Detective Sergeant who took the statement from the appellant. He confirms that a detailed statement was taken while he and the appellant sat in a police vehicle. He states that the information which he obtained from

the appellant was later transferred onto his computer and was presented as part of the investigation into the appellant's allegations. He states that the rough notes "were not retained."

I accept the evidence that the Police have provided with respect to the disposal of the notes. Therefore, in the circumstances, I find that they have conducted a reasonable search for the handwritten notes of the statement.

The appellant states that if the notes of the statement have been destroyed, he seeks an explanation with respect to the authority for the destruction of the notes and information about when the notes were destroyed.

In the Notice of Inquiry, the Police were asked to respond to this question:

Is it possible that such records existed but no longer exist? If so please **provide details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.**

The Police have not provided me with any information as to the record maintenance policies with respect to this type of information nor have they provided me with a retention schedule.

By the very nature of their work, the Police are frequently dealing with highly sensitive personal information.

Section 30 of the Act places a clear responsibility on the Police to ensure that personal information is retained and disposed of in accordance with section 5 of Regulation 823 (Order M-1053). This regulation reads as follows:

Personal information that has been used by an institution shall be retained by the institution for the shorter of one year after use or the period set out in a by-law or resolution made by the institution or made by another institution on behalf of the institution, unless the individual to whom the information relates consents to its earlier disposal.

Notes complaining of an assault would most probably contain the appellant's personal information and possibly that of the individuals about whom he was complaining.

Our office will be in touch with the Police to ensure that the retention and disposal policies and procedures with respect to these kinds of records are in place to ensure compliance with section 30 of the Act and section 5 of Regulation 823.

**ORDER:**

I dismiss the appeal.

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

\_\_\_\_\_ March 6, 1998