



Information and Privacy
Commissioner/Ontario

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

ORDER PO-1837

Appeal PA-990388-1

Ministry of the Solicitor General



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NATURE OF THE APPEAL:

This is an appeal from a decision of the Ministry of the Solicitor General (the Ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The decision was made in relation to a request for certain records kept by the Ontario Civilian Commission on Police Services (the OCCOPS). In its decision, the Ministry provided a number of records to the requester (now the appellant) in response to parts of the request, and indicated that no records exist in relation to other parts of the request. In this appeal, the sole issue is whether the Ministry has conducted a reasonable search for records responsive to the request. The appellant contends that it has not, and that more records exist.

The parts of the request which are at issue in this appeal are:

1. minutes of meetings during which there were discussions regarding the appellant's complaint about the conduct of the former chief and two other officers of the Amherstburg Police Service (the Amherstburg Police);
2. minutes of meetings during which there were discussions in relation to a letter from the appellant to the OCCOPS dated March 4, 1999, asking for a decision;
3. minutes of meetings during which the appellant's complaint was reviewed and the basis of the decision that the matter be remitted to the Police Services Board for further action;
4. minutes of meetings and the basis for a decision to forward a copy of a report of the Chatham-Kent Police to the Amherstburg Police Chief for his adjudication as stated in correspondence dated April 7, 1999 from the OCCOPS to the appellant;
5. minutes of meetings during which there was discussion in relation to a letter from the appellant to the OCCOPS dated September 1, 1998, requesting an investigation;
6. minutes of meetings during which there was discussion in relation to a letter from the appellant to the OCCOPS dated August 27, 1998;
7. minutes of meetings during which there was discussion in relation to a letter from the appellant to the OCCOPS dated July 2, 1998;
8. all correspondence from the OCCOPS to the Amherstburg Police regarding the appellant's complaint and the subsequent investigation by the Chatham-Kent Police;
9. all correspondence from the OCCOPS to the Amherstburg Police referring the matter to the Amherstburg Police for its review.

The Ministry has indicated that no records exist in relation to parts 1-7 above. It has provided the appellant with copies of certain records in relation to parts 8 and 9. The appellant asserts that records exist in relation to parts 1-7, and that more records exist than have been disclosed in relation to parts 8 and 9.

In response to the Notice of Inquiry sent by this office, the Ministry has provided representations, which were subsequently forwarded to the appellant for her response. The appellant has also provided representations in this matter.

CONCLUSION:

I find that the Ministry's search for responsive records was reasonable.

DISCUSSION:

In appeals involving a claim that further responsive records exist, as is the case in this appeal, the issue to be decided is whether the Ministry has conducted a reasonable search for the records as required by section 24 of the *Act*. The *Act* does not require the Ministry to prove with absolute certainty that further records do not exist. In order to properly discharge its obligations under the *Act*, the Ministry must establish, however, that it has made a **reasonable** effort to identify and locate records responsive to the request.

The representations provided by the Ministry state that a search for records was conducted at the offices of the OCCOPS by a staff member at the OCCOPS who is familiar with the file and with the possible location of any records in relation to this request. Sixty-two pages of responsive records were located, access to *all* of which was provided to the appellant. Further searches were subsequently conducted during the mediation of this matter by staff from OCCOPS, none of which resulted in locating any other records.

In prior correspondence to the appellant, the Ministry has outlined the process followed by the OCCOPS in reviewing the decisions of police services concerning public complaints. The Ministry states that such meetings of OCCOPS members are *ex parte* (ie. neither the complainant nor the police service or its officer(s) attend), *in camera* (ie. not in public), and no notes or minutes are taken. Case review meetings are generally presided over by two or more OCCOPS members. Also in attendance is the case manager who has prepared the file for review and, usually, the OCCOPS senior investigator. In preparing a file for review, the case manager prepares a case summary which outlines the allegations, the parties' respective positions and recommendations to the OCCOPS. If the review panel makes a decision other than to confirm the decision of the police service, the case manager may make a note on the case summary regarding those matters the panel wishes to have included in the decision letter but other than that, no notes are taken.

Among the records disclosed to the appellant in response to her request is a case summary in relation to her complaint to the OCCOPS. Handwritten notes on the case summary indicate that the decision of the review panel was not to confirm the decision of the Amherstburg Police in this instance, but to direct an investigation.

The appellant contends that minutes of case review meetings must be kept. She states, among other things, that the OCCOPS is an "independent quasi-judicial civilian agency that carries out a mixed combination of duties." Further, the appellant has submitted a letter, unrelated to this appeal, which she states is evidence as to the existence of minutes. The letter in question is dated August 20, 1998, is addressed to the Secretary of the Amherstburg Police from the Registrar of the OCCOPS, and discusses the proposed amalgamation of three police services into one. Among other things, the letter refers to an impending hearing into the matter, and states that the Amherstburg Police will be contacted about the hearing date. On the first page of the letter is stamped: "FROM THE MINUTES OF SEP 21 1998".

On the material before me, I am satisfied that the Ministry has made a reasonable search for records responsive to this request. It appears that OCCOPS does indeed carry out a "mixed combination of duties", amongst which is the review of decisions of police services in relation to complaints about police conduct. As described by the Ministry, these reviews are not conducted as formal in person hearings, but are meetings based on a review of written materials. The disposition of these reviews is documented through notations on the case summaries and subsequent correspondence, but no minutes are taken. The records provided to the appellant substantiate that this process was in fact applied to the review of the appellant's complaint, in that the result of the review of her file was noted on the case summary. I see no reason to doubt the description of the case review process provided by the Ministry.

The material provided by the appellant does not cast doubt on the accuracy of the Ministry's description of the case review process. The document which she has provided refers to a very different area of the OCCOPS' jurisdiction, relating to the amalgamation of police services. It is apparent that in these matters, there are formal hearings with more voluminous documentation than in a case such as the appellants' complaint. In this context, it is plausible that there are minutes in relation to meetings or hearings of the OCCOPS about amalgamation, while there are no minutes in relation to case reviews.

The appellant appears to question the OCCOPS' record-keeping practices in relation to its case review meetings. She also seeks written assurance, through minutes, that each of the letters sent by her to the OCCOPS and listed in her request was considered by the OCCOPS at a meeting. The *Act*, however, does not impose on the OCCOPS or the Ministry an obligation to create records or to conduct their business in a specific fashion.

Finally, the appellant questions whether she has been provided with a copy of all of the records located by the OCCOPS and forwarded to the Ministry. On the material before me, I am satisfied that the appellant was forwarded all of the records located.

ORDER:

I find that the Ministry's search for responsive records was reasonable and I dismiss the appeal.

Original Signed By: _____ November 30, 2000
Sherry Liang
Adjudicator