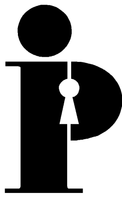

ORDER MO-1406

Appeal MA_000122_1

Peterborough Lakefield Community Police Services Board

NATURE OF THE APPEAL:

The appellant submitted the following request to the Peterborough Lakefield Community Police Services Board (the Police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

> ...please forward to me copies of any and all information that is held in the custody and/or control of the [Police], which pertains to me personally.
>
> This information may be in written, electronic, or other format, and may include, for example, memos, letters, press clippings, and investigative files/reports. Also specifically included in this request is a copy of exactly what information is accessed by officers via in-vehicle computer consoles and/or the information that is provided to officers seeking a check on my name and personal information from their dispatcher.

The Police responded to the appellant on March 28, 2000 and granted partial access to the requested records. The decision of the Police was worded, in part, as follows:

> Partial access is available to the records you requested.
>
> With reference to your request for "**exactly what information is accessed by officers via in-vehicle computer consoles and/or the information that is provided to officers seeking a check on my name and personal information from their dispatcher**". Access is denied to this information pursuant to CPIC (Canadian Police Information Centre) Reference Manual, Chapter 1.1 - Introduction to CPIC, Section 4 Confidentiality ... [emphasis in the original]

According to the documentation provided to this office, the information that was provided to the appellant consists of copies of two incident reports (each one consisting of two pages of incident details). In appealing the decision of the Police, the appellant attached the records (or documents) that they sent to him, which include, in addition to the two incident reports, two documents which contain the results of a check of the database maintained by the Police and a severed copy of the CPIC Reference Manual, Chapter 1.1 (only section 4 is revealed on this page). I note that these documents were also sent to this office. However, the index provided by the Police that is attached to all of the documents it sent does not indicate that this information was provided to the appellant.

The appellant responded to the Police's decision on April 5, 2000 by facsimile and asked for clarification on several points. Specifically, he asked:

> 1. Could you please advise as to what information databases are maintained by your agency, and which of those databases were searched in response to my request.

2. As regards the information that was provided to me, were there not written notes, on these incidences, made by the responding officers in their duty notebooks? If there were, they why were these notes not provided?

3. As regards your reference to the [CPIC] Reference manual, in denying access to information that I had requested: Please note that contents of the CPIC Reference manual are **not** valid exemptions to the requirement of disclosure of information, as outlined under sub-section 6 - 16 of the [*Act*]. Therefore, I am asking that you either release the requested information, or provide a valid exemption to justify your refusal to do so.

The Police apparently did not respond to the appellant's April 5 letter. I note that the Police did not attach a copy of this letter to the documentation that they sent to this office. The letter indicates that it was sent to the facsimile number of the "Fax Executive" for the Police. This number is confirmed on documents that the Police faxed to this office. However, the appellant did not provide the actual transmission record which would indicate that the facsimile was, in fact, sent to the number referred to on the letter or that it was received by the Police.

On April 28, 2000, the appellant appealed the decision of the Police. In his letter, the appellant indicated that the decision of the Police was not adequate and I will consider this as an issue in this appeal. He indicated further that the basis for his appeal is essentially outlined in his April 5 letter to the Police.

With respect to points one and two of his letter, the appellant has raised the reasonableness of the search conducted by the Police for responsive records. During mediation, the appellant indicated that he believes there should be, at a minimum, a report and police officers' notes for an incident involving him (other than the two already identified) that occurred in late spring/early summer of 1998.

The Police state in their decision letter that partial access to the records is granted but do not indicate what records have been located. For example, it is not clear whether they consider the portion of the CPIC Reference Manual dealing with queries to be responsive, or whether there are other records. As I noted above, the package of records and other material that the Police sent to this office includes two documents pertaining to the searches of their database. The Police do not state that these records were disclosed to the appellant, although it appears that they were. It is not clear whether the Police consider them to be records responsive to the appellant's request or whether they sent them to him simply as proof that they searched for responsive records. It may be, in part, that the appellant's queries about the reasonableness of search relate as well to the adequacy of the decision and the decision to deny access to certain records. Therefore, I will consider this aspect of the decision under the adequacy of the decision discussion.

Finally, with respect to item three above, the issue appears to relate to both the adequacy of the decision and the adequacy of search, as the appellant indicates:

> The contents of the manual are, I would suggest, guidelines not law; are not valid exemptions under the *Act*; and should not be taken into consideration when making a decision to grant or deny access to records requested under the *Act*. However, even if I were to accept the CPIC Reference Manual guidelines quoted by the Police, I would argue that I **am** a person authorized to see **my** personal records. [emphasis in the original].

During mediation, the appellant indicated that he is seeking access to tapes of radio conversations between the radio dispatcher and officer in his or her vehicle. In my view, the appellant is also raising the scope of the request as an issue in this appeal. Although it is not clear how the Police interpreted this part of his request, it appears that they may have interpreted it as only referring to the guidelines as set out in the Reference Manual as being a record responsive to the request whereas the appellant appears to be suggesting that he is also requesting the information that was communicated over the in-vehicle communications system regarding himself. Accordingly, I have included this as a sub-issue under "reasonableness of search".

In summary, the issues in this appeal are:

- adequacy of decision;
- reasonableness of search, including scope of the request; and
- denial of access to responsive records.

In my view, it is necessary to address the first two issues as a preliminary step to dealing with the denial of access. Therefore, the Notice of Inquiry setting out the facts and issues in this appeal only addressed the first two issues. I sent this Notice to the Police, initially.

I received representations from the Police relating to some of the issues raised in the Notice. I sent a copy of these representations to the appellant along with a copy of the Notice. The appellant was requested to review the representations and to refer to them where appropriate in responding to the issues in this appeal. In addition, I indicated to the appellant that he may wish to respond to any issue raised in the Notice whether or not this issue has been addressed by the Police. The appellant did not submit representations in response to the Notice.

DISCUSSION:

ISSUES RAISED AND QUESTIONS ASKED IN THE NOTICE OF INQUIRY

I made the following comments in the Notice of Inquiry under the first issue raised relating to the Adequacy of Decision Letter:

> The appellant indicated that he considered the Police's decision letter not to be in compliance with section 22 of the *Act* in that it should have referred to specific provisions under the *Act* in support of the denial of access. As I also indicated above, the decision of the Police did not indicate what records were located as being responsive to the request.

Sections 19, 22(1) and 22(3.1) are relevant to this issue.

I then set out the text of these provisions of the *Act* and attached a copy of the *IPC Practices* publication dated September 1998, entitled "Drafting a Letter Refusing Access to a Record". This document, which was sent to all provincial and municipal institutions, sets out the components of a proper decision letter.

I asked the Police to provide submissions on this issue, with particular reference to the relevant provisions of the *Act*, the IPC Practices and any relevant IPC orders.

I also noted that in responding to this issue the Police may decide to provide the appellant with a new decision. If they decided to do this, I asked the Police to consider the following:

> **Are the Police entitled to claim discretionary exemptions later than 35 days after the Confirmation of Appeal?**
>
> The appellant submitted his appeal of the decision of the Police on April 28, 2000. The Confirmation of Appeal which was sent to the Police provided that they had until June 15, 2000 to raise new discretionary exemptions.
>
>> By analogy, I am of the view that the Commissioner's office has the authority to set a limit on the time during which it will allow an institution to rely upon new discretionary exemptions not originally raised in its decision letter.
>>
>> There are several reasons why the prompt identification of discretionary exemptions is necessary to maintain the integrity of the appeals process:
>>
>> (1) Unless the scope of the exemptions being claimed is known at an early stage in the proceedings, it will not be possible to effectively try to achieve a mediated settlement of the matter under appeal pursuant to section 51 of the *Act*.
>>
>> (2) Where a new discretionary exemption is raised after the Inquiry Status Report is issued, it will be necessary to re-notify all parties to an appeal to solicit additional representations on the applicability of the exemptions raised. The processing of the appeal will, therefore, be further delayed.

> (3) In many cases, the value of information which is the subject of an access request diminishes with time. In these cases, appellants are particularly prejudiced by delays arising from the late raising of new exemptions.

As part of its efforts to expedite the processing of access appeals and in order to sensitize institutions about the prejudice which accrues to appellants when discretionary exemptions are not applied promptly, the Commissioner's office issued an *IPC Practices* publication in January 1993, entitled "Raising Discretionary Exemptions During an Appeal". This document, which was sent to all provincial and municipal institutions, indicates that:

> The IPC has found that institutions frequently raise new discretionary exemptions after the appeal process is underway. When this happens, the appellant must be informed and given the opportunity to comment on the applicability of the new exemption claims. This additional step prolongs the appeal process, particularly when new discretionary exemptions are raised at the later stages of an appeal.
>
> Effective March 1, 1993, the IPC will permit institutions to raise new discretionary exemptions only within a limited time frame - up to 35 days after the appeal has been opened. The initial notice sent out by the IPC will specify the deadline for claiming any new discretionary exemptions.

The objective of this policy is to provide institutions with a window of opportunity to raise new discretionary exemptions but not at a stage in the appeal where the integrity of the process is compromised or the interests of the appellant prejudiced.

[Order P-658]

For your information, I have attached the above referenced IPC Practices. The 35-day policy was recently codified in the IPC Code of Procedure (Part IV - Section 11).

> In the event that the Police decide to issue a new decision and they decide to claim any discretionary exemptions, the Police are asked to make representations on the following:
>
> Do the circumstances of this case warrant taking a different approach to the late raising of a discretionary exemption? If so, why. If not, why not. The Police should also include in their representations (1) the reasons why they are claiming a discretionary exemption at this late date, and (2) the reasons why the discretionary exemption should apply. [emphasis in the original]

Under the heading "Reasonableness of Search", I made the following comments:

> As I indicated above, the appellant believes that more records exist which are responsive to his request. In particular, he believes there should be a report and police officers' notes for an incident involving him (other than the two already identified) that occurred in late spring/early summer of 1998. He also believes that there should exist police officers' notes for the incidents that were identified by the Police. Finally, he is seeking access to tapes of radio conversations between the radio dispatcher and officer.
>
> ...
>
> A preliminary step in determining whether the search conducted by the Police for responsive records was reasonable is to determine whether the Police properly interpreted the appellant's request.
>
> **Does the scope of the request cover only the record the Police identified as responsive, or does it cover other records?**
>
>> It appears from the face of the appellant's request that he may not have had knowledge of the specific records which might contain the information he was seeking, which is not unusual in the access to information context. Both requesters and institutions have obligations in relation to the formulation of an access request under the *Act*. Section 17(1)(b) of the *Act* requires a person seeking access to a record to "provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record." On the other hand, section 17(2) states:
>>
>>> If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).
>>
>> In circumstances where the request does not sufficiently describe the **records** sought, it is incumbent on an institution to inform the requester of the defect and offer assistance in reformulating the

> request, by identifying the responsive records which contain the information the requester is seeking. This the County did not do.
>
> While the institution takes issue with the appellant's revised request, it is reasonable to accept the revision to the request which the appellant now seeks. The County's initial response to the request did not comply with the requirements of section 22(1)(b) of the *Act* and effectively foreclosed the prospect of clarification of the records sought at that time. The County should not now be permitted to use this omission to its advantage. I find that the request in this appeal reasonably encompasses the names of the individual contributors in the five records at issue, the addresses of these individuals and the contribution amounts where they exceed $100.
>
> [Order M-1154]

Based on the discussion under "Nature of the Appeal", the Police are asked to provide representations on the scope of the appellant's request.

The Police are also asked to provide a written summary of all steps taken in response to the appellant's request. In particular, the Police are asked to consider the following:

1. Was the appellant contacted for additional clarification of his request? If so, please provide details including a summary of any further information the appellant provided. For your information, I have included a copy of the IPC Practices dated July 1994 entitled "Clarifying Access Requests".

2. Please provide details of any searches carried out including: by whom were they conducted, what places (or databases) were searched, who was contacted in the course of the search, what types of files were searched and finally, what were the results of the searches? I ask that you include details of any searches carried out to respond to the appellant's access request.

3. 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.

SUBMISSIONS OF THE POLICE

The Police made the following submissions in response to the Notice of Inquiry:

The requester was not contacted to clarify or narrow the request. It was felt that this was not necessary as the request was self-explanatory.

The database we use at our Police Service is called "O.M.P.P.A.C.". We automated our records system in 1987, anything prior to 1987 was purged, with the exception of major outstanding incidents (i.e. unsolved homicides, unsolved sexual assaults, unsolved bank robberies, etc.)...

Our records were searched for all incidents involving [the appellant]. At the time of the record check which also included "Archived" files on OMPPAC, the only incidents involving [the appellant] were the two incidents which were disclosed to [the appellant]. Our records indicated an occurrence on February 5, 1999 ... and another occurrence on August 21, 1999 .... A persons query was conducted in our Archives files and that revealed "NO MATCHING PERSONS FOUND". A check of our Intelligence Files reveal no information on [the appellant]. This search was conducted by the Intelligence Officer of our Police Service. The above searches were carried out by ... Freedom of Information Clerk. Therefore, the only reports on file for [the appellant] were the two that were given to him - full access, nothing severed.

The information accessed by police officers from the cruisers is done through our police radio system, our cruisers are not equipped with computers. An officer may request a check of a person which would be done by a communicator on a computer system called "C.P.I.C.". This is a database held by the R.C.M.P., accessible to all police agencies throughout Canada. An officer may request a persons check which would then indicate if the person was "wanted", "on probation or parole", had a criminal record, etc. this information is not relayed to members of the public as Section 8(1) states: A head may refuse to disclose a record if the disclosure could reasonably be expected to; (a) interfere with a law enforcement matter, and (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result and (l) facilitate the commission of an unlawful act or hamper the control of crime.

And further, Section 15 states: A head may refuse to disclose a record if, (a) the record or the information contained in the record has been published or is currently available to the public. Our Records Department has a form "Criminal Record Request" which is available to the public at a cost. This form is completed partially by the person providing identification and then a CPIC record check is performed. The form is then either stamped "Based on the information received there is no criminal record identified" or the criminal record of the requesting person is typed onto the form. There is also a box on the form that could be checked to indicate "Presently there are charges pending before the courts". It has been our business practice for several years to provide this service to the public to meet their needs. We do not keep a record of these Criminal Record Requests, once completed it is given to the person making the request...

> [The appellant] was not provided with officers notes as his request did not specifically request same. Therefore, notes were not searched and not disclosed.

FINDINGS

Adequacy of decision

The Police did not address the issues raised in the Notice of Inquiry regarding the adequacy of their decision, including whether or not they should be entitled to raise a discretionary exemption late in the process in the event that they decided to issue a new decision. They did indicate, however, that they now rely on the discretionary exemptions in sections 8 and 15 of the *Act* in denying access to records pertaining to CPIC.

Sections 19, 22(1) and (3.1) of the *Act* provide:

> 19. Where a person requests access to a record, the head of the institution to which the request is made or if a request is forwarded or transferred under section 18, the head of the institution to which it is forwarded or transferred, shall, subject to sections 20, 21 and 45, within thirty days after the request is received,
>
> (a) give written notice to the person who made the request as to whether or not access to the record or a part of it will be given; and
>
> (b) if access is to be given, give the person who made the request access to the record or part, and if necessary for the purpose cause the record to be produced.
>
> 22(1). Notice of refusal to give access to a record or part under section 19 shall set out,
>
> (a) where there is no such record,
>
> (i) that there is no such record, and
>
> (ii) that the person who made the request may appeal to the Commissioner the question of whether such a record exists; or
>
> (b) where there is such a record,
>
> (i) the specific provision of this *Act* under which access is refused,
>
> (ii) the reason the provision applies to the record,

(iii) the name and position of the person responsible for making the decision, and

(iv) that the person who made the request may appeal to the Commissioner for a review of the decision.

(3.1) If a request for access covers more than one record, the statement in a notice under this section of a reason mentioned in subclause (1)(b)(ii) or clause (3)(b) may refer to a summary of the categories of the records requested if it provides sufficient detail to identify them.

The IPC Practices entitled "Drafting a Letter Refusing Access to a Record" describes the types of information an institution should include in its decision, including, in part:

- an index of records;
- a document number assigned to each record and a general description of each record;
- an indication of whether access has been granted or denied for each record or part of a record;
- the specific provision of the *Act* for which access has been denied to each record or part of a record;
- an explanation of why the provision applies to each record or part of a record;
- the name and position of the person making the decision; and
- a paragraph informing the requester that he or she can appeal the decision to the Commissioner's office.

Clearly, the original decision of the Police (as set out above) is inadequate in that it does not identify or describe the responsive records, it does not identify the records to which access is denied nor does it refer to the specific provisions of the *Act* under which access is denied.

In explaining why it is important to include all of the above information in a decision letter, the IPC Practices states:

When access is denied, the decision letter should provide the requester with a sound understanding of why some or all of the information has been denied.

If a thorough explanation is provided, the chances of an appeal may be greatly reduced. An appeal can be a time-consuming process for an institution, involving an investigation, mediation and/or an inquiry. It is therefore in the institution's best interest to ensure the decision letter is drafted with care, in accordance with legislative requirements.

Where the requester proceeds with an appeal, a proper decision letter is essential to the efficient processing of the appeal. If the original decision letter is

> incomplete, the institution will be required to take time to produce a proper decision letter.

In my view, the deficiencies in the decision letter issued by the Police are such that the appellant is not able to determine what records the Police have located, what records have been denied, whether the Police responded to his request in its entirety and whether any records which might be responsive to his request do not exist. Moreover, despite having this appeal undergo mediation, the Police have not provided, until now, any information that would enlighten either the appellant or the Commissioner's office with respect to these issues.

In most cases where a decision is inadequate, it is addressed during the mediation stage of the appeal and both the appellant and the Commissioner's office are then in a position to be able to address the substantive issues in the appeal. That is not the case here. Although the Police have provided some additional information regarding their decision, as I will discuss below, there remain significant omissions for which I will require the Police to undertake additional work with respect to this request.

As a result, with one exception, I will require the Police to respond to the appellant's request as if it had just been received by them. In doing so, I will require the Police to prepare a new decision letter in accordance with the legislative requirements as outlined above. At a minimum, the Police are required to identify all records which have been located as being responsive to the appellant's request (which I will clarify in the next discussion). If any of the records described below cannot be located, the Police are to so indicate. Further, the Police are to indicate for each record identified as being responsive to the request, whether or not access is granted. If access is denied to any record or portion of a record, the Police are to state the specific section of the *Act* they rely on for exemption and are to include an explanation of why the exemption applies to the record or part of the record. Finally, the Police should refer to any additional requirements for a proper decision letter as set out in the legislation and in the IPC Practices.

As I noted above, the Police have indicated in their representations that they believe the discretionary exemptions in sections 8 and 15 apply to certain, as yet undetermined parts of the records. By raising new discretionary exemptions in their representations, it would appear that the Police have effectively negated the possibility of mediation. By not addressing the questions I asked of them in the Notice of Inquiry, the Police have provided no explanation as to why they should be permitted to now rely on a discretionary exemption raised late in the appeals process.

In requiring the Police to issue a new decision, I am essentially requiring the parties to start over. In my view, this is the only solution that would allow, not only the parties, but this office as well, to deal with the issues in any meaningful way. I recognize that in doing so, the appellant will be disadvantaged, particularly in view of the fact that he began this process a year ago and is no further ahead for his efforts. For this reason, combined with the absence of any explanation by the Police that would justify their reliance on the discretionary exemptions referred to in their representations, I will not allow the Police to rely on these exemptions in any further decision they make in response to this request.

Reasonableness of search

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 Police conducted a reasonable search for the records as required by section 17 of the *Act*. If I am satisfied that the search carried out was reasonable in the circumstances, the decision of the Police will be upheld. If I am not satisfied, further searches may be ordered.

As I noted above, a preliminary step in determining whether the search conducted by the Police for responsive records was reasonable is to determine whether the Police properly interpreted the appellant's request.

Scope of the request

Section 17 of the *Act* provides, in part:

> (1) A person seeking access to a record shall,
>
> > (a) make a request in writing to the institution that the person believes has custody or control of the record;
> >
> > (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and
> >
> > (c) at the time of making the request, pay the fee prescribed by the regulations for that purpose.
>
> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

In the IPC Practices entitled "Clarifying Access Requests", institutions are provided with guidance on how to fulfill their obligations under the *Act*. In doing so, the IPC Practices note:

> It is vital that government institutions have a clear understanding of the nature and scope of requests in order to process them efficiently.

The *Act* recognizes that both requesters and institutions have obligations in ensuring that a request is responded to properly. Section 17(1) specifies that a requester must provide sufficient detail to enable an experienced government employee to identify the record. Section 17(2) requires institutions to inform and assist requesters in reformulating their requests in those cases where a request does not sufficiently describe the record sought.

The IPC Practices points out that it is important to distinguish between "clarifying" a request and "narrowing" it. To clarify is to make clear what the requester is seeking. To narrow is to reduce the scope of the request.

With respect to the information that the appellant was seeking, the Police state that his request was "self-explanatory", and to a point, I agree. The appellant was clearly seeking "any and all information" pertaining to himself in the custody of the Police. However, the Police go on to state that a search was not conducted for, and the appellant was not given, the officers' notes because "his request did not specifically request same". In my view, the appellant's request clearly contemplated all records pertaining to himself including police officers' notes. Accordingly, I find that the Police have unilaterally narrowed the scope of the request beyond what a reasonable interpretation would allow.

Even if I were to accept that a narrower interpretation of the request was initially reasonable, upon receipt of the decision, the appellant immediately wrote to the Police to clarify the information he was seeking. It appears that the Police ignored this clarification. Even if, for some reason, the Police did not receive the appellant's letter, they were notified of the issues raised in this letter during mediation of the appeal. Moreover, the Notice of Inquiry subsequently pointed the clarification out to them. To continue to take the position that the appellant did not request this information is untenable.

That being said, the scope of the appellant's request dealing with information accessed by officers either through in-vehicle computers or through communications with the dispatcher and certain other information is not as clear.

Further, in my view, the particulars of which I will discuss below, there was sufficient ambiguity with respect to some of the information requested that the Police should have contacted the appellant for clarification. In not making an effort to determine the scope of the appellant's request, the Police have failed to meet their obligations under the *Act* which has resulted in an inadequate search for responsive records.

In reviewing the appellant's request, there are, apart from police officers' notes, two other aspects of the request that should have been clarified prior to a search being conducted.

communications via in-vehicle computers or the dispatcher

Initially, I would have interpreted this part of the request as only referring to the actual information received or communicated via either of the sources referred to about the appellant.

In their decision, the Police appear to have interpreted it as all types of information that could be accessed by the police from these sources about an individual. In the package of records and other information provided to this office by the Police, some of the relevant portions of the CPIC manual were enclosed, but there do not appear to be any communications regarding the appellant included. Accordingly, it appeared to me that the Police intended the contents of the manual to serve as a responsive record.

I asked the parties to clarify this issue. For the most part, the submissions of the Police on this issue do not assist me in determining whether they searched for this type of communication regarding the appellant, and the appellant chose not to respond. The submissions of the Police do, however, clarify one aspect of this issue. As I noted above, the Police state that their vehicles do not have on-board computers and their officers must obtain this type of information via

communications, presumably with the dispatcher. In the absence of evidence to the contrary, I accept that the only information that might be responsive to this part of the request would be information obtained through radio communications with the dispatcher or any other individual responsible for responding to such queries.

Even with this clarification, the scope of this part of the request is still not clear despite my efforts to have the parties turn their minds to it. In the circumstances, I have decided to interpret this part of the appellant's request as being a request for the communications between officers in their cars and the dispatcher regarding the appellant in connection with any query on his name and other personal information relating to him. These communications may be contained on an audio tape or they may be on paper, for example, in transcribed form.

correspondence

While it appears on the surface that the appellant is seeking information about himself in the context of specific incidents and/or police investigations into matters involving him, his request also specifies that he is seeking correspondence. It may be that the appellant is not seeking any information other than that pertaining to the three incidents in which he, apparently, had contact with the Police. However, in order to be clear about the scope of his request, the Police should have contacted the appellant to clarify exactly what type of information he was seeking.

The Police either did not address the information referred to above in their representations, or they indicated that they did not conduct a search for responsive records. The Police provided their "working file notes used in the decision making process" to this office. One notation indicates that "no other info held by our Police Service ... press clippings, etc.". In my view, this notation is not sufficient to establish that the Police turned their minds to or searched for any information pertaining to the appellant other than what could be located on their database. Further, none of the other information provided to this office by the Police prior to inquiry indicates that they conducted a search for responsive records. I will, therefore, order the Police to conduct a further search for this information.

Having determined that the Police must conduct a further search for information they either considered to be outside the scope of the request or simply neglected to consider, I will now turn to the steps taken by them in conducting the search they did make in order to determine whether it was reasonable.

Steps taken by the Police to search for responsive records

The submissions of the Police explain the manner in which certain information is maintained and accessed. I am satisfied that the first step in locating records relating to a requester entails a query to the OMPPAC database. The Police indicate that they used the appellant's name in searching the OMPPAC database and I accept that this was the appropriate identifier which resulted in the location of reports relating to two incidents pertaining to the appellant. Accordingly, I find that the initial steps taken by the Police to search for this information were reasonable despite the appellant's contention that another incident occurred. On this basis, I am

satisfied that the search conducted by the Police for records relating to the third incident identified by the appellant was reasonable.

Beyond this, however, the Police have said nothing about what kind of information is maintained in the database or whether paper records might exist and where they might be located. For example, does the database contain information about named individuals in any capacity, as a result of any type of contact with the Police or only where an occurrence report has been completed? Further, does the database contain certain types of records only, such as electronic copies of police occurrence reports, or does it contain all information that might have been compiled during a police investigation into a matter? Similarly, if the database only contains certain information, does it direct the user to a paper file containing other information?
The Police attached a copy of the OMPPAC Constitution and By-Laws to their representations. This document governs the retention and destruction of certain records maintained by the Police. This document appears to indicate that paper files are maintained. It is not clear how they are linked to the information in the database, however. In my view, this document does not adequately address the questions I asked in the preceding paragraph, nor does it tell me what, exactly, the Police did in responding to this request.

In general, the Police have failed to provide me with sufficient information to be able to determine that their search for responsive records relating to the two identified incidents was reasonable. This raises another issue of concern. It is apparent from the OMPPAC document that retention periods for many matters are very short. It would appear that the retention period for one of the two incidents identified by the Police as responsive is only one year. The second incident may be maintained for one year as "active" and for another year as "dormant". If the search conducted by the Police did not include other locations at which responsive records might be located, it is possible that they would not have been flagged and may, therefore, already have been destroyed.

Finally, I am not able to discern from the Police's submissions whether they maintain general correspondence files or files that contain information about matters unrelated to investigations. It is not clear whether a search through OMPPAC is a necessary first step in locating records in these types of files, if they exist.

To ensure that the Police fulfill their obligations under the *Act*, I will require them to conduct another search for responsive records. In doing so, the Police are to interpret the appellant's request as encompassing any and all information pertaining to him in their custody, and maintained in any format, including electronic, paper, video or audio. In particular, the Police are required to search for:

- police officers' notes relating to the two incidents referred to in their representations as well as any other types of records that might have been compiled by them in connection with either matter;

- any communications between the dispatcher and any police officer regarding the appellant, either in the form of an audio tape or on paper; and

- any correspondence pertaining to the appellant, either to or from him or about him.

With respect to the third area of search, prior to conducting a new search, the Police are to contact the appellant to clarify whether he is only seeking information pertaining to police investigations into incidents involving him or whether he is also seeking other information in their custody.

In issuing the new decision in accordance with my directions above, the Police are to:

- describe **all** locations in which responsive records might exist;
- describe where they searched and by what method;
- identify any individuals contacted and the results of their searches for or knowledge of responsive records; and
- if the Police determine that a record does not exist, they are to so inform the appellant, and, if possible, explain why such a record might not exist.

Because of the decisions I have made in this order, I will not address the third issue identified above. Once the Police have issued their decision in accordance with the order provisions below, the appellant may contact the Registrar of this office if he disagrees with any part of it and a new appeal will be opened to address the issues arising from the decision.

ORDER:

1. I find the search conducted by the Police for records relating to an incident in the spring/summer of 1998 was reasonable.

2. I find that the search conducted by the Police for any other responsive records was not reasonable.

3. I find that the Police did not issue a decision letter in accordance with the requirements of the *Act*.

4. I order the Police to conduct a new search for records responsive to the appellant's request and to issue a new decision to the appellant in accordance with the following requirements:

new search

- the appellant's request is to be interpreted as encompassing any and all information pertaining to him in the custody and/or control of the Police,

and maintained in any format, including electronic, paper, video or audio. In particular, the Police are required to search for:

- police officers' notes relating to the two incidents referred to in their representations as well as any other types of records that might have been compiled by them in connection with either matter;

- any communications between the dispatcher and any police officer regarding the appellant, either in the form of an audio tape or on paper;

- any correspondence pertaining to the appellant, either to or from him or about him.

- With respect to "correspondence", prior to conducting a new search, the Police are to contact the appellant to clarify whether he is only seeking information pertaining to police investigations into incidents involving him or whether he is also seeking other information in their custody.

new decision

- The Police are to prepare a new decision letter in accordance with the legislative requirements as set out in sections 19 and 22 of the *Act* and as noted in the IPC Practices. In particular and at a minimum:

- The Police are required to identify all records which have been located as being responsive to the appellant's request (as clarified above).

- If any of the records described above cannot be located, the Police are to so indicate.
- The Police are to indicate for each record identified as being responsive to the request, whether or not access is granted.

- If access is denied to any record or portion of a record, the Police are to state the specific section of the *Act* they rely on for exemption and are to include an explanation of why the exemption applies to the record or part of the record.

In addition, the Police are required to include in their decision to the appellant:

- a description of **all** locations in which responsive records might exist;

- a description of where they searched and by what method; and

- information which identifies any individuals contacted and the results of their searches for or knowledge of responsive records.

5. The new search and decision letter referred to in Provision 4 is to be conducted in accordance with the provisions in sections 19, 21 and 22 of the *Act*, without reference to a time extension, treating the date of this order as the date of the request.

6. I order the Police to provide me with a copy of the letter sent to the appellant in accordance with Provision 4 on the same date that it is sent to the appellant. The copy of this letter should be sent to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: March 7, 2001
Laurel Cropley
Adjudicator