



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1522

Appeal MA-010094-1

York Regional Police Service



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NATURE OF THE APPEAL:

The York Regional Police (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to “a copy of all personal information about [the requester] that is held by the York Regional Police Service”. The requester explained that he had recently applied for the position of police constable with the Police and later voluntarily withdrew from the selection process.

The Police initially identified one responsive record, entitled “Background Inquiry Summary” (the summary), and granted full access to it. This record was prepared by the police officer who handled the appellant’s job application (I will refer to him as the “primary officer”).

The requester (now the appellant) appealed the decision of the Police on the basis that he believed additional records responsive to his request should exist. The appellant also provided information concerning the types of additional responsive records that should exist.

During the mediation stage of the appeal, the Police conducted another search for responsive records and as a result located an additional 94 pages of documents. The Police granted access to the majority of these records. In denying access to the remainder of the records and/or portions of records, the Police relied on the exemption at section 38(c) and/or section 52(3)3, which excludes certain employment-related records from the scope of the *Act*. The Police also severed certain information from one of the records indicating that this information is not responsive to the request.

The appellant appealed the supplemental decision of the Police, and maintained that additional records responsive to his request should exist.

Also during mediation, the issues regarding access to records were resolved. As a result, the only remaining issue in this appeal is whether the Police have conducted a reasonable search for responsive records.

This office provided the appellant and the Police with a Notice of Inquiry setting out the background and issues in the appeal and explaining that I would conduct an oral inquiry into the matter. I subsequently conducted an oral inquiry, and heard submissions from the appellant and the representatives of the Police, including the primary officer.

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 Police have conducted a reasonable search for the records as required by section 17 of the *Act*. The *Act* does not require the Police to prove with absolute certainty that further records do not exist. However, in order to properly discharge its obligations under the *Act*, the Police must establish that they have made a reasonable effort to identify and locate records responsive to the request.

The appellant states that there have been “inconsistencies” in the way his request was handled from the beginning. The appellant refers to the fact that the Police initially located only one record, but later, after additional searches, discovered additional records.

The appellant submits that the primary officer failed to mention in the summary that in conducting background checks, the primary officer had spoken to a former colleague of the appellant, a fact that was revealed in a letter to the appellant from the York Regional Chief of Police. The appellant takes the position that notes of this conversation taken by the primary officer should exist.

The appellant also states that he made inquiries of staff from the Policing Services Division of the Ministry of the Solicitor General, and of the Ontario Association of Chiefs of Police about protocols or guidelines relating to recruiting and reference checks. The appellant submits that, based on these conversations, it is his understanding that, based on policy, all comments received during background checks must be noted.

The appellant submits that, according to the summary, the primary officer spoke to a named officer at his former employer, another police service. The appellant states that he later contacted his former employer, and complained that “inaccurate and false information” had been provided to the primary officer. The appellant asked the other police service to investigate the matter, to determine to whom the primary officer had spoken, and asked for “complete disclosure” of their file on the matter. The appellant submits that there are inconsistencies between the versions of events provided by the other police service and the primary officer, which, in his view, suggest that additional records of conversations with the other police service should exist.

In summary, the appellant submits that based on all of the above he does not “trust” the Police when they say that they have identified all records responsive to his request, and that no additional notes of conversations made by the primary officer exist.

The primary officer provided an account of the events surrounding his handling of the appellant’s application. In particular, the officer states that he made no notes of conversations with the other police service, since no substantive reference information was provided to him, although he did have brief conversations and left messages with staff of the other police service. The primary officer also states that, in response to an internal request from the freedom of information unit of the Police, he provided them with all of the records in his possession on the matter, including any notes. The primary officer states in conclusion that he has no knowledge of any additional record responsive to the request.

In summary, the Police submit that the issue is not whether notes *should* exist, but whether they *do* exist. The Police also state that any inconsistencies or inaccuracies in the primary officer’s version of events are based on the passage of time and the fact that there are no notes of certain conversations during which no substantive information was received. The Police also submit that they later identified additional records since initially the Police were not entirely clear on what records the appellant was seeking.

I agree with the Police that the issue is not whether notes should exist, but whether they do exist, or more precisely whether the Police have conducted a reasonable search for them. In my view, while it is arguable that more detailed notes ought to have been taken in accordance with

established policies (I make no finding in this regard), this does not, in the circumstances, persuade me that it is likely additional notes exist which the Police have not identified. I am satisfied that the Police have made reasonable efforts to locate all records responsive to the appellant's request including notes of conversations.

ORDER:

I uphold the decision of the Police that no additional responsive records exist and I dismiss the appeal.

Original signed by: _____
David Goodis
Senior Adjudicator

_____ March 11, 2002