



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1644

Appeal MA-030052-1

Toronto Police Services Board



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NATURE OF THE APPEAL:

The Toronto Police Service (the Police) received a request on January 15, 2003 under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act) for access to records relating to a number of incidents, inspections, meetings, investigations, tape-recorded discussions, searches and other activities including one assault, which involved one or both of the requesters' named business establishments:

1. From May to August, 1995, in relation to complaints received, investigations conducted, discussed or contemplated, reports prepared or received in relation to the requesters or their respective business establishments, all records including data stored electronically created or kept by eight named officers;
2. From December 1 to 31, 1995, in relation to complaints received, investigations conducted, discussed or contemplated, reports prepared or received in relation to the requesters, their employees, patrons and the requesters' respective business establishments, all records including data stored electronically created or kept by eight named officers;
3. From January 1 to February 28, 1996, in relation to the requesters, their employees, patrons and the requesters' respective business establishments, all records including data stored electronically as created or kept by eight named officers;
4. From January 26 to 27, 1996, in relation to the requesters, their employees, patrons and the requesters' one named business establishment, all records including data stored electronically created or kept by thirty-one named officers;
5. From December 1 to 31, 1996, in relation to the requesters, their employees, patrons and the requesters' one named business establishment, all records including data stored electronically as created or kept by two named officers, and all other officers who were involved in this particular investigation;
6. From May 1 to 31, 1998, in relation to the requesters, their employees, patrons and the requesters' one named business establishment, all records including data stored electronically kept by two named officers;
7. From August 21, 1998 and onwards, in relation to the involvement of police any way with respect to a named occurrence involving an assault on one of the requesters, all records including data stored electronically as created or kept by two named officers, and all other officers involved in this investigation;
8. From August 21 to September 30, 1998, in relation to the requesters, their employees, patrons and the requesters' one named business establishment, all records including data stored electronically as created or kept by one named officers, and all other officers involved in the inspections;
9. On May 3, 1999, in relation to the requesters, their employees, patrons and the requesters' one named business establishment, all records including data stored electronically as created or kept by two named officers, including specific information upon which a delivered notice was based.
10. On May 12, 1999, in relation to the requesters, their employees, patrons and the requesters' respective business establishments, all records including data stored electronically kept by two named officers;

11. From May 3 to July 31, 1999, in relation to the requesters, their employees, patrons and the requesters' respective business establishments, all records including data stored electronically as created or kept by two named officers, and all members of the Police who were involved in this occurrence.
12. The project proposals, correspondence, documentation, typewritten notes and all other material which led to the creation of "Project Almonzo", and correspondence, documentation and subsequent proposals relative to "Project Almonzo" from the inception of this project to its termination
13. From July 1 to August 28, 1999, in relation to the requesters, their employees, patrons and the requesters' respective business establishments, all records including data stored electronically as created or kept by one named officer;
14. From July 1 to August 15, 2000, in relation to the requesters, their employees, patrons and the requesters' respective business establishments, all records including data stored electronically as created, kept by or made in relation to two named officers and all other members of the Police who were involved in the occurrence;
15. From September 5 to 9, 2000 in relation to the requesters, employees, patrons and the requesters' respective business establishments, all records including data stored electronically as created, kept by or made in relation to one named officer and all members of the Police who were involved in the investigation;
16. On November 24, 2000, in relation to the requesters, their employees, patrons and the requesters one named business establishment, all records including data stored electronically as created or kept by one named officer and all other members of the Police who were involved in this occurrence;
17. From December 1, 2000 to March 31, 2001, in relation to the requesters, their employees, patrons and the requesters respective business establishments all records including data stored electronically as created, kept by or made in relation to one named officer and any other members of the Police who were involved in this occurrence.

In response, on January 21, 2003, the Police wrote to the requesters' representative, advising that pursuant to section 20(1) of the *Act*, the time for response to the request had been extended to November 11, 2003, an additional 270 days. The Police stated that the reason for the extension is that the request necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution.

The appellant appealed the Police's time extension.

I provided the appellant's representative and the Police with a Notice of Inquiry, informing them that an inquiry would be held to review the City's application of the time extension. Both parties submitted representations. The appellant's representative sent a copy of his representations directly to the Police, and requested a copy of their representations. With the consent of the Police, their representations were shared with the appellant's representative, and responses to these representations were invited. Both parties submitted second-party representations.

DISCUSSION:

The sole issue for me to determine in this appeal is whether the extension of time claimed by the Police to respond to the appellant's request was made in accordance with section 20(1) of the *Act*.

Section 20(1) of the *Act* states:

A head may extend the time limit set out in section 19 for a period of time that is reasonable in the circumstances, if

- (a) the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution; or
- (b) consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.

In its decision advising the appellant of the time extension, the Police use the wording found in section 20(1) (a) of the *Act*. The reference is the same in the Police's representations. There is no indication either in the Police's decision or in its representations, that it is also relying on section 20(1) (b) to extend the response time. Accordingly, I will consider only whether the Police have extended the time in accordance with section 20(1)(a) of the *Act*.

Large number of records

While the appellant does not dispute that a large number of records are at issue in the request, I will assess the Police position.

In its representations, the Police state:

The appellant has requested a tremendous volume of records for 2 nightclubs, covering a 6-year period (May 1995 – March 2001, inclusive). The request consists of 16 segments, each segment covering 1 to 3 months (with few specific days given), involving anywhere from 4 to 30 officers, and requesting documentation in forms of memo books, correspondence, briefs, case files, policies, electronic media, arrest reports, and anything else generated in any investigations. The aforementioned information is not only requested as it relates to the owners (whom the appellant is representing) but also to patrons of the establishments.

The Police have provided details about the records to be reviewed:

Approximately 25,000 boxed documents

All documents must be scrutinized, because as well as looking for anything relating to the 2 establishments, the appellant also asks for the following regarding a large undertaking by several police services – covering several months – known as Project Almonzo:

- “(a) Project proposals, correspondence, documentation, typewritten notes and all other material which led to the creation of Project Almonzo
- (b) Correspondence, documentation and subsequent proposals relative to Project Almonzo through the inception of this project, the continuation of this project and through to the termination of the project”

Electronic Media – approximately 14,000 records of approximately 41 officers over 6 years

....

Memo Books and other documentation which must be obtained from various divisions of the Toronto Police Service

As a result [of the officers identified in the request] this institution will be scrutinizing and attempting to read hundreds of handwritten memobooks (consisting of 100 pages each) looking for responsive records. It is important to note that on average an officer requires a new memobook every 30 days.

...using segment 1 [of the request] as a representative sample, eight officers over a four month period would result in 32 memobooks to be viewed – equal to 3200 pages.

Based on the evidence provided, I find that the request “is for a large number of records” and “necessitates a search through a large number of records”.

Meeting the time limit would unreasonably interfere with the operations of the institution

With respect to whether meeting the time limit would unreasonably interfere with the operations of the institution, the appellant’s representatives have quoted the Notice of Inquiry, that “a number of orders, beginning with [Order] 28, have found that where the institution is responding to a number of separate requests by the same individual, which collectively require a search through a large number of records or necessitate consultation, section 20 is not properly triggered” to support their position that their request is no different to the appellant’s submitting multiple single requests.

The appellant’s representative points out that

All Constables and Detectives have either been named or their badge numbers provided. In most cases, names and badge numbers have been supplied. In the ordinary course, I would imagine requests are delivered to these individual Constables and Detectives, who are then able to cull their own notes. ...even if computer records can be stored under several names, searches can be conducted very quickly relating to [the named establishments]. Possible variations and mutations of how these names may be entered into a computer can likely be captured by very few searches....Material requested from particular Constables and Detectives should be available without any delay.

In response, the Police note that Order 28 is not relevant to this request, as the present appeal stems from one request for all information related to the requesters' business establishments. The Police reiterate that the appellant requires "all records, including briefs, reports, electronic data, correspondence, files, memo book notes, etc. for a variety of lengths of time over a 6-year period." They continue:

It is important to note that in 7 of the 16 segments of the request, the appellant indicates that, in addition to any named officers, he wants records of "***all other members of the Toronto Police Service who were involved in this occurrence/investigation.***" (emphasis in the original). From the aforementioned statement, it is evident that all officers are not named in the request and locating the identity of these connected officers over a variety of months/years requires significant search time; furthermore all of the officers identified cannot take time away from their law enforcement duties to "*cull their own notes*" especially for long periods of unspecified days/months/years. The divisional liaisons must take the time needed to locate and forward the documentation to the FOI analyst assigned, who in turn must search thoroughly for responsive entries.

In terms of the electronic records, the appellant expressed concerns about the Police server capacity: "...500 megabytes of storage space is miniscule".

The Police state:

At this point we have been advised by our Information and Technology Unit that they can download the information required in this portion of the request in small segments only – over a period of time – as there is not sufficient server space to download more.

Approximately 2 gigabytes of file space would be required to move over all of the officers' electronic files at one time, and the server has only about ¼ of the required space. Estimating that there would be at least 41 officers whose electronic files would be responsive, with a range of 8 to 2609 files to be searched per officer, personnel in the Information and Technology Unit estimate that only 2 officers' files could be downloaded at a time.

In addition, the downloading could only be done overnight so as not to interfere with other operations, as a synchronization of servers is required; therefore only 2 officers' electronic records could be downloaded per 24-hour period. Given the approximate number of officers identifiable at this time (approximately 41) this alone would take a minimum of 20 working days.

In addition, according to the Police, there is one staff member available to deal with this request. This analyst is currently handling 85 other requests as well as this one. Given the Police FOI resources, the volume of requests the Police must process on an ongoing basis and the mechanics involved in searching for and reviewing paper records and electronic records, a full response to the request within 30 days would not, in my view, be feasible.

Therefore, based on the above, I am satisfied that under the circumstances, meeting the thirty day time limit set out in section 19 of the *Act* would have unreasonably interfered with the operations of the City.

Whether the Time Extension is Reasonable

I will now consider whether the length of the Police's time extension is reasonable.

The Police have stated that the 25,000 boxed documents

are in envelopes, files, binders, etc., and must be extracted, examined and organized. Given an approximate estimate of 60 seconds per page to view for responsive records, the total amount of time estimated is 416 hours.

In terms of the police officers' memobooks, the Police indicate that

Reviewing each page for responsive entries in the officers' notebooks (allowing a conservative one minute per page) would equate to approximately 53 hours [for 8 officers over a 4-month period].

Using this same equation for all memobooks requested, the total time is estimated at 260 hours. That number does not include that portion of the request involving unnamed officers...[nor] the time needed to send for the records, nor the time required by our liaisons at the divisions to locate hundreds of books and other documentation covering several months.

The appellant's representative disputes the Police statement that each page in the 25,000 boxed documents requires 60 seconds to review. In the appellant's representative's experience,

...pages are just being scanned and entire sections can be flipped over with only a moment's review because it is apparent that documents are associated and are either relevant or not relevant. The suggestion that 60 seconds per page is required, on average, to determine relevancy, is not accurate and it is misleading.

With a 60 second per page assumption in place, it appears that the author of the report intends to have reviewers read every word of every page. In fact, the figure is likely much closer to between five and ten seconds per page; reviewers are scanning for relevant names or dates and most documents will have subject headings that clearly indicate if a document should be flagged.

The appellant repeats this position as applicable to the Police description of the search required to review the memobooks of individual officers as well.

As noted above in relation to the electronic data, the Police have estimated that

...there would be at least 41 officers whose electronic files would be responsive, with a range of 8 to 2609 files to be searched per officer, personnel in the Information and Technology Unit estimate that only 2 officers' files could be downloaded at a time.

In addition, the downloading could only be done overnight so as not to interfere with other operations, as a synchronization of servers is required; therefore only 2 officers' electronic records could be downloaded per 24-hour period. Given the approximate number of officers identifiable at this time (approximately 41) this alone would take a minimum of 20 working days.

The Police have noted that in nearly half of the segments of the request, the appellant has requested records of not only the named officers, but also of "all other members of the Toronto Police Service who were involved in this occurrence/investigation". The police indicate that determining the identities of these officers over a lengthy period of time will require "significant search time".

As such, I am satisfied based on this evidence that the time extension claimed by the Police is reasonable.

Conclusion

The appellant has requested all records including electronic data relating to sixteen different incidents or occurrences at one or both of the appellants' business establishments, involving the appellants and in most cases the employees and patrons of these establishments, also involving anywhere from one to thirty-one named officers in each incident or occurrence, and in several cases, all other officers that may have been involved in these incidents or occurrences. These records date from 1995 to 2001. In addition, the appellants have requested a number of records relating to a joint forces initiative composed of municipal, provincial and federal agencies, from the inception of the project through to the termination of the project.

Considering the reasons I noted above, I am satisfied that the time extension applied by the Police under section 20 (1) (a) of the *Act* is reasonable in the circumstances. The request is for a

large number of records that will necessitate a search through a large number of records, and meeting the time limit set out in section 19 of the *Act* would unreasonably interfere with the operations of the Police.

I note that the Police issued an interim decision and fee estimate to the appellants on May 2, 2003. I will word my Order to take into account that pursuant to section 45(3) of the *Act*, the Police are required to give a fee estimate of any payment that will be required that is over \$25.00, and that pursuant to section 7 (1) of Regulation 823 the Police may require the payment of a 50% deposit before taking further steps to respond to the request.

The practical effect of those provisions in this case are that the “time clock” is stopped effective May 2, 2003, the date the institution issued its fee estimate and interim decision. The time clock will re-start when one of two events occurs:

- (1) the appellants pay the required deposit; or
- (2) should the appellants appeal the fee estimate, without having paid the deposit, after the resolution of the appeal and the payment of any fees required as a result of the appeal.

ORDER:

1. I uphold the Police’s decision to extend the time limit set out in section 19 of the *Act* for 270 days. As the Police have used **77** of the 270 days to the date of their interim decision and fee estimate, I will uphold an additional **193** days, to begin from the date the Police are required to resume processing the request, as outlined above.

Original Signed By:
Leslie McIntyre
Acting Adjudicator

May 5, 2003