



**Information and Privacy
Commissioner/Ontario**
**Commissaire à l'information
et à la protection de la vie privée/Ontario**

Reconsideration Order MO-1376-R

Appeal MA-990192-1

Toronto Police Services Board



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NATURE OF THE APPEAL:

The appellant made a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Toronto Police Services Board (the Police). The request was for access to all documents related to a criminal charge laid against the appellant in 1996. The appellant specified that the request included officers' notes, any documents or notes outlining a statement made by the appellant to a named police detective after the appellant's arrest, the original complaint filed and signed by a named individual, any correspondence or communication between the detective and another named police detective from the sex crimes unit, and any documents provided to the provincial crown attorney for prosecution of this matter.

The Police identified responsive records and granted access to some of them. The Police denied access to other records under section 9(1)(d) (information received from an agency of the Ontario government), and section 14(1)(f) in conjunction with section 38(b) (personal privacy) of the *Act*. The Police also withheld parts of the police officers' notebooks because they were not responsive to the request.

The appellant appealed the decision of the Police to deny access.

During mediation, the appellant indicated that he was no longer seeking access to certain records subject to the appeal. As a result, only four pages of records remained at issue, consisting of two two-page forms entitled "Pretrial Meeting Notes". The only exemption claimed by the Police for these records was section 9(1)(d).

In my Order MO-1327 dated July 28, 2000 (the order), I found that the four pages of records at issue were not exempt under section 38(b) and, accordingly, I ordered the Police to disclose them to the appellant.

The appellant then wrote to me stating:

I have received your order relating to this file and am unable to find any reference to the "Statement of the complainant", in this matter which was also withheld from me by Toronto Police Services and formed a part of my request for documents in this appeal.

This document was discussed at length in my constitutional question and your response and order appears not [to] have dealt with this issue or the document.

After reviewing the material in this file, I determined that the Report of Mediator identified as an issue in the appeal "whether the Police have conducted a reasonable search for the records pursuant to section 17 of the *Act*." However, the Notice of Inquiry prepared by the original adjudicator assigned to this file did not refer to the reasonable search issue. I concluded that this omission was inadvertent. Based on the Notice of Inquiry, I, in turn, did not address the reasonable search issue in the order.

As a result, I decided to reconsider my decision in the order, and to address the reasonable search issue.

I sent a Notice of Inquiry seeking representations on the reasonable search issue to the Police, which provided representations in response. I then sent the non-confidential portions of this material to the appellant, who provided representations in response.

DISCUSSION:

Section 10(1) provides a right of access to a record or a part of a record “in the custody or under the control of an institution.” The issue to be decided is whether or not the Police have conducted a reasonable search to determine whether or not records exist “in the custody or under the control of” the Police in response to the appellant’s request. The Police are not required to prove with absolute certainty that responsive records are not in its custody or under its control, but simply that it has conducted a reasonable search for them.

The appellant believes that a statement from the complainant in this matter must exist, in addition to the statement provided by the complainant after the appellant’s arrest.

The Police state that at the time the complainant made the complaint to the Police, an occurrence report was prepared, but no signed statement of the complainant was provided. The Police indicate that subsequent to the arrest, they contacted the complainant and asked this individual to provide a signed statement, and the complainant later did so.

The appellant states that the position of the Police lacks credibility, and provides several reasons why he believes a statement must have been taken.

Having reviewed all of the material in this file, including the representations of the parties, the original occurrence report and the notebook of the investigating officer, I am satisfied that the explanation of the Police is reasonable and plausible in the circumstances. Accordingly, I am not persuaded that the Police should be required to conduct an additional search for records responsive to this request.

ORDER:

I uphold the decision of the Police that it has identified all records responsive to the appellant’s request.

Original Signed By: _____ December 7, 2000
David Goodis
Senior Adjudicator