



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

ORDER MO-1759

Appeal MA-030119-1

Toronto Police Services Board



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NATURE OF THE APPEAL:

The Toronto Police Services Board (the Police) received a request for records relating to a complaint made by the requester to the Ontario Provincial Police (OPP) against Ontario Hydro (as it was then known) relating to alleged fraudulent activity. The investigation of the complaint was undertaken by the Police, rather than the OPP. The request letter provided background information, stating that the Police commenced an investigation in 1995 and that it continued through 1996. The requester also identified the individuals involved in the Police investigation. Specifically, the request asked for:

Any and all information and documentation relating to the complaint lodged by ...(the requester)... and the subsequent investigation including originals or copies of all documentation provided to you by ...(the requester), Ontario Hydro and [a named accounting firm].

The request indicated that responsive records would include an internal investigation report prepared by Ontario Hydro and an audit report prepared by [the named accounting firm].

The Police located the pertinent memorandum book notes from 1996 of the second of two detectives identified by the appellant and granted partial access to them. In their decision letter, the Police stated that the information contained in the undisclosed portions of the memorandum book notes was not responsive to the request.

The Police also stated that searches were conducted at the Fraud Squad and 52 Division for additional detective memorandum book notes maintained by a first identified detective and the investigation file, but no other responsive records were located. They indicate that original occurrence reports could not be provided as their record-holdings had been purged in accordance with the Police Records Retention Schedule By-Law 689-2000. The Police did, however, provide access to a computerized database copy of the Occurrence Report dated October 16, 1995 relating to the requester's complaint. The Police identified no further responsive records.

The requester (now the appellant) appealed the decision on the basis that he wanted all the relevant notes of the second named detective, including those dated March 5, 1996, and records compiled by two other identified Police employees. The appellant also requested information as to why the investigation file and occurrence reports have not been found or why they have been purged and what Police policy and practice is in this regard. Again the appellant cited an internal investigation report performed by Ontario Hydro and an audit report prepared by [the accounting firm], which he maintains were provided to the Police in the course of their investigation.

During the mediation stage of the appeal, the Police indicated that one of its Freedom of Information analysts personally examined the memorandum book of [the second identified detective] page-by-page for the entire year of 1996 and found only one responsive entry for March 5th of that year. The Police stated that there is no record of notes prepared by the other individuals identified by the appellant as they are the civilian employees of the Police who entered the information in the computerized occurrence report database. These individuals are not police officers and they do not keep memorandum notebooks.

The Police also confirmed that their retention schedule for records depends on the type of record. Occurrence reports are “eligible” for destruction in the January five years following the event, although occurrence reports are not always destroyed according to this schedule.

The Police concluded that they had conducted a reasonable search and that no further records existed. The appellant is of the view that additional records exist, and is also seeking access to the undisclosed portions of the second named detective’s notebook for March 5, 1996 which the Police claim contains information that is not responsive to the request as it does not relate to the appellant’s complaint.

I decided to seek the representations of the Police initially and prepared a Notice of Inquiry setting out the facts and issues in dispute in the appeal. The Police made submissions, the non-confidential portions of which were shared with the appellant, who also made representations in response to the Notice of Inquiry provided to him. I then provided the complete representations of the appellant to the Police, who made further submissions by way of reply.

DISCUSSION:

IS THE UNDISCLOSED INFORMATION IN THE OFFICER’S NOTEBOOK RESPONSIVE TO THE REQUEST?

Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, 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

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- (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).

Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose of spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester’s favour [Orders P-134, P-880].

To be considered responsive to the request, records must “reasonably relate” to the request [Order P-880].

The appellant seeks access to all of the entries contained in the first investigating officer's notebook for March 5, 1996, the date he was interviewed by the officer.

The Police state that the information identified as non-responsive to the request involves other events in which the police officer was involved and are completely unrelated to the matter involving the appellant. They also rely on the findings of Adjudicator Laurel Cropley in Order MO-1219, in which she states:

The Police indicate that a police officer carries his or her notebook at all times while on duty, and maintains a constant up to date record of the events in which he or she is involved. The Police state that since police officers record all significant events which occur during their tour of duty, there are other areas of the officer's memorandum books which are neither relevant nor responsive to the request. In particular, the Police submit that the withheld portions of the police officer's notes which are marked as non-responsive contain information which is completely unrelated to the matter involving the appellant.

I have reviewed these portions of the records and I agree with the Police. The non-responsive portions of the records document other events involving the three police officers which occurred during their tour of duty and do not pertain, in any way, to the officers' investigation into the fire at the appellant's place of business. Therefore, I find that these portions of the records were properly withheld as being non-responsive to the request.

I agree with the approach taken by Adjudicator Cropley in this decision. In my view, the only entry in the notebook that contains any information relating to the appellant's complaint was disclosed to him. The other entries contained in the page relate to other activities undertaken by the second named detective on that date, as well as the preceding and following days. For this reason, I find that the remaining undisclosed portions of the detective's notebook are not responsive to the appellant's request as they do not "reasonably relate to the request". On this basis, I find that the Police properly withheld access to the non-responsive information contained in the police officer's notebook.

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 have 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.

Where a requester provides sufficient detail about the records that he/she is seeking and the institution indicates that further records do not exist, it is my responsibility to ensure that the institution has made a reasonable search to identify any records which are responsive to the

request. The *Act* does not require an institution to prove with absolute certainty that further records do not exist. However, in my view, in order to properly discharge its obligations under the *Act*, an institution must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records responsive to the request.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response to a request, an appellant must, nevertheless, provide a reasonable basis for concluding that such records exist.

Representations of the parties

In addition to the submissions recited above from the Police at the mediation stage of the appeal, the Police indicate that they have conducted the following additional searches in order to locate any responsive records. The Police submit that:

Records collected during a police investigation may be located in several locations. However, it would depend on whether charges were laid and/or if an occurrence report was prepared.

...

Where no charges are laid in an investigation, but an occurrence report is generated, records could either be attached to the original occurrence report, or be retained in a separate investigation file. There may also be memorandum book notes. Further areas of search could be identified from reviewing these records.

In relation to the 1995 occurrence report, there is no way to determine whether any of the records which may have been collected by [the first detective who prepared the occurrence report] during that part of the investigation were attached to the original report. As discussed above, a search was conducted for the original 1995 Occurrence Report and it was not located.

As has previously been indicated, a search was conducted at both 52 Division and the Fraud Squad for any separate investigation file with negative results. As a result, no further areas of search were identified.

In the event that [the second named detective] 'continued' the investigation under the 1995 occurrence report number, and did not create a new occurrence report, then the same search results would be attributed to any records he collected during that portion of the investigation.

It should be noted, however, that the normal practice for an officer adding information to a report is for his/her name to appear under the 'OFFICERS' category on the computerized occurrence report specifying 'involvement' (i.e.

prepared report, investigating, etc.) and the date of that entry. [The second detective's] name does not appear on the computerized version of the 1995 occurrence report, and therefore his investigation may have been conducted separately.

The Police also rely on section 5 of Regulation 823 promulgated under the *Act* which provides that personal information is to be retained for a period of one year "after use" as a basis for concluding that the records sought cannot be located.

The Police conclude this part of their representations by adding that:

In the absence of the original 1995 occurrence report, an investigation file or notes by [the first detective] and further notes by [the second detective], no further areas of search could be identified. It is therefore the position of this institution that a thorough search was conducted for all responsive records relating to this request.

The appellant submits that "the [Police] have failed to indicate with specificity the actual steps that were followed in the search for records or information." He points out that while an officer with the Fraud Squad was identified as the individual who conducted the search of its record-holdings, the Police have failed to describe in detail the nature and extent of the searches that he undertook. Similarly, the appellant submits that the Police have failed to provide the necessary detail with respect to the searches undertaken by unnamed individuals for records at 52 Division and the Police occurrence report database. Finally, the appellant states that the Police have not addressed with any degree of specificity the extent of the searches conducted for the memorandum notebooks of the second detective.

In their reply representations, the Police respond to the arguments put forward by the appellant as follows:

The individuals contacted at 52 Division, Fraud Squad and the Occurrence Section are experienced employees familiar with the storage and retrieval of records from their respective units, and in fact have acted as their unit's liaison for Freedom of Information requests for quite some time.

The Police also indicate that the memorandum notebooks belonging to the second detective for the year 1995 were not searched as his involvement in the investigation only began in March 1996, contrary to the belief of the appellant. The second detective did not "continue" the investigation under the initial occurrence number given to the matter by the first detective in 1995 and his name does not appear as an investigating officer on the occurrence printout for the 1995 investigation. Only the name of the first investigating detective appears on this record. Essentially, the Police take the position that a second investigation was undertaken by the second detective beginning in March 1996.

In response to the appellant's argument that the Police have failed to adduce evidence to demonstrate that the records sought have been destroyed, the Police reiterate that:

There is no requirement upon an institution to provide evidence that records have been destroyed. Rather, the only requirements upon this institution are the retention of certain records for specific periods of time, either as set out in the Record Retention Schedule [of the Police], By-law 689/2000 or the Regulations.

The Police conclude their reply submissions by arguing that the searches undertaken by various staff were "more than reasonable". They point out that, "[T]he fact that records could not be located does not alter the fact that a 'reasonable' search was conducted."

Findings

I have carefully reviewed the representations of the appellant and the Police and make the following findings. Owing to the passage of time and the operation of the records retention schedules of the Police, the searches undertaken were particularly difficult and, as it turns out, not very fruitful.

The Police have provided me with detailed evidence as to the nature and extent of the searches undertaken for any occurrence reports, police officers' notes and other information relating to the investigation of the appellant's complaint which took place in 1995 and 1996.

Based on the representations of the Police regarding the searches undertaken of its occurrence report databases, I am satisfied that the searches of these record-holdings were thorough and reasonably conducted. The Police indicate that their searches for the original investigation file and the notes of the first detective produced no results. Again, I am satisfied that, owing to the operation of its records retention policies, the searches undertaken by the Police for the original investigation file were reasonable in their scope.

With respect to the notebook entries of the second detective, I am satisfied based on the representations of the Police that this individual only became involved in the investigation of the appellant's complaint in 1996 and that the sole entry in his notebook for that year was dated March 5th. In my view, the Police have undertaken a reasonably comprehensive search for additional records relating to the involvement of the second named detective in the investigation.

In conclusion, I find that the Police have provided me with sufficient evidence to demonstrate that their search for records responsive to the appellant's request was reasonable.

ORDER:

I find that the Police have conducted a reasonable search and dismiss the appeal.

Original signed by: _____
Donald Hale
Adjudicator

February 24, 2004 _____