



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1804

Appeal MA-030414-1

Toronto Police Services Board



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NATURE OF THE APPEAL:

The Toronto Police Services Board (the Police) received two requests under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to a specified incident involving the requester that took place in 1987. Initially, the Police responded to the request by refusing to confirm or deny the existence of any responsive records under section 14(5) of the *Act*.

The requester, now the appellant, appealed the decision of the Police.

During the mediation stage of the present appeal, the Police issued a further decision letter to the appellant withdrawing their reliance on section 14(5) and indicating to him that no records exist. The appellant was not satisfied with this decision and the issue of whether responsive records exist is the sole issue to be determined in this appeal.

As further mediation was not possible, the appeal was moved into the adjudication stage of the process. I decided to seek the representations of the Police, initially and received their submissions, which were shared with the appellant, along with a Notice of Inquiry. The appellant submitted representations that were, in turn, shared with the Police, who made further submissions by way of reply.

DISCUSSION:

ADEQUACY OF SEARCH

The sole issue in this appeal is whether records responsive to the appellant's request exist.

In appeals involving a claim that 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 which he/she is seeking and the Police indicate that records do not exist, it is my responsibility to ensure that the Police have made a reasonable search to identify any records which are responsive to the request. The *Act* does not require the Police to prove with absolute certainty that records do not exist. However, in my view, in order to properly discharge its obligations under the *Act*, the Police must provide me with sufficient evidence to show that they have 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 the response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records exist.

In its initial representations, the Police outlined the steps taken to locate records responsive to the appellant's request. The Police state that they conducted a search of their microfiche record-holdings for the years 1984 to 1988 under the appellant's name and that of another individual whose name appeared in the request. This search did not reveal any records relating to the incident referred to by the appellant in his request.

The Police also state that:

The Toronto Police Record Retention Schedule (City of Toronto By-Law No. 689-2000), provides a retention period of five years plus the current year for minor general occurrences; memorandum books are retained for a period of eight years from the last entry.

It cannot be conclusively stated that the documents have been purged, as it cannot be established that such records did exist.

The computerized dispatch data base (ICAD) which was used to locate information consistent with the circumstances described by the appellant in request no. 032034, was not in use by the Toronto Police Service in 1987.

...

Although there is no indication that an occurrence report existed concerning the 1987 incident, it is possible that memorandum book notes existed; however, in the absence of any information concerning which officer attended, it is not possible to search further because:

- i) The retention period for such memorandum books has elapsed (as outlined previously);
- ii) Even had the appellant provided a specific date in 1987, learning which officers were assigned to the relevant division at that time would be a formidable undertaking. Without a specific date, given the time frames of the Toronto Police Service Record Retention Schedule, such a search is not only unreasonable, but ultimately unproductive.

In his representations, the appellant suggests that the Police ought to have conducted a search of the record-holdings located in the "Storage Facility" affiliated with the particular police station closest to the location of the incident in which he was involved. He indicates that the incident in August 1987 that is the subject matter of this request involved an unidentified officer from 31 Division in the former City of North York. The appellant submits that he recently spoke with another police officer who advised him that the records retrieval system predating the ICAD system that was in use in 1987 was called the "Communications Call Card" [the CCC] system. He was also told that the call cards were stored at a specific location. The appellant takes the position that the Police ought to undertake a search of these record-holdings in order to locate

records responsive to his request and the name of the 31 Division officer involved in the incident.

In response to the appellant's submissions, the Police submit that the Communication Call Cards referred to by the appellant were:

. . . generated and used by the Communications Bureau (now the Communication Centre) and were **never** created by or stored at individual divisions. In 1987, the Communications Bureau was located at 590 Jarvis Street.

The 1992 Metropolitan Toronto Police Service Record Retention Schedule (Municipality of Metropolitan Toronto By-Law No. 58-92) mandated a retention of 1 year for Communications 'records of complaint (handwritten cards)'.
...

Finally, the Record Retention Schedule (RRS) of 1992 requires that memorandum books be retained for a period of 7 years from the last entry; the 2000 RRS provides for 8 years from the last entry. The event in question took place in 1987. Neither RRS provides for a 17 year retention of memorandum books. The requested record(s), if they existed at all, cannot be located.

I have carefully reviewed the representations of the Police and the appellant and have come to the following conclusions with respect to the adequacy of the searches conducted for records responsive to the request:

- The initial searches undertaken in the Police databases for microfiche records relating to the 1987 incident were reasonable in their scope, particularly given the lack of detail provided by the appellant regarding the identity of the officer involved;
- Without the name of the involved officer, it is not reasonably practicable for the Police to conduct a search of all the officer's memorandum books, if any still exist, for all of the officers operating out of the identified Division for the time period in question;
- The Records Retention By-Laws governing the record-holdings of the Police dating from 1987 indicate that it is unlikely that occurrence reports or memorandum notebooks for the pertinent time period still exist, regardless;
- The searches undertaken for these records was reasonable in the circumstances, particularly given the passage of time;
- The Communications cards referred to by the appellant were also subject to destruction in accordance with the records retention schedules some years ago. I am satisfied that the searches undertaken for these records was also adequate.

In my view, the Police have expended a reasonable effort in conducting a search for records responsive to the appellant's request.

ORDER:

I uphold the decision of the Police and dismiss the appeal.

Original signed by _____
Donald Hale
Adjudicator

_____ June 22, 2004