ORDER MO-1791

Appeal MA-030400-1

Toronto Police Services Board

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NATURE OF THE APPEAL:

The Toronto Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to an incident that occurred on April 26, 1997 involving the requester.

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 appeal, the Police granted complete access to the responsive portion of one police officer's notebook describing the incident involving the appellant that occurred on April 26, 1997. The Police also issued a further decision letter to the appellant indicating to him that a memorandum notebook maintained by a second named officer in relation to the incident described in the request could not be located. The appellant advised the Mediator that he wished to proceed with his appeal on the basis that the Police did not conduct a reasonable search for the second officer's notebook.

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 in turn shared with the appellant, along with a copy of the Notice of Inquiry. The appellant also provided me with representations in response to the Notice.

DISCUSSION:

ADEQUACY OF SEARCH

The sole substantive issue in this appeal is whether the searches conducted by the Police for records responsive to the appellant's request were reasonable in the circumstances.

The Police indicate that they conducted an electronic search of their computerized dispatch data base (ICAD) for the date in question. That search revealed that two officers had been dispatched to the location described in the appellant's request. The Police state that they conducted searches at the home division of the two officers, 52 Division, for the memorandum books they maintained during that time period. The Police indicate that the searches were conducted by an experienced employee who is familiar with both the storage facilities at 52 Division and the record filing practices of the unit to which the officers belonged. The searches successfully located the notebook of one of the two named officers but the notebook of the other officer, who is no longer employed by the Police, could not be located. Complete access to the entries contained in the notebook located by the Police relating to the incident involving the appellant was granted.

The appellant takes the position that the searches undertaken by the Police were inadequate as they failed to locate the notebooks maintained by one of the officers involved in the April 26, 1997 incident.

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 which he/she is seeking and the Police indicate that further 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 further 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 an institution's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records exist.

In the present appeal, the appellant is of the view that because two officers were involved in the incident, both ought to have taken notes. He argues that regardless of the fact that the second officer has left the employ of the Police, his notebooks ought to still exist in their record-holdings.

I find that the Police have not provided me with a sufficiently detailed explanation as to the nature and extent of the searches they undertook for the second officer's notebook. The Police have not indicated where or by whom the searches were conducted. Rather, they have simply stated that searches were conducted by an experienced, though unnamed, individual. In my view, this is insufficient evidence to support a finding that they Police have made a reasonable effort to locate all of the records that are responsive to the request.

In addition, I have not been provided with any explanation as to why, when the second officer left the employ of the Police, his notebooks were not maintained in the Police record-holdings and are no longer retrievable. Based on the information provided to me, I am not satisfied that the searches undertaken for the notebooks maintained by this officer was reasonable in the circumstances.

ORDER:

1.   I order the Police to conduct a further search for the second police officer's notebook containing any information dating from the incident involving the appellant on April 26, 1997.

2.   I order the Police to communicate the results of that search to the appellant, along with a decision respecting to access to any additional responsive records, if located, in accordance with section 19 of the *Act*, on or before **June 10, 2004.**

3.   I order the Police to provide me with a copy of any correspondence provided to the appellant in compliance with Provision 2.

Original signed by: May 20, 2004
Donald Hale
Adjudicator