



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1857

Appeal MA-030400-2

Toronto Police Services Board



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NATURE OF THE APPEAL:

The requester submitted a request to the Toronto Police Services Board (the Police) for access to the following information pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

I am requesting access to my personal information found in the April 26, 1997, Police Report made by the Police Officer(s) who appeared at my storage unit at the Public Storage Facility [at a specified location]. Despite investigation no possible violation of the law existed.

Initially, the Police refused to confirm or deny the existence of any responsive records in accordance with section 14(5) of the *Act*. During mediation, the Police revised their decision to state:

Please be advised that access cannot be provided to relevant memorandum book notes of [a former Police Constable] as the memo book cannot be located.

The appellant appealed the decision of the Police. On May 20, 2004, I issued Order MO-1791 in which I ordered the Police to conduct a further search for the relevant officer's notebook and communicate the results of that search to the appellant on or before June 10, 2004.

The Police then conducted a further search and advised the appellant on June 7, 2004 that the memorandum book notes of the former Police Constable could not be located. The appellant appealed this decision and the current appeal file, MA-030400-2, was opened. I sought and received the representations of the Police, which were shared with the appellant in their entirety. The appellant also provided me with representations. The sole issue to be addressed in this appeal is whether the Police have conducted a reasonable search for the information contained in the memorandum book of the former Police Constable relating to the events that are the subject of the appellant's request.

DISCUSSION:

SEARCH FOR RESPONSIVE RECORDS

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17 [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624].

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

The Police submit that the officer who prepared the notebook entries sought by the appellant left its employ in June 2002. It further indicates that:

Memorandum books of officers who have left the Toronto Police Service are kept at the division where the officer last served until purged pursuant to the Toronto Police Service Records Retention Schedule (City of Toronto By-law No. 689-2000). The Schedule now mandates a minimum retention period for memorandum books of 8 years from the last entry. The previous Retention Schedule (Municipality of Metropolitan Toronto By-law No. 58-92) mandated that such records be maintained for 7 years from the date of the last entry.

The Police also rely on Routine Order No. 0285 dated February 8, 2002 which specifies that the retention and storage of memorandum books belonging to officers who leave the force must be in accordance with the pertinent records retention schedule. The Police go on to explain the efforts they made to locate the memorandum book containing the entries sought by the appellant as follows:

Unfortunately, there have been officers who have not turned in their memorandum books upon leaving the Service and on occasion, memorandum books have been lost or inadvertently destroyed. It is not possible to determine which of the foregoing possibilities occurred in this instance.

The Police state that on October 30, 2003, in response to the appellant's original request, an experienced officer attached to the same Division as the officer who prepared the memorandum book undertook a search of the Division's record-holdings. This search was not successful. The Police also indicate that, following the issuance of Order MO-1791, a different experienced officer from the same Division also undertook a further search for the memorandum book and again, did not locate it.

The appellant maintains that the searches undertaken for the memorandum book were inadequate and that the explanations provided by the Police do not properly describe where the searches were undertaken and when.

I have reviewed the representations of the parties and conclude that the searches undertaken by the Police for the 1997 memorandum book of the former Police Constable were adequate in the circumstances. Two searches were conducted of the Division's record-holdings by two experienced police officers. As noted above, the Police are not obliged to ascertain with absolute certainty whether the records exist or not. Rather, they are required to demonstrate only that they conducted a reasonable search in the circumstances. In my view, the Police have satisfied their obligation to conduct a reasonable search for the requested information, despite their lack of success in locating it.

ORDER:

I dismiss the appeal.

Original Signed By: _____
Donald Hale
Adjudicator

_____ October 15, 2004