



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2345

Appeal PA-030343-1

Ministry of Public Safety and Security



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NATURE OF THE APPEAL:

The requesters made a request to the Ministry of Public Safety and Security (now the Ministry of Community Safety and Correctional Services) (the Ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

Any information that pertains to or touches upon any investigation or other matter relating to [the requesters], or any one of them.

Without limiting the generality of the foregoing the [requesters] request copies of all media including any document, letter, microfiche, memo, record, e-mail, photocopy, facsimile, video tape, audio tape, hard drive, disk, instruction pertaining to any of the above individuals, that was created or maintained, on and between the periods January 1, 1997 to, and including March 27, 2003, by an officer, civilian employee or other person of the Toronto Police Services, including but not limited to any said information created or maintained by, of, for:

- [64 named individuals],
- Any other person.

The requesters subsequently clarified their request. They specified that they expected eight named individuals would have information pertaining to the request. They stated:

The records will consist of any information on any media that was created or maintained, on and between the periods January 1, 1997 to, and including March 27, 2003, by any person pertaining to [the requesters], or any of them and includes and is not limited to documents, letters, memos, records, e-mails, photocopies, etcetera.

Pursuant to section 25(2) of the *Act*, the Ministry transferred part of the request to the Ministry of the Attorney General. (The requesters have appealed the Ministry of the Attorney General's decision regarding the transferred part of the request, and that appeal is proceeding as Appeal Number PA-040014-1.) With respect to the remainder of the request, the Ministry issued a decision to the requesters denying access to the records in their entirety, claiming that section 65(6) (labour relations and employment records) excludes them from the scope of the *Act*.

The requesters (now the appellants) appealed the Ministry's decision.

During mediation, the Ministry provided the appellants with an index of the 73 pages of records it had identified. The appellants then agreed that those records fall outside the scope of the *Act*, and they indicated that they were not pursuing access to them. Those records are therefore no longer at issue.

At the same time, the appellants took the position that additional responsive records should exist, such as telephone memos, meeting notes and other records relating to contacts between members of the Toronto Police Service and the Ministry. The appellants thus raised the reasonableness of the Ministry's search for records as an issue. The Ministry indicated that it had conducted a search for responsive records at two locations only: the Ministry's Correspondence Unit and the

Ontario Police Arbitration Commission. The Ministry refused to search for additional records, taking the position that any additional records would fall outside the scope of the *Act* by virtue of section 65(6).

Mediation did not resolve this appeal, and the file was transferred to adjudication. In the circumstances, I added the possible application of section 65(6) as an issue in this appeal. I sent a Notice of Inquiry to the Ministry, initially, outlining the facts and issues and inviting the Ministry to make written representations. The Ministry submitted representations in response to the Notice: it made representations on the reasonableness of its searches, but it made no representations on the possible application of section 65(6). At the same time, the Ministry issued a new decision to the appellants, indicating that it had conducted a further search and that it had identified three additional pages of records. The Ministry denied access to these three pages, relying on the exemption at section 17 (third party information). These three records and the Ministry's section 17 claim are not at issue in this appeal.

I then sent a Notice of Inquiry to the appellants, together with a copy of the Ministry's representations. The appellants, in turn, provided brief representations. The appellants had also provided this office with a letter at the conclusion of mediation, which they agreed would be forwarded to adjudication; I will treat this letter as forming part of the appellants' representations for the purpose of this appeal.

In this appeal I must decide whether the Ministry has conducted a reasonable search for additional records the appellants believe exist.

BRIEF CONCLUSION:

The Ministry's searches for additional records were reasonable.

DISCUSSION:

DID THE MINISTRY CONDUCT A REASONABLE SEARCH FOR RECORDS?

The appellants believe that additional records (such as telephone memos and meeting notes) relating to contacts between members of the Toronto Police Service and the Ministry exist.

General principles

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 24 (Orders P-85, P-221, PO-1954-I).

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. The institution must, however, 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.

In this case, if I am satisfied that the Ministry's search was reasonable in the circumstances, I will uphold the Ministry's decision. If I am not satisfied, I may order the Ministry to conduct further searches.

The parties' representations

The Ministry submits that its search was reasonable. As part of its representations, the Ministry provides an affidavit sworn by an experienced staff member at the Ministry. Among other things, the affidavit details the Ministry's second search for records, as follows:

... The Ministry subsequently asked the Executive Officer of the Ontario Police Arbitration Commission and the Manager of the Ministry's Correspondence Unit to conduct a second search for responsive records.

... The Ontario Police Arbitration Commission subsequently located three additional pages of responsive records. The pages consist of administrative activity logs associated with three applications for appointment of a conciliator pursuant to section 123(1) of the *Police Services Act*.

... the Ministry issued a decision letter to the appellant[s] denying [them] access to the administrative activity logs in accordance with section 17(1) of [the *Act*]. ...

... The Correspondence Unit did not locate any additional responsive records during the second search for responsive records.

... Additionally, ... the Office Administrator of the Community Safety Deputy Minister's Office was asked to undertake a search for any responsive records held by the three named individuals relating to the requesters. The Office Administrator's responsibilities include records management activities respecting ministerial records.

... The Office Administrator reviewed the relevant file transfer lists of ministerial records. The Office Administrator confirmed that there do not appear to be any files or records responsive to the request ...

... I am not aware of the existence of any other records responsive to the [appellants'] request as clarified...

As noted above, the Ministry does not make representations on the possible application of section 65(6).

At the conclusion of mediation, the appellants took the position that the Ministry should not have restricted its searches to its Correspondence Unit and the Ontario Police Arbitration Commission. They also asserted that the Ministry's refusal (at that time) to conduct further searches on the basis that any additional records would be excluded from the *Act's* scope was erroneous.

In their representations responding to my Notice of Inquiry, the appellants submit that I should adjudicate this appeal based on the materials already before me.

Findings

Based on the evidence before me, I find that the Ministry has conducted a reasonable search for additional records responding to the appellants' request. As noted above, the Ministry is not required to prove with absolute certainty that additional records do not exist. Rather, it must satisfy me that its searches for records were reasonable.

During mediation, the Ministry was not prepared to search for additional records, taking the position that any additional records would be excluded from the *Act's* purview. After receiving my Notice of Inquiry, however, the Ministry did conduct a further search. Specifically, it conducted a second search of the Ontario Police Arbitration Commission (which yielded three additional pages of records) and the Ministry's Correspondence Unit. In addition, the Office Administrator of the Community Safety Deputy Minister's Office reviewed the relevant file-transfer lists and confirmed that no responsive records appear to exist. The Ministry's representations include an affidavit sworn by an experienced staff member describing these searches and stating that she is not aware of any other records that would respond to the appellants' request. In the circumstances, the Ministry's searches were appropriate and reasonable. The appellants have not provided sufficient evidence to persuade me otherwise.

In view of the fact that the Ministry has conducted further searches and these searches were reasonable, the possible application of section 65(6) to any additional records is no longer at issue in this case.

I will therefore dismiss the appeal.

ORDER:

I dismiss the appeal.

Original signed by: _____
Shirley Senoff
Adjudicator

November 16, 2004