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

ORDER PO-2335

Appeal PA-030401-1

Ministry of Community Safety and Correctional Services

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NATURE OF THE APPEAL:

The Ministry of Community Safety and Correctional Services (the Ministry) received two requests under the *Freedom of Information and Protection of Privacy Act* (the *Act).* The requests were for records related to the requester's detention in the Toronto Jail during two specified periods of time in 2001.

The first request specifically stated:

> I am requesting information pursuant to the *Freedom of Information and Protection of Privacy Act* or any other Act relative to freedom of information regarding my case.
>
> I am seeking any and all documents regarding the communication and records held by the **Public Safety and Security Bureau** regarding the arrest and detention at the Toronto Jail ["the Don Jail"] from [a specified date] to [a specified date], in the case of [the appellant's name and other identifying information].
>
> I am further seeking the complete notes and records, photographs, finger prints internal office documents regarding the involvement of any other members of the Public Safety and Security Branch and the Attorney General Office in this case from [a specified date] to current.
>
> It will include correspondence and all applications, copies of warrant and in formations, any communications with [three named detectives] as well as any and all other relevant communications as well as any communication with any commanding officer, the Office of the Chief of Police and the Crown Attorney of Ontario.
>
> It will include correspondence and communication with **the Transfer Unit between the Toronto Jail and College Park Court**. [emphasis added by the appellant]

The second request was identical except the appellant was requesting records for a second period when he was incarcerated in the Toronto Jail.

The Ministry responded to the two requests in one decision letter dated December 2, 2003, granting access to the responsive records, in part. The Ministry denied access to pages 25 to 36 of the records because they were records prepared by the Toronto Police Service (the Police). The Ministry advised the appellant to make a separate request directly to the Police for them. The Ministry also explained that records containing information related to the transfer of inmates to and from court facilities are maintained by the Toronto Police Service Prisoner Transportation Division. In order to access the information maintained by the Police, the appellant was advised by the Ministry to request it directly from the Police. I understand that he has done so and these records are not, therefore, at issue in this appeal.

The Ministry denied access to a portion of the remaining records in accordance with the discretionary exemptions in section 49(b) (invasion of privacy), in conjunction with the factor listed in section 21(2)(f) of the *Act* (highly sensitive information) and section 49(e) of the *Act* (confidential correctional record).

The requester, now the appellant, appealed the decision of the Police on the basis that additional records responsive to his request should exist. Specifically, the appellant states that additional records should exist related to the following incidents:

- The appellant states that on a specific date while he was incarcerated in the Toronto Jail, he was ejected from his cell by other inmates and was physically assaulted. He states that the incident caused a considerable disturbance involving 20-40 inmates. The appellant states that because the incident was like a small "riot", a detailed incident report should exist.

- The appellant is seeking records relating to himself maintained by the Jail's Medical Examiner. Although the appellant acknowledges that he did not attend the Medical Examiner's office, he states that he made repeated requests to the guards and a nurse who made rounds dispensing medication to receive medical attention. He contends that there should be a record of his requests for medical attention.

- The appellant contends that there should be records logging the communication between the College Park Court and the Toronto Jail. The appellant specifically states:

> … I am especially interested in Technical reports of communication on the morning of [a specified day] regarding computer breakdown, "crashes" and failure which prevented my being transported to the College Park Courts on schedule, and communication received by any member of the Public Safety and Security Bureau or authorities or the Don Jail from CPC [a named Justice of the Peace] and from members of the Toronto Police Service the crown and the Transfer Unit.

- Page 10 of the records that were disclosed to the appellant is a *Segregation Observation Form* carrying a specific date. The appellant contends that there should be a similar form for each day he was in the Jail.

- Page 5 of the records is an *Offender Management System Client Profile* for a specific date. The appellant contends that a similar form should also exist for each day he was incarcerated.

During the mediation stage of the appeal process, the Ministry indicated to the appellant and this office that it conducted a thorough search for the records at the Jail, including all departments and that no additional records could be found. Further mediation was not possible and the appeal was moved into the Adjudication stage of the process.

I sought and received the representations of the Ministry, initially. The Ministry submits that additional searches were conducted by Toronto Jail staff which resulted in a number of responsive electronic records being identified. These records were disclosed to the appellant on September 7, 2004. I then shared the Ministry's submissions with the appellant, along with a Notice of Inquiry. The appellant provided me with his own representations in response to the Notice.

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 24 [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 Ministry provided me with a comprehensive description of the searches undertaken and the records located as a result of the processing of the appellant's request, addressing each of the items raised by the appellant and described above.

Specifically, the Ministry indicates that both the former and the current Jail Security Manager and the Jail Health Care Coordinator undertook searches for responsive records prior to and following the commencement of the Adjudication phase of the processing of this appeal. All of these individuals came to the conclusion that no responsive records exist beyond those already disclosed to the appellant. A detailed description of the nature and extent of those searches was included in the Ministry's representations that were provided to the appellant during the Adjudication stage of this appeal. The Ministry also outlined in detail the searches undertaken for Segregation Observation Forms relating to the appellant, and explained that these documents are subject to destruction after one year, in accordance with the Ministry's then-existing records retention policy. Finally, during the mediation of the appeal, the appellant raised concerns about

records relating to himself that are stored on the Ministry's Offender Management System and its successor integrated electronic case management system, referred to as OTIS. The Ministry submits that it has now provided the appellant with all of the records maintained by that electronic system.

The appellant continues to maintain that additional records relating to his many requests to Jail staff for assistance from the Medical Examiner or Health Care Unit ought to exist, despite his not having attended at that unit or undergone an examination by any of its staff. Based on the representations of the Ministry, I am satisfied that it conducted a reasonable search for any such records. The appellant also takes issue with the position of the Ministry with respect to the whereabouts of Segregation Observation Forms and their destruction in September 2002. I, however, am satisfied with the explanation provided to the appellant and this office respecting the reason why such records no longer exist.

The appellant has also provided a lengthy narrative in his submissions setting out the reasons why he believes that additional records relating to the ongoing maintenance of his file by the Jail ought to exist. I find that the appellant's arguments on this point represent conjecture on his part and do not support a finding that additional records exist.

The appellant also relies on his own experience as an inmate at the Jail and the events that transpired at his court appearances at the relevant times as the basis for his belief that additional records ought to exist, relating particularly to the events of a specified day. While it may seem logical to the appellant that additional documentation of events ought to exist, the Ministry has provided an explanation as to the destruction of various Jail records in accordance with its records retention policy. The types of records sought by the appellant may very well have existed at one time, but they were destroyed in September 2002. In other cases, the Ministry indicates that records were simply not created documenting every occurrence on the day in question. I accept the Ministry's explanation as to why records relating to what were, in its view, every-day occurrences in the milieu of the Toronto Jail are not always created.

The appellant also relies on the written policies and procedures governing the operation of the Toronto Jail that were disclosed to him under the *Act* as the basis for his belief that additional records exist. He maintains that those policies and procedures mandate the creation of written records upon the occurrence of certain events. I find that many of these written directives require the recording of information by Jail staff when certain events take place. However, I find that the searches undertaken by the Ministry's staff at the Jail were reasonable in their scope and did not uncover any of the records that the appellant believes ought to exist.

Based on the representations of the Ministry and the explanations provided by it to the appellant and this office, and following the identification of additional responsive records in September of this year, I am satisfied that the Ministry has conducted reasonable searches for records responsive to each aspect of the appellant's request. While the appellant continues to maintain that additional records ought to exist, I do not find that this position has a reasonable basis.

ORDER:

I dismiss the appeal.

October 21, 2004

Donald Hale
Adjudicator