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

INTERIM ORDER MO-1976-I

Appeal MA-050101-1

Halton Regional Police Services Board

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NATURE OF THE APPEAL:

The Halton Regional Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all records involving the requester. The request was made by a representative for the requester, and stated that it was for all records including:

(a) dates and times of incidents … involving [the requester] or his property [an identified address] from April 2002 to the present;

(b) the details of such incidents;

(c) any statements received concerning [the requester] or his property;

(d) any investigations involving [the requester] or his property and the reasons for and results of each investigation.

After notifying a number of affected persons, the Police issued a decision in which it identified thirteen responsive records and denied access to them on the basis of the following exemptions in the *Act*:

- sections 8(1)(a) and (b) (law enforcement),
- section 8(1)(e) (endanger life or safety),
- section 8(1)(f) (right to a fair trial),
- section 8(1)(l) (facilitate commission of unlawful act),
- section 8(2)(a) (law enforcement),
- section 38(a) (discretion to refuse requester's own information), and
- section 38(b) (invasion of privacy) with reference to the presumptions in sections 14(3)(a) and (b) and the factors in sections 14(2)(f) and (i).

The requester, now the appellant, appealed the Police's decision.

During the mediation stage of this appeal, the Police issued a supplementary decision, granting access to portions of four of the records. The Police also identified a number of additional records responsive to the request, and denied access to them in full on the basis of the same exemptions as were claimed for the other records. The parties agreed that other records, identified as non-responsive, could be removed from the scope of the appeal.

Also during mediation, the Police identified that they searched for a videotaped statement, and advised the appellant that no videotaped statement responsive to the request exists. The appellant disputed the decision that no such record exists, and the issue of whether the Police conducted a reasonable search for the records was raised as an issue in this appeal.

Mediation did not resolve the remaining issues, and the file was transferred to the inquiry stage of the process. I sent a Notice of Inquiry to the Police, initially, and received representations in

response. In their representations the Police did not provide representations on the discretionary exemption in section 8(2)(a) and, accordingly, it is no longer at issue in this appeal.

I then sent the Notice of Inquiry, along with the non-confidential portions of the Police's representations, to the appellant, who also provided representations through his representative.

RECORDS:

The records remaining at issue are:

1) The undisclosed portions of four identified police reports. Access to the undisclosed portions of these records is denied on the basis of the following:

   - section 38(b) in conjunction with the factors in sections 14(2)(f) and (i) and the presumptions in sections 14(3)(a) and (b); and

   - section 38(a) in conjunction with sections 8(1)(e) and (l) for the information in the records relating to police 10-codes, patrol zone information and/or statistical codes.

2) Nine identified police reports (which I will refer to as the "first" through the "ninth" occurrence reports, based on the order in which the records were provided to me), as well as seven additional reports referring to the "first" occurrence report. Access to these records is denied on the basis of the following:

   - section 38(b) in conjunction with the factors in sections 14(2)(f) and (i) and the presumptions in sections 14(3)(a) and (b);

   - section 38(a) in conjunction with sections 8(1)(a), (b) and (f); and

   - section 38(a) in conjunction with sections 8(1)(e) and (l) for the information in the records relating to police 10-codes, patrol zone information and/or statistical codes.

DISCUSSION:

PERSONAL INFORMATION

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,

> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except if they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

The Police take the position that the records contain the personal information of the appellant, as well as that of other identified individuals. They state:

> The recorded information that has been withheld from disclosure contains the personal information of a number of individuals, including that of the appellant, a deceased individual and another affected party. The records include names, addresses and telephone numbers of affected individuals, along with their statements.

The appellant identifies that he is only interested in obtaining information that relates to him.

I have reviewed the records at issue in detail, and am satisfied that they contain the personal information of the appellant. Many of the records identify the appellant by name as either an accused or a complainant in the various police reports that comprise the records. The information includes his date of birth, address, telephone number, statements made by or about him, as well as other personal information relating to him. In some of the records the appellant is

neither a complainant nor an accused, but is referred to by name in the record. Other records do not contain his name, but relate to incidents occurring at his address and, in the circumstances, I am satisfied that it is reasonable to expect that the appellant could be identified from the information.

I also find that certain records contain the personal information of other identifiable individuals. Some of these records identify the other individuals by name, as either an accused or a complainant in the various police reports. These records then include the date of birth, address, telephone number, statements made, as well as other personal information relating to those individuals. Portions of some of the records also identify other individuals by name and address. I am satisfied that portions of a number of the records at issue contain the personal information of other identifiable individuals.

LAW ENFORCEMENT

General Principles

Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)].

Except in the case of section 8(1)(e), where section 8 uses the words "could reasonably be expected to", the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

It is not sufficient for an institution to take the position that the harms under section 8 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfillment of the requirements of the exemption [Order PO-2040; *Ontario (Attorney General) v. Fineberg*].

Section 8(1)(a) – ongoing law enforcement matter

The Police take the position that the records to which access was denied in full qualify for exemption under section 8(1)(a), which reads:

> A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> > interfere with a law enforcement matter;

In their initial decision letter, the Police identified the two specific occurrences that are reflected in the records which resulted in the charges which are presently before the courts. In their representations the Police continue to take the position that the disclosure of the records to which access was denied could reasonably be expected to interfere with a law enforcement matter under section 8(1)(a). They state:

> The law enforcement matter in these occurrences are various charges laid under the Criminal Code of Canada. Charges which are presently before the courts. The [Police] investigated the incidents and subsequently laid charges.
>
> Some of the reports relate directly to the charges before the courts and were therefore denied. Disclosure of the records could seriously hamper the prosecution of the offence or interfere with the testimony of the witnesses. The appellant can then contact the witnesses and attempt to sway their statements or disclosure could lead to publication of the anticipated evidence to be used in the trial.
>
> It is the view of [the Police] that disclosure of the records in question would interfere with a law enforcement matter, i.e. with the preparation of this matter for trial.

The Police's representations were shared with the appellant. The appellant confirms that he has been charged, and confirms that it is the information relating to the identity and actions of certain individuals that he is interested in obtaining. With respect to the position of the Police that he will use the information to "contact witnesses and try to subvert justice", the appellant states that this is a "ridiculous fear". He states that he "wants the information so that he can find out who is behind his own harassment and charges and why."

Findings

As set out above, the Police take the position that disclosure of the information contained in the reports to which access is denied in full will interfere with an ongoing law enforcement matter and that this information is, accordingly, exempt under section 8(1)(a). In their decision letter the Police identified the specific matters that are presently before the courts.

Previous orders have established that the law enforcement matter in question must be a specific, ongoing matter. The exemption does not apply where the matter is completed, or where the alleged interference is with "potential" law enforcement matters [Orders PO-2085, MO-1578].

Upon my review of the records at issue and the representations of the parties, I am satisfied that the two occurrences specifically identified as "ongoing" by the Police (the "first" and "second" occurrence reports) are currently before the courts and constitute ongoing "law enforcement matters" for the purpose of section 8(1)(a). Furthermore, the "seven additional reports" identified above referring to the first occurrence report also relate directly to the matters

identified in the "first" and "second" reports. In my view, all of these reports relate to ongoing law enforcement matters involving the appellant.

The Police take the position that the disclosure of the records in question could reasonably be expected to interfere with a law enforcement matter. They state that it will interfere with the preparation of this matter for trial, and that the disclosure could lead to distribution of the anticipated evidence to be used in the trial, thus interfering with the law enforcement matter.

In the circumstances of this appeal, I am satisfied that the disclosure of the first two occurrence reports, as well as the "seven additional reports" referring to the first occurrence report and relating to the same matters, could reasonably be expected to interfere with the identified law enforcement matters. As set out above, the Courts have established that, although evidence amounting to speculation of possible harm is not sufficient to establish the possibility of harm, the law enforcement exemption must be approached in a "sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context". Based on the representations of the parties and the fact that the matters relating to these records are before the courts, I am satisfied that those specific records qualify for exemption under section 8(1)(a).

However, upon my review of the remaining records to which access was denied in full, I am not satisfied that they qualify for exemption under section 8(1)(a). A number of these occurrence reports relate to matters which are clearly concluded, or which happened some time ago and appear to have never resulted in further actions or the laying of charges by the Police. In addition, some of the records requested involve the appellant as the complainant, while others involve him as a referenced third party. Although the Police take the position in their decision letter that the incidents in these reports "may be associated to the [matters] currently before the courts", I am not persuaded that these records qualify for exemption under section 8(1)(a), since they do not relate to ongoing law enforcement matters.

Specifically, the "third" and "fourth" occurrence reports relate to matters in which the appellant is neither the complainant nor the accused, although he is identified in the records. I have not been provided with any evidence to support the position that the incidents which resulted in the creation of these records are ongoing, nor that they are "associated" to the matters which are ongoing, and the records themselves do not support such a finding. Accordingly, I am not satisfied that these records qualify for exemption under section 8(1)(a).

With respect to the "fifth" and "eighth" occurrence reports, I have not been provided with sufficient evidence to support a finding that disclosure could reasonably be expected to interfere with the specific identified law enforcement matters. One of these reports suggests that any action relating to it has been concluded. The other report (portions of which I find to be exempt under section 38(b) below), though referencing a separate ongoing matter, deals predominantly with a matter involving the appellant which also appears to be concluded. In the circumstances, I am not satisfied that these records qualify for exemption under section 8(1)(a).

The "sixth", "seventh" and "ninth" occurrence reports involve the appellant as the complainant. Again I have not been provided with any evidence to support the position that the incidents

referred to in these records are ongoing or associated with the ongoing matters. I am not satisfied that these records qualify for exemption under section 8(1)(a).

In summary, I find that the "first" and "second" occurrence reports, as well as the "seven additional reports" referring to the first occurrence report, qualify for exemption under section 38(a) in conjunction with section 8(1)(a). I find that the remaining records do not qualify for exemption under that section.

Section 8(1)(b) – ongoing law enforcement investigation

The Police take the position that the records qualify for exemption under section 8(1)(b), which reads:

> A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> > interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

Previous orders have established that, in order for records to qualify under section 8(1)(b), the law enforcement investigation in question must be a specific, ongoing investigation. The exemption does not apply where the investigation is completed, or where the alleged interference is with "potential" law enforcement investigations [Order PO-2085].

I have found above that the "first" and "second" occurrence reports, as well as the "seven additional reports" referring to the first occurrence report, qualify for exemption under section 8(1)(a), but that the remaining records do not qualify under that exemption because they do not relate to ongoing law enforcement matters. For the same reasons as set out above, I find that the remaining records do not qualify for exemption under section 8(1)(b) as they do not relate to ongoing law enforcement investigations.

Section 8(1)(f) – right to a fair trial

The Police state the records qualify for exemption under section 8(1)(f), which reads:

> A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> > deprive a person of the right to a fair trial or impartial adjudication;

Previous orders have determined that, in order for this section to apply, the institution must show that there is a "real and substantial risk" of interference with the right to a fair trial or impartial adjudication. The exemption is not available as a protection against remote and speculative dangers. [Order P-948; *Dagenais v. Canadian Broadcasting Corp.* (1994), 120 D.L.R. (4th)

(S.C.C.); Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.)].

The Police's representations in support of this exemption are sparse, referring to the importance of fairness in judicial proceedings. Although the Police refer to the ongoing law enforcement matters as matters that are "before the courts", other than the statement in their initial decision letter that the matters referred to in these reports "may be associated to the [matters] currently before the courts", there is little to suggest that the occurrence reports which I have found do not qualify for exemption under section 8(1)(a) or (b) have any relation to the matters that are before the courts. These occurrence reports deal with matters which appear to me to be distinct from the ones before the courts, and I have not been provided with sufficient evidence to satisfy me that their disclosure could reasonably be expected to deprive a person of the right to a fair trial or impartial adjudication. I acknowledge that two of the reports refer to the identified charges, but they appear to do so in passing and, in my view, their disclosure could not reasonably be expected to result in the harms set out in section 8(1)(f). Accordingly, I find that section 8(1)(f) does not apply to the remaining records at issue.

Section 8(1)(l) – facilitate commission of unlawful act

The Police take the position that the portions of the records that contain police 10-codes, patrol zone codes, or statistical codes fall within the scope of section 8(1)(l), which reads:

> A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> > facilitate the commission of an unlawful act or hamper the control of crime.

The Police state:

> The effectiveness of the [police 10-codes, patrol zone codes and statistical codes] would be severely limited if they were disclosed. If individuals intent on engaging in criminal activity are aware of the procedures represented by the codes, they could then be used to counter the actions of the police in response to a variety of emergency situations.

The Police then refer to orders M-393, M-831, M-757 and PO-1777, issued by this office, in support of their position that section 8(1)(l) applies to the police codes at issue.

The appellant states that he is not interested in accessing "secret" police methods or procedures, unless that information assists him in answering certain questions he has about the identity and actions of certain individuals.

As identified by the Police, a number of previous orders have found that police codes qualify for exemption under section 8(1)(l), because of the reasonable expectation of harm which may result

from their release (for example, M-393, M-757, M-781, MO-1428, PO-1665, PO-1777, PO-1877, PO-2209, and PO-2339). This includes 10-codes as well as codes which reveal identifiable zones from which officers are dispatched for patrol and other law enforcement activities. In the circumstances of this appeal, I am satisfied that the Police have provided sufficient evidence to establish that disclosure of the identified police codes found in the records could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.

I therefore find that section 38(a), in conjunction with section 8(1)(l), applies to the police codes in the records.

Having found that the police codes qualify for exemption under sections 38(a) and 8(1)(l), it is not necessary for me to review the possible application of section 8(1)(e), as the police codes are the only records for which this exemption has been claimed.

EXERCISE OF DISCRETION

I have found that certain records or portions of records qualify for exemption under section 38(a) in conjunction with sections 8(1)(a) and 8(1)(l). As noted, section 38(a) is a discretionary exemption. Once it is found that records qualify for exemption under this section, the Police must exercise their discretion in deciding whether or not to disclose it.

I have reviewed the representations of the Police with respect to the considerations they took into account when deciding not to disclose the exempt information to the appellant. Based on the representations of the Police, I am satisfied that the Police properly exercised their discretion in responding to this request.

I will now review whether the remaining records qualify for exemption under section 38(b) of the *Act*.

INVASION OF PRIVACY

I have found above that all of the records contain the personal information of the appellant, and that portions of a number of records contain the personal information of other identifiable individuals. I have also found that the "third" through "ninth" occurrence reports do not qualify for exemption under sections 8(1)(a), (b) or (f), and that only the police codes contained in them qualify under section 8(1)(l). The Police have also not disclosed the severed portions of four other occurrence reports to the appellant on the basis of the exemption in section 38(b). I will now review the possible application of section 38(b) to the records and portions of records which do not otherwise qualify for exemption.

Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exceptions to this general right of access.

Under section 38(b) of the *Act*, where a record contains the personal information of both the requester and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information.

Section 38(b) of the *Act* introduces a balancing principle. The institution must look at the information and weigh the requester's right of access to his or her own personal information against another individual's right to the protection of their privacy. If the institution determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 38(b) gives the institution the discretion to deny access to the personal information of the requester.

In determining whether the exemption in section 38(b) applies, sections 14(2), (3) and (4) of the *Act* provide guidance in deciding whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 14(2) provides some criteria for the institution to consider in making this determination. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in 14(2) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

A section 14(3) presumption can be overcome if the personal information at issue falls under section 14(4) of the *Act*, or if a finding is made under section 16 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the section 14 exemption. [Order PO-1764]

If none of the presumptions in section 14(3) applies, the institution must consider the application of the factors listed in section 14(2), as well as all other considerations that are relevant in the circumstances of the case.

Operation of the presumption in section 14(3)(b)

In this appeal the Police rely on the "presumed unjustified invasion of personal privacy" in section 14(3)(b) of the *Act*, which states:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> > was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

All of the records and portions of records remaining at issue consist of occurrence reports prepared by the Police. The representations of the Police state:

> Order P-223 says that [section 14(3)(b)] does not specify whether the "investigation in to a possible violation of law" must be one which examines the activities of the individuals who are subject to the investigation or more properly referable to those of the individuals interviewed in the course of such investigations. Either interpretation is offered.
>
> … since the personal information relates to records compiled as part of an investigation into a possible violation of law, … the disclosure of this personal information is presumed to be an invasion of their privacy except to the extent that it is necessary to prosecute the violation. … The disclosure of this information is not necessary to prosecute the violation nor is it necessary to continue the investigation.

The appellant does not directly address the application of section 14(3)(b) to the records.

As set out above, all of the records or portions of records remaining at issue are police occurrence reports. In my view, all of the information in these records was compiled and is identifiable as part of a law enforcement investigation undertaken by the Police into a possible violation of the law. As such, I find that the presumption in section 14(3)(b) applies to all of the personal information of individuals other than the appellant contained in these records, for which the section 38(b) claim has been made.

As noted above, as a result of the decision in *John Doe*, it has been well-established that a presumption under section 14(3) cannot be rebutted by any of the factors under section 14(2), either alone or taken together. Accordingly, I find that the disclosure of the personal information of individuals other than the appellant contained in the records would constitute a presumed unjustified invasion of the personal privacy of the individuals referred to in these documents. Those portions of the records are, therefore, exempt from disclosure under section 38(b).

I have reviewed the four records which the Police disclosed in part to the appellant. I am satisfied that the severed portions of those records, which were not provided to the appellant on the basis of section 38(b), contain the personal information of individuals other than the appellant, and that they qualify for exemption under section 38(b).

With respect to the "third" through "ninth" occurrence reports, although the presumption in section 14(3)(b) applies to the personal information of individuals other than the appellant contained in these records, all of these records were withheld in full from him. On my review of these records, I am satisfied that the personal information of individuals other than the appellant can be severed from them, and that the disclosure of the unsevered portions of the records to the appellant would not constitute an unjustified invasion of the privacy of any other identifiable individuals.

The "third" and "fourth" occurrence reports relate to matters in which the appellant is neither the complainant nor the accused, and much of information contained in those records is the personal information of other individuals. However, the appellant was involved in some way with these incidents, and both of these reports contain discreet portions that contain only his own personal information. I am satisfied that the disclosure of the discreet portions of these records which contain the personal information of the appellant would not constitute an unjustified invasion of the privacy of other identifiable individuals. I will, accordingly, order that those portions of the records be disclosed.

With respect to the "fifth" and "eighth" occurrence, a small portion of the fifth occurrence report, and portions of the eighth occurrence report, contain the information of other identifiable individuals. In the circumstances, I am satisfied that those portions of the records can be severed and that the remaining information, relating only to the appellant, should be disclosed to him. In my view the disclosure of the portions of those records relating only to the appellant would not result in an unjustified invasion of personal privacy.

The "sixth", "seventh" and "ninth" occurrence reports involve the appellant as the complainant. The appellant was clearly directly involved in these incidents, and portions of these reports contain information relating solely to him, including his own statements. In my view the other portions of these records, which contain the personal information of other identifiable individuals and to which the presumption in section 14(3)(b) applies, can be severed from the records, and the disclosure of the remaining information would not result in an unjustified invasion of personal privacy.

In summary, I find that portions of the "third" through the "ninth" occurrence reports qualify for exemption under section 38(b) in conjunction with section 14(3)(b), but that other portions of each of those records can be severed and disclosed to the appellant. I will provide a highlighted copy of those occurrence reports to the Police, along with the copy of this order, indicating those portions of the records which can be severed and released to the appellant, as their disclosure would not constitute an unjustified invasion of the personal privacy of identifiable individuals other than the appellant.

REASONABLE SEARCH

In appeals involving a claim that an additional record exists, 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.

A number of previous orders have identified the requirements in reasonable search appeals (see, for example, Orders M-282, P-458, P-535, M-909, PO-1744 and PO-1920). In Order PO-1744, acting-Adjudicator Mumtaz Jiwan made the following statements with respect to the requirements of reasonable search appeals:

> … the *Act* does not require the [institution] to prove with absolute certainty that records do not exist. The [institution] must, however, provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records. A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request (Order M-909).

I agree with acting-Adjudicator Jiwan's statements.

Where a requester provides sufficient detail about the records that he/she is seeking and the institution indicates that further records do not exist, it is my responsibility to ensure that the institution has made a reasonable search to identify any records that are responsive to the request. The *Act* does not require the institution to prove with absolute certainty that records or further records do not exist. However, in my view, in order to properly discharge its obligations under the *Act*, the institution must provide me with sufficient evidence to show that it has 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, the appellant must, nevertheless, provide a reasonable basis for concluding that such records exist.

As identified above, during the mediation stage of this appeal the issue of whether the search conducted by the Police for a videotaped statement was reasonable was raised. The Police identified that they searched for a videotaped statement, and stated that no responsive videotaped statement exists. The appellant disputed the decision that no such record exists, and the issue of whether the Police conducted a reasonable search for the records remained an issue. In the Notice of Inquiry I invited the parties to address that issue.

In their representations the Police identify the searches they conducted for responsive records. They identify the nature of the searches conducted and the results of those searches. With respect to the specific issue regarding a search for a videotape, the Police provide representations concerning the search conducted for a videotaped statement of an affected party. In this appeal, however, one of the issues raised is whether another videotaped statement, referenced in one of records, exists. The Police do not address this issue in their representations and, in the circumstances, I have not been provided with sufficient evidence to conclude that a reasonable search was conducted for this record.

In the circumstances, I find it appropriate to order Police to conduct further searches for a specific videotaped statement, with particular reference to the information contained in the first occurrence report.

ORDER:

1. I order the Police to disclose a copy of the highlighted portions of the "third" through "ninth" occurrence reports by sending the appellant a copy of the information by **November 7, 2005** but not before **October 31, 2005**. I have provided the Police with a highlighted copy of those records, highlighting those portions which should be disclosed.

2. I uphold the Police's decision to deny access to the remaining records or portions of records.

3. I order the Police to conduct a further search for a specific videotaped statement, with particular attention to the information contained in the first occurrence report. I further order the Police to provide me with information identifying the nature of the further search conducted and the results of the search, within 35 days of the date of this Interim Order.

4. If as a result of the further search, the Police identify any records responsive to the request, I order the Police to provide a decision letter to the appellant regarding access to these records in accordance with sections 19, 21 and 22 of the *Act*.

5. In order to verify compliance with this order, I reserve the right to require the Police to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1, upon request.

6. I remain seized of this matter with respect to compliance with this interim order or any other outstanding issues arising from this appeal.

Original Signed by: September 30, 2005
Frank DeVries
Adjudicator