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

ORDER MO-2033

Appeal MA-050173-1

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 certain police officers' notes and videotapes relating to an incident in which the requester was arrested, taken to a named hospital, and then returned to a specified police station on a given date in 2001.

The Police initially located the paper records responsive to the request and issued a decision granting partial access to them. Access to the undisclosed portions of the records was denied on the basis that they were not responsive to the request or were exempt from disclosure under section 8(1)(l) (facilitate commission of an unlawful act). Subsequently, the Police made further disclosure to the appellant on three occasions, releasing an additional portion of Record 5 and two videotapes.

The requester, now the appellant, appealed the decision, taking the position that the Police did not undertake a reasonable search for responsive records. During the mediation stage of the appeal, the appellant also indicated that he is seeking access to those portions of the records identified as non-responsive by the Police and to the information severed under section 8(1)(l). In addition, the appellant argues that the Police are required to provide him with more legible copies of the records and provide him with an explanation of the abbreviations used by the officers in their notes. Mediation was not successful in resolving any of the issues in the appeal and the file was moved to the adjudication stage of the process.

I sought and received representations from the Police, a complete copy of which was shared with the appellant, along with a Notice of Inquiry. I then received representations from the appellant, including a copy of a videotape that was disclosed to him by the Police as part of the responsive records in this appeal. On page 18 of his submissions, the appellant indicates that he is not seeking access to the "10 codes" which are subject to the exemption in section 8(1)(l), stating that "they can be blocked out". As a result, access to the "10 codes" is no longer an issue in this appeal and I need not consider whether they are exempt from disclosure under section 8(1)(l).

I then sought and received additional representations from the Police by way of reply to certain information provided by the appellant respecting the searches undertaken for a specific videotape.

DISCUSSION:

PRELIMINARY ISSUES

The appellant raised several preliminary issues in his appeal letter and has expanded upon them in his representations. Essentially, he argues that the Police have not properly complied with their obligations to him in the manner in which they have responded to his request. I will address each of the matters raised by the appellant as a "preliminary issue".

Are the Police required to provide the appellant with more legible copies than those already disclosed to him?

The appellant insists that he ought to be entitled to photocopies of original records rather than scanned copies and appears to be seeking access to the records in some other format which is more comprehensible to him, without indicating what that format might be. The Police submit that they have complied with the requirements of sections 23(1) and 37(3) of the *Act* which require that they give the appellant access to the responsive portions of the records by reproducing a "true photocopy" of them in a "comprehensible format". I have reviewed the records, which are handwritten notebook entries by the officers involved in the appellant's arrest and transfer. In my view, the responsive records which were provided to the appellant are legible and clear, albeit handwritten, notes. I find that they are comprehensible, as is required by section 37(3).

In my view, the Police have met their obligations to the appellant under the *Act* as they have provided the records in the format in which they exist, which I find happens to be comprehensible. I cannot agree that the method of granting access to records used by the Police is contrary to their obligations under section 23(1) and 37(3).

Are the Police required to provide the appellant with an explanation of the abbreviations contained in the records?

The Police indicate that following the receipt of the Confirmation of Appeal from this office, "the appellant verbally asked for, *and was given,* definitions of the abbreviations which he cited" [emphasis by the Police]. The Police also provided me with an explanation of those abbreviations in their representations, which have now been shared with the appellant.

In the circumstances of this appeal, I find that the appellant has obtained the answers to the questions he had regarding the contents of the records that were disclosed to him and that no useful purpose would be served by requiring the Police to provide this information to the appellant again.

Are the severed portions of the records responsive to the request?

To be considered responsive to the request, records must "reasonably relate" to the request [Order P-880]. In the present appeal, the Police state that portions of pages 1, 4, 7, 15, 16, 18 and 19 of the records were withheld on the basis that they contained information that was unrelated to the subject matter of the request.

I have reviewed the contents of the undisclosed portions of these records and find that the information does not relate to the *appellant's* arrest and subsequent detention [my emphasis]. Rather, the records serve to document the other activities undertaken by the officers on the date in question, including action on investigations completely unrelated to the incident involving the appellant. Other portions of the records that were not disclosed describe the roll call procedures for the officers on that day and also document the arrest of an identifiable individual other than the appellant.

In my view, the undisclosed portions of the records, other than those parts to which the Police have claimed the application of section 8(1)(l), are not responsive to the request and were properly withheld from the appellant.

REASONABLE SEARCH

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 appellant was granted access to two videotapes on March 17, 2005 and April 5, 2005 which show his removal from the cells at the station house, his entry and departure from the booking room on a hospital gurney and his being wheeled through the "sally-port" on his way to an ambulance. The appellant is also involved in a civil action against the Police and, as part of the disclosure of documents in that process, the appellant was provided with a copy of a videotape by counsel for the Police in October 2005. The appellant made a copy of this videotape available to me for viewing. Included in the excerpts on that videotape is some additional footage taken of the booking room on the night in question. The tape shows several police officers processing the appellant's belongings following his arrest. The appellant does not appear in this segment of tape. This provides the basis for the appellant's argument that the Police have failed to conduct a reasonable search for *all* of the responsive videotape information relating to his arrest and detention. He notes that it is only because he has obtained access to the final version of the videotape from counsel to the Police that he has become aware of the existence of additional videotapes that recorded his processing in the booking area.

The Police concede that there were delays in locating and disclosing the videotapes sought by the appellant. They state that:

> An exceptional and unfortunate sequence of events resulted in a lengthy delay before the appellant's videotapes could be located and forwarded. A portion of one of the videotapes included a person in a cell next to the appellant and another portion showed other individuals leaving for court along with the appellant. In order to preserve the privacy of those persons, their faces were electronically

> 'blurred' by the Video Services Unit (Freedom of Information Unit personnel have neither the training nor the expertise to effect such an alternation).

The Police go on to indicate that:

> The *Act* requires that institutions conduct a reasonable – not exhaustive – search for responsive records; because the appellant repeatedly insisted that there were more and other records than those which he had been provided, this institution conducted not merely a reasonable search, but rather a thorough, comprehensive and labour intensive search for responsive records.

The appellant submits that he received access to a third videotape containing information he is seeking through the disclosure mechanism in the litigation he has commenced against the Police. However, he indicates that he did not receive the third videotape as a result of his request under the *Act* (which pre-dated the commencement of the litigation). In essence, the appellant understandably takes the position that the videotape that was disclosed to him as part of the litigation in October 2005 ought to have been located by the Police and disclosed to him in response to his request under the *Act*.

In their reply representations, the Police responded to the appellant's submission on this issue by pointing out that they provided him with all of the videotapes he is seeking *with the exception of the one he already had*, [my emphasis] the booking room tape. The Police argue that they did not provide him with a copy of the booking room tape as the appellant indicated on March 17, 2004 that he already received a copy of it. However, I accept the appellant's assertion that he did not receive the final videotape which recorded all of his comings and goings through the booking room from counsel to the Police through the disclosure process in his on-going litigation until October 2005.

I agree with the appellant's position with respect to the adequacy of the searches undertaken by the Police for records responsive to his request. I can only conclude that the searches undertaken by the Police for the final videotape were not sufficiently thorough as they did not uncover the videotape which was most recently disclosed to him (in October 2005) as part of the litigation process. In my view, the contents of this videotape are responsive to the request and would have been located had the Police searches been adequately undertaken.

However, the appellant has now received a copy of the videotape he is seeking. In my view, no useful purpose would be served by ordering the Police to go to the time and expense of preparing a second copy for the appellant. Although I do not uphold the adequacy or reasonableness of the searches for the identified videotape undertaken by the Police in this case, I will not order them to produce another copy of it for the appellant.

The reasonableness of the searches undertaken by the Police for the identified videotape was the sole issue raised by the appellant; he did not take issue with the adequacy of the searches made for other types of records. I find that the Police have provided me with sufficient evidence to

make a finding that the searches undertaken for other responsive records were reasonable and I dismiss that part of the appeal.

ORDER:

1. I uphold the decision of the Police with respect to the preliminary issues identified in this decision and dismiss those aspects of the appeal.

2. I find that the Police did not conduct a reasonable search for the "booking area videotape" which was disclosed to the appellant by counsel in October 2005. However, I will not order the Police to make another copy available to him.

Original Signed By: March 21, 2006
Donald Hale
Adjudicator