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

ORDER MO-2091

Appeal MA-060053-2

Halton Regional Police Services Board

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NATURE OF THE APPEAL:

BACKGROUND (Appeal MA-060053-1):

The Halton Regional Police Services Board (the Police) received the following request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

> I share custody of my three children … with my [a named individual]. I understand the Police have been called to the [named individual's] home at [a named address] for situations involving one or more of my children. I would like copies of all police reports involving my children at [the named address].

Initially, the Police issued a decision refusing to confirm or deny the existence of records under sections 8(3) and 14(5) (personal privacy) of the *Act*. The requester (now the appellant) appealed the Police decision and this office opened Appeal MA-060053-1.

During mediation of that appeal, the Police agreed to withdraw their reliance on sections 8(3) and 14(5), and confirmed the existence of one report involving the appellant's child. The Police issued a revised decision wherein they granted partial access to the report in question, withholding portions under section 14(1) (personal privacy), 8(2)(a), 8(2)(e), and 8(2)(l) (law enforcement) of the *Act*. As the Police no longer refused to confirm or deny the existence of records Appeal MA-060053-1 was closed after the Mediator issued her revised report.

In my view, the following comments by the Mediator in her revised report are relevant to the current appeal. The Mediator's revised report is dated June 2, 2006 and in it she states:

> The appellant advised the mediator that he intends to appeal the Police's revised decision to deny access to portions of the record, and also indicated that he believes additional records should exist. The appellant believes his request should have included police officer's notes, and therefore the scope of request may also be an issue in dispute. Accordingly, the appellant is advised to submit his appeal in writing to this office by … should he wish to pursue this matter further.

CURRENT APPEAL (MA-060053-2):

In accordance with the advice provided by the Mediator, the appellant filed a second appeal with this office, seeking a review of the Police's revised decision to deny access to portions of the responsive record. In addition, the appellant objected to the way in which the Police interpreted his request, as he believed that police officers' notes should have been included as responsive records.

During the course of mediation, the mediator notified an individual whose rights might be affected by the disclosure of the requested record (the affected person), in this appeal. As the affected person objected to the release of his/her personal information, the appellant advised the mediator that he did not wish to pursue access to any withheld portions of the responsive record. Accordingly, the issue of access to that record, and sections 14(1), 8(2)(a), 8(2)(e), and 8(2)(l) of the *Act*, are no longer at issue in this appeal.

However, the appellant stated that he was aware of other incidents where Police were called to the named address. During mediation discussions, the Mediator canvassed whether there may be additional records responsive to the appellant's request in the form of police officer's notes. The Police advised the mediator that they did not search for police officer's notes because the appellant had requested "all police reports" and did not specify "officer's notes" in his request. The appellant responded that, as a lay person, he felt his request was clear in terms of the type of information he was seeking. The appellant stated that he used the term "report" to include *any* information concerning the Police being called to the specified address, including officer's notes. The appellant advised the mediator that he wanted officer's notes to be included in the scope of his request. The Police replied that they do not consider officer's notes to be part of this request. Accordingly, the scope of request remains the sole issue in dispute.

Mediation did not resolve the appeal and it was transferred to the adjudication stage of the process. I sent a Notice of Inquiry to the Police and received representations in return. I decided that it was not necessary to seek representations from the appellant before issuing this order.

DISCUSSION:

SCOPE OF THE REQUEST

Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

> (1) A person seeking access to a record shall,
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> (a) make a request in writing to the institution that the person believes has custody or control of the record;
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> (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and
>
> . . . . .
>
> (2) *If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).* [empasis added]

I provided the Police with copies of Orders P-134 and P-880, which addressed similar issues to those present in this appeal. Additionally, I asked the Police to respond to the following questions:

- What is the scope of this request?

- Please explain your refusal to consider the police officer's notes to be part of this request?

The Police representations

The Police provided lengthy representations on this issue. The Police state that "[t]he appellant never contacted [our] office about the records". The Police state further that "[i]t was only during mediation that the issue of 'scope of the request' was brought forward by the Mediator". The Police also submit that they "stand firm on the clarity of the appellant's access request" and that they "clearly understand" their obligations as set out in the *Act*. In response to my questions regarding the scope of the request, the Police begin by providing a detailed explanation of their access policies and procedures. The Police explain:

1. "when a requester attends any station of the Halton Regional Police Service or the Records counter at Police Headquarters. Members of the service, will, *if requested*, assist in formulating an access request… In the *majority of cases*, the requester is asked to put in writing whether they are requesting a report or a notebook entry or all records available, including reports, written statements and police officer's notebooks". [emphasis added]

2. training is provided to all members of the Police, both "uniform and civilian".

3. an access request checklist is available.

4. "a Directory of Records is available, upon request, to anyone who may have difficulty knowing exactly what they would like from the Police. This document is available at the municipal office, libraries in the region, and on the Police's website."

5. "Once a request is received in the Information and Privacy Unit, it is reviewed and if required, the requester is immediately contacted by phone for clarity. If the requester cannot be reached by phone, a letter is immediately sent asking for clarification pursuant to section 17(1)(b)" [of the *Act*].

The Police did not directly answer my question regarding its refusal to consider the police officers' notes to be part of this request. However, it is clear to me that the Police refused to include these records as being responsive to the request because:

(a) they decided that the request was "clear and concise and did not require clarification",
(b) the appellant has a corresponding obligation under the *Act* "in relation to the formulation of a request", [Order MO-1406]
(c) the appellant did not contact the Police asking for notebook entries, and

(d) "it seems as if the appellant is in fact seeking to broaden his request at the appeal stage".

The Police also point out that notebook entries have historically been treated differently from reports in the Commissioner's orders, and provided me with a long list of examples.

The Police also state that the manner in which they have approached the appellant's request is how they have always processed appeals of this type. The Police state:

> This institution, along with the OACP FOIPN [Ontario Association of Chiefs of Police Freedom Of Information Police Network] clearly believes that this access request was very clear and concise and did not require clarification and would not process the type of records the appellant is now requesting without the precise wording in an initial written access request. Processing it for the appellant sets a [precedent] to all institutions that should not be set. When an access request is clear and concise, there is no need to seek out clarification.
>
> When this type of issue forms the basis of an appeal, this institution believes that if an access request is found to be clear and concise upon review by the IPC, the appeal should be dismissed at the onset. This is precisely the type of appeal that should be resolved at intake. An institution should not be made to submit representations.
>
> We invite the appellant to submit a second request to this institution for officer's notebook entries. Once received, we will duly process the request.

Analysis and Findings

I have carefully considered the representations of the Police and all of the circumstances of this appeal. I find that the approach taken by the Police throughout this matter, in defining the scope of the appeal narrowly, is not in keeping with the spirit and intent of the *Act*. This approach appears to be in direct contrast with many of the Police polices and procedures which they rely upon regarding access requests. For example, I commend the Police training initiatives and their commitment to disseminate, in as many ways possible, information regarding how to make an access request. However, their approach in this appeal seems to contradict their commitment.

In my view, the Police have failed to take into consideration their original decision to refuse or deny the existence of a record, which is what originated *this* appeal. It is not reasonable to expect the appellant to contact the Police to clarify the scope of his access request in situations where the Police have refused to confirm or deny the existence of any records. In my view, the appellant's next steps were reasonable; he contacted this office and launched an appeal. Once the initial appeal **(**MA-060053-1**)** was closed and the present appeal opened, I find that it is not reasonable to expect the appellant to contact the Police to clarify his request. At this point, the appellant was involved in discussions with a Mediator from this office and the Mediator was

attempting to settle the issue. It is obvious from the Mediator's report that the primary focus of her efforts related to having the officer's notes included as part of the appellant's request because the appellant had always intended the word "report" to mean any paperwork generated by the Police in relation to his request. Because the scope of the request was clarified at mediation, the Police could have proceeded to address the substantive issues raised, for example, by issuing a supplementary decision letter. Taking the position that the appellant was required to file a new request, and start the process over again, is in my view, overly bureaucratic and unnecessary.

In circumstances other than a refusal to confirm or deny, I would have expected the Police to contact the appellant, where the request concerned a matter of this nature, to determine whether "reports" should be read as including relevant notes taken by Police officers.

I acknowledge that the Commissioner has distinguished a "report" from a "notebook" in past orders and treated them as different kinds of records. However, this is not a distinction I would expect a requester to be aware of and, in the circumstances of this appeal, one that I find it unreasonable for the Police to apply. The Police have a great deal of experience with the *Act* and the jurisprudence made under it. The average requester is not an "institution" who deals with access requests on a regular basis and, in my view, should not be held to this standard. Similarly, I find that it is unreasonable to put the onus for clarification on requesters, as the Police's representations indicate is their practice. I also find it unreasonable for the Police to insist on "precise wording". In my view, these types of practices run contrary to the principles of the *Act*.

As noted previously, I provided the Police with copies of Orders P-134 and P-880. The principles set out in these orders mandate that institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. In P-880 Inquiry Officer Anita Fineberg provided a useful discussion of "relevance" which I find has direct bearing on the present appeal:

> In my view, the need for an institution to determine which documents are relevant to a request is a *fundamental first step* in responding to the request. It is an integral part of any decision by a head. The request itself sets out the boundaries of relevancy and circumscribes the records which will ultimately be identified as being responsive to the request. I am of the view that, in the context of freedom of information legislation, "relevancy" must mean "responsiveness". That is, by asking whether information is "relevant" to a request, one is really asking whether it is "responsive" to a request. *While it is admittedly difficult to provide a precise definition of "relevancy" or "responsiveness", I believe that the term describes anything that is reasonably related to the request.*
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> [T]he purpose and spirit of freedom of information legislation is best served when government institutions adopt a liberal interpretation of a request. If an institution has any doubts about the interpretation to be given to a request, it has an obligation pursuant to section 24(2) of the Act to assist the requester in reformulating it. As stated in Order 38, an institution may in no way unilaterally

> limit the scope of its search for records. It must outline the limits of the search to the appellant. [emphasis added]

In the present appeal, I find that the *Act* obliged the Police to search for any and all records pertaining to the appellant's request, particularly once it was clarified during mediation. In my view, it was arbitrary and unreasonable for the Police to argue that the appellant sought to broaden his request at the appeal stage. Under the circumstances of *this* appeal, I am satisfied that the appellant's statement meant the term "report" in his request to include all information involving his children in relation to a particular address. The Mediator's revised report at the end of the first appeal (MA-060053-1) made this perfectly clear to the Police. The Police were, at that time and before the current appeal, invited to contact the Mediator to clarify any questions they might have had. I note that the Police chose not to do so.

I find further support for my views in Order MO-1406. While I agree with the Police position that the *Act* imposes a dual obligation regarding access requests, Order MO-1406 does not support the findings of the Police in the present appeal. To the contrary, Adjudicator Laurel Cropley considered a somewhat similar situation and stated:

> With respect to the information that the appellant was seeking, the Police state that his request was "self-explanatory", and to a point, I agree. The appellant was clearly seeking "any and all information" pertaining to himself in the custody of the Police. However, the Police go on to state that a search was not conducted for, and the appellant was not given, the officers' notes because "his request did not specifically request same". In my view, the appellant's request clearly contemplated all records pertaining to himself including police officers' notes. Accordingly, I find that the Police have unilaterally narrowed the scope of the request beyond what a reasonable interpretation would allow.
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> Even if I were to accept that a narrower interpretation of the request was initially reasonable, upon receipt of the decision, the appellant immediately wrote to the Police to clarify the information he was seeking. It appears that the Police ignored this clarification. Even if, for some reason, the Police did not receive the appellant's letter, *they were notified of the issues raised in this letter during mediation of the appeal. Moreover, the Notice of Inquiry subsequently pointed the clarification out to them. To continue to take the position that the appellant did not request this information is untenable.*
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> …
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> … In not making an effort to determine the scope of the appellant's request, the Police have failed to meet their obligations under the *Act* which has resulted in an inadequate search for responsive records. [emphasis added]

Adjudicator Cropley's reasoning is equally applicable here: for the Police to continue to assert that the appellant did not request anything other than a "report" and to continue to insist he submit another request is untenable, in my view.

To ensure that the Police fulfill their obligations under the *Act*, I will require them to conduct another search for responsive records. In doing so, the Police are to interpret the appellant's request as encompassing any and all information relating to visits by officers to the named address in relation to matters involving his children. In particular, the Police are required to search for the police officer's notes that relate to the identified address and to render to the appellant an access decision on any such records, using the date of this order as the date of the request.

I would like to add that it is unfortunate that I have only been able to address the scope of the request in this order, as opposed to the merits of any responsive records themselves. This is a regrettable, bureaucratic disservice to the appellant.

ORDER:

1. I find that the Police's interpretation of the request was not reasonable, in the circumstances of this appeal.

2. I order the Police to conduct a new search for records responsive to the appellant's request and to issue a new decision to the appellant in accordance with the following requirements:

    a. The Police are to prepare a new decision letter in accordance with the legislative requirements as set out in sections 19, 21 and 22 of the *Act*. The Police are to treat the date of this order as the date of the request and no time extension is permitted. In particular and at a minimum:

        - The Police are required to identify all records which are determined to be responsive to the appellant's request (as clarified above).

        - The Police are to indicate for each record identified as being responsive to the request, whether or not access is granted.

        - If access is denied to any record or portion of a record, the Police are to state the specific section of the *Act* they rely on for exemption and are to include an explanation of why the exemption applies to the record or part of the record.

3. I order the Police to provide me with a copy of the letter sent to the appellant in accordance with Provision 4 on the same date that it is sent to the appellant. The copy of this letter should be sent to my attention, c/o Information and Privacy Commissioner/Ontario, 2 Bloor Street East, Suite 1400, Toronto, Ontario M4W 1A8.

Original signed by: September 27, 2006
Beverley Caddigan
Adjudicator