



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2144

Appeal MA-050386-2

Toronto Police Services Board



Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téloc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

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

The following [attached article] appeared in the Toronto Star. In the article Chief Blair made the statement “half of all guns used in crime come from robberies.”

Please provide all relevant data (raw data) to substantiate the chief’s statement. Including total number of firearms stolen, recovered, returned to owner and country the theft occurred in. As well please provide the statistical methodology used including the sample size and location and any non governmental organization used to supply data or provide statistical analysis.

In its decision letter, the Police informed the requester that Chief Blair (the Chief) had obtained the information verbally from members of the Gun and Gang Unit in response to questions he asked them about the origins of “crime guns”. The Police also stated in the decision letter that the information provided by the Gun and Gang Unit,

“relates only to “crime guns”, primarily hand guns, and only to the situation in Toronto. The information that Chief Blair received was not based on a scientific analysis of raw data, but rather the estimate of an experienced police officer.

[F]ollowing Chief Blair’s statement, the [Police] conducted a review of handguns [taken into possession by] the Gun and Gang Task Force during 2004. During this review, handguns identified and investigated as potential “crime guns” were analysed. (With very few exceptions, the majority of seized rifles and shotguns are usually sourced back to Canada.)

The Police also provided numbers relating to handguns seized, broken down into several categories, some of which mirrored the information requested. However, the Police denied access to the “raw data used in the recent review of handguns submitted to the Gun and Gang Task Force” pursuant to subsections 8(1)(a), 8(1)(b), 8(1)(e), 8(1)(f) and 8(1)(l) (law enforcement) of the *Act*.

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

During mediation, the appellant advised the mediator that he was satisfied with the information about handguns provided by the Police. He also confirmed that he was not interested in pursuing the raw data referred to by the Police and to which he was being denied access pursuant to the law enforcement exemptions cited above. Because the information was not the subject of this appeal, copies were not provided to this office.

However, the appellant advised the mediator that he believed that the response to his request for information relating to “firearms” should have included information about all types of guns or firearms, including “long arms”, i.e. shotguns and rifles. Although the mediator spoke with the Police about this clarification, the Police indicated that they did not share the appellant’s view

about the breadth of the request and informed the mediator that they considered this to be a new request.

No further mediation was possible and this matter was streamed to adjudication for a determination of the sole issue in this inquiry: the scope of the appellant's request.

I initially sent a Notice of Inquiry to the Police and received representations in response. I then sent a complete copy of the representations provided by the Police to the appellant, along with a Notice of Inquiry. The appellant also submitted representations for my consideration.

DISCUSSION:

SCOPE OF THE REQUEST/RESPONSIVENESS OF RECORDS

General Principles

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,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;
 - (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).

It is a well-settled principle that institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour [Orders P-134, P-880]. Furthermore, previous orders of this office have established that to be considered responsive to the request, records must "reasonably relate" to the request [Order P-880].

Background

In the Notice of Inquiry, the Police were asked to explain the basis of their position that the appellant's request is restricted to records relating to handguns – and not similar information about other firearms - in view of the wording of the request, as reproduced above.

The Police were also asked to provide representations regarding the efforts made to clarify the terms and/or scope of the appellant's request, as required by section 17(2) of the *Act*. Finally, the Police were asked the following:

If, as may be the case, no records exist which are responsive to a broader reading of the scope of the appellant's request than that asserted by the Police (i.e. to include all firearms described), did the Police inform the appellant that no such records exist? Please explain why or why not.

Representations

The Police claim that the request "was specific insofar as wanting to know the source of a statement made by the Chief of Police in the Toronto Star newspaper that 'half of all guns used in crime come from robberies'." The Police refer to the decision letter and state that the appellant was informed that "since the subject of the interview [with the Chief] was 'crime guns' (which, in Toronto, are overwhelmingly hand guns), only data concerning hand guns was used for the purpose of the interview."

The Police appear to be arguing that the introductory wording of the request defines its scope. More specifically, the Police appear to be taking the position that the appellant defined the scope of the request to include only the subject matter of the Chief's interview by making specific reference to that interview, in which the Chief relied only on data/statistics relating to handguns. In support of this position, the Police rely on an additional quote from the Toronto Star newspaper article, in which an identified MPP refers only to the word "handguns".

The Police respond to the question about efforts made to clarify the scope of the appellant's request by indicating that "although the analyst spoke with the appellant on [four separate dates in the same month], there was no clarification of the request, as the request held no apparent ambiguity" [emphasis in original].

In response to the question I posed to the Police about exploring, or acting upon, a broader reading of the scope of the request (to include all firearms), the Police state:

The police did not research records concerning shotguns or rifles as the request was understood to be with respect to the statistical basis of a comment made by the Chief of Police pertaining to "crime guns" used in Toronto (the vast majority of which are handguns).

Accordingly, the appellant was not informed of the existence of records with respect to shotguns and rifles.

Having had the opportunity to review the representations provided by the Police, the appellant reiterated in his submissions that "the scope of the request was all firearms not just handguns. The Toronto Police took it upon themselves to exclude this data based on assumptions that are not entirely accurate..."

With his representations, the appellant provided me with a copy of draft minutes from a Toronto Police Services Board meeting that took place in 2004, which contain data relating to an analysis of “crime guns”, including data about “long-barrelled firearms”. Implicit in the appellant’s position is that the information about long-barreled firearms he claims to be included in the scope of his request does exist.

The remainder of the appellant’s representations are not directed to the issue of the scope of his request, but to concerns about the use of information about firearms for political reasons.

Analysis and Findings

I wish to preface my findings in this appeal by setting out the text of the appellant’s request once again:

The following appeared in the Toronto Star. In the article Chief Blair made the statement “half of all guns used in crime come from robberies.”

Please provide all relevant data (raw data) to substantiate the chief’s statement. **Including total number of firearms** stolen, recovered, returned to owner and country the theft occurred in. As well please provide the statistical methodology used including the sample size and location and any non governmental organization used to supply data or provide statistical analysis [emphasis added].

Based on my consideration of the evidence before me, and all the circumstances of this appeal, including the actual wording of the appellant’s request, I find that the Police response represents an overly narrow and restrictive interpretation of the request. I conclude that the request includes records which relate to “firearms”, including not only hand guns but also long-barreled firearms, such as rifles and shotguns.

On its face, the second paragraph of the request refers to “firearms”. Unfortunately, however, the Police approached the request as though the introductory wording of the request defined its scope and chose not to rely on the clarification provided in the text following that introduction.

In my consideration of the text of the appellant’s request, I discovered that dictionary definitions indicate that the term “firearm” could be interpreted more broadly in the context of the request than was done in the present appeal.

For example, the following dictionary definitions support a definition of “firearm” that is not strictly limited to handguns:

“Firearm”

n. (usu. in *pl.*) a gun, esp. a pistol or rifle [*Concise Oxford Dictionary*, 1991].

n. any of a variety of guns (pistols, rifles, machine guns, etc.) [*Newbury House Dictionary of American English*, online].

n. a gun, pistol, or any weapon from [which] a shot is discharged by the force of an explosive substance, as gunpowder [*Webster's Revised Unabridged Dictionary* (1913)] .

There are also definitions that suggest a more limited connotation for the term, such as:

n. slightly formal; a gun that can be carried easily; "he was found guilty of possessing an unlicensed firearm" [*Cambridge Advanced Learner's Dictionary*].

n. a portable gun; "he wore his firearm in a shoulder holster" [*Webster's Online Dictionary*].

While there may be, as suggested by the definitions above, some ambiguity surrounding the interpretation of the word "firearm", I note that as regards access requests under the *Act*, the Police are under an obligation to clarify the intent of the requester regarding the scope of the request.

I note that during the mediation stage of this appeal, a mediator from this office attempted to confirm with the Police that the appellant's request included all types of guns, whether handguns or long-barreled guns. These efforts met with no success and, to compound matters, the Police continued to assert during the adjudication of this appeal that the appellant's request did not contemplate the inclusion of records relating to anything other than handguns. In my view, taking this position was unreasonable since the Police had been made aware that the appellant took a broader approach to defining the scope of the request.

It was not open to the Police, in the circumstances, to unilaterally limit the scope of the request by choosing to rely solely upon the context of the quote by the Chief, and others, in the newspaper article referred to by the appellant to define its breadth. In my view, choosing to do so led the Police to unreasonably narrow the appellant's request, resulting in an inadequate search for information about *all* firearms, including shotguns and rifles, which is not in keeping with their obligations under the *Act*.

In summary, I find that the scope of the appellant's request *includes* information about all types of firearms, including, but not limited to long-barreled guns, such as shotguns and rifles, as well as handguns. I will order the Police to conduct another search for responsive records using my findings in this order as a guide.

ORDER:

1. 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 new decision letter is to be prepared in accordance with the legislative requirements set out in sections 19, 21 and 22 of the *Act*;
 - b. The date of this order is to be treated as the date of the request and without recourse to a time extension under section 20 of the *Act*; and
 - c. The Police are ordered to conduct a search for all records which are determined to be responsive to the request construing "all firearms" to include, but not be limited to long-barreled guns, such as shotguns and rifles, as well as handguns.

2. I order the Police to provide me with a copy of the new decision letter sent to the appellant on the same date it is sent to the appellant.

Original Signed By: _____

January 19, 2007 _____

Daphne Loukidelis
Adjudicator