



**Information and Privacy
Commissioner/Ontario**

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

FINAL ORDER MO-2203-F

Appeal MA-050328-2

Hamilton Police Services Board



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This Final Order follows from my previously issued Interim Orders MO-2084-I, MO-2122-I and MO-2196-I in this same appeal, which were released on August 31, 2006, November 17, 2006 and May 28, 2007, respectively. This Final Order operates to resolve the sole outstanding issue in this appeal, whether the Hamilton Police Services Board (the Police) conducted a reasonable search for an identified category of records.

NATURE OF THE APPEAL:

The Police received a three-page request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) in which the appellant sought all information relating to a complaint and subsequent investigation he had initiated with the Police in 1995. The request was for access to records relating to the investigations regarding the appellant, certain named individuals, and an identified organization. Portions of the request read as follows:

I want any and every piece of information regarding me and the investigation of [identified individuals] going back to the 1995/1996 investigation and also including the 1998 investigation and the ... investigation... in 2004. ...

What I want from the [Police] is every scrap of information regarding me, [identified individuals], the [identified organization] ... and all information regarding their investigations of my case and any other contacts and information gotten during the period from 1995 to the present.

The Police issued an initial decision letter in which they granted partial access to certain responsive records, advised that no records exist for notes or information compiled by a named individual, and advised that any information relating to records concerning the complaint made by the appellant to the Ontario Civilian Commission on Police Services (OCCPS) would have to be accessed from that agency directly.

The appellant appealed the Police's decision, and one of the reasons for the appeal was the appellant's position that additional records responsive to his request should exist.

During mediation, the Police issued two revised decision letters to the appellant, and a number of issues were resolved, as described in Interim Order MO-2084-I. However, the appellant was not satisfied with the response of the Police concerning the existence of certain additional records, and believed additional records should exist in relation to his request. The Police advised that there were no additional records, and the sole remaining issue in this appeal was whether additional records responsive to the appellant's request exist.

In appeals involving a claim that additional records exist, the issue to be decided is whether the Police have conducted a reasonable search for records responsive to the appellant's request as required by the *Act*.

The file was transferred to the inquiry stage of the process, and I sent a Notice of Inquiry to the appellant and the Police setting out the facts and the issue in this appeal, and scheduling an oral inquiry to address the remaining issue. Prior to the inquiry, the appellant forwarded to this office 52 pages of materials which he indicated he intended to rely on at the inquiry. The appellant also provided a copy of that material to the Police.

On June 26, 2006, I conducted an oral inquiry by teleconference. The appellant represented himself, but also had two individuals present in support. Participating for the Police were their Freedom of Information Co-ordinator (the Co-ordinator) and one of the detectives involved in the investigation that was the subject of the request.

The Police and the appellant provided representations in the oral inquiry, as set out in Interim Order MO-2084-I. Based on the representations of the parties, I issued Interim Order MO-2084-I, in which I addressed the issues in this appeal. In that Interim Order, I found that three categories of records were responsive to the appellant's request, and ordered the Police to conduct further searches for all three of them. In that Order, I also stated that I remained seized of this appeal in order to deal with any other outstanding issues regarding the search for records by the Police.

Following the issuance of Interim Order MO-2084-I, I received an affidavit sworn by the Co-ordinator for the Police. I subsequently received a copy of a further decision letter and attached records which the Police had sent to the appellant.

After reviewing the material provided by the Police, I issued Interim Order MO-2122-I in which I addressed a number of issues respecting the adequacy of the searches conducted by the Police in response to the Order Provisions in Interim Order MO-2084-I.

In response to Interim Order MO-2122-I, the Police provided another affidavit sworn by the Co-ordinator. In addition, I subsequently received a copy of a further decision letter which the Police had sent to the appellant.

Following my review of the material provided by the Police, I issued Interim Order MO-2196-I. In that order, I addressed the adequacy of the Police's search for three specific categories of records responsive to the request, and found that the searches conducted by the Police for two of those specific categories of records were reasonable. However, I found that the Police had not provided sufficient evidence to support a finding that a reasonable search for the third category of records had been conducted.

In response to Interim Order MO-2196-I, the Police have provided a further affidavit sworn by the Co-ordinator. This Order constitutes my ruling on the adequacy of the searches conducted by the Police for responsive records following the issuance of Interim Order MO-2196-I.

DISCUSSION:

REASONABLE SEARCH AND INTERIM ORDER MO-2196-I

As identified in previous orders, 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 [P-624].

In Interim Order MO-2196-I, I addressed the adequacy of the Police's search for three specific categories of records responsive to the request, and found that the searches conducted by the Police for two of those specific categories of records were reasonable. With respect to the third category of records, namely, any records which may have been received by the Police from other bodies, I reviewed the material provided to me by the Police, and also the obligations on institutions to conduct searches for all responsive records. In Interim Order MO-2196-I, I stated:

... the position of the Police that they conducted a search for all *releasable* records does not satisfy the requirements to respond to access requests in accordance with the requirements of the *Act*. In this case, it does not satisfy the obligation of the Police to provide this office with sufficient evidence to support a finding that a reasonable search for responsive records has been conducted.

As a result, I will order the Police to search for responsive documents which may have been received from or provided to other bodies (excluding OCCPS), and to provide me with additional details about the nature and extent of the further searches it conducts. In addition, if such records are located, the Police are to provide a decision letter to the appellant respecting access to those records.

In response to Interim Order MO-2196-I, the Police provide a further affidavit in support of their position that the searches conducted for responsive records were reasonable. In that affidavit, the Coordinator for the Police reviews the searches that were conducted by the Police and the specific records which were located in response to those searches. The Co-ordinator also affirms that she had "exhausted all other areas within the [Police service] to search", and states that there are "no further locations to be searched."

Interim Order MO-2196-I required the Police to provide additional details about the nature and extent of the searches they conducted for responsive documents which may have been received from or provided to other bodies (excluding OCCPS). In response to this requirement, the affidavit specifically states: "... no further responsive records exist in the possession of the [Police], whether created by [the Police], from an outside body or to an outside body ...". The

affidavit does note that the one exception to this is the records retained by the Professional Standards Branch (which is addressed in Interim Order MO-2196-I).

Based on the nature of the searches conducted for responsive records, the previous evidence provided to me and referred to in the previous Interim Orders, and the specific sworn evidence which states that the searches included searches for responsive records received from an outside body or provided to an outside body, I am satisfied that the searches conducted by the Police for responsive documents which may have been received from or provided to other bodies were reasonable.

ORDER:

I find that searches conducted by the Police for responsive documents which may have been received from or provided to other bodies were reasonable, and I dismiss the appeal.

Original signed by: _____
Frank DeVries
Adjudicator

_____ June 21, 2007