



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2273

Appeal MA07-153-2

West Nipissing Police Services Board



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NATURE OF THE APPEAL:

The West Nipissing Police Services Board (the Police) received a multi-part request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from an individual requester for access to:

... all information [and] copies of documents of all complaints I filed with the [Police] against by law enforcement officer [named By-law enforcement officer]. I am also requesting all information on complaints I filed against Officer [named Police constable] regarding threats of arrest against me for my complaints regarding animal control enforcement By-laws.

The requester (now the appellant) filed an appeal with this office indicating that the Police had not replied to the access request within the requisite time frame under the *Act*. Under section 22(4) of the *Act*, failing to respond to a request for access to a record within the statutory time frame results in a "deemed refusal" to provide access, which gives rise to a right of appeal. Accordingly, this office opened file MA07-153-1 and sent a Notice of Inquiry to both the appellant and the Police.

The Police then issued a decision letter identifying records responsive to the request and provided a fee estimate for access in the sum of \$75.00. As a result of the Police issuing a final decision letter, appeal file MA07-153-1 was closed.

The appellant appealed the amount of the fee. The appellant also took the position that the Police did not conduct a reasonable search for responsive records. Accordingly, the current appeal file (MA07-153-2) was opened.

At mediation the fee issue was resolved. Also at mediation the Police informed the mediator that there are only 10 records, not 11 as they originally stated, that are responsive to the appellant's request for copies of documents of all complaints the appellant "filed with the [Police] against By-law enforcement officer [named individual]." In addition, the Police conducted two further searches for all information on complaints the appellant filed against a named Police constable "regarding threats of arrest against [the requester] for [his] complaints regarding animal control enforcement By-laws." The Police advised that no other responsive records were located.

Mediation did not resolve the appeal and it moved to the adjudication stage of the appeal process.

A Notice of Inquiry setting out the facts and issues in the appeal was sent to the Police, initially. The Police provided representations in response to the Notice. I then sent the appellant a Notice of Inquiry along with the complete representations of the Police. The appellant provided representations in response to the Notice.

DISCUSSION:

ADEQUACY OF THE SEARCH FOR RECORDS

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).

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 of the *Act* [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].

A reasonable search would be one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request [Order M-909].

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 Representations of the Police

The Police submit that two searches were conducted for responsive records. It conducted the first shortly after receipt of the request. The second search was conducted in the course of mediation.

The Police explain that with respect to the second search:

... [they] received a request in writing by the mediator that a further search for responsive records take place. Enclosed with the mediator's request was a copy of the requestor/appellant's statement of complaint which mentions his negative dealings with [a named Police constable]. Also enclosed were newspaper articles printed by local media groups pertaining to the animal complaints made by the requestor/appellant. After having been requested by the mediator to conduct further searches the requestor was contacted and spoken to regarding responsive records. There was no misunderstanding as to what records the requestor/appellant was seeking. The requestor/appellant did refer to animal complaints investigated by the service however these were not complaints investigated by the Animal Control (By-Law) officer in the original request.

The process taken to search for the responsive records has been the same each time and is detailed as follows.

The West Nippising Police Service uses a data gathering system called Niche R.M.S. (Records Management System). When a complaint is received our service further uses a data gathering system called CAD (Computer Assisted Dispatching). The dispatcher logs the information provided by the victim or complainant which in turn generates an individualized identifiable incident number. The officer is in turn dispatched to the incident. The CAD and RMS systems are integrated and once the incident has been created by CAD it is transferred to the R.M.S system where officers can add person, vehicle, and address details as well as add reports and briefs electronically.

Prior to utilizing the R.M.S system our service used the OMPPAC data gathering system. The records from OMPPAC were also electronic and are still available through R.M.S.

Once the request for personal information was received a search of the electronic records was commenced. The requester/appellant has had numerous police contacts ([in] excess of 100) [and] each incident was checked and read to ensure that if responsive it would be disclosed or provided to the requestor/appellant.

Our service further stores records in what is called "Incident envelopes". These envelopes are used when additional real (written) information is received and relates to a particular incident. Such examples of real documents could be court orders and statements. The envelopes are numbered with the corresponding electronic incident number and filed in a filing cabinet. The envelopes and documents are kept in the main office for a period of two years and then stored in the archive room for seven years.

Our service has a Public Complaint file that is kept in the Chief of Police's office. The file is in a secure filing cabinet and is appropriately named "Public

Complaints”. Once a complaint is received it is examined by the Chief, classified and assigned to an investigator if the matter requires further investigation. These records are kept by the Chief in his office and are kept on file for a period of 10 years.

The records sought by the requestor/appellant were searched for by a [named Inspector]. This officer examined the electronic files held in the R.M.S. database, the records were read and responsive records were provided. The incident envelope files were checked for any corresponding incident #. No responsive records were located. The Chief’s Public Complaint file was checked in entirety. A file entitled “[appellant’s name]” was located however the documents enclosed dealt with another matter and were not responsive to this request. Other files within the Public Complaints file were checked to ensure a filing error had not occurred [and] there were no records found that would have been responsive to this request.

When asked by the mediator to conduct additional searches [the named Inspector] conducted a similar search. A review of all electronic records was conducted and the files and filing cabinets were searched. The public complaint referred to by the requestor/appellant was not located. Our service does now have a copy of the letter/complaint on file as it was provided by the mediator. We are also in possession of a further complaint made to the Ontario Commission on Police Services by the requestor/appellant. This document describes a complaint against [a named Police constable] and has been filed appropriately in the “Public Complaint” file.

I respectfully submit that the searches conducted by our police service were complete, thorough and appropriate. There is no intention on our part to hide or withhold any record from the requestor/appellant. We have in good faith searched our records and are unable to locate the said document. We are now in possession of a document filed by the requestor/appellant and will be acting upon it.

The Appellant’s Representations

The Revised Mediator’s Report sets out why the appellant believes that further responsive records exist. With respect to his request for information pertaining to the first part of his request, the appellant advised the mediator that the Police have not identified records relating to the following:

- an attendance at his residence by an identified Police officer along with the named By-law enforcement officer on an unidentified date;
- his contacts with the Police regarding two animal attacks; and
- a telephone call from a hospital to the Police with respect to one of the animal attacks.

With respect to the second part of his request the appellant states in his letter of appeal that he personally delivered to the Police a complaint about the named Police constable. As set out in a letter the appellant sent to the mediator, he states that this occurred after he attended at the Police station and made a verbal complaint about this Police constable. As set out above, the mediator provided a copy of the complaint letter to the Police in the course of mediation, but the Police were unable to locate a copy of it in an independent search.

In his representations the appellant maintains his position that additional records should exist. He alleges that the Police intentionally “covered up” the existence of his complaint against the named Police constable until he provided a copy of the complaint along with a local newspaper article.

Analysis and Finding

The issue before me is whether the search carried out by the Police was reasonable in the circumstances. As set out above, the *Act* does not require the Police to prove with absolute certainty that further records do not exist, but only to provide sufficient evidence to establish that it made a reasonable effort to identify and locate responsive records [Order P-624]. To be considered responsive to the request, records must “reasonably relate” to the request [Order P-880].

I find that the Police have provided a thorough explanation of the efforts made to identify and locate records that are responsive to the request made by the appellant and why no other responsive records exist. Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the appellant still must provide a reasonable basis for concluding that such records exist. In my view, although he expresses dissatisfaction with the manner in which the Police addressed his request and questions the adequacy of the search, the appellant has not provided a reasonable basis for concluding that other records *that are responsive to his request* exist. Accordingly, I am satisfied that the Police’s search for responsive records was reasonable and is in compliance with its obligations under the *Act*.

Therefore, I find that the Police have conducted a reasonable search for records that are responsive to the appellant’s request as required by section 17 of the *Act*.

ORDER:

I find that the Police’s search for responsive records is reasonable.

Original signed by: _____
Steven Faughnan
Adjudicator

February 12, 2008 _____