



**Information and Privacy
Commissioner/Ontario**

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

FINAL ORDER MO-2327-F

Appeal MA07-131

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 information relating to an investigation of a report of fraud relating to the purchase of a truck.

The Police located the responsive record and granted partial access to the requested information. Access to the remainder of the record was denied pursuant to section 38(b) (personal privacy) of the *Act*.

The requester, now the appellant, appealed the decision of the Police.

The appellant advised the mediator that she believes additional records should exist containing the notes of the investigating police officers. As a result, the issue of whether the Police conducted a reasonable search was an issue in this appeal.

The parties were unable to resolve the issues under appeal through the process of mediation. The file was transferred to me to conduct an inquiry. I sent a Notice of Inquiry, setting out the facts and issues in this appeal, to the Police and the one affected person whose personal information may have been contained in the record, initially. I received representations from the Police only, a complete copy of which was sent to the appellant, along with a Notice of Inquiry. I received representations from the appellant in response.

I then issued Interim Order MO-2265-I, in which I ordered, inter alia, the Police to provide the appellant with certain undisclosed information from the record. I also ordered the Police to conduct a new search for responsive records related to the appellant's fraud report, including any responsive police officer memorandum books. I further ordered the Police to provide me with an affidavit sworn by the individual(s) who conducted the search, confirming the nature and extent of the search conducted for the responsive records. The Order stated that at a minimum the affidavit should include information relating to the following:

- (a) information about the employee(s) swearing the affidavit describing his or her qualifications and responsibilities;
- (b) the date(s) the person conducted the search and the names and positions of any individuals who were consulted;
- (c) information about the type of files searched, the search terms used, the nature and location of the search and the steps taken in conducting the search; and,
- (d) the results of the search.

As a result of this further search, the Police identified additional records responsive to the request and provided a decision letter to the appellant regarding access to these records in accordance with the provisions of the *Act*.

I then sent a copy of the Police's affidavit to the appellant and sought her representations on the issue as to whether the Police had conducted a reasonable search for records in response to Interim Order MO-2265-I. I asked the appellant to provide me with any details she was aware of concerning records which have not been located, or any other information to indicate that the search carried out by the Police was not reasonable. I received representations in response from the appellant's representative.

DISCUSSION:

SEARCH FOR RESPONSIVE RECORDS

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].

The appellant sought records concerning a specific fraud investigation. During the mediation stage of the appeal, the appellant informed the mediator that she believes additional records should exist containing the notes of the investigating police officers. In her request she named 10 police officers who she had contact with concerning her fraud complaint. She provided the badge number of eight of these officers in her request.

In Interim Order MO-2265-I I found that as the record, which is an Occurrence Report, was generated from police officers' memorandum books, that responsive memorandum books should exist. As a result, I found that the Police have not conducted a reasonable search for records responsive to the appellant's request. Therefore, I ordered the Police to conduct a new search for the responsive records, including any responsive police officer memorandum books. I also ordered the Police to disclose to the appellant the DVD made of her interview with the Police at the police station. This DVD was referred to in the disclosed portions of the record.

In response to Order MO-2265-I, the Police disclosed the DVD of the appellant's interview to her. The Police also disclosed an additional 29 pages of records to the appellant, which included pages from police officer memorandum books.

As ordered, the Police provided an affidavit from an analyst with their Access and Privacy Section detailing the searches undertaken in response to Order MO-2265-I. In this affidavit, the Police state that they contacted 11 police officers seeking responsive records.

The appellant did not address the issue of the Police's further search in her representations.

Analysis/Findings

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 *Act* does not require the Police to prove with absolute certainty that further records do not exist. However, the Police must provide sufficient evidence to show that they have made a reasonable effort to identify and locate responsive records within their custody or control [Order P-624].

The appellant has not provided any evidence which would allow me to conclude that additional responsive records exist.

Upon my review of the Police's affidavit and the information disclosed in response to Order MO-2265-I, I find that the Police have provided sufficient evidence to show that they have made a reasonable effort to identify and locate responsive records [Order P-624].

The Police have provided a comprehensive description of the steps they undertook to locate records responsive to the appellant's request as ordered to do so in Order MO-2265-I. Accordingly, I find that the Police have performed a reasonable search for responsive records.

ORDER:

I uphold the Police's search for records.

Original signed by: _____
Diane Smith
Adjudicator

July 11, 2008