



**Information and Privacy  
Commissioner/Ontario**

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

# **FINAL ORDER MO-2255-F**

## **Appeal MA07-103**

### **Toronto Police Services Board**



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## **NATURE OF THE APPEAL:**

This is my final order disposing of the outstanding issue in this appeal.

The appeal arises out of a request submitted by the appellant to the Toronto Police Services Board (the Police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

On March of 2005, [the appellant] was arrested at Mt Sinai Hospital, taken into police custody and then held in detention in a holding cell at Old City Hall.

...we require copies of any and all records, statements taken and all other documents produced from witnesses, reports, police memo-books, correspondence, memoranda, forms, directives, drawings, diagrams, photographs, visual recordings, audio recordings and any other documentary materials regardless of physical form or characteristics concerning the above named incident.

The Police issued a decision granting access to witness information and the statement of a physician, as well as the appellant's booking videotape. The Police denied access to any documents seized on the basis that the appellant's criminal case had been dealt with by the courts and those documents had been purged.

The Police provided partial access to other records, denying access pursuant to section 38(a), read with section 8(1)(l) (right of access to one's own personal information/commission of an unlawful act or control of crime) and section 38(b), read with section 14(1) (personal privacy) of the *Act*. The Police also noted that some information had been removed as being non-responsive to the request.

The appellant appealed the Police's decision, noting that information had not been provided regarding his detention in a holding cell at Old City Hall on or about March 25, 2005, at which time he alleges he sustained an injury.

During the mediation stage of the appeal process, the appellant indicated that he was not interested in the severed records or the information marked non-responsive, and was focusing instead on the existence of records relating to the time he was held in the holding cell at Old City Hall on March 25, 2005. The appellant believes that there must be a videotape or a log book as well as other records which document his detention.

The parties were unable to resolve the appeal through mediation. The file was transferred to the adjudication stage for an inquiry where the issue to be determined was whether the Police conducted a reasonable search for records responsive to the appellant's request.

On October 10, 2007, I held an in-person hearing into the reasonable search issue. The appellant did not attend the hearing but was represented by counsel (Appellant's Counsel). Participating for the Police were their legal counsel (Police Counsel) and an individual employed by the Police as a Court Officer (the Court Officer) who, according to Police Counsel, conducted all of the physical searches for records responsive to the appellant's request.

I subsequently issued Order MO-2244-I in which I expressed concerns regarding the Police's retention practices and their possible impact on the recovery of records responsive to the appellant's request. I ordered the Police to conduct a further search for responsive records, to include all Standard Form Documents for March 25, 2005, including the Daily Roster Sheet, Daily Working Duty Sheets and Bi-weekly Schedules, as well as all court and holding cell records for that date.

Pursuant to my decision I made the following order provisions:

1. I order the Police to conduct further searches for responsive records, whether in printed form, on videotape, by electronic means or otherwise, within their record holdings for Old City Hall for March 25, 2005. In conducting these searches, the Police are requested to consult all of their staff employed at Old City Hall. With regard to this provision, I order the Police to provide me with affidavits sworn by the individuals who conduct the searches by **November 23, 2007**. 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, position and responsibilities;
  - (b) a statement describing the employee's knowledge and understanding of the subject matter of the request;
  - (c) the date(s) the person conducted the search and the names and positions of any individuals who were consulted;
  - (d) information about the type of files searched, the nature and location of the search, and the steps taken in conducting the search;
  - (e) the results of the search;
  - (f) if as a result of the further searches it appears that responsive records existed but no longer exist, details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.
2. If further responsive records are located as a result of the searches referred to in Provision 1, I order the Police to provide a decision letter to the appellant regarding access to those records in accordance with the provisions of the *Act*, considering the date of this order as the date of the request.
3. The affidavits referred to in Provision 1 should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 2 Bloor Street East, Suite 1400, Toronto, Ontario, M4W 1A8. The affidavits provided to me may be shared with

the appellant, unless there is an overriding confidentiality concern. The procedure for the submitting and sharing of representations is set out in *IPC Practice Direction 7*, which is available on our website.

4. I remain seized of this appeal in order to deal with any other outstanding issues arising from this order.

In response, the Police provided two affidavits regarding further search efforts, one from the Court Officer, who attended and gave evidence at the hearing on October 10, 2007 regarding her role in conducting the searches for records relating to the appellant's detention at Old City Hall, and a second from a Senior Court Officer employed by the Police (the Senior Court Officer).

I provided the appellant with copies of these affidavits and invited him to provide representations in response. The appellant chose not to submit further representations.

## **DISCUSSION:**

The Court Officer reiterates in her affidavit that she conducted the initial search for records relating to the appellant's detention at Old City Hall and, during the course of these searches, located the Property Log and Weekend Platoon Schedule. She states that as a result of my Interim Order MO-2244-I she carried out further searches, noting in particular that she searched the "storage bins" in the "storage room where the daily documents are stored." The Court Officer submits that her additional search efforts did not produce any additional records.

The Senior Court Officer states that he is the Acting Senior Administrator for Court Services – Old City Hall. He states that shortly after my interim order was issued he received a call from the Court Officer during which he was asked to do the following:

1. to inquire with the cell booking officer whether there was any information pertaining to the appellant on the computerized booking system, and
2. to inquire with the Ministry of the Attorney General's Court Clerk's office to determine whether there was any notation as to the time the appellant's bail papers were generated.

The Senior Court Officer submits that no records were found as a result of his inquiries.

On my review of the information contained in the two affidavits provided by the Police, I am satisfied that the Police have complied with the provisions of Interim Order MO-2244-I and have conducted a reasonable search for records responsive to the appellant's request.

**ORDER:**

On the basis of the Police's compliance with Interim Order MO-2244-I, I uphold the Police's new search for records responsive to the appellant's request.

Original signed by: \_\_\_\_\_  
Bernard Morrow  
Adjudicator

December 19, 2007 \_\_\_\_\_