



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-2391**

**Appeal MA08-263**

**York Regional 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/Télé: 416-325-9188  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

The York Regional Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all records pertaining to the requester within their custody and control.

The Police identified records responsive to the request and granted partial access to them. The Police relied on the discretionary exemption at section 38(b) (personal privacy), with reference to the presumption at section 14(3)(b) (compiled as part of an investigation into a possible violation of law) of the *Act*, to deny access to the portion they withheld. In the letter, the Police advised the requester that:

...if [the Police] received a complaint regarding yourself or made by you that the attending officers did not submit a police report for, then the incident would not be listed in our records management system. The only way [to] locate any records that may exist for those types of complaints where a police report was not submitted would be for you to advise the date, location and the name and badge number of the officer that attended the complaint so that we could search our system for a record of attendance.

The requester (now the appellant) appealed the decision.

During mediation, the appellant advised the mediator that he was not challenging the Police's application of the discretionary exemption at section 38(b) to the information they withheld, but asserted that the Police did not conduct a reasonable search for responsive records. In addition, the appellant voiced his concerns about the accuracy of some of the information contained in the records that the Police did disclose to him. After providing a letter of disagreement to the Police and receiving confirmation that the letter was on file with them, the appellant indicated to the mediator that this was satisfactory. Accordingly, the only matter at issue in this appeal is the reasonableness of the Police's search for responsive records.

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

I commenced the inquiry by sending a Notice of Inquiry setting out the facts and issues in the appeal and requesting representations to the Police. The Police provided representations in response. I then sent a Notice of Inquiry, along with the complete representations of the Police, to the appellant. The appellant provided representations in response.

## **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).

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].

Where an appellant 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 within its custody or control. [Orders P-85, P-221, PO-1954-I]

Although an appellant 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 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 within its custody or control [Order P-624].

A reasonable search is one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request (see Order M-909).

During the course of adjudication the appellant explained to an Adjudication Review Officer of this office the basis for his belief that the Police's search was inadequate. As I understand it, his position is that there are additional records containing information pertaining to him, which he described as "print outs, records and transcripts", including:

- "profile and security checks" that the Police would consult before attending on calls; and
- information that the Police disclosed to Emergency Medical Services (EMS).

The Police's representations and accompanying affidavit describe in detail the searches conducted in an effort to locate records responsive to the request. In my opinion, these searches were extensive. The appellant's representations challenge the adequacy of the search, but do not provide an evidentiary basis to refute it. As set out above, in order to satisfy its obligations under the *Act*, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records within its custody or control [Order P-624]. In my view, based on the evidence before me, the Police have made a reasonable effort to locate responsive records that are within their custody or control.

In all the circumstances, I find that the Police have provided sufficient evidence to establish that it has conducted a reasonable search for responsive records within their custody and control sought by the appellant and I dismiss the appeal.

**ORDER:**

I find that the Police have conducted a reasonable search for responsive records and I dismiss the appeal.

Original signed by: \_\_\_\_\_  
Steven Faughnan  
Adjudicator

February 2, 2009 \_\_\_\_\_