Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

FINAL ORDER MO-2604-F

Appeal MA10-31-2

Brantford Police Services Board

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NATURE OF THE APPEAL:

The appellant submitted a five-part request to the Brantford Police Services Board (the Police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), for access to records relating to various meetings, communications and actions taken by the Police with respect to the Native protests, land claims, by-laws and criminal law within the Brantford area.

In their initial response, the Police claimed that the first four parts of the request were frivolous and vexatious on the basis that the appellant had requested this information previously and either a decision respecting access had already been provided to him or he was told that the records did not exist. The Police then denied access to records relating to the fifth part of the request, which concerned records about meetings and communications with the Crown Attorney's office, pursuant to section 12 (solicitor-client privilege) of the *Act*.

The Police subsequently issued a supplementary decision, claiming the application of sections 8(1)(a)(b)(f)(g)(h), 8(2)(a)(c), 8(3) (law enforcement), 14(5) (refusal to confirm or deny the existence of records), 38(a) (discretion to refuse requester's own information) and (b) (personal privacy) of the *Act* to the information responsive to part 5 of the request.

The appellant appealed the Police's access decision.

This file underwent extensive mediation, during which the Police issued two additional access decisions. A number of issues were clarified, which ultimately resolved most of the issues on appeal.

However, the appellant continues to believe that records should exist for minutes of meetings, including *in camera* meetings, with the City of Brantford and provincial and/or federal government representatives. As a result, he argues that the search for minutes of such meetings was inadequate that this continues to be at issue in this appeal. In particular, the appellant maintains that minutes or notes of Police meetings, including *in camera* meetings with the City of Brantford with respect to native protests and the development of by-laws ought to exist, and have not been located.

No further mediation was possible, and the file was forwarded to the adjudication stage of the appeal process. The sole issue remaining is whether the Police conducted a reasonable search for the minutes of meetings, including *in camera* meetings, involving the City of Brantford and provincial and/or federal government representatives.

I decided to seek representations from the Police, initially. The Police did not submit representations and when contacted by this office, indicated that none would be forthcoming. As a result, I issued Interim Order MO-2587-I, in which I ordered the Police to conduct a further search for records and to provide me with representations on the steps taken and results of that search.

The Police complied with the interim order. I then provided the appellant with a complete copy of the representations of the Police, along with a copy of the Notice of Inquiry, and invited him

to submit representations. In response, the appellant sent a short note attached to a newspaper clipping. The newspaper article refers to testimony to be given in a court action by a former Brantford City councillor, in part, regarding the relationship between the Brantford City Council and the Police relating to the subject matter of the request. The appellant requests that I subpoena this individual to give evidence in the current proceedings.

The individual identified in the newspaper article is no longer a member of the Brantford City Council; nor does he appear to have any association with the Police (the institution at issue in this appeal). Based on my review of the newspaper article and the appellant's note alleging that this individual cannot be trusted to voluntarily provide information, apparently based on the fact the he was subpoenaed to give testimony in the court matter, I am not persuaded that this individual can provide relevant information that would assist in determining the issues in the current appeal. Although I will take into account the information provided in the newspaper article relating to this issue, as discussed below, I will not seek representations from the named former councillor.

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 and 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 [Orders P-624 and PO-2559]. To be responsive, a record must be "reasonably related" to the request [Order PO-2554].

A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request [Orders M-909, PO-2469, PO-2592].

A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control [Order MO-2185].

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 [Order MO-2246].

A requester's lack of diligence in pursuing a request by not responding to requests from the institution for clarification may result in a finding that all steps taken by the institution to respond to the request were reasonable [Order MO-2213].

In their representations, the Police indicate that a further search for responsive records was conducted following their receipt of Interim Order MO-2587-I. The Police state that, as part of their search, they contacted legal counsel for the City of Brantford. She advised that the City has records relating to meetings, including *in camera* meetings and confirmed that the Chief of Police is not on the distribution list for receipt of the minutes of these meetings and that he did not receive any minutes from the City.

The Police also refer to a letter sent to the appellant by the Chief, dated October 5, 2010 (approximately two weeks before he retired, according to the newspaper article provided by the appellant). In this letter the Chief stated:

> I…attended 'in-camera meetings' when requested by City Hall staff dealing with protests and bylaws. You have previously been supplied with a copy of our protest policy. Any minutes recorded and lists of attendees would have been recorded by City Hall staff.

The Police maintain that the Chief did not receive minutes of any meetings he attended with City staff. The Police state further that the Chief did not host any meetings. The Police confirm that neither the Chief nor his office were responsible for any meeting minutes dealing with protests.

In the newspaper article provided by the appellant, it is suggested that the former Chief of Police had made a suggestion to Brantford City Council that it seek an injunction in order to permit the Police to intervene at certain "protested construction sites" in the Brantford area. The article goes on to raise the question whether the Chief's alleged suggestion was "a violation of the separation between police and political leaders," and discusses the legality of the injunction that the City of Brantford was seeking. Although the article suggests that the Chief attended City Council meetings, it does not provide evidence to support the appellant's assertion that additional records should exist relating to this request.

I find that there is no dispute that the Chief attended meetings at Brantford City Hall relating to the Native protests. The issue before me is whether minutes or notes of Police meetings, including *in camera* meetings with the City of Brantford with respect to Native protests and the development of by-laws ought to exist in the records holdings of the Police. Based on the submissions made by the Police and the absence of evidence presented by the appellant that corroborates his position, I am satisfied that the Police have undertaken a reasonable search for responsive records.

As I noted above, the *Act* does not require the Police to prove with absolute certainty that further records do not exist. Rather, the Police are required only to provide sufficient evidence to show that they have made a reasonable effort to identify and locate responsive records. I am satisfied that the Police contacted the individuals who could provide the best evidence relating to this issue; that being the legal counsel for the City of Brantford who confirmed that the Chief was not on the list of recipients of the minutes of meetings and that he was not provided with copies of any minutes and the Chief himself, who confirmed that he did not have any responsive records. In addition, the Police confirmed that they did not host meetings on these issues and,

consequently, did not have any notes or minutes in their records holdings arising from such meetings. Accordingly, I find that the search conducted by the Police for the minutes of meetings, including *in camera* meetings, involving the City of Brantford and provincial and/or federal government representatives was reasonable.

ORDER:

The search for responsive records by the Police is upheld and this appeal is dismissed.

Original signed by: March 8, 2011
Laurel Cropley
Adjudicator