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

ORDER MO-2641

Appeal MA10-87

Niagara 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/Téléc: 416-325-9188
TTY: 416-325-7539
http://www.ipc.on.ca

OVERVIEW:

The requester submitted an access to information request to the Niagara Regional Police Services Board (the Police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following information:

> …copies covering the previous ten years of the annual table of raw crime statistics that the Police Service prepares. In my experience such raw information is prepared annually and then provided directly to the Board itself. These tables list, among other things, the various types of incidents, the number of incidents, and the number of incidents that have been resolved or solved.

The Police issued a decision advising as follows:

> You have requested access to the Niagara Regional Police Service Annual Report for last ten years.
>
> Please be advised that these reports are currently available elsewhere.
>
> I am therefore denying access to this report through the Information and Privacy [U]nit pursuant to subsection 15(a) [information available to the public] of the *Act*. …

The requester (now the appellant) appealed the Police's decision. In his letter of appeal the appellant stated as follows:

> Although my request was denied, the [Police] did provide me [with] a copy of the [Police's] annual report for each of the years in question […]. The information I seek is not found in those Annual Reports.
>
> [W]hat I seek is the raw data which consists of crime statistics broken out for each and every sub-policing area as listed below:
>
> 1. St. Catharines;
> 2. Thorold;
> 3. Niagara Falls;
> 4. Niagara-on-the-Lake;
> 5. Casino Unit;
> 6. Welland;
> 7. Pelham;
> 8. Fort Erie;
> 9. Port Colborne;
> 10. Wainfleet;
> 11. Grimsby; and,
> 12. Lincoln.

During the mediation stage of the appeal process, the appellant reiterated that he is seeking access to "raw data" consisting of crime statistics by geographic area as identified above, including the types of incidents, the number of incidents and the number of incidents that were solved.

The Police subsequently provided the appellant with some raw statistical data. An analyst with the Police's Information and Privacy Unit wrote to this office to review the steps she had taken to respond to the appellant's request for raw data. The analyst stated that she contacted "appropriate departments" on the appellant's behalf and inquired about the availability of the raw data that the appellant was seeking. The analyst reported that the Corporate Support Analyst from the Chief of Police's office and the Uniform Crime Reporting Clerks provided her with the raw data, which she, in turn, forwarded to the appellant.

The appellant was not satisfied with this information, stating that the statistical information provided to him by the Police was not broken down by geographic area as requested. In turn, the Police advised that they are unable to provide the requested data by geographic area. On this issue, the analyst indicated that she had been advised by the Corporate Support Analyst and the Uniform Crime Reporting Clerks that the data could not be broken down into the 12 sub-policing areas as requested by the appellant.

The appellant maintained the view that the requested data by geographic area should exist. Accordingly, the reasonableness of the Police's search was raised and added as an issue in this appeal.

Prior to the completion of the appeal process, the Police reiterated their reliance on section 15(a) of the *Act* to deny access to the information requested by the appellant.

The parties were unable to resolve the appeal during mediation and the file was transferred to the adjudication stage for a written inquiry. I conducted an inquiry, during which I sought and received representations from both the Police and the appellant. Representations were shared in accordance with Section 7 of the IPC's *Code of Procedure* and *Practice Direction 7*.

In his representations, the appellant indicated he was now satisfied that the Police had conducted a reasonable search for responsive records. Accordingly, reasonable search is no longer an issue in this appeal.

In this inquiry, I address the application of the exemption in section 15(a) to the records that are responsive to the request.

In the discussion that follows, I conclude that the Police have properly applied the discretionary exemption in section 15(a), taking into account all of the circumstances of this appeal.

DISCUSSION:

The issue

The sole issue to be determined is whether the information sought by the appellant is publicly available, pursuant to section 15(a) of the *Act*.

Section 15(a)

Section 15(a) states as follows:

> A head may refuse to disclose a record if,
>
> > the record or the information contained in the record has been published or is currently available to the public;

For this section to apply, the institution must establish that the record is available to the public generally, through a regularized system of access, such as a public library or a government publications centre [Orders P-327, P-1387 and MO-1881].

To show that a "regularized system of access" exists, the institution must demonstrate that

- a system exists
- the record is available to everyone, and
- there is a pricing structure that is applied to all who wish to obtain the information [Orders P-1316, MO-1881]

Section 15(a) is intended to provide an institution with the option of referring a requester to a publicly available source of information where the balance of convenience favours this method of alternative access. It is not intended to be used in order to avoid an institution's obligations under the *Act* [Orders P-327, P-1114 and MO-2280].

Parties' representations

It is the view of the Police that the information sought by the appellant is available through the office of the Chief of Police.

The Police state that it is their practice to provide statistical information "as a public service" to "any member of the public who requests it." The Police indicate that the public is "directed" to send their requests to the office of the Chief of Police. The Police advise that no requests for statistical information have ever been denied and "no fees" are charged for this service. The Police add that requests for statistical information of this nature are not dealt with through their Information and Privacy Unit. The Police submit that at the time of making his request, the

appellant was advised of this system of access, but nevertheless chose to make a request for access under the *Act*.

Despite this system of access, the analyst in the Information and Privacy Unit with carriage of the file, states that she contacted the "appropriate departments" on the appellant's behalf and inquired about the availability of the raw data that the appellant was seeking and then provided the raw data that she received directly to the appellant.

The appellant argues that the intent behind the exemption in section 15(a) is that the information requested should be available to the public generally, not through a request process. The appellant states that, in this case, there is no claim by the Police that the requested information has already been released publicly or is otherwise generally available to the public. In the appellant's view, section 15(a) is not applicable because the information requested is not publicly available and is only accessible by request. The appellant argues that while the Police may have a system of access through the Chief of Police's office, the existence of such a process does not permit the Police to invoke the application of section 15(a). The appellant states that section 15(a) can only be invoked if the specific records sought have been previously released.

Analysis and findings

I have carefully considered the parties representations and conclude that the responsive information at issue in this appeal qualifies for exemption under section 15(a) of the *Act*.

The information sought by the appellant is not published or generally available to the public, instead requiring the processing of a request by the Chief of Police's office. However, I am satisfied that the Police have established the existence of a regularized system of access that meets the three criteria first established in Order P-1316, and followed in Order MO-1881 and subsequent decisions.

In Order P-1316, former Commissioner Tom Wright found that a regularized system of access existed for a "computer tape" containing property assessment roll information for each municipality in the Ottawa-Carleton region (the Region). The requester in that case had sought access to electronic copies of the 1995 property assessment rolls for the Region from the Ministry of Finance (the Ministry). In denying access to the requested records, the Ministry claimed the application of section 22(a), the provincial *Act* equivalent of section 15(a). In its decision letter, the Ministry indicated that the assessment roll for an individual municipality in the Region could be viewed at no cost at the office of the clerk of the municipality. The Ministry also advised that the requester could purchase a copy of each roll directly from a municipality or from the Ministry's Assessment Program. Further correspondence between the Ministry and the requester indicated that the assessment information for all the municipalities in the Ottawa-Carleton region could be purchased on computer tape at an estimated cost of $1,700. The requester took the position that the responsive information should be disclosed in the public interest either at no cost, or for a fee that reflects recovery of the cost of reproducing the information. The requester maintained that the price established by the Ministry was prohibitive, an impediment to public interest and contrary to the fee provisions of the *Act*.

In assessing whether a regularized system of access existed for the computer tape, former Commissioner Wright first established the criteria for determining this issue, stating that the Ministry "must demonstrate that a system exists, the tape is available to everyone and there is a pricing structure which is applied to all who wish to obtain the information." He added that once an institution establishes that section 22(a) applies, the fee structure of the *Act*, including the provisions for fee waiver, is no longer operative.

In concluding that the three criteria were satisfied in P-1316, former Commissioner Wright states:

> In many instances, the existence of a regularized system of access is clear because the system and its associated fees are prescribed by statute or regulation. The system of access which the Ministry has established for assessment information in electronic format has not been formalized in such a manner, therefore, I must examine it more closely.
>
> In its representations, the Ministry advises that the electronic tape of assessment roll information has been available to persons outside government since 1988. The Ministry does not advertise the availability of the tape, however those who could take advantage of this format are made aware of its existence when assessment roll information is requested.
>
> The main component of the appellant's $1,700 fee is the "three for a penny" "Processing" charge for assessment roll entries. (There are 404,938 assessment roll entries in the region of Ottawa-Carleton). The Ministry advises that it offers this component at half price for other ministries, Crown agencies and its statutory clients, i.e. municipalities and school boards; the other price components remain the same.
>
> The Ministry states that other ministries and Crown agencies charges are internal accounting entries, since their money comes from the Consolidated Revenue Fund (CRF) "only to return to the CRF (Finance)." The Ministry states that it has a statutory obligation to provide a paper copy of the assessment roll to the municipalities, but not an electronic copy. It provides the tape to the municipalities at reduced cost because they are its primary clients.
>
> According to the Ministry, the full pricing structure is consistently applied to all requesters outside government such as the appellant. The Ministry also states that it has not licensed its clients to resell the data as yet, but that may come.
>
> In the circumstances, I am satisfied that the tape is available through a regularized system of access. If the appellant purchases the tape he will obtain access to the information he seeks. Accordingly, the Ministry has established that the requested record or the information contained in it is "published or available to the public" and section 22(a) applies.

In this case, it is the first two criteria that have been raised by the appellant. In my view, the third criterion is not an issue, since it is clear that the Police have a pricing structure in place – they make the type of information sought by the appellant available free of charge to anyone who seeks it.

With regard to the first two criteria, I find that the circumstances in Order P-1316 are analogous to those in this case and that the analysis conducted by former Commissioner Wright is similarly applicable. Dealing with the first criterion, in Order P-1316, the Police do not appear to have a prescribed or published system of access in place. However, as in that case, the information at issue in this appeal is available to anyone who makes a request for it through the Chief of Police's office. While many institutions may have a prescribed system of access in place, involving the active publication of information to facilitate its availability to the public generally, this is not required so long as the information is available upon request, which is the case here. This conclusion is consistent with former Commissioner's findings in Order P-1316. Further, in my view, it is clear that the information at issue is available without reservation or restriction.

Accordingly, I am satisfied that, in the circumstances, the records at issue are available through a regularized system of access. The Police have, therefore, established that the requested information is "published or available to the public" and that section 15(a) applies.

Turning briefly to the exercise of discretion of the Police, I am satisfied that the Police properly exercised their discretion in this case by relying on section 15(a). The actions of the Police convey to me that they recognize one of the key purposes of the *Act*, the principle that information should be made available to the public. In addition, they have demonstrated through their actions that they practice this principle by providing statistical information through the office of the Chief of Police as a public service to any member of the public who requests it at no charge. Despite this system of access, it appears that the analyst assigned to the file contacted the appropriate departments on the appellant's behalf to inquire about the availability of the raw data that the appellant was seeking and then provided the raw data that she received directly to the appellant. In my view, the Police have demonstrated both a commitment to the principles of the *Act* and to public service. To conclude, I am satisfied that in exercising their discretion to apply section 15(a), they did so by considering only relevant considerations and no irrelevant factors.

ORDER:

I uphold the decision of the Police.

Original signed by: July 27, 2011
Bernard Morrow
Adjudicator