

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER MO-2667

Appeal MA10-393

Sault Ste. Marie Police Services Board

November 2, 2011

Summary: The appellant made a request to the Sault Ste. Marie Police Services Board (the police) for access to the notebook entries of a named constable for a specified roadside stop. The police provided a decision that no responsive records exist. During mediation, the appellant specified the date of the roadside stop and the police conducted an additional search, but did not locate any responsive records. The appellant takes the position that responsive records should exist as he witnessed the named constable making notes. The appellant's basis for concluding that records should exist was found not to be reasonable and the appeal was dismissed.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 17.

OVERVIEW:

[1] The appellant made a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Sault Ste. Marie Police Services Board (the police) for access to the notes of a police officer relating to a specified roadside incident. The appellant specifies, "any notes that [named officer] may have made to suggest that he was instructed to conduct the stop by a second specified police service [officer]."

[2] The police issued a decision advising that no responsive records exist. In their decision the police indicated that the named constable was contacted and he advised

that he does not have any notes pertaining to the traffic stop. The appellant appealed the police's decision that no responsive records exist.

[3] During mediation, the appellant provided the police with the date of the roadside stop in an effort to clarify his request. The police conducted an additional search using the new date, again consulting with the named constable and advised that no notes of the specified incident could be found.

[4] Also during mediation, the parties participated in a teleconference that included the named constable. The constable explained that he issued three tickets to the appellant as a warning and that he is not required to make notes in his notebook when warnings are issued. The appellant maintains that he saw the constable making notes during the stop and notes ought to exist.

[5] During my inquiry into this appeal, I sought and received representations from the appellant only.

[6] In this order, I uphold the police's search as reasonable.

DISCUSSION:

WAS THE POLICE'S SEARCH FOR RESPONSIVE RECORDS REASONABLE?

[7] 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.

[8] 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].

[9] 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].

[10] 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].

[11] 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].

[12] The police have conducted a number of searches for responsive records using the dates specified by the appellant. During the teleconference, the named constable submitted that he does not record notes in his notebook when he gives warnings, as was the case in the situation that is the subject of this request and appeal.

[13] The appellant submits the following in support of his position that responsive records should exist:

- He was stopped by named constable on or about July 7, 2010 for not having a valid sticker on his plate.
- He also did not have his identification with him at the time of the stop.
- He witnessed the named constable return to his car and document the traffic stop in his notebook.
- He also witnessed the named constable filling out the tickets.
- The named constable returned to the appellant's car and gave him the tickets.
- The constable informed the appellant that he had 72 hours to bring the required documentation to the police station and if he did so the tickets would go away.

[14] The appellant also expresses his view that the roadside stop was suspicious because the named constable had turned on his cruiser's lights before the appellant had passed him. Further, the appellant submits that the circumstances surrounding the stop may have been coincidental to the fact that he was having an issue with a named OPP officer at that time. The appellant made his request to the police based on his concern that the named constable may have been instructed to stop the appellant by the named OPP officer.

[15] The police and the named constable have provided extensive evidence of the searches they conducted for the requested notes. While I am not able to determine definitively whether the appellant witnessed the officer writing the tickets or making the notes, I find that the police have provided sufficient evidence to enable me to find that they made a reasonable effort to identify and locate the named constable's notes.

[16] The appellant's basis that responsive records should exist is the following:

- He witnessed the police officer making notes.
- The time and location of the roadside stop were suspicious.

- He was involved in a personal matter with an OPP officer at this same time.

[17] The appellant's concern of the suspicious nature of the roadside stop is not borne out by any evidence and I find that it is no more than speculation. Further, while I do not doubt that the appellant witnessed the constable writing something down, it is not clear to me that the constable was making notes in his notebook and not writing the tickets. As such, I find that the appellant has not established a reasonable basis that records should exist.

[18] Based on my review of the circumstances in this appeal, I find that the appellant has not provided a reasonable basis for concluding that responsive records exist. As stated above, the police are not required to prove with absolute certainty that further records do not exist. The police must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.

ORDER:

I uphold the police's search as reasonable and dismiss the appeal.

Original Signed by: _____
Stephanie Haly
Adjudicator

November 2, 2011