

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-2685

Appeal MA09-120-2

Halton Regional Police Services Board

January 6, 2012

**Summary:** The Halton Regional Police Services Board (the police) received a five-part request for access to various categories of records involving the requester. The police located and disclosed, in part, records responsive to several parts of the request. The appellant argued that additional records beyond those located ought to exist. Based on the representations of the police and the appellant, the search was found 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 4(1)

### OVERVIEW:

[1] The Halton 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 records related to the requester. The request stated as follows:

1. All of the records in question which were provided to the RCMP by the HRPB including but not limited to: police notes and statements of Staff Sergeant Ken Cormier, Detective Sergeant Nikitin, Staff-Sergeant Baker, Cst Chris Clarke, Cst. Trute, Cst. Dawson, and Cst. Nalepa, as well as the documents and log entries from Ms. Teresa Parker, all in relation to myself.

2. All correspondence which sent by the HRPS in relation to the aforementioned records to the RCMP including but not limited to correspondences which were addressed to Inspector Bates, Sgt. Paul Dickinson, S/Sgt Wally Babenko, Superintendent Paul Thorne of the RCMP, by HRPS or an employee thereof.
3. All correspondences and records which were received by the HRPS which were sent by the RCMP to the HRPS in relation to myself.
4. All the records in question which were provided to the Crown Attorney in the Halton Area, by HRPS, including but not limited to police notes and statements of Staff Sergeant Ken Cormier, Detective Sergeant Nikitin, Staff-Sergeant Baker, Cst Chris Clarke, Cst. Trute, and Cst. Nalepa, in relation to myself.
5. All correspondences and records which were received by the HRPS which were sent by the Crown Attorney in Halton to the HRPS in relation to myself.

[2] In response, the police issued an initial decision denying access to the records on the basis that the request was frivolous and vexatious pursuant to section 4(1)(b) and 20.1(1) of the *Act*. The requester, now the appellant, appealed the decision to this office and file MA07-228 was opened to address that issue.

[3] The file was transferred to the adjudication stage to deal with the frivolous and vexatious issue. During the adjudication process, it was clarified that the records that are being sought are for the time period between August 6, 2005 and December 1, 2006, in the case of records shared between the police and the RCMP and March 18, 2004 through September 1, 2006, with regard to records shared between the police and the Crown Attorney in the Halton area.

[4] Adjudicator Morrow issued Order MO-2390, and ordered the police to issue a decision letter in response to the access request treating the date of the Order (January 30, 2009) as the date of the request and Appeal MA07-228 was closed.

[5] In response to Order MO-2390, on February 27, 2009 the police issued a decision that stated:

Following careful review of Item # 1, #2, and #3 as listed above and after consultation with the Professional Standard Bureau and a secondary search of their files, it has been determined that all of the documentation you have requested has already been processed in our FOI case file 05-459 which lead to Order MO-2266 being issued on January 31, 2008 by the Information and Privacy Commissioner's office. The records were

disclosed to you with a cover letter dated February 25, 2008. Enclosed you will find an embossed copy of the records.

[6] With respect to item #4 and #5, consultation took place with the Professional Standards Bureau of the police and in a decision dated September 10, 2009, which is the subject of the current appeal, the police stated:

Following another extensive search of our storage facility, a crown brief has now been located by our Records Bureau. As the crown brief is the property of the Crown Attorney, access must be made through the Ministry of the Attorney General. Please forward a \$5 application fee, payable via cheque to the Ministry of Finance, attention FOI Coordinator, Ministry of the Attorney General, 5<sup>th</sup> Floor, 720 Bay Street, Toronto, ON M5G 2K1.

With respect to your request for a copy of the records provided to the RCMP between August 6, 2005 and December 1, 2006. Enclosed you will find a copy of the record shared with the RCMP within that time frame, with only your personal information; therefore some information has been removed, as disclosure would constitute an unjustified invasion of another individual's personal privacy [section 38(a)&(b)]. These records have been edited according to Order MO-2266 issued on January 29, 2008.

[7] The requester, now the appellant, appealed the police's decision to this office. As a result, appeal MA09-120-2<sup>1</sup> was opened and extensive mediation was undertaken, which is described in more detail below.

### **Parts 1 and 2 of the request**

[8] As noted above, this appeal concerns records created by the police during the time period from August 6, 2005 to December 1, 2006. The police located records responsive to parts 1 and 2 of the appellant's request and provided the appellant with copies of some of them. The police denied access to a portion of these records as this information qualified for exemption under the discretionary invasion of privacy exemption in section 38(b) and the exemption in section 38(a), taken in conjunction with the law enforcement exemptions in sections 8(2)(a), 8(1)(e) and 8(1)(l) of the *Act*. The appellant does not take issue with the severances made to these records and he is not appealing the decision to withhold these portions of the records.

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<sup>1</sup> Appeal MA09-120 was originally closed by this office. Following the issuance of the decision letters on February 27 and September 10, 2009, it was re-opened as Appeal MA09-120-2.

[9] However, the appellant believes that additional records exist related to parts 1 and 2 of his request and wishes to appeal the decision on the basis that the police did not conduct a reasonable search for responsive records.

### **Part 3 of the request**

[10] With respect to part 3 of the appellant's request, the police maintain that its search did not locate additional records that were sent to the police by the RCMP.

[11] The appellant does not accept the police's position and believes that additional records exist. Therefore, the appellant wishes to appeal the decision related to part 3 of his request on the basis that the police did not conduct a reasonable search for such records.

### **Parts 4 and 5 of the request**

[12] With respect to parts 4 and 5 of the request, it was established during mediation that the Crown Brief records identified by the police as responsive were not, in fact, those sought by the appellant. However, the appellant appealed the decision respecting parts 4 and 5 of the request on the basis that further responsive records should exist.

[13] To support his position that additional records exist, the appellant provided a copy of a memo he received from the RCMP which he argued demonstrated the existence of additional records. This evidence consisted of a memo the appellant received from the RCMP to the IPC's mediator noting that a Report to Crown Counsel (RTCC) was prepared by the police and forwarded to the Crown. The appellant's position is that his memo confirms that the records identified as the RTCC were prepared by the police and sent to the Crown during this period. The mediator forwarded a copy of this memo to the police, who then advised that an additional search was conducted and every office that may have records related to the matter was contacted, but no records were found.

[14] When advised of the police's position, the appellant indicated that he wished to appeal the decision related to part 4 of his request on the basis that the police did not conduct a reasonable search. The appellant agreed to withdraw his appeal respecting part 5 of the request, however.

[15] As further mediation was not possible, the file was referred to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*. I sought and received the representations of the Police, which were shared with the appellant in accordance with Practice Direction 7. I also received representations from the appellant.

## **DISCUSSION:**

### **Was the police's search for records responsive to parts 1, 2, 3 and 4 of the request reasonable?**

[16] The sole issue for determination in this appeal is whether the police have conducted a reasonable search for records responsive to parts 1, 2, 3 and 4 of the appellant's request.

[17] 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.

[18] 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].

[19] 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].

[20] 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].

[21] 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].

### ***Analysis and findings***

[22] In their representations, the police describe that several separate searches for responsive records were undertaken by or on behalf of the officers involved in the matters identified by the appellant. For each of the four parts of the request still remaining at issue the police have provided a description of the efforts made to identify and locate responsive records.

[23] In the case of part 1 of the request, the police indicate that upon receipt of the request, it was forwarded to the "Inspector of the Professional Standards Bureau" (the PSB) who then conducted searches of the identified officers' record-holdings for their communications with the RCMP. With respect to the first part of the request, the police state that records were located and disclosed, in part, to the appellant. Additional searches for responsive records were undertaken by the Administrative Assistant to the PSB on three other occasions and further records were not located.

[24] Similarly, part 2 of the request was also forwarded to the Inspector of the PSB who located officer notebooks and memoranda which were "edited and released to the appellant." Again, the PSB's Administrative Assistant conducted three additional searches for records which did not reveal anything further.

[25] With respect to part 3 of the request, the police submit that identical searches were undertaken by the PSB's Inspector and Administrative Assistant for the records responsive to this part as well.

[26] Finally, with respect to part 4 of the request, the police indicate that upon receipt of the request each of the identified officers were contacted and asked to conduct searches of their records for responsive records. Each of the officers indicated that they do not have any records that are responsive to this part of the request.

[27] In his representations, the appellant points out what he describes as apparent inconsistencies in the police representations regarding the existence or non-existence of further responsive records. One of these discrepancies relates to the existence of a crown brief. I note that this issue was addressed mid-way through the adjudication stage of the appeal when the parties agreed that the crown brief referred to by the police concerned an earlier matter involving the appellant which took place in 1999 and 2000, rather than events which took place in 2003 and 2004, the time period covered by this request.

[28] The appellant takes the position that the police were obliged to contact the RCMP to obtain information from that organization about any contacts that may have been made between the two agencies relating to him. The appellant argues that in order for the police to conduct a reasonably thorough search of its own records, it ought to have consulted with the RCMP and coordinated its searches with theirs.

[29] I have carefully reviewed the representations of both the parties to this appeal, particularly the submissions of the police describing the nature and extent of the searches which they conducted for records responsive to the four remaining parts of the appellant's request. I have also carefully considered the appellant's arguments in favour of a finding that the searches undertaken by the police were not reasonable.

[30] Based on the information contained in those representations, I conclude that the searches undertaken by the police for responsive records were reasonable, taking into account all of the circumstances surrounding this appeal. I further find that the police are not obliged to contact another organization in order to coordinate or obtain assistance in conducting their own searches. I find that the steps taken by the police to locate and identify the requested information from their own record-holdings were adequate to satisfy their obligations to the appellant.

**ORDER:**

I conclude that the searches undertaken by the police were reasonable and dismiss the appeal.

Original Signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

\_\_\_\_\_ January 6, 2012