



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-276

Appeal M-9300459

Hamilton-Wentworth Regional Police Services Board



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ORDER

BACKGROUND:

The Hamilton-Wentworth Regional Police Services Board (the Police) received six requests under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to:

- (1) logs, journals or phone calls with respect to the requester from a named Detective to a Crown Attorney or a named Inspector from October 1, 1992 to October 30, 1992;
- (2) all records, logs, journals, telephone, verbal or other with respect to the requester from a named Inspector from October 1, 1992 to October 30, 1992;
- (3) logs, notebooks, diaries, telephone or fax transmissions with respect to the requester from a named Inspector from April 28, 1992 to June 12, 1992;
- (4) telephone and written messages pertaining to or from the requester to a named officer, including return calls, notes and logbooks of the officer from January 21, 1991 to January 25, 1991, and all conversations and correspondence with a named individual regarding the requester during May, June and July, 1992;
- (5) all records, notebooks, memos, phone calls or fax transmissions in connection with or about the requester from a named individual with four other named individuals; and
- (6) all log, note, phone, fax, memos or any other transmission used by a named individual including oral instructions in regards to the requester.

In response to the first request, the Police granted access to responsive portions of 9 pages of officer's notes. In response to Requests 2, 3 and 6, the Police notified the requester that any responsive records were within the scope of another request submitted by the requester, and would be dealt with therein. Otherwise, the Police indicated that no responsive records exist.

The requester appealed the decision of the Police, as he believes that additional records responsive to his requests exist, and that he finds the officer's notes he was granted access to illegible.

Mediation of the appeal was not successful and notice that an inquiry was being conducted to review the decision of the Police was sent to the Police and the appellant. Representations were received from both parties.

ISSUES:

- A. Whether any of the information contained in the record qualifies as "personal information" of the appellant as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether section 37(3) of the Act requires that the Police clarify the information contained in the record to the appellant.
- C. Whether additional records responsive to the requests are in the custody or under the control of the Police.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether any of the information contained in the record qualifies as "personal information" of the appellant as defined in section 2(1) of the Act.

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, ...

Having reviewed the records which have been disclosed to the appellant, I find that they all contain information which satisfies the definition of personal information in section 2(1) of the Act. I find that this information is the personal information of the appellant.

ISSUE B: If the answer to Issue A is yes, whether section 37(3) of the Act requires that the Police clarify the information contained in the record to the appellant.

The appellant indicates that he cannot decipher the handwriting of the officer, and he wishes to be provided with the information in a form that he can read.

Section 37(3) of the Act reads:

If access to personal information is to be given, the head shall ensure that the personal information is provided to the individual in a comprehensible form and in a manner that indicates the general conditions under which the personal information is stored and used.

In my view, this section creates a duty to ensure that the average person can comprehend the record. The Police have identified that a number of individuals involved with the records were able to decipher them. I have reviewed the records, and I am of the view that the average person is able to comprehend the records. It is my view that in the circumstances of this appeal there is no obligation on the Police to create a typewritten copy of the records.

ISSUE C: Whether additional records responsive to the requests are in the custody or under the control of the Police.

Where a requester provides sufficient details about the records which he or she is seeking access to and the Police indicate that additional records do not exist, it is my responsibility to ensure that the Police have made a reasonable search to identify the records which are responsive to the request. While the Act does not require that the Police prove to the degree of absolute certainty that such records do not exist, the search which the Police undertake must be conducted by knowledgeable staff in locations where the records in question might reasonably be located.

The appellant submits that some of his requests involve high-ranking individuals within the Police, and that one would expect that because of their position, records or logs of telephone conversations would be kept.

The Police submit that the appellant was advised that telephone conversations are not taped by the Police (with the exception of calls to the 911 line) and, therefore, there would not be a record of any telephone conversations. The Police also advised the appellant that a record of a conversation would very rarely be kept, except possibly in an officer's notebook, and that not all officers keep notebooks. The Police have provided six separate memos signed by the staff who were responsible for the searches conducted for responsive records. These memos identify that the searches resulted either in the provision of the responsive records to the Freedom of Information Co-ordinator (in the case of Request 1), or in no responsive records being found.

Having carefully reviewed the representations, I am satisfied that the search conducted by the Police was reasonable in the circumstances of this appeal.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ February 24, 1994