



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-306

Appeal M-9400108

London Police Services Board



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ORDER

On March 28, 1994, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and make orders under the provincial Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

The London Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to information in a named police officer's notebook relating to the police officer's appearance before a named Justice of the Peace at a stated date and time.

The Police denied access on the grounds that the records do not exist. The Police indicated that the police officer's notebook contained no entries for that particular day and that the Daily Duty List showing his duties for that day had been destroyed in accordance with their Retention and Destruction By-law. The requester appealed the decision of the Police maintaining that records should exist.

Mediation 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.

The sole issue to be decided in this appeal is whether the Police have conducted a reasonable search for the requested records.

In a sworn affidavit, the Freedom of Information and Protection of Privacy Co-ordinator for the Police outlines the steps taken to search for responsive records. The police officer's notebook and the Duty List for the particular day were requested from the officer's supervisor. The supervisor confirmed with the Freedom of Information and Protection of Privacy Co-ordinator that the police officer's notebook contains no entries for the particular date because the nature of his duties during that year did not require him to maintain any notebook entries. The affidavit also states that the Duty List for that period had been destroyed in January, 1993, in accordance with the retention schedule. The copy of By-law 6-81 submitted by the Police sets out the retention and destruction periods for all Police records, and shows that the Duty List was destroyed in accordance with the timelines set out in the by-law.

Where a requester provides sufficient details about the records to which he is seeking access and the Police indicate that no responsive records can be located, it is my responsibility to ensure that the Police have made a reasonable search to identify any records which are responsive to the request. In my view, the Act does not require that the Police prove to the degree of absolute certainty that such records do not exist. In the circumstances of this case, I believe that the Police have provided a reasonable explanation as to why the records do not exist.

Having carefully reviewed the affidavit and the representations submitted to me, I am satisfied that the search conducted by the Police for records responsive to the appellant's request was reasonable in the circumstances.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ April 19, 1994