



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

ORDER P-652

Appeal P-9300502

Ministry of the Attorney General



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

The Ministry of the Attorney General (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for answers to certain questions relating to the requester's arrest and to four subsequent attendances which he made in court. The questions are:

- (1) Who laid the charge? i.e. the Police or the A/G? (or whomever)
- (2) Who accepted the laying of the charge?
- (3) Who reviewed the charge as to if it should stand or be rejected?
- (4) Who requested the charge be withdrawn? (and of course the reason)
- (5) Who withdrew the charge? (again reason)

The Ministry responded to the request by providing a copy of the Information laid in the matter of concern to the requester. The Ministry is of the view that this document contains factual information which answers Questions 1, 2, 4 and 5.

The Ministry's decision letter also indicates: (1) the date on which the charge was sworn, (2) the name of the police officer who swore the Information, (3) that the charge was sworn before a Justice of the Peace (JP) and (4) that the JP accepted the charge. The decision letter also indicates that "[t]he charge was eventually withdrawn by the Crown Prosecutor in Court".

With respect to the review of the charges (Question 3 of the request), the Ministry's decision letter states that:

... charges are continually subject to review as part of the ongoing screening process of the Crown Attorney's office, especially in the present case where alternate measures appeared appropriate.

With respect to those portions of Questions 4 and 5 which are concerned with reasons for the withdrawal of the charge, the Ministry indicates that the Crown's reasons for particular actions are usually stated in court and recorded by the court reporter. The Ministry also points out that the requester is entitled to order a copy of the court transcript through the Court Reporter's office. The Ministry then provided the requester with the address of the relevant court reporter's office.

The requester wrote to the Ministry in response to the decision letter, referring to the questions in his original request, and appealed the decision of the Ministry on the following grounds:

- (1) Although the name of the officer who swore the Information was provided, the Ministry did not include his badge number.
- (2) The name of the Justice of the Peace on the Information, referred to by the Ministry in response to Question 2, was not legible.
- (3) With respect to Question 3, no response was given as to who decided whether the charge should stand or be rejected. Further, no explanation was given as to the "alternate measures" described in the decision letter.
- (4) The appellant feels that it should not be necessary for him to obtain transcripts of his court appearances in order to receive a response to Questions 4 and 5. He also feels that this serves to delay answering his questions.

During the mediation stage of the appeal, the Ministry located two additional responsive records, a recognizance to keep the peace entered into by the appellant and the back page of a Crown folder relating to the disposition of the charge about which the appellant originally enquired. The Ministry disclosed these records along with a new decision letter to the appellant.

At this stage of the proceedings, the appellant also indicated that he wished to know the badge number of another police officer mentioned in the Information and the name and address of the Crown Attorney or Assistant Crown Attorney responsible for withdrawing the charge against him.

Further mediation was not successful and notice that an inquiry was being conducted to review the decision of the Ministry was sent to the Ministry and the appellant. Representations were received from the Ministry only. The appellant indicated that he wished his correspondence addressed to the Deputy Attorney General, dated September 27, 1993, which was submitted to the Commissioner's office with his letter of appeal, to serve as his representations. The substance of this letter is summarized in points 1 through 4 on page 2 of this order. During the inquiry stage of the appeal, the appellant also indicated that he no longer wished to obtain access to the transcript of his court appearances.

The appellant made a specific request in the form of five numbered questions listed on page 1 of this order. In his letter of appeal and during mediation, the appellant clarified and elaborated on this request.

In Orders 17 and 54, former Commissioner Sidney B. Linden discussed the appropriateness of requests being made to an institution in the form of questions and the extent of the institution's obligation in responding to such requests.

In Order 17, Commissioner Linden quoted with approval the Williams Report, "Public Government for Private People" (1980):

At page 241 (Volume 2) of the report, the author addresses the question of to which kinds of information or documents access should be given:

"A common feature of the freedom of information schemes in place in other jurisdictions is that the type of "information" to which access is given is material which is already recorded in the custody or control of the government institution. **Thus, a right to "information" does not embrace the right to require the government institution to provide an answer to a specific question; rather, it is generally interpreted as requiring that access be given to an existing document on which information has been recorded.** This is not to say, of course, that the government should feel no obligation to answer questions from the public. Indeed, as we have indicated in an earlier chapter [13], the government of Ontario has committed substantial resources to establishing citizen's inquiry services with this specific objective in view. It would be quite unworkable, however, to grant a legally binding right of access to anything other than information contained in existing documents or records. (emphasis added)

For obvious reasons, most freedom of information schemes broadly construe the concept of "document" or "record" to include the various physical forms in which information may be recorded and stored. Thus, the right of access normally extends to all printed materials, maps, photographs, and information recorded on film or in computerized information systems."

My conclusion is, therefore, that an individual's right of access to information under the Act relates to information already recorded, whatever its physical form. In the absence of existing recorded information, the Act does not require the creation of a new record.

I adopt the view of Commissioner Linden that an institution is not required to create records in response to a request which is posed in the form of a question. However, when a request for personal information is received by an institution under the Act in the form of a series of questions, it is incumbent upon the institution to seek clarification of the request under sections 24(2) and 48(2) of the Act. I am satisfied that, in the circumstances of this appeal, the Ministry has met this obligation fully. I find that the Ministry has taken all reasonable steps to clarify the nature of the appellant's request and to provide him with access to all records which are responsive to the request as originally and subsequently framed.

On this basis, the sole issue to address in this appeal is whether the Ministry has conducted a reasonable search for records responsive to the original request as subsequently clarified by the appellant.

In its representations, the Ministry addresses "[t]he existence or non-existence of records responsive to the information sought by the Appellant" and has provided an affidavit sworn by the individual who conducted the searches for records responsive to the request.

With respect to the appellant's first question, the Ministry's representations and the affidavit which was included indicate that a search was made but that no responsive records were found which identify the badge numbers of either of the officers whose names appear on the Information.

As indicated in Order 17, it is not necessary for the Ministry to create a record which contains the badge numbers for these officers. In the circumstances, I find that the Ministry has an obligation only to conduct a reasonable search for records which might contain such information. I am satisfied that the search undertaken for records responsive to this portion of the request was reasonable in the circumstances of the appeal.

With respect to the appellant's second question, the Ministry's representations indicate that a search was undertaken but that no records, other than those already disclosed to the appellant, were located which might identify the JP. The Ministry's representations further state that "The Ministry has reviewed the records and is unable to decipher the signature." I am satisfied, based on the representations submitted by the Ministry and the affidavit provided, that the search for records responsive to this portion of the appellant's request was also reasonable.

With respect to the appellant's third question, the Ministry's representations indicate that the charge was reviewed by a specific Assistant Crown Attorney. The appellant has been provided with the name, title and address of this individual, as requested. In my view, the Ministry has provided a responsive record to this aspect of the request and it has clarified the information in that record to ensure that the appellant understands the materials. I am satisfied that no further records exist which address this portion of the appellant's request.

With respect to the appellant's fourth question as to who requested that the charge be withdrawn and the reason, the Ministry has indicated in its submissions that records which might contain this information do not exist. As with respect to the appellant's first question, I am satisfied that the affidavit evidence tendered demonstrates that a reasonable effort was made by an experienced employee of the Ministry to locate records which might identify the individual(s) who requested that the charge be withdrawn and the reason for the withdrawal of the charge.

With respect to the appellant's fifth question as to who withdrew the charge and why, the Ministry has indicated in its representations that the records provided to the appellant state that the Assistant Crown Attorney withdrew the charge. However, the Ministry does not dispute that neither the recognizance document nor the folder, both of which were disclosed to the appellant, contain an explanation as to the reason(s) for the withdrawal of the charge. The Ministry has indicated in its representations that information describing why the charge was withdrawn does not appear in the records which it has located. Based on the affidavit evidence provided in the Ministry's representations I am satisfied that a reasonable effort was made to locate records responsive to this portion of the appellant's request.

I am satisfied, based on the representations of the parties and the affidavit submitted by the Ministry, that the search undertaken by the Ministry for records responsive to all facets of the appellant's request was reasonable in the circumstances of this appeal.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ April 6, 1994