



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-504

Appeal M-9400597

Metropolitan Toronto Police Services Board



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>

NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Metropolitan Toronto Police Services Board (the Police) received a request for records relating to the requester's deceased brother. The records requested relate to a 1973 hit-and-run accident involving the deceased, any records relating to the property of the deceased, including records relating to such property which may have been in their father's possession at the time of the father's death.

The Police denied access on the basis that the financial information being sought is not contained in the Police files. The Police state that section 54(a) of the Act may be applicable in the circumstances of this appeal.

The requester appealed as he believes that responsive records exist.

There are two issues to be addressed in this order:

- (1) whether the search conducted by the Police for records responsive to the request was reasonable in the circumstances of this appeal, and
- (2) whether the appellant has the right to exercise the deceased's right of access to his own personal information.

A Notice of Inquiry was provided to the appellant and the Police. Representations were received from both parties.

DISCUSSION:

REASONABLENESS OF SEARCH

In their decision letter, the Police state "... the financial information which you are attempting to locate is not contained in Metropolitan Toronto Police files".

The representations of the Police indicate that they clarified the request with the appellant. The appellant explained that, as a result of injuries sustained from the 1973 hit-and-run accident, his brother had been awarded substantial compensation. The appellant was seeking access to information about this money together with any property records of his brother at the time of his death in 1982 and which might have been in the possession of their father at the time of the father's death in 1985.

The Police state that the type of information sought would not be contained in their accident or homicide occurrence records.

The Police refer to their Records Retention Schedule (the schedule) which sets out the retention periods and destruction times for the various types of police records. The schedule provides that all accident reports, except fatalities, are retained for six years after which they are purged. General occurrence reports are retained for five years. If the hit-and-run accident involving the deceased in 1973 was recorded on an

occurrence report, it would have been purged in 1978.

The Police state that homicide occurrences are retained indefinitely on microfilm and that the microfilmed homicide occurrence relating to the deceased does exist. The Police state that, in response to the request and subsequent clarification, the microfilmed record was obtained from the occurrence processing unit and reviewed for information responsive to the request but none was found. I have reviewed the record in question and I agree it is not responsive to the request.

With respect to property receipts that may have existed at the time of the homicide, the Police state that property receipts are retained by the occurrence processing unit for five years after the disposal of the property and then purged. Similarly, any reference to property in police officers' memorandum books would be required to be purged after a period of seven years.

The Police point out that, during mediation, the appellant suggested that his father had died under "suspicious" circumstances. In this regard, the Police conducted a search of the microfiche records in the occurrence processing unit for a 1985 occurrence relating to the father. No records were found.

Where a requester provides sufficient details about the records which he or she is seeking and the Police indicate that such records do not exist, it is my responsibility to ensure that the Police have made a reasonable search to identify any records which are responsive to the request. The Act does not require the Police to prove with absolute certainty that the requested records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the Police must provide me with sufficient evidence to show that they have made a reasonable effort to identify and locate records responsive to the request.

I have carefully reviewed the representations of the parties. Based on the evidence before me, I find that the search conducted by the Police was reasonable in the circumstances of this appeal.

Because of the manner in which I have disposed of the issue above, I do not need to address the possible application of section 54(a) of the Act to the circumstances of this appeal.

ORDER:

I uphold the decision of the Police.

Original signed by: _____

Mumtaz Jiwan
Inquiry Officer

March 29, 1995