



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-483

Appeal M-9400688

Niagara Regional Police Services Board



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NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Niagara Regional Police Services Board (the Police) received a request for information relating to costs for investigating and preparing for trial in two cases, follow up in one of the two cases, and costs of the Green Ribbon Task Force, including personnel and consultants.

The Police responded that no records exist, as expenses associated with the identified cases and the Green Ribbon Task Force are paid directly by the province of Ontario. The Police indicated that they pay the wages where their officers are involved, however there is no record which identifies which wages are attributable to the Task Force or any specific case or investigation.

The requester appealed the decision of the Police, as he believes additional responsive records should exist.

A Notice of Inquiry was sent to the appellant and the Police. Representations were received from the Police only.

DISCUSSION:

REASONABLENESS OF SEARCH

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.

In their decision letter, the Police indicate that the decision was based on a meeting with their Finance Director, and advice provided by the Finance Director in that meeting. The Police indicate that if any such record existed, the Finance Director would be aware of it as all such expenses would need his approval. In response to a request in the Notice of Inquiry for an affidavit detailing the searches carried out, the Freedom of Information and Privacy Co-ordinator of the Police provided a sworn copy of his decision letter.

During the course of this inquiry, the Police indicated that wages, benefits and overtime are paid to officers assigned to these cases by the Police. The Police indicate that all other expenses are paid directly by the province, but have not provided information which would explain the processing of such expenses in order to show that the Police do not have custody or control of such records.

The Police have not disputed the fact that they do have payroll records. Nor have they disputed that they have general orders which would indicate which officers had been exclusively assigned to the Green Ribbon Task Force for what period of time. The Police have not indicated that such records would not be

responsive to the appellant's request. They do, however, maintain that the records are not retained in the form requested by the appellant.

I am not satisfied with the decision of the Police. It is apparent to me that wages, benefits and overtime are costs, therefore, records which contain information responsive to at least part of the request do exist.

In my view, in cases where a request is for information which currently exists, either in whole or in part, in a recorded format different from the format asked for by the requester, section 17 of the Act imposes the responsibility on the Police to identify and advise the requester of the existence of these related records. Prior to undertaking the actual search, the Police should determine if the appellant wishes to proceed with the request on this basis.

ORDER:

1. I order the Police to inform the appellant of the extent of its record holdings which may contain information responsive to the request, and seek clarification from the appellant as to the basis on which he wishes to proceed with the request, within twenty (20) days of the date of this order.
2. I order the Police to issue a decision under the Act regarding the appellant's access to records which are responsive to the request on the basis which the appellant indicates he wishes to proceed with within thirty (30) days of the date of receipt of such clarification from the appellant.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ March 8, 1995