



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

ORDER M-530

Appeal M-9500017

Metropolitan Toronto 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 Metropolitan Toronto Police Services Board (the Police) received a letter in which the requester sought access to personal information about himself, and information about his brothers and his father. The request was submitted in the form of questions. A second letter was sent to the Police by the requester in which he provided further background pertaining to the information he was seeking and his reasons for asking for it.

The request contained three identically worded questions pertaining to two named murder investigations and to murder investigations generally. The follow-up letter which was sent to the Police made specific reference to other investigations. The pertinent part of the questions was stated as follows:

Am I, or is one of my brothers, or my father, an old, new, or continuing suspect in [a named murder investigation] to the knowledge of the [Police]?

The Police contacted the appellant and advised him that it was not within the mandate of the Freedom of Information Unit to conduct investigations or to proffer opinions concerning the status of individuals in relation to ongoing criminal investigations. The request was then forwarded to the Homicide and Missing Persons Squad and the appellant was advised to contact a named police officer in that Unit.

The appellant submitted a reformulated request to the Police in which he set out 52 questions in his attempt to clarify the information he was seeking. The Police again responded to the appellant by forwarding his request to the Homicide and Missing Persons Squad and advising him that the Freedom of Information Unit is only mandated to disseminate **recorded** information.

The appellant appealed the refusal of the Police to provide him with a decision with respect to the information he seeks. In subsequent correspondence to the Commissioner's office he indicates that the "thrust" of his information requests should be clear and he does not know how else to phrase them. He then states:

Is there any document anywhere with my name on it as some sort of suspect - past, present or future - in some sort of homicide? And if so, what homicide?

The Police take the position that it does not consider the contents of the letters received from the appellant to constitute a request for recorded information under sections 17, 36 and 37 of the Act.

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

The sole issue in this appeal is whether or not the appellant's request constitutes a proper request under the Act.

DISCUSSION:

FORM OF THE REQUEST

Section 17 of the Act, which applies to requests for information generally, states:

- (1) A person seeking access to a record shall make a request for access in writing to the institution that the person believes has custody or control of the record and shall provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record.
- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Sections 36 and 37 of the Act apply to requests for personal information. The pertinent portions of these sections provide:

36.-(1) Every individual has a right of access to,

- (a) any personal information about the individual contained in a personal information bank in the custody or under the control of an institution; and
- (b) any other personal information about the individual in the custody or under the control of an institution with respect to which the individual is able to provide sufficiently specific information to render it reasonably retrievable by the institution.

37.-(1) An individual seeking access to personal information about the individual shall make a request for access in writing to the institution that the individual believes has custody or control of the personal information and shall identify the personal information bank or otherwise identify the location of the personal information.

The Police acknowledge that a request in the form of questions may be acceptable in certain circumstances, particularly when an individual is seeking access to his or her personal information (Order 54). However, the Police argue, this should not go so far as to include any question regardless of content. They assert that a valid request under the Act must fulfil certain conditions, as laid out in sections 17, 36 and 37. The Police do not clearly specify what, in their view, those conditions should be, however.

In their representations, the Police state that the questions posed by the appellant require "yes" or "no" answers, not documents. They indicate that the appellant was asked whether or not he had ever been interviewed, questioned or contacted by the police in any way in regards to the specific investigations he referred to. He indicated that he had not. The Police assert that because the appellant has no reason to believe there are any documents concerning him, he cannot be requesting documents, but must, rather, be

requesting opinions. In order to be able to answer these questions, the Police would be required to contact each police officer who had been involved in an investigation, and ascertain the personal opinion of each officer regarding the requester. The Police submit that this is not the mandate of the Freedom of Information Unit, nor is it consistent with the intention of the Act. The appellant was advised to reformulate his request to ask for documents.

In his representations, the appellant outlines his suspicions regarding the Police, and why he believes the Police may have records pertaining to him in the context of his request. In general, he believes that the nature of the information he is seeking from the Police is clear, that is, whether or not he has been a suspect in a homicide investigation.

The issue of the Form of the Request was addressed by Inquiry Officer John Higgins in Order M-493. With respect to a request in the form of questions, he stated:

In my view, when such a request is received, the Board is obligated to consider what records in its possession might, in whole or in part, contain information which would answer the questions asked. Under section 17 of the Act, if the request is not sufficiently particular "... to enable an experienced employee of the institution, upon a reasonable effort, to identify the record", then the Board may have recourse to the clarification provisions of section 17(2).

I agree with Inquiry Officer Higgins. I would add to this that once the Police have clarified the request with the requester, they are then obligated to search their record holdings to determine whether they contain information which would respond to the request.

In my view, the information the appellant is seeking in his request was clear from the beginning. He is seeking records which would indicate that he, or one of his brothers or his father were, at any time, suspects in certain specifically identified murder investigations or in any other murder investigation which has been identified by him. In other words, this is a request for his personal information on file with the Police as well as a request for the personal information of other individuals on file with the Police.

Although one possible route would be to provide a "yes" or "no" answer to the appellant's questions, that should not dictate whether or not the request has been properly formulated. Rather, the Police should consider what records they might have that would answer these questions. If they require further information in order to make that determination, they must inform the requester and assist him in reformulating the request, which they did.

In attempting to clarify the request, the Police contacted the appellant to determine whether he had had any contact with them concerning these investigations. It appears that they have taken the position, as a result of this clarification, that no search is necessary where it appears to them that there appears to be no basis for the request, or that the search is unlikely to produce any records. While their initial approach in contacting the appellant to assist them in determining whether records might exist and where they might be located is consistent with their obligations under section 17(2) of the Act, it should not then be used by the Police in place of, or as a reason for not conducting a full and proper search for records which might be responsive

to the request unless, as a result of clarification, the request still does not sufficiently describe the records sought.

In my view, the appellant has clearly indicated which investigation files are to be searched, and has provided information, such as his identity and the identities of others, which the Police can use as the basis for their search. The Police have not indicated that the information provided by the appellant is insufficient to enable an experienced employee to conduct a search and, upon a reasonable effort, to identify a record.

In the absence of evidence to the contrary, I am satisfied that the appellant's request for his personal information and information about other individuals, in the form requested, is a request for "recorded" information in the custody and/or under the control of the Police and, as such, constitutes a proper request under the Act.

ORDER:

1. I order the Police to conduct a search through their record holdings, using as a basis for search, the appellant's name and the names of the individuals he has identified, to determine whether they have records in their custody or under their control that respond to the appellant's request. The parameters of the appellant's request pertain to records which establish a linkage between his name, and/or the names of his brothers and father, to the murder investigations identified by him in his initial letter of request and follow-up letter.
2. I order the Police to make an access decision with respect to the appellant's request within thirty (30) days of the date of this order. This decision should be made in accordance with sections 19 and 22 of the Act and without recourse to a time extension.
3. I order the Police to provide me with a copy of the access decision letter issued to the appellant pursuant to Provision 2 of this order, within thirty-five (35) days of the date of this order. This copy of the decision letter should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____
Laurel Cropley

_____ May 18, 1995

Inquiry Officer