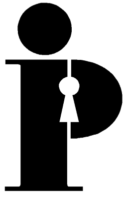

ORDER M-909

Appeal M_9600216

Peel Regional Police Services Board

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NATURE OF THE APPEAL:

The appellant submitted a request to the Peel Regional Police Services Board (the Police) under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to:

> Copies of any and all information, be that information held in written, electronic or other format, and/or held at any office/detachment of your agency, and/or held in any information file/database under your control; that pertains to me personally, as defined under the [Act]. This information would include, for example: copies of correspondence pertaining to me in any way, to/from the Peel Police and outside agencies (e.g. Ontario Police Complaints Commission, Information and Privacy Commission, and other police services) copies of internal correspondence, memos, or reports, copies of investigative notes.

This request was made in November, 1994. The appellant provided his name, date of birth, address and former address. He indicated that he was not seeking any information that had been provided to him in response to previous access requests.

The Police advised the appellant that no records responsive to his request existed. The appellant appealed this decision in December, 1994. In accordance with the procedures established by this office for processing large volumes of appeals filed by one individual, the appeal was assigned non-active status until July of 1996 when it was re-activated under the current appeal number.

During mediation of the re-activated appeal, the appellant identified a category of responsive records which he felt should be in the custody of the Police. Many of these records fell outside the scope of the request as they were created after the date of the request. The appellant subsequently agreed that these records did fall outside the scope of his request. However, at least one record which appeared to be responsive, a letter dated May 4, 1994, may not have been identified by the Police. The letter has since been destroyed.

The Police maintain their position that no records responsive to the appellant's request exist. The appellant states that the Police did not accurately identify records responsive to his request at the time it was made. He believes that responsive records should still exist. The appellant questions what, if any, criteria, policies and practices are followed by the Police when identifying records as responsive to a request for access to personal information. He also questions whether the record retention policies and practices of the Police are in keeping with the requirements of the Act.

No further mediation was possible. A Notice of Inquiry was sent to the Police and the appellant. Representations were received from both parties.

DISCUSSION:

REASONABLE SEARCH

Where a requester provides sufficient details about the records which he or she is seeking and the Police indicate that records do not exist, it is my responsibility to ensure that the Police have made a reasonable search to identify responsive records. While the Act does not require that the Police prove to the degree of absolute certainty that such records do not exist, the search which the Police undertake must be conducted by knowledgeable staff in locations where the records in question might reasonably be located.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records may, in fact, exist.

Based on his contact with various police services across the province, the appellant has provided extensive representations regarding records he believes should exist in the custody and control of the Police. He maintains that he has copies of some correspondence which was sent to the Police. He refers, in particular, to the letter dated May 4, 1994 addressed to the Police from a law firm.

Further, the appellant suggests that records may have been improperly disposed of by the Police because he believes that the Police destroyed records which should have been identified as responsive to his request.

Area of Search

In my view, the appellant's request was very broadly worded. In Order 38, former Commissioner Sidney B. Linden considered an institution's obligations with respect to broadly worded requests. He stated that:

> In my view, an institution that receives a broadly worded request has three choices in making its response. It can choose to respond literally to the request, which may involve an institution wide search for the records requested. It may request further information from the requester so that it may narrow its area of search. Finally, it may narrow a records search unilaterally, but if it does so, it must outline the limits of the search to the appellant.

In their representations, the Police indicate that, based on their experience with the appellant and the locations identified in his request, searches were conducted in three units: Incidents and Occurrences, Public Complaints Bureau and the Information and Privacy Unit.

The Police also state that by including the following sentence in their decision letter: "If you have any questions, please contact this office at ...", they would have expected the appellant to contact them if he had any serious concerns about the reasonableness of search.

Although the Police appear to have adopted the third option outlined by former Commissioner Linden, they did not notify the appellant of their decision to unilaterally narrow the search. Strictly speaking, following the approach in Order 38, this not in accordance with their obligations under the Act. However, given the large number of requests submitted by the

appellant to this and other Police forces across the province and the extensive police experience in processing these requests, I find the decision to limit the search to the areas I have listed, without contacting the appellant, was reasonable in the circumstances.

Having determined that the decision to restrict the search to these three areas was reasonable, I will now determine if the search for responsive records within the three areas was reasonable.

Search for Responsive Records

As I indicated above, the appellant directs my attention to a letter dated May 4, 1994 which he states refers extensively to him. He states that the Police should have found this letter and identified it as containing his personal information. Because the Police did not identify this letter and possibly other correspondence about him, he questions what, if any, criteria, policies and practices are followed by the Police when determining which records are or are not responsive to a request for personal information. I note that the appellant did not refer to this or similar letters in his request although he appears to have had information about their existence.

In my view, section 17(1)(b) of the Act is germane to this discussion. This section imposes a duty on requesters to "provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record". By inference, it also imposes a duty on institutions to employ experienced employees in a search to identify records responsive to the request.

In Order P-880, Inquiry Officer Anita Fineberg examined the issues of "relevancy" and "responsiveness" of records. She concluded that:

> While it is admittedly difficult to provide a precise definition of "relevancy" or "responsiveness", I believe that the term describes anything that is reasonably related to the request.

Taken together, a reasonable search would be one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request.

In their representations, the Police have informed me that both records of incidents and occurrences and files in the Public Complaints Bureau are accessed by name and date of birth. Records of incidents and occurrences are filed in a computerised data bank. Files in the Public Complaints Bureau are kept in a manual database.

The search for responsive records in the incidents and occurrences unit was conducted by a "very experienced" Records Services Clerk who "has expert knowledge of the methods of accessing our computerised database." The search in the Public Complaints Bureau was conducted by a Detective Sergeant who is a "highly experienced officer with several years experience as a supervisor ... and expert knowledge of the contents of [our] files". No records were located as a result of these searches.

Finally, administration files within the Information and Privacy Unit were searched by an analyst in this unit, with negative results. The Police indicate that with one exception, the administration files in this unit contain all Freedom of Information (FOI) related information, including general correspondence. The exception pertains to information relating to access (FOI) requests. These records are filed separately in this unit. The Police state that FOI related files were excluded from the initial search, however, during mediation they went back and reviewed these files as well.

In response to the appellant's questions regarding what, if any, criteria, policies and practices are followed when determining which records are responsive, the Police state that they have no written criteria to establish whether or not records are responsive to a particular request. Rather, they rely on the experience and common sense of the person conducting the search. The Police point out that each person involved in determining which records are responsive to a request receives extensive training.

I agree with the Police that institutions must rely on the judgment of their staff. Although they do not have written policies setting out the parameters of responsiveness, the Police receive considerable guidance, when identifying personal information records, from the definition of personal information found in section 2 of the Act, the orders that have been issued by this office and the annotated version of the Act compiled by Management Board Secretariat.

In my view, an institution has met its obligations under the Act by providing experienced employees who expend a reasonable effort to conduct the search, in areas where the responsive records are likely to be located. In the final analysis, the identification of responsive records must rely on the experience and judgment of the individual conducting the search.

Accordingly, I find that the Police's search for records responsive to the appellant's request was reasonable in the circumstances.

Having determined that the Police's search for records was reasonable in the circumstances which existed at the time of the request, in my view, the subsequent destruction of records which were not identified as responsive is not a relevant issue in this appeal. Therefore, I need not consider the issue of destruction of any records which the Police had not originally identified as responsive to the request.

ORDER:

The search for responsive records conducted by the Police was reasonable and this appeal is dismissed.

Original signed by: March 18, 1997
Laurel Cropley
Inquiry Officer