



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

ORDER M-1139

Appeal M-9800073

Halton Regional Police Services Board



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NATURE OF THE APPEAL:

The Halton Regional Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to the service records of three named police officers including “any prior or pending complaints that have been filed against these officers and any details of any such complaints as well as details of any internal discipline procedures.” The appellant subsequently clarified his request to mean records concerning prior disciplinary matters and complaints against the three named officers dating back five years from the date of the request.

The Police advised the appellant that it would have to search each disciplinary file dating back five years in order to process the request, and that the majority of these files are located in their storage facility. Based on a random sample of ten files, the Police estimated that it would take approximately 95.5 hours to conduct the search of 957 files, and provided the appellant with a fee estimate of \$2,850. The Police requested a deposit of \$1,425 before conducting the search. The Police also advised the appellant no records had yet been examined, and that they did not know whether any exemptions would apply once the search had been completed.

The appellant appealed the amount of the fee estimate provided by the Police. He subsequently requested a fee waiver which was denied by the Police.

This office sent a Notice of Inquiry to the appellant and the Police. Because the requested records might fall within the scope of section 52(3) of the Act, this issue was included in the Notice. If section 52(3) applies, and none of the exceptions listed in section 54(4) are present, then the records are excluded from the scope of the Act and are not subject to the Commissioner’s jurisdiction.

Representations were received from both parties.

In his letter of appeal, the appellant alleges improper behaviour on the part of the Police employee who dealt with his request. Neither the appeal letter nor the appellant’s representations provide details or elaborate on this allegation. I find that this allegation has not been substantiated by the appellant, and I will not deal with it further in this order.

PRELIMINARY MATTER:

SCOPE OF THE REQUEST

The appellant’s request was worded as follows:

I would like copies of the service records of [three named police officers]. Please include specifically any prior or pending complaints that have been filed against these officers and details of any such complaints as well as details of any internal discipline procedures.

In their decision letter to the appellant, the Police state:

To confirm our telephone conversation on February 2nd, you are requesting access to prior disciplinary matters against [the three named officers]. You are looking for complaints dating back five (5) years and you are not interested in any personal information these files may contain.

The Police then advised the appellant that it would be necessary to search all 957 disciplinary files for the past five years in order to respond to the request, and provided the fee estimate referred to above.

The Police explain in their representations that the request was “massive both in terms of the subject areas addressed and the time period over which the information is sought”, and point out that the appellant did not contact them to narrow the scope of his request, despite being given the opportunity to do so in the two decision letters sent to him by the Police.

The representation of the Police also include a memorandum from their Professional Standards Bureau which identifies the following categories of records which would have to be searched in order to respond to the request:

1. Public Complaints against Police Officers of this [Police] Service.
2. Public Complaints against Policy of this [Police] Service.
3. Public Complaints against service provided.
4. Civil litigation against this [Police] Service and its members.
5. Investigations conducted by Special Investigations Unit.
6. General Inquiry (Persons making inquiry as to policy and procedure, or other matters).
7. Investigations conducted on behalf of another Police Service.
8. Miscellaneous files.

The Professional Standards Bureau officer goes on to describe the proposed search as follows:

Requester has asked for a search of all files to establish if the named officers appear in any of our files. Do (sic) to the generality of the request I can only assume that the status of the officer (subject of a complaint, subject of discipline, subject of litigation, subject of criminal or other statute charges, or witness officer) is not an issue, and that the requester is interested only in the number of times the officers' name appears in our files. Should that assumption be correct then all of our files both past and present would have to be individually read.

It is this interpretation of the scope of the appellant's request the Police relied on in arriving at their fee estimate. I disagree with this interpretation.

The appellant's request is quite clear and specific; he is seeking access to the service records of the three named police officers and the details of any complaints against them, as well as internal discipline procedures. In my view, the identification of responsive records would not require search activities to the extent contemplated by the Police. The most likely source of responsive records would be the personnel or equivalent file for each of the named officers, supplemented by records falling under Category 1 and perhaps Categories 4 and 5 on the list outlined above. As far as the portion of the appellant's request dealing with "any internal discipline procedures" is concerned, the Police presumably maintain an internal policies and procedures manual which would satisfactorily address this part of the request without an extensive search.

Accordingly, I find that the Police have interpreted the request too broadly, which has resulted in the unnecessarily high fee estimate. In addition, no responsive records have been examined. As the Police acknowledge, and I agree, responsive records would have to be retrieved and examined in order to determine whether any of them fall outside the jurisdiction of the Act by virtue of section 52(3)

In my view, the most appropriate course to take in the circumstances of this appeal is to return the matter to the Police, order them to conduct a search for records responsive to the plain wording of the appellant's request, and issue a new decision letter to the appellant.

ORDER:

1. I order the Police to conduct a new search for records responsive to the plain wording of the appellant's request.
- 2.. On completion of the search, I order the Police to issue an access decision to the appellant in accordance with sections 19, 21 and 22 of the Act, treating the date of this order as the date of the request.
3. I order the Police to provide me with copies of the correspondence referred to in Provision 2, by sending a copy to me when they send this correspondence to the appellant.

Original signed by: _____ July 24, 1998

[IPC Order M-1139/July 24,1998]

Tom Mitchinson
Assistant Commissioner