

**ORDER MO-1489**

**Appeal MA-010168-1**

**Toronto Police Services Board**

## **NATURE OF THE APPEAL:**

This is an appeal from a decision of the Toronto Police Services Board (the Police), under the *Municipal Freedom of Information and Protection of Privacy Act*, in response to a request for access to information. The requester, now the appellant, specifically requested “information, notes, memoranda and reports” of a named police officer. The named police officer had attended at a certain address in response to the appellant’s 911 call.

The Police located one responsive record, the memorandum book of a second police officer. It issued a decision letter granting partial access to the information claiming the exemption in section 14 (invasion of privacy), together with section 38(b) of the *Act*. The Police also advised that the named police officer’s memorandum book cannot be located.

The appellant appealed the decision of the Police.

During the mediation stage of this appeal, the appellant informed the mediator that he is not pursuing access to the information in the second police officer’s memorandum book. This record is, therefore, no longer at issue. The appellant was not satisfied with the Police response that they were unable to locate the requested memorandum book, and reasonableness of the Police search remains at issue.

I sent a Notice of Inquiry to the Police, initially, summarizing the facts and issues of this appeal. The Police returned representations, which were shared with the appellant in their entirety, together with a copy of the Notice. Other than leaving a telephone message, the appellant did not respond to the Notice.

## **DISCUSSION:**

### **REASONABLENESS OF SEARCH**

Where a requester provides sufficient detail about the records which s/he is seeking and the institution indicates that further records do not exist, it is my responsibility to ensure that the institution has 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 further records do not exist. However, in order to properly discharge its obligations under the *Act*, the Police must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.

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

The Police submit:

After receiving the appellant’s request, the assigned FOI Analyst sent a written request to the 13 Division FOI Liaison for the memorandum book of the named police officer for [a certain date]. The FOI Liaison, who is the Detective/Sergeant in the 13 Division Detective Office, personally conducted a search of the memo

book lock-up area (where memo books are normally stored) for the book at issue, however, the results of this search were negative.

The Police then set out the steps that were undertaken to locate the requested record. The Freedom of Information (FOI) Liaison contacted the named officer's supervisor requesting that the specific memo book be forwarded to the FOI Unit. The Police indicate that when the memo book could not be located, the named officer was requested to perform a thorough search of the 13 Division memo book lock up area, and of his locker, residence and vehicle.

The Police further submit:

When all avenues were exhausted, the named officer was instructed to contact the FOI Analyst directly by telephone concerning the matter, which he did. He advised that he would provide written confirmation to the 13 Division FOI Liaison concerning the missing book, which he did. He provided the identity of the actual investigating officer, whose notes concern this call were subsequently obtained and released to the appellant with only one small severance. It should be noted that the named officer was not, in fact the investigating officer, but rather the Acting Sergeant whose role in the matter was reflected in the investigating officer's notes (he advised the appellant that it was a civil [not criminal] matter).

...

In summary, despite the Toronto Police Service Record Retention Schedule, Bylaw 69-2000, which requires that police officer memorandum books be retained for a period of eight years from last entry, following extensive search for the record in question, it would appear that the named officer's memorandum book is lost. Although it is likely that the missing memorandum book contained notations which would corroborate what the investigating officer recorded, there is no way to confirm this in the absence of the records.

Finally, the Police state that the named officer confirmed he had submitted a written report to his Unit Commander and another FOI Analyst, that his memo book was missing in mid-2000.

As noted above, the appellant did not return a response.

Based on the representations of the Police, I am satisfied that the search for the requested information was reasonable in the circumstances.

## **ORDER:**

I uphold the decision of the Police.

Original signed by:  
Dora Nipp  
Adjudicator

December 5, 2001