



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1596

Appeal MA-010374-2

North Bay Police



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NATURE OF THE APPEAL:

The North Bay Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information pertaining to an assault against the requester in 2001 and “all information respecting any criminal record checks (CPIC) on me since 1991 – require who performed the check and for what reasons”.

The Police initially responded to the first part of the request by granting the requester access to portions of the requested records. Subsequently, the Police issued a second decision letter with respect to the second part of the request, indicating that:

The record that you are requesting is known as an “off-line search”, performed through CPIC. A request to locate any existing records was sent out and the response returned was that this record is not in existence. As I mentioned in our telephone conversation of Dec. 17, 2001, I am not authorized, as the Freedom of Information Co-ordinator, to initiate an off-line record search. Information in the CPIC system is for investigative purposes only.

The requester, now the appellant, appealed the decision of the Police that the record referred to as an “off-line search” does not exist.

During the mediation stage of the appeal process, the appellant indicated that he was not seeking access to the undisclosed portions of the records responsive to Part One of his request. The sole issue for determination is whether the search undertaken by the Police for records relating to any “off-line search” of information relating to the appellant was reasonable.

I decided to seek the representations of the Police, initially, as they bear the onus of demonstrating that the search which they have undertaken for responsive records was reasonable, in the circumstances. The Police provided representations and the non-confidential portions were shared with the appellant. The appellant provided me with representations in response to the Notice of Inquiry which were shared, in their entirety, with the Police. I then solicited additional representations by way of reply from the Police.

DISCUSSION:

REASONABLENESS OF SEARCH

The sole issue for determination in this appeal is whether the Police have conducted a reasonable search for records which are responsive to the second part of the appellant’s request, relating to who initiated a search of the CPIC record-holdings from within the North Bay Police and why.

Representations of the Police

The Police indicate that their searches have not revealed any records relating to the conduct of an “off-line search” involving requests made to the CPIC system for information relating to the appellant. The Police submit that:

Should the North Bay Police have had the occasion to submit a request for an off-line record search to the RCMP in relation to the appellant prior to the access request, a search for responsive records would have located the record in the section of the police service that had requested it.

The Police indicate that it conducted searches for records relating to the conduct of an off-line search in its Investigative Support Section, Communications Centre, Professional Standards and Central Records and that no responsive records were located in any of these areas. The Police include in their submissions a discussion of the CPIC system and how information contained in that system is accessed by the Police. The Police have also provided me with excerpts from the CPIC manual which describe the policies and procedures surrounding the use of the system.

In Order MO-1446, former Adjudicator Dawn Maruno commented on the procedure involved in obtaining information relating to the use of the CPIC system as it relates to queries made about an individual. She described the process whereby an off-line search is undertaken as follows:

CPIC is a centralized computer system managed by the Royal Canadian Mounted Police (RCMP). Police departments and agencies across Canada enter information into this system which is accessible to other departments and agencies through local computer terminals. An off-line search is a method of processing and searching the computer records on this database. To obtain an off-line search, a police agency submits a request to the RCMP. After the request is approved and a search completed, the RCMP forwards the results to the requesting police department. The search results then become a record in the custody and control of that police department.

The Police have provided me with similar information concerning the manner in which an off-line search would be conducted. It submits that no such search was undertaken prior to the date of the appellant’s request and that, accordingly, no records exist relating to such an activity.

The Appellant’s Representations

The appellant has provided extensive submissions setting out the factual basis for his contention that unauthorized and inappropriate searches of the CPIC database for his personal information were conducted by the Police. He also sets out a comprehensive chronology of his dealings with the Police and the responses he has obtained. He requested that the Police ask the RCMP to conduct the necessary search of the CPIC system in order to ascertain whether such unauthorized inquiries of the system’s information relating to him had been made. Essentially, he argues that the Police are obliged to request the RCMP to create the record he is seeking in order that he might obtain access to it. The appellant relies on the information described in the CPIC manual

to support his contention that I should order the Police to request that the RCMP conduct an off-line search in order to determine whether any unauthorized CPIC searches were made.

The appellant concludes his submissions by indicating that the Police have failed to conduct a reasonable search for records relating to an off-line search due to their refusal to request the RCMP to proceed with it.

Findings

Based on my review of the representations of the parties, the Police have satisfied me that they have conducted a reasonable search of its record-holdings for documents related to the initiation of an off-line search. I accept that the Police have not made a request of the RCMP for such a search to be conducted and that, as a result, no records exist.

The appellant is of the view that I have the authority to order the Police to comply with the procedure set out in the CPIC manual for requesting an off-line search. In my view, this would be tantamount to ordering the Police to create a record. It is well established in previous orders of this office that I have no such authority. In Order P-652, I addressed a similar situation in which requested information did not exist in the form of a record by finding as follows:

In Order 17, Commissioner Linden quoted with approval the Williams Report, "Public Government for Private People" (1980):

At page 241 (Volume 2) of the report, the author addresses the question of to which kinds of information or documents access should be given:

A common feature of the freedom of information schemes in place in other jurisdictions is that the type of "information" to which access is given is material which is already recorded in the custody or control of the government institution. **Thus, a right to "information" does not embrace the right to require the government institution to provide an answer to a specific question; rather, it is generally interpreted as requiring that access be given to an existing document on which information has been recorded.** This is not to say, of course, that the government should feel no obligation to answer questions from the public. Indeed, as we have indicated in an earlier chapter [13], the government of Ontario has committed substantial resources to establishing citizen's inquiry services with this specific objective in view. It would be quite unworkable, however, to grant a legally binding right of access to anything other

than information contained in existing documents or records. (emphasis added)

For obvious reasons, most freedom of information schemes broadly construe the concept of "document" or "record" to include the various physical forms in which information may be recorded and stored. Thus, the right of access normally extends to all printed materials, maps, photographs, and information recorded on film or in computerized information systems."

My conclusion is, therefore, that an individual's right of access to information under the *Act* relates to information already recorded, whatever its physical form. In the absence of existing recorded information, the *Act* does not require the creation of a new record.

I adopt the rationale expressed in both Orders 17 and P-652 for the purposes of this appeal and conclude by reiterating that the Police are not obliged to create a record in response to this request; nor are they obliged to request that the RCMP undertake the off-line search sought by the appellant. I find that the Police have met their obligations under section 17 of the *Act* as the searches conducted for records responsive to the second part of the appellant's request were reasonable.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Donald Hale
Adjudicator

December 5, 2002 _____