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

ORDER MO-1989

Appeal MA-030268-2 and MA-030269-2

Toronto Police Services Board

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NATURE OF THE APPEAL:

BACKGROUND INFORMATION

The Toronto Police Services Board (the Police) received two requests under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from the same requester, who is a member of the media.

These two appeals arise from the two requests, which are set out below. The two requests are for information from Police databases, and were made following an earlier request, which resulted in the requester receiving certain information from the Police.

In the earlier request, which was resolved through mediation, the requester had asked for and received access to an electronic copy of certain data contained in the Police's Criminal Information Processing System. The requester had received data concerning events captured in the system, but had indicated that he did not seek access to any personal information, or any information that could potentially be used to identify individuals involved in those events. As I understand the previous request, the requester received the electronic data, with all personal information which could potentially identify the individuals involved in the events severed from the record.

In the requests resulting in the current appeals, the requester identifies that he is seeking similar information as before, but for an update of the information until the date of the request; however, rather than simply severing the names or other personal information in the databases which could potentially identify individuals (the unique individual identifiers), the requester asks the Police to include the unique individual identifiers but, in providing the requester with the records, to replace those unique individual identifiers with randomly-generated, unique numbers, and that "only one unique number be used for each individual entered in the database".

Due to the similarities in the responses to the requests and in the issues raised in these two appeals, they are dealt with together in this order.

Request for Criminal Information Processing System (CIPS) information (Appeal MA-030268-2)

The first request was for the following:

> … access to an electronic copy of data contained in Criminal Information Processing System (CIPS), which I believe is now part of the larger Centralized Occurrence Processing System (COPS).
>
> … release similar to the release of CIPS data made last May to [an identified newspaper]. That release contained CIPS data up to early 2002, and this is a request for an update of the data up to the latest date available.
>
> As with the previous CIPS request, I do not seek access to personal information or information that could potentially be used to identify individuals. I ask for an identical release, with one exception: I ask that names be replaced with

> randomly-generated, unique numbers, and that only one unique number be used for each individual entered in the database.

The requester also identified that, in his view, the requested data is of great public interest.

The Police issued a decision letter in response to the request. In that letter the Police stated:

> Your request specifies that the names in the CIPS data "be replaced with randomly-generated, unique numbers, and that only one unique number be used for each individual".

After referring to the definition of a "record" found in section 2 of the *Act*, and referencing a number of Orders which dealt with the creation of records, the decision letter stated:

> Pursuant to the foregoing, it is the function of [the Police] Freedom of Information and Protection of Privacy Unit to disseminate *recorded* information to which an individual is entitled under [the Act]. It is not within the mandate of the Freedom of Information Unit to create a record in response to a request.
>
> …
>
> Since fulfilling the requirements of your request would necessitate the creation of records by the institution, access cannot be provided to the data as specified, as such record does not exist.

The requester (now the appellant) appealed the Police's decision, and appeal MA-030268-2 was opened by this office.

Request for Master Name Index (MANIX) database information (Appeal MA-030269-2)

The second request was for the following:

> I am seeking access to an electronic copy of data contained in the Master Name Index (MANIX) database, which is part of the larger Centralized Occurrence Processing System (COPS).
>
> I do not seek access to personal information or information that could potentially be used to identify individuals. I seek access to all other data in MANIX, as far back in time as MANIX data goes. I ask that names be replaced with randomly-generated, unique numbers, and that only one unique number be used for each individual entered in the database. I ask that home address information be limited to the full postal code of each individual.

> As you know, the [requester] made a similar request for information contained in the Criminal Information Processing System, or CIPS. The request resulted in appeals, and mediation, and eventually, a filtered release of CIPS data.
>
> The request also involved an initial release by police of a list of fields in the database, along with descriptions of the data contained in those fields. I ask that the same be done in the case of MANIX in order to eliminate certain personal information from this request.
>
> I should stress that I am not interested in obtaining the MANIX software, only the data contained in the MANIX database.

The requester also identified that it was his view that "the data being requested is of great public interest."

The Police issued a decision letter in response to the request. In that letter the Police stated:

> Your request specifies that with respect to the information in the MANIX database, the names "be replaced with randomly-generated, unique numbers, and that only one unique number be used for each individual", as well your request indicates that you are looking for "a list of fields in the database", "along with descriptions of the data contained in those fields".

The Police again referred to the definition of a "record" found in section 2 of the *Act*, and a number of Orders which deal with the creation of records, and the Police's the decision letter stated:

> Pursuant to the foregoing, it is the function of [the Police] Freedom of Information and Protection of Privacy Unit to disseminate *recorded* information to which an individual is entitled under [the Act]. It is not within the mandate of the Freedom of Information Unit to create a record in response to a request.
>
> …
>
> Since fulfilling the requirements of your request would necessitate the creation of records by the institution, access cannot be provided to the data as specified, as such record does not exist.

The requester (now the appellant) also appealed this decision by the Police, and appeal MA-030269-2 was opened by this office.

Mediation was not possible, and both of these appeals were transferred to the inquiry stage of the process. I sent Notices of Inquiry to the Police, initially, and received representations in response. I then sent the Notices of Inquiry, along with copies of the Police's representations, to

the appellant. The appellant also provided representations in response. After reviewing the representations, I decided they raised issues to which the Police should be given an opportunity to respond, and I sent a copy of the appellant's representations to the Police, requesting reply representations. Upon receipt of the reply representations, I provided a copy to the appellant, who provided representations in sur-reply.

DISCUSSION

IS THE REQUESTED INFORMATION A "RECORD"?

General Principles

Section 2 of the *Act* specifically defines a "record" as follows:

> "record" means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,
>
> (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and
>
> (b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution;

Section 1 of Regulation 823 under the *Act* states:

> A record capable of being produced from machine readable records is not included in the definition of "record" for the purposes of the Act if the process of producing it would unreasonably interfere with the operations of an institution.

In the Notices of Inquiry I sent to the parties, I invited the parties to address the issue of whether the *Act* requires the institution to create a record to respond to a request. I referred to the definition of a "Record" from section 2 of the *Act*. I also referred the parties to section 6(2) of the British Columbia *Freedom of Information and Protection of Privacy Act* which contains wording similar to the wording found in this *Act*, but replaces the word "produce" with the word "create". In addition, I invited the parties to address the issue of whether responding to the requests resulting in these appeals would require the institution to create a record, and asked the parties to identify whether the records requested in these appeals are "capable of being produced

from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution".

Representations

The Police's Representations

As set out above, in their decision letter the Police took the position that they were not required to create a record in order to satisfy a request. Their decision stated:

> In Order 50, Commissioner Sidney B. Linden stated:
>
> > The *Act* requires the institution to provide the requester with access to all relevant records, however, in most cases, the *Act* does not go further and require an institution to conduct searches through existing records, collecting information which responds to a request, and then creating an entirely new record in the requested format.
>
> Accordingly, in Order MO-1381, Assistant Commissioner Tom Mitchinson wrote that the Police are "… not obliged to [create a record] in order to satisfy a request".
>
> In Order MO-1422, Adjudicator Donald Hale writes "In my view, as has been established and recognized in many previous orders, section 17 does not, as a rule, oblige an institution to create a record where one does not currently exist."

In their initial representations responding to the Notices of Inquiry, the Police reiterate their position that the creation of a record is not required. The Police rely on the following quotation from Order M-436, in which Senior Adjudicator John Higgins stated:

> There is one other matter which must be considered. The Board's representations assert that the Board is not obligated to create a record in order to respond to the request. This submission is most relevant with respect to the parts of the request which are in the form of questions (see items 11-16, above). I agree with the Board on this point, and my order should not be interpreted as requiring the Board to create responsive records. The Board's only obligation is to locate records which already exist and which contain the requested information.

The Police also refer to Order MO-1396 in which Adjudicator Hale stated:

> It is important to note that the *Act* does not oblige the Town to create records which will satisfy the queries of the appellant regarding these perceived

> discrepancies. Rather, the *Act* is intended to provide requesters with a right of access to existing information, subject to the exemptions provided therein. If records which relate to the appellant's questions do not exist, the Town is not under any obligation under the *Act* to create them.

Based on the above, the Police state:

> The above passages clearly establish that the institution is under no obligation to create a record. To produce a machine readable record would fall within the Act's definition of record only in cases where the record already exists in a computerized (or other storage equipment) format.

With respect to whether responding to the specific requests in this appeal would require the creation of records, the Police took the position that, as the records do not exist, responding to the requests would require the creation of records. Their decision letter reads:

> Since fulfilling the requirements of your request would necessitate the creation of records by the institution, access cannot be provided to the data as specified, as such record does not exist.

The Police also take the position that there is a clear difference between the word "produce" and the word "create". They state:

> It is the position of [the Police] that the difference between the two terms is clear. In fact, the difference is not only addressed within the Act itself. But the evidence of a distinction between the two words has also been supported by previous orders.

The Police then refer to the definition of a record found in section 2 of the *Act*, and identify that the definition includes the term "produce". They then state:

> The definition clearly acknowledges that in order for a machine readable record to be produced, the record itself *must already exist* within a computer (or any other storage equipment).

The appellant's representations

In response to the Police's representations, the appellant takes the position that the Police are capable of producing records responsive to the requests and that, as they are capable of doing so, they are obliged to "produce" or "create" these records. The appellant refers to the definition of a "record" found in the *Act* (set out above) and states:

> Paragraph (a) and (b) of [the definition of a "record" in section 2(1) of the *Act*] sets out two distinct definitions of a "record" for the purposes of the Act.

> The responsive records on this appeal fall within paragraph (b), as records "capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution".
>
> The defining characteristic of a paragraph (b) record is that it is "capable of being produced from a machine readable record". An institution has an obligation to produce or create a paragraph (b) record so long as it is capable of doing so through a process that does not unreasonably burden its operations.
>
> The obligation to "produce" or "create" a paragraph (b) record does not disappear merely because it does not physically exist at the time of the request. Indeed, the definition in paragraph (b) assumes that no physical record exists at the time of the request but must be "produced", if necessary through the use of computer software.
>
> In dealing with a paragraph (b) record, the question in every case is whether a record containing the responsive information is capable of being produced by the institution. It is not whether the record actually exists at the time of the request or even whether the precise information sought by the requester is in the database.

The appellant proceeds to identify in detail the difference between a paragraph (a) record and a paragraph (b) record and states:

> The [Police's] reliance on previous decisions of the Information and Privacy Commissioner stating that there is no obligation on an institution to create a record in response to a request is misguided and mistaken. The [Police] ignore the important fact that the records in this appeal are paragraph (b) records. Whatever may be the law in respect to the "creation" of records, it is clear that an institution does have a duty to "produce' or "create" a paragraph (b) record. This point was made clear by Commissioner Linden in Order P-50:
>
> > The Act requires the institution to provide the requester with access to all relevant records, however, ***in most cases***, the Act does not go further and require an institution to conduct searches through existing records, collecting information which responds to a request, and then creating an entirely new record in the requested format. In other words, the Act gives requesters a right (subject to the exemptions contained in the Act) to the "raw material" which would answer all or part of a request, ***but, subject to special provisions which apply only to information stored on computer,***

> ***the institution is not required to organize this information into a particular format before disclosing it to the requester.***
>
> ***The Act imposes additional obligations on institutions when dealing with computer generated information. When a request relates to information that does not currently exist in the form requested, but is "...capable of being produced from a machine readable record..." [paragraph (b) of the definition of "record" under subsection 2(1)], the Act requires the institution to create this type of record, "subject to the regulations".*** [emphasis added by appellant]

Analysis

It is clear from previous orders that an institution is not, in most instances, required to create a record in response to a request. The orders cited above, including orders M-436, MO-1381 and MO-1396 confirm that "… as has been established and recognized in many previous orders, section 17 does not, as a rule, oblige an institution to create a record where one does not currently exist." (Order MO-1422) Generally speaking, an institution's "… only obligation is to locate records which already exist and which contain the requested information" (Order M-436).

The appellant does not take issue with this general statement; however, the appellant takes the position that the *Act* allows for different considerations to apply when dealing with electronic records – what it characterises as paragraph (b) records. In these circumstances, the appellant argues that if a record is capable of being produced, the *Act* requires the institution to produce it, subject to the regulations.

I agree with that part of the appellant's argument, which is supported by former Commissioner Linden's analysis in Order P-50. In circumstances where a request is made for records which exist in electronic format, the question to be determined is whether the record is "...capable of being produced from a machine readable record."

The appellant correctly refers to the definition of "record" to determine whether the Police are required to provide a record. The appellant focuses on the wording in paragraph (b) of the definition to support that position. In my view, however, it is necessary to review the wording of the definition as a whole. Section 2 of the *Act* states:

> "record" means any record of information *however recorded*, whether in printed form, on film, by electronic means or otherwise, and includes,
>
> (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other

> documentary material, regardless of physical form or characteristics, and any copy thereof, and
>
> (b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution;
>
> (emphasis added)

In my view the opening wording of the definition which refers to "any record of information *however recorded*" limits the definition to *recorded* information. It does not extend the definition to information that is not recorded.

In light of the above, and the positions taken by the parties, in my view there are three issues which must be decided in order to determine whether the Police are obliged to provide an access decision in response to the requests for information resulting in these appeals.

The first issue is whether the basic information – that is, unique identifiers - exist in a "recorded" form in the identified database, and are capable of being produced from machine readable records by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution.

If the answer to this issue is yes, the second issue to be decided is whether the process of producing the information would unreasonably interfere with the operations of the Police (as the definition of "record" is limited by section 1 of Regulation 823).

If the process of producing the record would not unreasonably interfere with the operations of the institution, then the unique identifiers constitute a "record" for the purpose of the *Act*. The final issue to be decided, based on the wording of the request, is whether the Police are required to provide the appellant with a record which replaces the unique identifiers with randomly-generated, unique numbers.

DO THE UNIQUE IDENTIFIERS EXIST IN A "RECORDED" FORM, AND ARE THEY CAPABLE OF BEING PRODUCED FROM MACHINE READABLE RECORDS?

The parties have provided significant representations on the issue of whether the databases contain unique identifiers which can be produced.

The Police begin by taking the position that the requested records are not capable of being produced. They refer to section 1 of Regulation 823 of the *Act*, which reads as follows:

> A record capable of being produced from machine readable records is not

> included in the definition of "record" for the purposes of the Act if the process of producing it would unreasonably interfere with the operations of an institution.

The Police then state:

> This section deals with hardship only. The condition precedent to the application of this section is that there already exists a record capable of being produced. That is not the case here. There is no such record. There is no record capable of being produced. Therefore, section 1 of the Regulation does not apply.

Request for CIPS information (MA-030268-2)

The Police argue that responding to the request for information in the CIPS system would require the Police to create information that does not currently exist in any "recorded" form. They state:

> The information sought by the appellant does not exist as a record within any [Police] database. Each entry on CIPS is specific to an occurrence and does not provide a unique identifier for all individuals whose information is contained within the database.
>
> … It is not possible to create such a record with any degree of accuracy. Therefore, this institution is simply unable to provide the information requested because it does not exist in a machine readable record and therefore cannot be produced.
>
> The Notice of Inquiry asks the Police to respond to various questions concerning the replacement of unique identifiers/information with unique numbers. *All of the questions hinge on whether a unique identifier/information currently exists for each individual whose information is entered into the database. As previously indicated, such an identifier does not currently exist* and to replace any data with unique numbers would constitute creating a record. [emphasis added]

Accordingly, the Police maintain that a unique identifier does not exist for each individual whose information is entered in the CIPS database.

The appellant responds to this position of the Police by taking the position that the Police are capable of producing records responsive to the request.

The appellant begins by referring to the right of access to a "record" as established by section 4(1) of the *Act*. The appellant then proceeds to refer to the definition of a "record" in section 2, as set out above. The appellant takes the position that this section clearly recognizes the distinct categories of records: i) material that already exists in some physical form such as a book, microfilm or computer tape, and ii) a record that is "capable of being produced from a machine readable record".

According to the appellant, the definition of a record in paragraph (b) is broad, as it includes files on a hard drive or diskette, and a list of fields in a computer database.

The appellant proceeds to identify that the only exception to paragraph (b) arises where the process of producing the record would "unreasonably interfere with the operations of an institution".

With respect to the nature of the responsive records in this appeal, the appellant takes the position that the records clearly fit within paragraph (b) of the definition as being "machine readable records", because they are computer databases on the Police's computer hard drive. The appellant then states that the record could be produced and provided to the appellant.

The appellant proceeds to dispute the Police's assertion that there are no unique identifiers for all individuals in the CIPS database, and in particular relies on the information obtained in an earlier request to the Police. The appellant refers to this earlier request and states:

> In response to [the earlier] request, the requester was supplied a list of fields in the CIPS database. This list includes fields which, on their face appear unique to an individual. These include the following: "Full Name", "Given Name 1" and "Given Name 2", "Accused Person ID", "CPS NO", "ID", "MTP No." and "FPS#'s". We understand that the latter two (MTP No. and FPS No.), are identification numbers used by the Police to identify people they come in contact with.
>
> Following publication of the Race and Crime Series, the Toronto Police provided the information in the CIPS database to [an identified individual], an expert it had retained to rebut the conclusions contained in the "Race and Crime" series. In [the identified expert's] "Executive Summary" accompanying his report to the Toronto Police, he stated that "persons with multiple charges were screened out of the CIPS database". If, as the [Police] assert on this appeal, there are no unique identifiers for every individual in the field, it is unclear how the [Police] could have supplied the CIPS data to [the identified expert], (which they did very shortly after the … series began) with persons with multiple charges screened out. Clearly, the CIPS database must have been capable of matching different charges in the database with specific individuals. This would not be possible without specific identifiers.

In further support of its position, the appellant provides an affidavit of an individual who has a masters degree in Library Science and who has worked as a database analyst, a programmer and a database administrator since 1981, and who notes that it would be anomalous to have a database of the nature of the CIPS database without unique identifier information for all individuals. The appellant also notes that, from the standpoint of a layperson, it is inconceivable

that the Police would not have the ability to determine, using its CIPS database, whether a particular individual is the subject of multiple charges.

The appellant states:

> Accordingly, the [Police's] bald assertion that the CIPS database does not provide a unique identifier for all individuals whose information is contained in the database should be rejected.

The appellant's representations were, in turn shared with the Police. In response to the appellant's position set out above, the Police confirm the position taken earlier. They state:

> A unique identifier does not exist for each individual whose information is on record with the [Police]. Further, it is not possible to create unique person identifiers with a greater than 65-70% accuracy.
>
> … The process of extracting and manipulating data to create such a record, which would be accurate only to 65-70%, would take a full time employee approximately two weeks to complete. This would unreasonably interfere with the operations of the [Police].
>
> With respect to [the appellant's position that records with "persons with multiple charges were screened out of the CIPS database" were provided] the [Police] acknowledge that records were created in response to a request made in March 2000.

The Police identify that these records were created over an extended period of time and as a result of negotiations between the parties. The Police state that they were under no legal requirement to create those records. The Police also state:

> With respect to [the record created for the identified expert], it took some additional time (approximately 3 working days) to create records for [the expert]. The process involved a cumbersome screening process but did not utilize existing unique identifiers since there were none. These records were used to rebut some of the assumptions made by the Requester which were based on the partly responsive records received pursuant to the [earlier] request.

In support of their position, the Police provide an affidavit prepared by the individual who designed and implemented the [Police's] crime analysis/investigative database, and who has also been involved in extracting and creating reports from these databases using industry standard tools. This individual identifies that he was involved in developing a small standalone database which became the basis of the CIPS, and that he was involved in the design and implementation of the underlying tables and database structure of the CIPS application as well as the design, business rules and logic for the entire application. He has also been involved in developing and

maintaining the database used by the Police's crime analysts, and as part of a team responsible for creating a database of crime statistics and occurrence/contact information.

This individual identifies that he has reviewed the affidavit provided in support of the appellant's representations, and that some of the assumptions made regarding the database are inaccurate. The affidavit proceeds to confirm the limitations on the CIPS database, including that it does not generate or validate FTS or MTP numbers. The affidavit states that these numbers have been issued since the early 1970's and that there is no standardized format for entering these numbers in the CIPS application – that they can be recorded in the system in varied fashion. Since the CIPS application does not mask or validate the format of the data inputted into the fields for the MTP or FPS numbers, it is not possible to simply match FPS and MTP numbers in CIPS records.

The affidavit then states:

> Currently, the [Police] does not have an algorithm capable of replacing a person specific identifier with a randomly generated number. One would have to be developed specifically for … use with CIPS.
>
> There is no simple method of creating records responsive to this request.
>
> It would take approximately two weeks to extract and manipulate the data to meet the request.
>
> I do not believe it is possible to create the unique person identifiers to a degree higher than 65 to 70% at best.

The affidavit then explains in detail the step-by-step method by which the CIPS data was prepared for the identified expert who used the material to screen "persons with multiple charges" out of the CIPS database, and who then used that material to rebut the conclusions contained in the "Race and Crime" series in the earlier request.

The affidavit continues by identifying that the appellant makes the inaccurate assumption that the CIPS application is used to track a person's arrest history. He states that, in the CIPS database schema, there is no connection between individual person records, and no built-in mechanism to link an individual person to different arrests. The affidavit also identifies that the Police made the business decision that CIPS would not be designed to link persons with multiple arrests, and identifies the reasons why they chose to make that decision.

The Police's reply representations were shared with the appellant on sur-reply. The appellant provided sur-reply representations that refer in detail to the affidavit provided by the Police.

With respect to the information contained in the CIPS and the manner in which this information is input, the appellant states that the system should be capable of extracting the type of information identified. Although the appellant accepts that this may not initially have been

required, since the Police were aware that this type of information could not be readily accessed or searched, the Police should have standardized the FPS number entries from that point forward.

The appellant then identifies that the issue of whether the information is accurate or not is not relevant to whether it should be produced. The appellant states:

> Whether data is accurate is not part of the test for production under [the *Act*]. The suggestion that the public is only entitled to accurate information is novel and unfounded. … Naturally, the requester will fairly and accurately report on the data, including any potential margin for inaccuracy (ie: if the available statistics are only 65% accurate, this will be reported).

The appellant also identifies that any alleged inaccuracy in the information is unclear in this case, referring to the Police's representations that the information will not be more than 65-70% accurate, but also referring to the report prepared earlier by the identified expert in which the report was characterized by that individual as "a controlled statistical analysis of an important issue." The appellant states:

> Although there may be some margin for error, the requester is entitled to receive the same information that was provided to [the identified expert].

Findings

I have carefully reviewed the detailed representations provided by the parties on the issue of whether or not a unique identifier exists in any form that is accessible through the Police's CIPS system. Based on the representations provided by the parties, I am satisfied that the information does exist.

The Police's representations focus on a number of reasons why, in their view, the information does not exist. The main reasons can be summarized as follows:

- the CIPS application was not developed or created to record "unique identifiers",
- although some unique identifiers do exist and can be extracted from CIPS, the information obtained would be between 65-70% inaccurate.

Based on the representations of the Police, I accept that the CIPS application was not developed or created to record unique identifiers. Accordingly, I accept that the extraction of the requested information would be time-consuming, and would result in certain inaccuracies in the information. However, this does not mean that a unique identifier does not exist in a form that is accessible, and that it is not a "record" for the purpose of the *Act*.

Even if the records produced would be between 65-70% accurate, I agree with the appellant that the accuracy of the data is not relevant to whether it should be produced or not. I accept the appellant's position that, as long as a requester is advised of the potential inaccuracies in a

record, the test for whether a record is required to be produced under the *Act* is not contingent on its accuracy.

Accordingly, I find that the unique identifiers exist in CIPS, and that they are capable of being produced from a machine readable record.

Request for MANIX information (MA-030269-2)

The Police identify that responding to the request for information in the Master Name Index database (MANIX) system would require the Police to create a record. They state:

> The information sought by the appellant does not exist as a record within any [Police] database. Each entry on MANIX is specific to an event and does not provide a unique identifier for all individuals whose information is contained within the database.
>
> The appellant is asking that "names be replaced with randomly-generated, unique numbers, and that only one unique number be used for each individual entered in the database". It is not possible to create such a record with any degree of accuracy. Therefore, this institution is simply unable to provide the information requested because it does not exist in a machine readable record and therefore cannot be produced.
>
> The Notice of Inquiry asks the Police to respond to various questions concerning the replacement of unique identifiers/information with unique numbers. All of the questions hinge on whether a unique identifier/information currently exists for each individual whose information is entered into the database. As previously indicated, such an identifier does not currently exist and to replace any data with unique numbers would constitute creating a record.

The Police then distinguish the information contained in the CIPS system from that contained in the MANIX system. They identify that the CIPS system is a relational database in which all fields are linked. The Police then state:

> [The current] request relates to the significantly different MANIX system: a mainframe data storage system containing a variety of subsystems.
>
> The MANIX subsystems do not share the same basic fields. Consequently, unlike CIPS, there is no interaction between the MANIX subsystems, and a record would have to be created to satisfy the request.

Accordingly, the Police maintain that a unique identifier does not exist for each individual whose information is entered in the database.

In response, the appellant provides an affidavit from the identified computer programming professional, who states:

> I have not had the opportunity to view the MANIX database.
>
> I have reviewed excerpts from the Direct Data Entry Procedure Manual. From my review of this document it appears that MANIX is a database that stores "person investigated" cards. Each person investigated card appears to contain a social insurance number field.
>
> I would expect that the [Police] could replace social insurance numbers with randomly generated unique identifiers without difficulty. As with CIPS, this could be done through creating a simple algorithm.

By way of response, the Police provide affidavit evidence regarding the MANIX system. The affidavit states:

> The Social Insurance Number field ("SIN") is not mandatory when completing the 'Persons Investigated' card. I can advise, from personal experience, that I have filled out in excess of 1000 of these cards and have rarely entered a SIN. While it would be easy to replace this number if it existed; it suffers from the same limitation as CIPS in that there is no way to account for data entry errors. In practice, the SIN is recorded in so few instances that it would be useless as a unique identifier.
>
> I have been advised and do verily believe that the MANIX system, which captures some of the information contained in the Persons Investigated cards, does not capture an individual's SIN.

The affidavit further states:

> Currently, the [Police] do not have an algorithm capable of replacing a person specific identifier with a randomly generated number. One would have to be developed specifically for the [MANIX] database…

Findings

In this appeal the information provided by the parties with respect to what information is contained in the MANIX database is less detailed than the information relating to the CIPS. Based on the Police's representations, I am satisfied that the Social Insurance Number field is of no value as a unique identifier in the MANIX system. However, the Police identify that a 'Persons Investigated' card is completed, and that the MANIX database captures "some of the information" contained on these cards. Although again it may be difficult to extract a unique identifier from this database, which the Police describe as a "mainframe data storage system

containing a variety of subsystems", it appears that a 'Person Investigated' card would contain unique information about the person investigated. I am not satisfied that this information, which appears to exist in the MANIX database, cannot be extracted from it. Although it may be time-consuming to do so, and although the extracted information may contain errors, based on the information provided to me, I am satisfied that the information does exist.

Accordingly, I find that the unique identifiers exist in a recorded form that is accessible through the Police's MANIX database, and that they are capable of being produced from a machine readable record.

WOULD THE PROCESS OF PRODUCING THE RECORD INTERFERE WITH THE OPERATIONS OF THE INSTITUTION?

The Police take the position that the process of extracting the information would unreasonably interfere with the operations of the Police. The appellant takes the position that the Police have not produced sufficient evidence to support this position.

After reviewing the representations of the parties, I agree with the appellant that the Police have not provided sufficient evidence to support a finding that the process of extracting the information would unreasonably interfere with the operations of the Police.

In Order PO-2151 Adjudicator Cropley identified the nature of the information required to establish an "unreasonable interference with the operations of an institution" as follows:

> Previous orders of this office have considered the meaning of the term "unreasonable interference with the operations of an institution" in the context of claims that a request is frivolous or vexatious. Although made in a different context, they provide some guidance in assessing this issue.
>
> Applying the findings in these previous orders, it appears that in order to establish "interference", an institution must, at a minimum, provide evidence that responding to a request would "obstruct or hinder the range of effectiveness of the institution's activities" (Order M-850).

The Police do identify that extracting the information would take time and effort. They state:

> The process of extracting and manipulating data to create such a record … would take a full time employee approximately two weeks to complete. This would unreasonably interfere with the operations of the [Police].

Other than this general statement, the Police do not identify how the extraction of the information would obstruct or hinder the range of effectiveness of the Police's activities. The Police do identify that extracting the information would take time and effort; however, that is not sufficient evidence to support a finding that the process of extracting the information would

unreasonably interfere with the operations of the Police, and in the circumstances of this appeal, I am not satisfied that the process of producing it would unreasonably interfere with the operations of the Police.

As an aside, although the Police identify the time and effort required to produce the information, it should be noted that costs regarding the production of records are chargeable under the *Act*.

Accordingly, I find that the unique identifiers exist in a recorded form that is accessible through the Police's CIPS and MANIX databases, and constitute a "record" for the purpose of the *Act*.

IF A UNIQUE IDENTIFIER CURRENTLY EXISTS, WOULD REPLACING THE IDENTIFIER WITH UNIQUE NUMBERS CONSTITUTE CREATING A RECORD?

I have found above that a unique identifier does exist for individuals whose information is entered in the CIPS and MANIX databases. Having made that decision, I must now decide whether replacing the identifiers with unique numbers would constitute creating a record. Specifically, I must decide whether the *Act* requires the Police to respond to a request for a "record" of this nature.

The Police take the position that replacing a unique identifier with a randomly-generated unique number would constitute creating a record, which they maintain they are not required to do. The Police state:

> As previously mentioned, to add a unique number to a database, the record could not be considered to have been produced from the machine readable record – the institution would have created a new record by introducing an entirely new field to the system. Such an undertaking would require time, expense, impose a considerable hardship to the institution and be of no future use to the institution.

The appellant takes the position that it is possible for a computer program to be created that would replace the unique identifier with a unique number, and that producing that record would not unreasonably interfere with operations of the institution. The appellant takes the position that if a record is capable of being produced from machine readable records, it must be produced (subject to it unreasonably interfering with the operations of the institution).

Analysis

As identified above, the appellant correctly refers to the definition of "record" to determine whether the Police are required to provide a record. The appellant focuses on the wording in paragraph (b) of the definition to support that position. As stated, in my view it is necessary to review the wording of the definition as a whole. Section 2 of the *Act* states:

> "record" means any record of information *however recorded*, whether in printed form, on film, by electronic means or otherwise, and includes,

> (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and
>
> (b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution;
>
> (emphasis added)

As I have already indicated, the opening wording of definition which refers to "any record of information *however recorded*" limits the definition to *recorded* information. It does not extend the definition to information that is not recorded.

In this appeal, I have found that the information containing unique identifiers exists in both the CIPS and MANIX databases. As noted above, these identifiers may vary in the information they contain; however, these unique identifiers "link" the information in the records to identifiable individuals – and consequently "link" certain occurrences found in the records to each other. In my view, these "linkages" constitute "recorded" information for the purpose of the *Act*. These links exist and are capable of being produced from machine readable records.

Having found that the unique identifier exists in the database, I must determine whether replacing the identifier with a unique number would constitute "creating a record" for the purpose of the *Act*. Order MO-1381 is an order of former Assistant Commissioner Mitchinson, in which he reviewed issues similar to the ones raised in this appeal. I have therefore reviewed that order in some detail.

Order MO-1381

Order MO-1381 resulted from a request to an institution for a "list of the data fields" contained in two identified electronic databases. The institution in that appeal denied access to the responsive records on the basis of section 10 (third party information) and section 11 (economic interests), taking the position that disclosure of the printed records which contained this information (the screen layouts printed from the database) would disclose exempt information. The institution took the position that the only records capable of being produced from the database information without "creating a record" were the print layouts, and that disclosure of these print layouts would disclose exempt information. The institution stated it was not required

to simply print a list of the data fields (regardless of how simple producing a record of this nature might be), as doing so would constitute creating a record.

Former Assistant Commissioner Mitchinson addressed this issue as follows:

> The records provided to me by the Police regarding the CIPS database consist of 24 pages of screen layouts printed from the database. These records identify only the blank field names for each screen, and contain no data. Similarly, the records provided by the Police concerning the RICI database consist of three pages of blank screen layouts printed from this second database.
>
> The appellant described the first part of his request as a "list of fields" in the two databases. He did not ask for screen layouts, and apparently sought the field names in order to fully understand the type of information stored in the databases and to refine the scope of the second part of his request. The records provided to this Office by the Police consist of hardcopy printouts of blank screen layouts generated by the two databases. Presumably, these layouts reflect all of the field names used in the two databases. However, it is important to note that, as with all electronic database systems, the contents of a database can be displayed and printed in a number of different ways, and the particular paper format chosen by the Police merely represents one way of displaying the field names.
>
> In Order PO-1725, I examined the nature of information stored in a different type of database, an electronic calendar management system. I stated:
>
> > The nature of an electronic calendar management database permits users to manipulate entries in ways that organize and/or display them either individually or together with other entries related by a common characteristic identified by the user. A "record" could be anything from a single entry up to and including the entire database. That determination must be made on the basis of the nature of the specific request and the circumstances of a particular appeal. In Order P-1281, I determined that an entire relational database containing corporate registration data should be treated as a single "record" for the purpose of addressing the issues in that appeal. In the present appeals, because the entries are electronic, and are created and can be amended, classified or deleted one entry at a time, I find that each entry in its electronic format should be characterized as a separate "record". The individual printed pages of entries for each day - the form in which the material has been provided to me - merely represent a convenient way of organizing the entries in order to permit Cabinet Office to respond to the requests and to permit me to process these appeals.

> Although the present appeal involves a different type of database, some of the reasoning in Order PO-1725 is also applicable here.
>
> In my view, the "record" responsive to the first part of the appellant's request is a listing of the individual field names used in the RICI and CIPS databases. That is all of the information the appellant wants, and the format that he receives it in is not relevant for his purposes.
>
> The Police decided to provide the list of fields in a format that includes additional information, such as screen layout design and field sizes. However, the appellant did not ask for this additional information, and I find that any information other than the field names themselves falls outside the scope of the first part of the appellant's request. In responding to the appellant, the Police could have provided the listing of field names in whatever format was most convenient or appropriate in the circumstances. For example, the Police could have generated a printout of the field names in alphabetical order, or as a continuous listing of the names in order of their use on the various screens. If the screen layouts were the most convenient format, the Police could even have provided individual hardcopy printouts of the various screens, with all information other than a particular field name severed from each printed page. Although not obliged to do so, if more convenient, the Police could also have created a new word processing document listing the various field names in whatever order the Police felt appropriate.
>
> It is clear from the wording of the appellant's request letter that his purpose in asking for the field names was to assist in identifying what data from the two databases he wanted to obtain from the Police. He was essentially asking the Police for assistance in this regard. The Police chose to respond to the first part of the appellant's request by producing a record that includes more information than was required and, in my view, the Police and the affected party are not entitled to rely on the existence of this additional information in order to support the application of either of the sections 10 or 11 exemption claims.

After finding that the disclosure of the information containing only the list of the data fields did not qualify for exemption, former Assistant Commissioner Mitchinson addressed the question of how the institution could comply with the order as follows:

> In order to implement the findings in this order, the Police must disclose the field names contained in both databases to the appellant in a format that does not disclose or reveal any additional information relating to the content or design of either database. One method of doing so is to isolate individual field names by severing all other information from the printed screen layout printed. I have attached two sample records severed in this manner for each of the two databases. However, as indicated, that is not the only acceptable manner of disclosing the listing of field names, and I have no objection to the Police choosing an

> alternative method of disclosing this information if deemed by the Police to be more convenient or appropriate in the circumstances. My only caution to the Police is to ensure that whatever method is chosen, no information other than a listing of the various field names contained in the two databases be disclosed.

In Order MO-1381 former Assistant Commissioner Mitchinson took an expansive approach to a request for the information contained in an electronic database. Technically, the request resulting in that appeal was for a "list" of data fields. The Assistant Commissioner looked behind the specific wording of the request, and determined that the requester's purpose in asking for the field names was to assist in identifying what data fields existed in the two databases. Notwithstanding the wording of the request, the Assistant Commissioner found that the "record" responsive to the request was a listing of the individual field names used in the databases, and that the format the appellant received the information in was not relevant for his purposes.

I adopt this approach to the circumstances of this appeal. The request in this appeal is for the names [or identifiers] to be replaced with randomly-generated, unique numbers, and that only one unique number be used for each individual referenced in the records. Based on my review of the representations of the parties, the appellant is interested in obtaining this information for the purpose of reviewing the information in the same way the Police reviewed the information. In my view, the information itself is what is of interest to the appellant - the format in which it is provided to the appellant is not critical.

Order MO-1381 also confirms that, in circumstances where a request is for information contained in an electronic database, the nature of a record of this type allows the information to be organized in different ways, and that this is a factor in reviewing the nature of the record. It also confirms that the determination of what constitutes the record must be made on the basis of the nature of the specific request and the circumstances of a particular appeal.

Conclusion

In the present appeals, I have determined that the unique identifiers or "linkages" exist in the database. Due to the fact that the information is contained in a record that is capable of being produced from a machine readable record under the control of an institution by means of computer software, I am satisfied that replacing these unique identifiers or "links" with unique numbers does not constitute "creating" a record - no "new" information is created. The information provided to the appellant in response to the request is the same recorded information, but simply in a modified, anonymized format. Replacing the unique identifiers with randomly-generated numbers does not change the nature of the information; rather, in these circumstances, it serves the purpose of anonymizing the information. In my view doing so does not result in the creation of new information or the creation of a new record.

I find support for my finding in the fact that, although the request was for the records in a particular format (namely – that "the names (or identifiers) be replaced with randomly-generated, unique numbers, and that only one unique number be used for each individual entered in the

database"), if the request had been made for the same information in some other format, the issue of whether replacing the unique identifiers would constitute creating a record would not exist. For example, if the request had been for "information relating to the individual involved in the first incident" in the requested time period "and all subsequent incidents involving this individual", based on my findings above that the unique identifiers for each individual exist, the records could be located. The issue of the possible "creation of a record" in response to this request would not be raised. The request could have continued for the information "relating to the individual involved in the second incident and all subsequent incidents involving this individual", then for the same information relating to the third, fourth and subsequent individuals. The fact that information responsive to a request framed in that way, which would result in the same substantive information as covered by this request but not raise the issue of whether this constitutes "creating a record", supports my view that the information responsive to the request exists in the database and constitutes "recorded information" for the purpose of the *Act*.

Finally, the parties address the issue of how difficult it might be to replace the identifiers with randomly generated numbers. The appellant takes the position that the Police could replace unique identifiers with randomly generated unique numbers without difficulty, by creating a simple algorithm. The affidavit provided by the Police addresses this issue as follows:

> Currently, the [Police] do not have an algorithm capable of replacing a person specific identifier with a randomly generated number. One would have to be developed specifically for the [MANIX] database and for use with CIPS.

The affidavit of the Police suggests that it is possible to develop software which would replace a unique identifier with a random number. The Police's concern that an algorithm would have to be specifically developed seems to me to be covered in the fees section of the *Act* (see section 6 of Regulation 823, which allows for fees for developing a computer program or other method of producing a record from machine readable record, and for the costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.).

However, in the circumstances of this appeal, it is not necessary for me to determine whether it is simple or complex to do so. I have found that the unique identifiers (or "linkages") exist in the database, and I have determined that it is these linkages that the appellant is interested in obtaining. Similar to the approach taken by former Assistant Commissioner Mitchinson in Order MO-1381, I find that the method or format by which these linkages are ultimately produced is not critical to the issue of whether they constitute a record. One method of producing these records may be to develop a computer software system to provide the anonomyzed linkages, another may be to extract the information in a different format. There may be alternative methods of extracting the information which would be equally responsive to the appellant's request.

ADDITIONAL ISSUE:

Whether the Police improperly split their case in these appeals

As a final matter, the appellant takes the position that, by inviting and allowing the Police to provide reply representations in response to the appellant's representations, the Police have improperly split their case. The appellant states:

> It is a fundamental rule of evidence and natural justice that matters properly raised in chief are inadmissible when raised in Reply. In other words, all evidence which has not been made necessary by the opponent's responding submissions is excluded from Reply.
>
> There are several rationales underlying this rule of general application, including the following (from *Wigmore on Evidence*, vol. 6 (Little, Brown and Company, 1976), as cited in *The Law of Evidence in Canada* (Markham: Butterworth's, 1992), by Sopinka, Lederman and Bryant):
>
> > ...first the possible unfairness of an opponent who has unjustly supposed that the case in chief was the entire case which he had to meet, and second, the interminable confusion that would be created by unending alternation of successive fragments of each case which could have been put in at once in the beginning.

The appellant then states:

> The issue of unreasonable interference with operations was clearly raised in the Notice of Inquiry. Specifically the [Police] were invited to respond to the question raised by Regulation 823 of whether "a record capable of being produced from machine readable records is not included in the definition of "record" for purposes of the Act *if the process of producing it would not unreasonably interfere with the operations of an institution*" (emphasis added).
>
> In its original submission [the Police] stated "we contend that the creation of a record as requested would be an enormous hardship to the institution" and "it is not possible to create such a record with any degree of accuracy". Portions of the Affidavit [provided in reply], particularly paragraphs 21 and 22, seek to buttress these bald allegations. This is impermissible and these paragraphs should be struck.
>
> In its original submissions [the Police] stated "each entry on CIPS is a specific occurrence and does not provide a unique identifier for all individuals whose information is contained within the database" and " such an identifier does not currently exist and to replace any data with unique numbers would constitute

> creating a record". Throughout the [affidavit provided in reply], including paragraphs 7, 9, 12-18 and 41-51, the Respondent seeks to elaborate on these bald statements. These paragraphs of the … affidavit should be struck as improper Reply.
>
> It was incumbent upon the [Police] to raise all its arguments respecting unreasonable interference in the original submissions. The [Police's] Reply Submissions attempt to buttress its initial sparse submissions on this issue, which constitutes a clear violation of principles of natural justice. The Divisional Court has made it clear that the processes of the IPC are subject to overriding concerns of natural justice. [*Gravenhurst (Town) v. Ontario (Information and Privacy Commissioner),* [1994] O.J. No. 2782 (Div. Ct), Interim Order PO-2263-1]
>
> The Adjudicator allowed the [Police] to make Reply submissions on the condition it not raise any new issues. The Requester submits … that the reply submissions should have been limited to issues that [the Police] could not reasonably have anticipated when it made its original submissions. The bulk of the [Police's] Reply submissions do not fall in that category and are contrary to the rules of evidence and natural justice.
>
> The rule against splitting submissions is particularly important in the present context, as the Requester was left largely in the dark when it made its original submissions, having been provided only selective information about the CIPS and MANIX databases. This prejudiced the Requester, forcing speculative arguments and general uncertainty as to the Respondent's position. The Respondent seized on this, devoting a large portion of its Reply submissions to discrediting the Requester's evidence, instead of leading evidence of interference with operation. By splitting its case the [Police] unjustly led the Requester to believe that the entire case had been entered and created a situation of "interminable confusion" created by successive fragments of argument.
>
> The prejudice to the Requester is not resolved by allowing for Sur-Reply submissions. Much of the Respondent's submissions are devoted to critiquing the Requester's evidence, which was necessarily limited due to the paucity of evidence initially advanced by the Respondent. This approach creates a false appearance of complexity. By splitting its case the Respondent has subverted the entire process at the Requester's expense. It had ample opportunity to make any relevant submissions at the outset and should have done so.

Findings

I do not agree that the sequence of events described by the appellant constitutes improper case-splitting by the Police.

The appellant correctly identifies that, in response to the Notices of Inquiry sent to it, the Police provided relatively brief representations on the issues. In those representations, the Police focus on their position that responding to the requests would require the Police to create records, which they maintain they are not required to do. The focus of their representations is on their position that the requirement to produce a machine readable record under the definition of the word "record" in the *Act* only applies "in cases where the record already exists in a computerized (or other storage) format." With respect to the question of whether it is necessary to refer to the "hardship" aspect of the definition as found in the regulations, the Police state:

> However, in the alternative, should the [IPC] disagree with our submission concerning there being no requirement to create a record, we contend that the creation of a record as requested would be an enormous hardship to the [Police]. Should the IPC wish further submissions on this aspect, the [Police] will provide same.

Accordingly, in the Police's initial representations, they appear to be reserving the opportunity to provide representations on the issue of hardship, based on their view that this is an alternative argument. In their reply representations, the Police do provide representations in support of their position that the creation of a record would result in hardship to them. In that regard, I understand the appellant's frustration at having the Police's detailed arguments provided after it submitted its arguments.

However, in the circumstances of this appeal, and in light of the nature of the issues raised, in my view the need to elicit detailed and specific representations outweighs any concerns the appellant may have regarding the possible splitting of the Police's case. I make this finding for a number of reasons.

In the first place, the issues raised in this appeal are unique, and relate to the definition of the word "record" as it applies to computerized information. The process followed by this office in adjudicating on appeals is an inquiry process, as opposed to a pure adversarial process. As identified by Adjudicator Cropley in PO-1940:

> As an administrative tribunal, the Information and Privacy Commissioner (the IPC) functions in a somewhat different capacity from other tribunals. While the majority of administrative tribunals operate under an "adversarial" model, the IPC has "inquisitorial" elements. Although the rules of natural justice and procedural fairness applicable to other tribunals similarly apply to IPC inquiry processes, the extent to which an adjudicator may "inquire", on his or her own initiative, into the issues on appeal is heightened under this model.

In this appeal, upon receiving the appellant's representations, I chose to invite the Police to address the specifics raised by the appellant, to ensure that the information before me on these unique issues was as complete as possible.

In the second place, the issues in this appeal concern whether or not the requested information constitutes a "record" for the purpose of the *Act*. Each of the parties identified unique arguments in their representations, and the Police, in their reply representations, responded to a number of the appellant's positions on the issues. In that regard, the Police were not required in this appeal to anticipate every possible argument, or its evidentiary basis, in initially responding to the Notice of Inquiry – this would have placed the Police in the difficult position of having to prove a negative without the benefit of the countervailing positions. I find that this is particularly compelling in this appeal, where the focus of the appellant's representations was on their position that the unique identifiers did exist in the databases.

Finally, I am not persuaded that the reasons identified by the appellant as to why a party is prohibited from being allowed to split its case apply in the circumstances of this appeal. The appellant cites possible prejudice in allowing the Police's representations to stand. In my view, however, the appellant was not prejudiced in this appeal. In fact, a greater prejudice may have resulted in not providing the Police the opportunity to address the unique and detailed arguments raised by the appellant in the course of this appeal. Furthermore, because I allowed the appellant the opportunity to provide representations by way of sur-reply, I find that the appellant was not prejudiced as a result of the Police's opportunity to provide reply representations in this appeal.

Accordingly, I do not accept the appellant's position that the Police improperly split their case.

ORDER:

I order the Police to respond to the appellant's requests by issuing access decisions in accordance with the provisions of sections 19, 21 and 22 of the *Act*, treating the date of this order as the date of the request.

Original signed by: November 7, 2005
Frank DeVries
Adjudicator