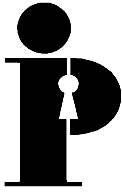

ORDER MO-2130

Appeal MA-040218-2

Toronto Police Services Board

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NATURE OF THE APPEAL:

The Toronto Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following information:

> Total amount of Parking Violation Notices, broken down by issuing agency for all Parking Violation Notices that were issued during the periods:
>
> Jan 1, 2001 – Dec 31, 2001.
> Jan 1, 2002 – Dec 31, 2002.
> Jan 1, 2003 – Dec 31, 2003.
>
> Total number of "bylaw tows" that were caused by the Toronto Police Service and its authorized Municipal Law Enforcement Agencies, broken down by the agency that caused the action, for the following periods:
>
> Jan 1, 2001 – Dec 31, 2001.
> Jan 1, 2002 – Dec 31, 2002.
> Jan 1, 2003 – Dec 31, 2003.

In response, the Police issued a decision letter to the requester which stated:

> Access to the requested total amounts broken down by agency and year cannot be provided because such records do not exist on file with [the Police]. The Analysis Support Section of [the Police] advises that the databases do not currently have report functions capable of providing the information you have requested.
>
> It is the function of the [Police's] Freedom of Information and Protection of Privacy Unit to disseminate *recorded* information to which an individual is entitled to under the [Act]. It is not within the mandate of the Freedom of Information Unit to create a record in response to a request.

The Police also referred to Orders MO-1381 and MO-1422 in support of their position that they are not required to create a record in response to a request.

The requester (now the appellant) appealed the Police's decision to this office. He took the position that the information he requested exists in the Police's record holdings.

Furthermore, in his appeal letter, the appellant asked that he be permitted to amend the second part of the request to read:

> Total number of "bylaw tows" that were caused by [the Police] and its authorized Municipal Law Enforcement Agencies, broken down by the agency that caused the action, for the following periods:
>
> Jan 1, 2001 – Dec 31, 2001.
> Jan 1, 2002 – Dec 31, 2002.
> Jan 1, 2003 – Dec 31, 2003.

> Including the date, time and address from which the vehicles were towed, the Enforcement Officers ID# and MLEO agency name.

Initially, this office issued a Notice of Inquiry setting out the facts and issues in this appeal to the Police, who submitted representations in response. A Notice of Inquiry was then issued to the appellant, along with the complete representations of the Police. The appellant submitted representations in response.

DISCUSSION:

BACKGROUND

To understand the nature of the appellant's request and effectively address the issues in this appeal, it is helpful to provide a brief overview of the parking enforcement regime that exists in Toronto, the key players involved, and the databases onto which the Police store information relating to parking tickets and tow cards.

The regulation of parking on both public and private property in Toronto appears to be based on a complex set of rules in the *Toronto Municipal Code* that operates in conjunction with relevant provisions in provincial statutes such as the *Police Services Act,* the *Highway Traffic Act* and the *Provincial Offences Act*.

According to the Police's representations, Parking Infraction Notices (PINs), which are referred to in the appellant's request as "Parking Violation Notices," are issued by several entities: the Police (police officers and parking enforcement officers), agencies of the City of Toronto (the Toronto Parking Authority, the Toronto Transit Commission and others), and Municipal Law Enforcement Officers (MLEOs) employed by private agencies. PINs are commonly known as "parking tickets."

Chapter 915 of the *Toronto Municipal Code* sets out the general rules governing parking within the City of Toronto (the City) and authorizes the towing of illegally parked vehicles in prescribed circumstances. In particular, it prohibits parking on municipal property or private property without consent and authorizes police officers, police cadets and MLEOs to have illegally parked vehicles towed away. It appears that these individuals fill out a "tow card" after making a decision to have an illegally parked vehicle towed away.

In their representations, the Police state that the information from PINs is inputted into a City database and then transferred to the Police's Parking Infraction Notice System (PINS) database. The information from tow cards is inputted directly into the Police's Vehicle Impound Program (VIP) database.

WHAT IS THE SCOPE OF THE REQUEST?

As noted above, the appellant submitted a request to the Police for statistical information relating to parking violation notices and by-law tows but was refused access. In the appeal letter that he later submitted to this office, the appellant asked that he be permitted to amend the second part of his request dealing with by-law tows to include additional information.

At the end of the mediation stage of the appeal process, this office's mediator issued a report that specifically stated that the appellant had amended the second part of his request. Before dealing with the other issues in this appeal, I must determine whether the scope of this appeal is limited to the information that the appellant asked for in his initial access request to the Police, or whether it should be expanded to cover the additional information that the appellant included in the amended request which he submitted to this office.

The Police's representations

In the Notice of Inquiry that this office issued to the Police at the outset of adjudication, the Police were asked to state their position with respect to the scope of the appellant's access request. The Police submitted representations that addressed this issue. In particular, they submit that the appellant's amendment to the second part of his request is not within the scope of this appeal:

> The Notice of Inquiry states the appellant requested, in his appeal letter, that he be permitted to amend the second part of his request. This appeal letter was never shared with [the Police] … some information was exchanged during the mediation stage which suggested that the appellant may have changed his original request; however [the Police were] never notified of the IPC decision to permit or deny the appellant's amendment request. Therefore, it is submitted that the amendment to the second part of the request is not within the scope of the decision that is the subject of this appeal.

The appellant's representations

The Notice of Inquiry that was subsequently issued to the appellant asked him to address this preliminary issue and to respond to the Police's representations. Although the appellant submitted representations, he did not address this issue.

Analysis and Findings

Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

> (1) A person seeking access to a record shall,

> (a) make a request in writing to the institution that the person believes has custody or control of the record;
>
> (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and
>
> . . . . .
>
> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Section 17(1)(a) requires a person seeking access to a record to make a request in writing to the institution that the person believes has custody or control of the record. The provisions of the *Act* do not specifically address the process that a person must follow if they wish to amend their original request. However, if the original request must be submitted in writing to the institution, this suggests that a requester has an obligation to communicate any amendments to his or her request in writing to the institution.

In the circumstances of this appeal, the appellant submitted his original request to the Police but did not submit his amended request to them. Instead, he included his amended request in the appeal letter that he sent to this office. Consequently, the Police were not aware of the appellant's amended request at the outset of the appeal process.

I have considered the fact that the appellant did not submit his amended access request directly to the Police, and that the Police did not become fully aware of the appellant's amended request until the mediator's report was issued. In addition, it must be noted that this office resolves appeals of access decisions made by institutions, and the Police have not made any such decision with respect to access to the additional information sought by the appellant in his amended request. The Police have only made an access decision with respect to the appellant's initial request.

I have concluded, therefore, that the scope of this appeal must be limited to the information that the appellant asked for in his initial access request to the Police. If the appellant wishes to pursue access to the information set out in his amended request, he must file this request directly with the Police.

REASONABLE SEARCH

The issue of reasonable search arises in this appeal because the Police claim that no records responsive to the appellant's two-part request exist, while the appellant takes the position that the information he has requested exists within the Police's record holdings.

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act* [Orders P-85, P-221, PO-1954-I].

If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624].

A reasonable search would be one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request [Order M-909].

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

Preliminary issue

An important preliminary issue underpinning the issue of reasonable search is the Police's assertion that they are not required to create a record in response to a request. The Police submit that it is not within the mandate of their Freedom of Information Unit to create statistical information concerning PINs and by-law tows.

In essence, the Police are arguing that once they have determined that no records exist in the exact format described in a request, they have no obligation to go further and create a record in the format sought by the requester.

Clearly, if an institution takes such a position, this will influence the types of searches, if any, that the institution conducts to find responsive records. In my view, therefore, it is important, as a preliminary matter, to assess whether the Police are correct in their assertion that they have no obligation under the *Act* to create a record in response to a request.

As noted above, the Police cited Orders MO-1381 and MO-1422 to support their position that they are not required to create a record in response to a request.

In my view, the Police have presented an incomplete picture of this office's orders with respect to whether institutions have a duty to create a record in response to a request. It is true that the above orders establish the general rule that institutions are not required to create records to satisfy an access request. However, this rule is not absolute.

The Police have omitted any reference in their decision letter or representations to Order P-50, which was issued by former Commissioner Sidney Linden and more closely parallels the issues in this appeal. This order clearly contemplates that there will be situations in which an institution will be required to create records in response to a request.

In that order, former Commissioner Linden grappled with the following issue: When an institution receives a request for information which exists in some recorded format within the institution, but not in the format asked for by the requester, what duty is imposed on the institution?

This is substantially the same issue as in this appeal. It is clear from the Police's representations that recorded information that is responsive to the appellant's request exists in two Police databases but not in the aggregated statistical format asked for by the appellant.

PINS database

In Part 1 of his request, the appellant is seeking the total number of parking violation notices (i.e., PINs), broken down by issuing agency for 2001, 2002 and 2003.

When the employee of a parking enforcement agency, whether public or private, issues a PIN, it appears that the information from this parking ticket is entered into a City database and then subsequently transferred to a Police database.

In their representations, the Police state that a PIN contains a "field" or box for the employee signature, employee number and the Unit of the person issuing the PIN. The ticket does not contain a specific field for the name of the agency issuing the PIN. However, the "Unit" field on the ticket allows for an agency to be identified by way of coded information.

The City of Toronto inputs a "portion" of the information from a PIN into a database known as the Parking Tag Management System (PTMS). It then shares some information from this database with the Police, who transfer it onto their Parking Infraction Notice System (PINS) database.

The Police caution that the City does not provide them with all updates that it has made to the PTMS. Consequently, when compared to the original parking ticket information contained on the PTMS database, the accuracy of the information on the PINS database may be only 90 per cent or less than the original.

In short, it appears that the PINS database contains a record of each ticket issued by an agency, and the identity of the agency (apparently in coded form). I find, therefore, that recorded information responsive to Part 1 of the appellant's request exists in the PINS database but not in the aggregated statistical format asked for by the appellant.

VIP database

In Part 2 of his request, the appellant is seeking the total number of "bylaw tows" undertaken by the Police and private agencies, broken down by the agency that caused the towing, in 2001, 2002 and 2003.

When the employee of a parking enforcement agency, whether public or private, issues a tow card, it appears that the information from the card is entered into a Police database. In their representations, the Police state that they input information from tow cards directly into their VIP database.

The Police further state that a tow card contains fields for the employee surname, rank, "badge" number and "Unit" of the person issuing the card. A tow card does not contain a specific field for the name of the agency issuing the card. However, the "Unit" field on the tow card allows for an agency to be identified by way of coded information.

In short, it appears that the VIP database contains a record of each tow card issued by the Police or a private agency, including the identity of the agency (apparently in coded form). I find, therefore, that recorded information responsive to Part 2 of the appellant's request exists in the VIP database, but not in the aggregated statistical format asked for by the appellant.

Order P-50

I have found that the information sought by the appellant exists within the record holdings of the Police, but not in the format asked for by the appellant. Consequently, what duty is imposed on an institution such as the Police in these circumstances?

In Order P-50, former Commissioner Linden stated that the *Act* does not address this question directly but that the answer could be found by examining all relevant provisions of the *Act*, including the definition of a record in section 2(1):

> "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; ("document")

Former Commissioner Linden stated that the duty of an institution differs according to which part of the definition of "record" applies.

Paragraph (a) records

Paragraph (a) of the definition of a record refers to recorded information that exists in some physical form, such as correspondence, a memorandum, a microfilm, a machine readable record, etc. Former Commissioner Linden found that if a request is for information that currently exists in a recorded format different from the format asked for by the requester, section 17 of the *Act* imposes a responsibility on the institution to identify and advise the requester of the existence of these related records. It is then up to the requester to decide whether to obtain these related records and sort through and organize the information into the desired format (e.g., statistics).

In short, the *Act* gives a requester the right (subject to any exemptions) to the "raw material" which would be responsive to a request. However, subject to special provisions that apply only to information that is capable of being produced from a machine readable record (paragraph (b) of the definition of a record), the institution is not required to organize this information into a particular format for the requester (i.e., the institution is not required to create a record).

In addition, an institution must charge a fee for accessing this "raw material," in accordance with the fee provisions in the *Act* and Regulation 823.

Paragraph (b) records

The term, "machine readable record," is not defined in the *Act*. However, a machine readable record can be defined as a record that is capable of being rendered intelligible by a machine. For example, a machine readable record would include a database that is capable of being rendered intelligible by a computer. Other examples of machine readable records would include a DVD which can be played or rendered intelligible by a DVD player or an audiotape which can be listened to or rendered intelligible by a tape recorder.

Machine readable records are included in the list of records in paragraph (a) of the definition of a record. However paragraph (b) goes one step further and extends the definition of a record to include " … 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."

Former Commissioner Linden found that the *Act* imposes additional obligations on institutions when dealing with the types of records set out in paragraph (b):

> 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 regulations." (Emphasis added.)

Section 1 of Ontario Regulation 823 states that:

> 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.

Former Commissioner Linden stated that what constitutes "unreasonable interference" is a matter which must be considered on a case-by-case basis, but it is clear that the regulation is intended to impose limits on the institution's responsibility to create a new record.

Moreover, paragraph 5 of section 6 of the same regulation provides for a fee to be charged by an institution "for developing a computer program or other method of producing a record from a machine readable record."

In short, former Commissioner Linden found that subject to the regulation, the *Act* requires an institution to locate information and produce it in the requested format if that information can be produced from an existing machine readable record, and providing that doing so would not unreasonably interfere with the operation of the institution.

I agree with former Commissioner Linden's reasoning in Order P-50. Clearly, it would be unreasonable to expect an institution to create a record in the format sought by the requester if the records are the type contemplated by paragraph (a) of the definition of a record, such as paper records. Unless the records are few in number, it would require significant resources and staff time for an institution to manually organize such records into the format sought by the requester (e.g., statistics).

However, there is a clear policy rationale underlying the special rules governing computerized or electronic records inherent in paragraph (b) of the definition of a record. The data in a machine readable record, such as a database, can be retrieved, manipulated and reorganized with ease through the use of information technology tools, such as computer software. Consequently, in comparison to paper records, it is significantly easier and less labour intensive for institutions to organize electronic data into the format sought by the requester. This is why section 2(1) of the *Act* defines a record as including any record that is capable of being produced from a machine readable record in the circumstances set out in paragraph (b).

In 1997, this office published a paper, *Electronic Records: Maximizing Best Practices*, that provides further commentary on this requirement:

> The *Acts* and regulations recognize the obligation of government organizations to create electronic records when requested, except where to do so would unreasonably interfere with the operations of the government organization. That obligation would be satisfied through the use of the appropriate hardware and software to create the document …

I find, therefore, that the Police's blanket assertion that they are not required to create a record in response to an access request is not entirely accurate. If the request is for information that currently exists in a recorded format different from the format asked for by the requester, as is the case in this appeal, the Police have dual obligations.

First, if the requested information falls within paragraph (a) of the definition of a record, the Police have a duty to identify and advise the requester of the existence of these related records (i.e., the raw material). However, the Police are not required to create a record from these records that is in the format asked for by the requester (e.g., statistics).

Second, if the requested information falls within paragraph (b) of the definition of a record, the Police have a duty to provide it in the requested format (e.g., statistics) if it can be produced from an existing machine readable record (e.g., a database) by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution, and doing so will not unreasonably interfere with the operations of the Police. In such circumstances, the Police have a duty to create a record in the format asked for by the requester.

In my view, a reasonable search for records responsive to an access request would include taking steps to comply with these two obligations. I will now summarize the representations of the parties in this appeal and assess whether the Police have conducted a reasonable search for the records sought by the appellant.

The Police's representations

The Police state that as part of their search efforts for responsive records, their freedom-of-information (FOI) analyst contacted and received advice from persons within the Police familiar with information technology, statistical analysis and management of the PINS and VIP databases, including:

- A Sergeant in the Traffic Services Unit
- A Planner Analyst in the Planning Department
- The Manager of Parking Support Services
- The Section Supervisor of Contract Services at the Parking Enforcement Unit
- The Section Supervisor of Training Services at the Parking Enforcement Unit
- Information Technology Analysts in the Analysis Support Unit
- The Coordinator of Quality Control and Business Services in Corporate Information Services – Operations

The Police submit that they found that it is not currently possible to produce the requested statistical information from the PINS or VIP databases.

PINS database

The Police state that the PINS database does not contain a report function capable of producing the records in the statistical format requested by the appellant in Part 1 of his request. In order to create such a record, they would have to write a "custom query" to cross reference tables on the PINS database and correlate all [PINs] by Units and coded information within the three time frames specified by the appellant.

Moreover, the Police state that they considered, in the alternative, whether the "raw data" relating to PINs could be produced from the PINS database. They state that the information relating to PINs is only one component of information on the larger PINS database. Consequently, in order to extract the unedited raw data for transfer to a separate file, they would have to create a "custom query" to isolate the PIN information from the remainder of the information on the database.

They also submit that this "custom query" would require further customization to isolate information within the three time frames specified by the appellant and to isolate and remove fields containing the personal information of affected parties and information not responsive to the request.

VIP database

The Police state that the VIP database does not contain a report function capable of producing the records in the statistical format requested by the appellant in Part 2 of his request.

They further submit that "by-law tows" is only one of six criteria under the category of "reasons for tow." Consequently, in order to create a record to provide the requested statistical information, they would have to write a custom query to isolate "by-law tows" from the remaining five options under "reasons for tow." This custom query would also have to cross-reference tables on the VIP database and correlate all tow cards by Units and coded information within the three time frames specified by the appellant.

Moreover, the Police state that they considered, in the alternative, whether the "raw data" relating to the "by-law tows" information on tow cards could be produced from the VIP database. They reiterated that "by-law tows" is only one of six criteria under the "reasons for tow." Consequently, in order to extract the unedited raw data from the database for transfer to a separate file, they would have to create a "custom query" to isolate the tow card information from the remainder of the information contained on the VIP database.

They also submit that this "custom query" would require further customization in order to isolate information within the three time frames specified by the appellant, to isolate the "by-law tows"

from the remaining five criteria under the "reason for tow" category, and to isolate and remove fields containing the personal information of affected parties and information not responsive to the request.

Interference with the operations of an institution

As noted above, section 1 of Regulation 823 states that 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 refused to address this issue in their representations because they submit that it is not currently possible to produce the requested statistical information from the PINS and VIP databases (i.e., they do not have a duty to create a record in the format asked for by the appellant).

The appellant's representations

The appellant submitted a one-page letter in response to the Notice of Inquiry. In these representations, he states that the Police's submissions lack credibility and are based on illogical assumptions. He further submits that there is no need to "create" records because they already exist and are routinely accessed:

> The Parking Enforcement Unit of the [Police] directly supervises the activity of Municipal Law Enforcement Officers and Certified Contract Officers (MLEO\CCOs) to which this request relates. Given that MLEO\CCO activity is limited to writing by-law PINs, writing by-law tow orders and giving evidence in court relating to these PINs, I fail to understand how the Parking Enforcement Unit could possibly supervise the MLEO\CCOs or review their activity and complaints if the records that I have requested are not readily available.
>
> In 2003, 141,806 (59.4 %) of the 238,256 PINs that were issued by MLEO Agencies resulted in complaints.
>
> If [the Police] are not tracking the requested information, how is it that they can supervise MLEO activity, identify irregularities and investigate the volumes of complaints that flow from MLEO activities?

The appellant further submits he will accept a 90 per cent accuracy rate if doing so will accelerate the disclosure of information.

Analysis and findings

I have considered the representations of the parties and the obligations that the *Act* imposes on an institution when responding to an access request. In my view, the Police have made significant

efforts to locate and identify records responsive to the appellant's request, but these efforts have yet to meet the threshold of a reasonable search.

I have found that the Police's assertion that they are not required to create a record in response to an access request is not entirely accurate. If the request is for information that currently exists in a recorded format different from the format asked for by the requester, as is the case in this appeal, the Police must comply with the dual obligations outlined above. A reasonable search for records responsive to the appellant's two-part request would include taking steps to comply with these obligations.

The thrust of the appellant's representations is that the records he is seeking exist and are routinely accessed by the Police. He points out that the Police's Parking Enforcement Unit supervises the activities of private agencies and responds to public complaints about the parking tickets and tow cards issued by these agencies. In his view, the Police could not fulfill these roles unless they were able to track and easily access the information he has requested.

In my view, the appellant's representations do not address the real issue with respect to whether the Police have conducted a reasonable search for the records he is seeking. The Police are not claiming that they cannot retrieve information that relates to a specific parking ticket or tow card that was issued on a particular day by the employee of a private agency. On the contrary, they have acknowledged that such information exists in their record holdings. The position of the Police is that their databases do not currently have the capability of organizing and producing this data in the aggregated statistical format sought by the appellant in Parts 1 and 2 of his request.

As part of their search efforts, the Police consulted a number of experienced employees and took the important preliminary step of determining whether the PINS and VIP databases contain a "report" function capable of producing the requested information. They found that the database does not have a "report" function capable of producing the information in the statistical format sought by the appellant.

The Police undertook further search efforts that resulted in a determination that they would have to develop "custom query" functions to produce the information from the PINS and VIP databases in the statistical format sought by the appellant. I find, therefore, that the Police have taken the necessary step of determining whether records responsive to the request can be produced from their databases by means of computer hardware and software or any other information storage equipment and technical expertise that they normally use.

However, section 1 of Regulation 823 requires the Police to also determine whether the process of producing the requested information from the PINS and VIP databases using "custom query" functions would unreasonably interfere with their operations. The Police did not provide any representations on this issue. I find, therefore, that the Police have not yet addressed this issue as part of the search efforts, and I will order them to do so.

The Police also considered, in the alternative, whether the "raw data" relating to the appellant's request could be produced from the PINS and VIP databases. They determined that in these circumstances, they would also have to develop "custom query" functions that could be used to extract the "raw data" responsive to the appellant's request from the two databases.

An institution must make reasonable efforts to assist requesters, which includes striving to provide access in the format asked for by a requester and at the lowest possible cost. Unless there are very few records at issue, providing access to the "raw material" would be cumbersome and costly for both the institution and the requester. Consequently, in the circumstances of this appeal, the Police should only issue an access decision with respect to the "raw material" responsive to the appellant's request if they conclude that access cannot be provided in the aggregated statistical format asked for by the appellant.

In short, I find that the Police have not yet made reasonable efforts to identify and locate responsive records. Specifically, I find that the Police must determine whether the process of producing responsive records from the PINS and VIP databases using "custom query" functions would unreasonably interfere with their operations.

If the Police determine, as a result of these additional search efforts, that the process of producing responsive records from the PINS and VIP databases using "custom query" functions would unreasonably interfere with their operations, they should only then turn their focus to providing the appellant with access to the "raw material" that would enable him to compile this information in the statistical format he is seeking.

After the Police have completed a further search for the records, they must issue a new access decision to the appellant, who has the right to appeal this new access decision to this office.

An institution must charge a fee for providing access to records in accordance with the fee provisions in section 45 of the *Act* and sections 6, 6.1, 7, 8 and 9 of Regulation 823. Consequently, the Police's new access decision must include an actual fee or fee estimate for providing access to the records.

If the Police decide to provide the appellant with access to the records in the statistical format he is seeking, paragraph 5 of section 6 of Regulation 823 requires an institution to charge a fee "for developing a computer program or other method of producing a record from a machine readable record." In other words, the Police must charge a fee for developing "custom query" functions to extract the requested information from the databases in the statistical format asked for by the appellant.

Where the fee exceeds $25, an institution must provide the requester with a fee estimate. Where the fee is over $25 and under $100, the fee estimate must be based on the actual work done by the institution to respond to the request.

The purpose of a fee estimate is to give the requester sufficient information to make an informed decision on whether or not to pay the fee and pursue access [Orders P-81, MO-1367, MO-1479, MO-1614, MO-1699]. The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees [Order MO-1520-I].

In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated [Order P-81, MO-1614].

ORDER:

1. I order the Police to conduct further searches for the records responsive to the appellant's two-part request. In particular, they must determine whether the process of producing responsive records from the PINS and VIP databases using "custom query" functions would unreasonably interfere with their operations.

2. I order the Police to issue a new access decision to the appellant, including a fee decision, within 45 days of this order.

3. I order the Police to provide this office with a copy of the new decision letter that they issue to the appellant.

Original signed by: November 30, 2006
Colin Bhattacharjee
Adjudicator