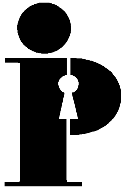

ORDER MO-2129

Appeal MA-030423-2

Toronto Police Services Board

Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9188
TTY: 416-325-7539
http://www.ipc.on.ca

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:

1. Complete listing of all Private Parking Enforcement Agencies that have participated in the Police Administered Municipal Law Enforcement Program under by-law 465-2001 since Jan 1, 2002.

2. Total number of individuals employed by Private Parking Enforcement Agencies that have been certified as Municipal Law Enforcement Officers since Jan 2002.

3. Total number of individuals employed by Private Parking Enforcement Agencies that are currently certified as Municipal Law Enforcement Officers under the Toronto Police administered Municipal Law Enforcement Program.

In response, the Police issued a decision letter to the requester stating that access cannot be provided to such records because they do not exist. The letter further stated that the Police are not required to create records in response to an access request:

> … it is the function of the Toronto Police Service 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 [Unit] to create a record in response to a request.

In support of their decision, the Police cited the definition of the term "record" in section 2(1) of the *Act* and three orders that have been issued by this office (Orders P-50, MO-1381 and MO-1422) which address whether institutions are required to create a record in response to an access request.

The requester (now the appellant) appealed the Police's decision to this office. The issues in this appeal were not resolved in mediation and the file was transferred to the adjudication stage of the appeal process.

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, which were then shared with the Police. The Police were invited to respond to the appellant's representations and to answer a series of detailed questions, mainly about a database that they referred to in their initial representations. The Police submitted supplementary representations that responded to these questions, but did not comment on the appellant's representations. This office then sent the Police's supplementary representations to the appellant for his comments. However, he did not provide any additional submissions.

DISCUSSION:

BACKGROUND

The appellant's three-part request refers to "Private Parking Enforcement Agencies" (private agencies) and "Municipal Law Enforcement Officers" (MLEOs). In addition, it refers to "bylaw 465-2001" and a "Municipal Law Enforcement Program" administered by the Police. To understand this request and effectively address the issues in this appeal, it is helpful to have a basic understanding of these terms.

Neither the Police nor the appellant provided me with detailed background information about the meaning of these terms or any related legal framework. However, it appears that the regulation of private agencies and MLEOs is based on a complex set of rules in the *Toronto Municipal Code* (the *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*.

Parking enforcement duties in Toronto are divided between public authorities, such as police officers and the Police's Parking Enforcement Unit, and private agencies that are licensed by the City's Municipal Licensing and Standards Division.

Bylaw 465-2001, which was enacted by Toronto City Council on June 1, 2001, repealed the existing version of Chapter 150, which governed MLEOs, and replaced it with a new version. The preamble to this bylaw states that the Police "train and recommend competent persons for enforcing one of more municipal parking by-laws within the City of Toronto."

Under section 545-444 of the *Municipal Code*, a person who is applying for or one who holds a license as a private agency must employ one or more MLEOs who have successfully completed a private parking enforcement course approved by the Chief of Police. A private agency must also ensure that parking enforcement activities are only undertaken by MLEOs. Consequently, it appears that the Police have the authority to train and certify MLEOs that are employed by private agencies.

According to the Police's supplementary representations, MLEOs are certified by the Police and must renew their certification annually on their birth date.

Once an MLEO employed by a private agency is certified, a combination of statutory and bylaw provisions gives them the authority to issue parking tickets and to have illegally parked vehicles towed away from private property.

In short, it appears that the City licenses private agencies, and the Police are responsible for administering the Municipal Law Enforcement Program, which includes the training and certification of MLEOs employed by private agencies. The objective of the program is to authorize these MLEOs to enforce the City's parking bylaws on private property, which presumably relieves police officers and parking enforcement officers of this responsibility.

In their representations, the Police state that their Parking Support Services Unit deals with private agencies and MLEOs. The training and approval of MLEOs and the management of both paper and electronic records relating to private agencies and MLEOs is overseen by three individuals: the Section Manager of the Parking Support Services Unit, the Section Supervisor of Training Services and the Section Director of Contract Services.

The Police appear to maintain paper files on private agencies that are organized alphabetically in filing cabinets. However, dormant or "inactive" files are stored in boxes.

The Police's representations do not state whether they also maintain separate paper files for the MLEOs employed by private agencies who are trained by the Police. However, in Appeal MA-030341-1, which dealt with a request from the same appellant for a list of all applicants for the Police's private parking enforcement course, the Police informed this office that, in addition to agency files, they also maintain "applicant" paper files, which are organized alphabetically.

The Police also maintain electronic records relating to private agencies and MLEOs in a database called the Vehicle Impound Program (VIP) System.

The supplementary Notice of Inquiry that was issued to the Police asked them how many paper files they have in their record holdings relating to both private agencies and applicants. The Police did not provide a direct answer to this question. However, during the mediation stage of this appeal, the appellant faxed a list of private agencies that he had obtained from the City's Licensing and Standards Division. This list contains approximately 80 private agencies that have been licensed by the City.

The number of files maintained by the Police may not exactly match the number of private agencies licensed by the City. However, given that the City's list contains approximately 80 private agencies, it is reasonable to assume that the Police maintain files on a similar number of private agencies (i.e., they do not maintain files on thousands of private agencies). Based on the submissions I have received, however, it is not clear how many files the Police maintain on applicants.

REASONABLE SEARCH

The issue of reasonable search arises in this appeal because the Police claim that no records responsive to the appellant's three-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].

Section 17 of the *Act* 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).
>
> (Emphasis added.)

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. In essence, they 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's decision letter provides excerpts from three orders of this office (Orders P-50, MO-1381 and MO-1422) to support their position that the *Act* does not require institutions to create records in response to a request:

> In Order No. 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 required 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 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, the wording of the excerpt from Order P-50 (formerly indexed as Order 50), indicates that this rule is not absolute. It states that "in most cases" the *Act* does not require an institution to create a record in response to a request. Consequently, 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 Order P-50, 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. With respect to Part 1 of the appellant's request, the Police submit that the information sought by the appellant does not exist in list format and that their database does not contain a report function capable of extracting a list of agencies. However, they acknowledge that the information that could be used to compile a list exists in both paper and electronic records.

With respect to Parts 2 and 3 of the appellant's request, the Police submit that no documents exist that contain this statistical information, and that their database does not contain a report function capable of extracting these statistics. However, they acknowledge that both paper and electronic records exist from which records could be created to respond to the appellant's request.

In short, the information sought by the appellant appears to exist within the record holdings of the Police, but not in the format asked for by the appellant. Consequently, what duty is imposed on 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")

In Order P-50, 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., a list).

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).

An institution may 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 produced from an existing machine readable record, and 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 the data from such records into the format sought by the requester, such as a list.

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 provided 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 (e.g., paper records), 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., a list).

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., a list) 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

Part 1 of the request

In part 1 of his request, the appellant indicates that he is seeking a complete listing of all private agencies that have participated in the Police's Municipal Law Enforcement Program under by-law 465-2001 since Jan 1, 2002.

In their representations, the Police state that they do not have a "complete" list of all agencies that have participated in the program since January 1, 2002. They further submit that their database does not have a "report" function capable of extracting a list of agencies. Moreover, even if such a report function did exist, the database does not have a "query" function which could be used to extract information based on a specific time frame (i.e., as of January 1, 2002).

In the Notice of Inquiry that was initially issued to the Police, they were asked whether information responsive to Part 1 of the request is contained in the records, even if not in list format. In addition, the Police were also asked whether records exist containing "raw material" responsive to the request and if the Police had considered providing access to this "raw material" so that the appellant could compile it in the format requested.

In response, the Police stated in their representations that it has both paper and electronic records that contain information relating to agencies that have participated in the program since January 1, 2002. However, they submit that a review of their electronic records would not yield a "complete listing" of such agencies. Instead, it would be necessary to review all of the paper records that relate to such agencies to locate documents that would confirm whether an agency participated in the program since January 1, 2002.

Parts 2 and 3 of the request

In Part 2 of his request, the appellant is seeking the total number of individuals employed by private agencies that have been certified as MLEOs since January 1, 2002.

In Part 3 of his request, the appellant is seeking the total number of individuals employed by private agencies that are currently certified as MLEOs under the Police's Municipal Law Enforcement Program.

In their representations, the Police state that no documents exist which contain the total number of individuals employed by private agencies who have been "certified" (Part 2 of the request) or the total number of individuals employed by private agencies who are "currently certified" (Part 3 of the request).

The Police point out that the number of individuals who may become certified changes on a regular and frequent basis. A "certified" individual may lose his or her status because their certification has expired, been rescinded or for some other reason. Consequently, it is difficult to accurately pinpoint the total number of individuals employed by private agencies who have been "certified" since a specific date or who are "currently certified."

The Police further submit that their database does not have a "report" function capable of extracting a report that would contain the statistical information responsive to Parts 2 and 3 of the request. With respect to Part 2 of the request, the Police submit that even if such a report function did exist, the database does not have a "query" function which could be used to extract information based on a specific time frame (i.e., as of January 1, 2002).

The Notice of Inquiry that was initially issued to the Police asked them whether information responsive to Parts 2 and 3 of the request is contained in the records, even if not in list format. As noted above, the Police were also asked whether records exist containing "raw material" responsive to the request, and if the Police had considered providing access to this "raw material" so that the appellant could compile it in the format requested.

In response, the Police stated in their representations that both electronic and paper records exist from which records could be created to respond to Parts 2 and 3 of the appellant's request.

They submit that unless programming changes are made to the database, a search of electronic records would involve manually entering the name of an agency or an individual's name to retrieve data relating to that agency or individual. The Police consulted the Coordinator of Quality Control/Business Programs, who stated that he would need to review the database either by himself or with other information technology staff before he could determine whether the database has the ability to be adapted to create a record showing an accurate number of MLEOs who have been "certified" since a specific date or who are "currently certified."

The Police caution that even if they could extract such information from their database, they would have to cross-check the information with their paper records to ensure the accuracy of an individual's status as "certified" since a specific date or "currently certified."

The appellant's representations

The appellant submitted a one-page letter in response to the Notice of Inquiry that was issued to him. In these representations, he submits that the reasons offered by the Police as to why they cannot produce the requested information are not credible:

> Control, integrity and accountability is the umbrella under which the new MLEO parking bylaw program came into effect on Jan. 1, 2002. The parking enforcement unit spent a great deal of time updating and creating records, re-training, recertification and re-licensing of MLEO/MLE Agencies … yet according to the police service representations, their new computer system is … conveniently incapable of running a basic report, without "further review of the programming" by the coordinator of Quality Control/Business Programs.

The appellant further submits that evidence which was submitted in a legal proceeding between his company and the City of Toronto also casts serious doubt on the Police's claim that their database has limited reporting capabilities. He submits that a full list of fields from the Police's database would undoubtedly contradict this claim.

The Police's supplementary representations

After receiving the appellant's representations, this office issued a supplementary Notice of Inquiry to the Police that asked them to respond to a series of questions, mainly about the VIP database that they referred to in their initial representations.

The supplementary Notice of Inquiry asked the Police to describe the search capabilities of their database. In response, the Police submitted that their database can be searched using the following criteria: full or partial tow number, full or partial plate number, full or partial VIN number, and full or partial tag number.

The Police were also asked to provide a list of all the fields in their database and the elements of the database that are "primary keys." Primary keys are data elements that uniquely identify database records so that they may be easily retrieved from the database. In response, the Police submitted two appendices to their supplementary representations that included a list of all of the fields and primary keys in the VIP database.

The supplementary Notice of Inquiry also asked the Police to identify what steps are involved in determining the date on which their files relating to private agencies and MLEOs are opened and closed. In response, the Police stated that the database has a field which records the date on which an individual is approved or certified. However, when the individual is re-certified, the date of re-certification appears, and the history of the individual is not displayed.

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 not conducted a reasonable search for the records sought by the appellant for the following reasons.

In their decision letter, the Police took the position that they are not required to create a record in response to an access request. As a result, the scope of the searches that they conducted for responsive records was limited.

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 three-part request would include taking steps to comply with these obligations.

In my view, the logical starting point for conducting a search for responsive records would be to first assess whether the VIP database is capable of producing the records in the format asked for by the appellant. The *Merriam Webster Online Dictionary* defines a database as "a usually large collection of data organized especially for rapid search and retrieval (as by a computer)." Similarly, *Webopedia* defines a database as "a collection of information organized in such a way that a computer program can quickly select desired pieces of data."

Given that databases are essentially electronic filing systems that enable users to quickly organize, retrieve and manipulate data, the most efficient search approach would be for the Police to first determine whether the information sought by the appellant can be extracted from the VIP database, either in whole or in part, in the format asked for by the appellant. A search through the Police's paper files or other raw material relating to private agencies and MLEOs would only be justified once they have determined whether the hardware and software supporting the VIP database can be modified to produce the records, either in whole or in part, in the desired format.

As part of their search efforts, the Police took the important preliminary step of determining whether the VIP database contains a "report" function capable of producing the requested information. They found that the database does not have a "report" function capable of extracting a report that would contain a list of agencies (Part 1 of the request) or the statistical information responsive to Parts 2 and 3 of the request. Moreover, even if such a "report" function did exist, the database does not have a "query" function which could be used to extract information based on a specific time frame (i.e., as of January 1, 2002).

The appellant submits that a full list of fields from the Police's database would undoubtedly contradict their claim that the requested information cannot be extracted from the database. I have reviewed the full list of fields and primary keys submitted to this office by the Police. In

my view, these documents simply show that the information sought by the appellant is found, in part, in the VIP database. They do not prove in any way that the database, as it currently functions, would allow this information to be extracted and organized in the format asked for by the appellant.

I would note as well that I sent the Police's supplementary representations, including the full list of database fields and primary keys, to the appellant and asked him to provide reply representations. The appellant did not submit any representations in response.

Consequently, I accept that the existing functionality of the VIP database may not be capable of producing the information in the format asked for by the appellant. However, to meet the threshold of a reasonable search, the Police have an obligation to make additional efforts. Such efforts would include determining whether the information sought by the appellant is capable of being produced from the VIP database by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the Police, and whether doing so would unreasonably interfere with their operations.

I will now consider the Police's response to the three parts of the appellant's request.

Part 1 of the request

With respect to Part 1 of the appellant's request, the Police submit that a review of their electronic records would not yield a "complete listing" of such agencies. Instead, it would be necessary to review all of the paper records that relate to such agencies to locate documents that would confirm whether an agency participated in the program since January 1, 2002.

In my view, before manually searching through their paper records (i.e., searching through the "raw material"), the Police must first make efforts to determine whether the computer programs and technical expertise that they normally use could be applied to extract a list of agencies, either in whole or in part, from the VIP database, and whether doing so would unreasonably interfere with their operations. I find that the Police did not undertake such efforts as part of their search for responsive records.

Parts 2 and 3 of the request

With respect to Parts 2 and 3 of the appellant's request, the Police submit that unless programming changes are made to the database, a search of electronic records would involve manually entering the name of an agency or an individual's name to retrieve data relating to that agency or individual. The Police consulted their Coordinator of Quality Control/Business Programs, who stated that he would need to review the database either by himself or with other information technology staff before he could determine whether the database has the ability to be adapted to create a record showing an accurate number of MLEOs who have been "certified" since a specific date or who are "currently certified."

This portion of the Police's representations indicates that as part of their search efforts, they considered whether the VIP database has the ability to be "adapted" to respond to Parts 2 and 3 of the request, but did not take the additional step of actually determining whether this could be accomplished.

In my view, before conducting a search that involves manually entering the name of an agency or an individual's name into the database to extract data, a reasonable search would involve first taking the steps that were described but not undertaken by its Coordinator of Quality Control/Business Programs. In other words, the Police must determine whether the computer programs and technical expertise that they normally use could be applied to extract the statistical data responsive to Parts 2 and 3 of the request from the VIP database, and whether doing so would unreasonably interfere with their operations. I find that the Police did not undertake such efforts as part of their search for responsive records.

Conclusion

In short, I find that the Police have failed to provide sufficient evidence to establish that they have made a reasonable effort to identify and locate responsive records. Although the Police consulted an experienced employee (the Coordinator of Quality Control/Business Programs) about whether the information sought by the appellant could be extracted from the VIP database, this individual was not asked to expend any efforts to determine whether the computer programs and technical expertise that the Police normally use could be applied to extract the information sought by the appellant from the VIP database, and whether doing so would unreasonably interfere with their operations.

Consequently, I will order the Police to conduct further searches for the records sought by the appellant, with a focus on determining whether they can apply their existing computer hardware and software and technical expertise to extract the data from the VIP database in the format asked for by the appellant. This could involve, for example, asking their information technology staff to apply their technical expertise to determine whether a computer program, a report function, a custom query or other methods could be developed to produce the information from the VIP database in the format requested by the appellant, either in whole or in part.

If the Police find that they are capable of devising a method for providing access to the appellant in the format he has requested, and doing so would not unreasonably interfere with their operations, they must charge him a fee for providing access. Paragraph 5 of section 6 of Regulation 823 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."

However, if the Police determine, as a result of these additional search efforts, that they cannot extract the information from the VIP database in the format asked for by the appellant, or that doing so would unreasonably interfere with their operations, they should only then turn their focus to determining whether they can provide the appellant with access to the "raw material"

that would enable the appellant to make his own list of agencies (Part 1 of the request) or compile the statistical information responsive to Parts 2 and 3 of his request.

In the circumstances of this appeal, it would appear that this "raw material" would be found in both paper and electronic records. With respect to Part 1 of the appellant's request, the Police submit that it would be necessary to review all of the paper records that relate to such agencies to locate documents that would confirm whether an agency participated in the program since January 1, 2002. With respect to Parts 2 and 3 of the request, the Police submit that they would have to manually enter the name of an agency or an individual's name into the VIP database to retrieve data relating to that agency or individual.

After the Police have completed further searches for the records, they must issue a new access decision to the appellant. The appellant has the right to appeal this new access decision to the Commissioner's office.

An institution must charge a fee for providing access to records, whether paper or electronic, 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.

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 three-part request, in accordance with the findings in this order.

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