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

ORDER MO-2160

Appeal MA-050361-1

Halton Regional Police

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 Halton Regional Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

1. All [Police] CPIC records as it relates to myself, including but not limited to entry data forms and CPIC printouts in relation to myself.
2. The [Police] CPIC directives which explicitly defines and directs the use of the probation category on CPIC.
3. All [Police] CPIC records as it relates to my name being entered under the probation category on CPIC by the HRPS.
4. All [Police] records which conducted and confirmed the removal of my name from the probation category on CPIC by the HRPS.
5. All [Police] records which conducted and confirmed the removal of my name from the CNI and Criminal Record category on CPIC.

By way of background, CPIC is an abbreviation for the Canadian Police Information Centre and CNI is an abbreviation for the Criminal Name Index.

In response to part 1 of the request, the Police indicated that they do not conduct CPIC inquiries in response to requests made under the *Act*, and referred the requester to the Royal Canadian Mounted Police. The Police provided copies of directives in response to part 2 of the request, one relating to "Parolees/Probationers/Persons on Undertakings or Recognizance's" (sic), dated March 31, 2005, and another relating to "Probation", dated April 1991, severing some portions of both records pursuant to the law enforcement exemptions in sections 8(1)(e) (life or physical safety) and (l) (commission of an unlawful act or control of crime) of the *Act* and other portions as being non-responsive to the request. With reference to parts 3, 4 and 5 of the request, the Police advised the requester that they do not have custody or control of records responsive to these parts of the request and directed him to the Ministry of the Attorney General (the Ministry).

The requester (now the appellant) appealed this decision stating that he believes that there are additional responsive records in the custody or control of the Police. The appellant did not, however, appeal the Police's application of the section 8 law enforcement exemption or their position on the responsiveness of some of the undisclosed information to the appellant's request. Accordingly, the undisclosed portions of the records responsive to part 2 of the request are not at issue.

During the mediation stage of the appeal, the appellant stated that he believes the Police must have a data input form from which they entered information onto the CPIC system, and a data verification form that would be used to verify the accurate inputting of the data. The appellant also believes that the Police must have other records relating to his being entered onto and removed from the CPIC system.

With regard to part 2 of his request, during the mediation stage of the appeal process the appellant stated that he is not interested in the current directives, but wanted the directives that were in effect at the time he was placed on probation, sometime between 2000 and 2004. The Police indicated that this is not how his request was worded, and refused to consider the directives from 2000 to 2004 as responsive to this request. Therefore, scope of request relating to this point is an issue in this appeal.

The appellant also confirmed that he is of the view that the Police have custody or control of records responsive to parts 3, 4 and 5 of the request, and this is an issue in this appeal.

This office initially sought and received representations from Police on the reasonable search and scope of request issues. The Police's representations were shared, in their entirety, with the appellant, who also provided representations on the reasonable search and scope of request issues.

I then decided to seek reply representations from the Police in response to the appellant's submissions and provided the Police with the appellant's non-confidential representations. In particular, I invited the Police to provide representations on the "custody or control" issue. The Police provided additional representations in which they restated the position taken in their initial submissions.

DISCUSSION:

SCOPE OF REQUEST

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).

Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour [Orders P-134, P-880].

To be considered responsive to the request, records must "reasonably relate" to the request [Order P-880].

In this case, the Police interpreted part 2 of the appellant's request to include only the current CPIC directives, dated March 31, 2005 and April 1991. However, the appellant takes the position that part 2 of his request was sufficiently broad in its wording to include the directives that were in effect in the period between the years 2000 to 2004.

In support of its interpretation, the Police state that the scope of the appellant's request was "quite clear" and that "no other interpretation could be concluded" since the request is "not date specific."

In response, the appellant acknowledges that his request was not date specific. However, he adds that if the Police were uncertain as to the specifics of the request they could have sought clarification from him and he would have attempted to clarify his request.

Turning to my analysis, I am satisfied on the evidence before me that the Police adopted a reasonable interpretation of part 2 of the appellant's request. My conclusion is based on the wording of the request.

While an institution is required to liberally interpret a request for information and to seek clarification where there is ambiguity in the wording of the request, in my view, there is no evidence of ambiguity in this case. The appellant provided no time frame for part 2 of his request. Therefore, under the circumstances, considering the plain wording of the appellant's request, I see no reasonable basis for concluding that the Police should have sought clarification from the appellant regarding his request.

In conclusion, I am satisfied that the Police properly interpreted the scope of part 2 of the appellant's request by providing him with the directives currently in use.

I also note that the appellant takes issue with the Police's retention practices in this case. The *Act* requires that "personal information" be retained after use by an institution for up to one year [see section 30 of the *Act* and section 5 of Regulation 823]. However, the *Act* does not address the retention of information that is other than personal information. In this case, the directives in question contain generic procedural information, not personal information. Accordingly, I have no jurisdiction under the *Act* to examine the efficacy of the Police's Records Retention Schedule as it applies to the directives in question.

SEARCH FOR RESPONSIVE RECORDS

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 [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].

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.

In this case, the appellant argues that records relating to his being included and removed from the CPIC database, including any data entry input or data verification forms, ought to exist.

Representations

The Police provide detailed representations describing their efforts to locate records responsive to the appellant's request. The Police state that their search for responsive records was conducted over a two-day period by their Freedom of Information Analyst (the Analyst). The Police submit that the Analyst's search included the following three components:

- Inquiries of the data entry personnel with the Police's Records Bureau, all of whom are responsible for CPIC data entry, including the Warrant and Probation Clerk, who advised that any data entry regarding probation orders would come from specific court documents that the Police do not house

- Review of the Central Records Support Service Policy and Procedures Manual to identify the process used to enter and remove individuals from CPIC in the probation category, with all responsive records being provided to the appellant

- Review of all records involving the appellant that were directly related to why the appellant was placed on and subsequently removed from the probation category, including a lengthy arrest report, a local criminal record and "criminal information dossier" (CID)

With regard to the third component, the Police state that there was no information in the arrest report or in the criminal record that described how the appellant was entered and removed from the probation category. The Police submit that the only information in the CID file was a "recognizance with conditions", which they state is a court document. The Police indicate that the Analyst reviewed this information with the Warrant and Probation Clerk, who confirmed that

this information was used to place the appellant on the CPIC database. The Police state that the appellant was subsequently removed from the CPIC database as a result of information received from the Court when his probation was terminated. The Police state that they do not have specific records that address this portion of the appellant's request. Finally, the Police submit that they do not remove individuals from the CNI and/or the criminal record category on the CPIC database; that only the Court can perform this function.

The appellant states that without being able to determine what has or has not been provided to this office, he is at a disadvantage to elaborate on what may or may not have been found as a result of the Police's search efforts. However, he believes that there are some outstanding records that are responsive to his request that may be in the Police's custody and control. In support of this contention, the appellant states that when a police force makes an entry in the CPIC database, that entry remains in the custody and control of that police force. In addition, the appellant suggests that it would not be unusual for a police service's legal branch or Professional Standards Branch to maintain archived records or previous police directives and yet, in this case, there is no indication that the Police conducted searches in those areas.

Analysis and findings

The Police have provided fairly detailed representations outlining their efforts to locate records responsive to the appellant's request. In order to warrant an order for further searches the appellant must provide a reasonable basis for concluding that additional records exist.

Having reviewed the records that have been located, along with the parties' representations, I am satisfied that the searches carried out by the Police were reasonable.

The question remains whether the Police have custody or control of records responsive to the appellant's request that they have not disclosed to the appellant under the *Act*. I will address the custody and control issue below.

CUSTODY OR CONTROL

Section 4(1) reads, in part:

> Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless . . .

Under section 4(1), the *Act* applies only to records that are in the custody or under the control of an institution.

The courts and this office have applied a broad and liberal approach to the custody or control question [*Ontario (Criminal Code Review Board) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 4072 *Canada Post Corp. v. Canada (Minister of Public Works)* (1995), 30 Admin. L.R. (2d) 242 (Fed. C.A.), Order MO-1251].

As set out above, the appellant believes that the Police have custody and control of records responsive to parts 3, 4 and 5 of his request. However, he does not provide any details in support of this assertion in his representations.

In their representations under the "Search for Responsive Records" issue, the Police allude to the possible existence of documents that they state would have been created by and held by various courts. The essence of the Police position seems to be that any data entry pertaining to probation orders relating to the appellant are contained in court documents and that they do not have any specific Police records that address these parts of the appellant's request.

With one exception, there is no evidence that the Police have custody or control of such documents. The one exception appears to be a "recognizance with conditions", which the Police state is a court document, and which they appear to hold a copy of in their CID file. I acknowledge that physical possession of a record may be a relevant factor in determining custody or control. However, I find that it is not determinative in this case since the appellant makes it clear in the wording of his request that he is interested in gaining access to "Police records", not records created and/or held by other entities, such as the courts.

Accordingly, on the evidence before me, I find that the Police do not have custody or control of the aforementioned "recognizance with conditions" document or any other records responsive to parts 3, 4 and 5 of the appellant's request.

I note that the Police have directed the appellant to the Ministry in order to obtain access to records responsive to parts 3, 4 and 5 of his request. While the Police may be technically correct in suggesting this course of action, the preferred method of addressing this issue would have been for the Police to have transferred these parts of the appellant's request to the Ministry for a response under section 18(2) or (3) of the *Act*. In the future, I would encourage the Police to do so.

ORDER:

1. I uphold the Police's interpretation of the scope of the appellant's request.

2. I find that the Police's search for responsive records was reasonable and I dismiss that aspect of the appeal.

3. I reject the appellant's contention that the Police have custody or control of additional records responsive to his request.

Original Signed by: February 15, 2007
Bernard Morrow
Adjudicator