



**Information and Privacy
Commissioner/Ontario**

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

INTERIM ORDER MO-2244-I

Appeal MA07-103

Toronto Police Services Board



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NATURE OF THE APPEAL:

The requester submitted the following request to the Toronto Police Services Board (the Police) for access to information under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

On March of 2005, [the appellant] was arrested at Mt Sinai Hospital, taken into police custody and then held in detention in a holding cell at Old City Hall.

...we require copies of any and all records, statements taken and all other documents produced from witnesses, reports, police memo-books, correspondence, memoranda, forms, directives, drawings, diagrams, photographs, visual recordings, audio recordings and any other documentary materials regardless of physical form or characteristics concerning the above named incident.

The Police issued a decision granting access to witness information and the statement of a physician, as well as the appellant's booking videotape. The Police denied access to any documents seized on the basis that the appellant's criminal case has been dealt with by the courts and those documents have been purged.

The Police provided partial access to other records, denying access pursuant to section 38(a), read with section 8(1)(l) (right of access to one's own personal information/commission of an unlawful act or control of crime) and section 38(b), read with section 14(1) (personal privacy) of the *Act*. The Police also noted that some information had been removed as being non-responsive to the request.

The requester (now the appellant) appealed the Police's decision, noting that

[n]o information had been provided regarding [the appellant's] detention in a holding cell at Old City Hall on or about March 24, 2005 in which he sustained an injury.

During the mediation stage, the appellant indicated that he was not interested in the severed records or the information marked non-responsive, and was focusing instead on the existence of records relating to the time he was held in the holding cell at Old City Hall on March 25, 2005. The appellant believes that there must be a videotape or a log book as well as other records which document his detention.

The parties were unable to resolve the appeal through mediation. The file has been transferred to the adjudication stage for an inquiry where the issue to be determined is whether the Police completed a reasonable search for records responsive to the appellant's request.

I scheduled an in-person oral inquiry for October 10, 2007.

On October 10, 2007, I conducted an in-person oral inquiry into the reasonable search issue. The appellant did not attend the hearing but was represented by counsel (Appellant's Counsel). Participating for the Police were their legal counsel (Police Counsel) and an individual employed

by the Police as a Court Officer (the Court Officer) who, according to Police Counsel, conducted all of the physical searches for records responsive to the appellant's request.

DISCUSSION:

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.

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.

Where a requester provides sufficient detail about the records that he is seeking and the institution indicates that records do not exist, it is my responsibility to ensure that the institution has conducted a reasonable search to identify any records that are responsive to the request. The *Act* does not require the institution to prove with absolute certainty that the records do not exist. However, in order to properly discharge its obligations under the *Act*, the institution must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request [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].

Parties' representations

The appellant

I heard first from Appellant's Counsel. She stated that her client's request for information was made in response to an alleged incident that occurred while he was in Police custody in a holding cell at Old City Hall on March 25, 2005, awaiting processing prior to his release. The appellant alleges that while in the holding cell he was assaulted by another prisoner. As a result of this alleged incident the appellant commenced a civil action seeking damages for injuries he allegedly suffered, notably a fractured nose. Appellant's Counsel states that prior to issuing a statement of claim in this matter, she submitted the aforementioned request to the Police.

Appellant's Counsel states that the appellant is interested in records that would confirm his presence in a holding cell at Old City Hall at the time of the alleged incident on March 25, 2005. In her view, there should be several records in existence that would confirm the appellant's presence in the holding cell on March 25, 2005, including

- a list maintained by the officers that would set out the names of those in custody and the holding cell in which they were being held
- the “sign-in” and “sign-out” sheets that would have been completed by defence counsel who visited their clients in custody
- the footage from a video surveillance camera
- the processing documentation that would have been completed by the Police and/or the Court prior to the appellant’s release
- an occurrence report completed by the custodial officers documenting the alleged assault
- the notebook entries of the custodial officers that were on duty on the date in question
- the duty or roster sheet that confirms the names of the officers who were working at Old City Hall on that date

With regard to surveillance, Appellant’s Counsel advises that the appellant saw a camera in the holding cell area. She presumes that video cameras in police stations and detention centres are commonplace as a means of surveillance, as a source of evidence in the event of an incident and as an investigative tool.

With respect to processing documentation, Appellant’s Counsel states that the Police admit in their statement of defence (submitted in response to the appellant’s statement of claim) that they prepared and completed the appellant’s bail papers while he was in the holding cell at Old City Hall awaiting his release. According to Appellant’s Counsel, the appellant recalls that he waited for three hours in the holding cell for this documentation to be completed. Appellant’s Counsel, therefore, questions why this documentation has not been produced or, if it no longer exists, why it was destroyed when it was known to the custodial officers that the appellant had sustained a serious physical injury.

In addition, Appellant’s Counsel suggests that there should be some documentation that confirms the names of the police officers on duty at the time in question on March 25, 2005. In fact, Appellant’s Counsel states that the Police provided her with the names of two or three officers who were on duty on that date.

Appellant’s Counsel indicates that the assault allegedly suffered by the appellant was a dramatic incident, involving a serious facial injury, which required surgery. However, when asked to point to the specific evidence that the appellant is relying upon to support his allegations of an assault, Appellant’s Counsel advised that she is relying at this point on the appellant’s story. She acknowledges that the appellant does not have the names of any witnesses nor did she produce any other evidence, such as, photos, hospital intake forms or medical reports that might serve to support his allegations.

The Police

With regard to the appellant's arrest and detention and documents responsive to this period, Police Counsel states:

- The appellant was arrested on March 24, 2005 for uttering a forged document.
- He was brought to the Police where he was processed.
- The memo book notes of the arresting officers were produced as was the booking video.
- On March 25, 2005 the appellant was in Old City Hall for a bail hearing. He was in custody because at the time of his arrest he had been on probation.
- The appellant was granted bail by the presiding Justice of the Peace.
- The appellant remained in custody in a holding cell pending the preparation of his bail papers by the court system.
- The Police acknowledge that while their statement of defence indicates that they prepared the bail papers, this statement was made in error, as this documentation would have been prepared by Court Services at Old City Hall. Accordingly, the Police state that they did not conduct a search for these processing documents as they are not Police records.

With regard to the appellant's allegations regarding an incident in the holding cells on March 25, 2005 and the existence of any Police records that would have been responsive to it, Police Counsel states that in the event there was an incident the following types of documents may be relevant:

- Court Services Occurrence Report (Court 7)
- Morning Report
- Video surveillance footage
- Standard form documents, comprised of daily transportation logs and daily intake forms

Police Counsel submits that a Court 7 is prepared to record any in-custody incident of the type alleged by the appellant. Therefore, Police Counsel state that if the appellant had been assaulted in the holding cells at Old City Hall on March 25, 2005 a Court 7 would have been completed on that date by the Supervisor of Court Officers (the Supervisor) on duty that day and the individual

officers who had been involved in the incident, setting out what they saw and did in response. Police Counsel states that if a Court 7 is prepared, it is delivered to the officer in charge at Old City Hall for review. It would then be provided to the Court Officer and reviewed by a Staff Inspector. A completed Court 7 is required to be retained for a period of seven years according to the Police Retention Schedule (the Retention Schedule) for documents prepared at the Old City Hall cells and courts. Police Counsel advises that there is also an electronic database that summarizes all Court 7 reports.

In the context of this appeal, Police Counsel states that the Court Officer, who is the custodian of the Court 7 reports, searched both the electronic database and the physical file to determine whether a Court 7 had been completed in regard to an incident involving the appellant on March 25, 2007. Police Counsel submits that he Court Officer did not find a responding Court 7 and concluded that one had not been completed. Police Counsel states that had the appellant been assaulted a Court 7 would have been completed. Therefore, the position of the Police is that the appellant was not assaulted. Police Counsel indicated at the inquiry that the retention period for Court 7 reports is seven years from the date they are created.

With regard to notebook entries of custodial officers, raised by the Appellant's Counsel in her representations as a possible source of responsive information, Police Counsel states that no such records exist. Police Counsel states that custodial officers who are involved in court security at Old City Hall are not Police officers but are rather civilian officers who are employed by the Police. They are not required to maintain notebooks. If an incident occurs during their watch they are to report the incident through the Court 7. Accordingly, it is the position of Police Counsel that there are no notebooks that contain information responsive to the appellant's request.

Police Counsel describes the Morning Report as a summary document prepared by the Supervisor on duty on a particular day for the benefit of the Supervisor the following day. It is intended to provide a summary of the notable events that have occurred while a Supervisor was on duty. The Morning Report contains a section titled General Occurrences in which the Supervisor is required to insert information about any occurrence that might have arisen. In this case, Police Counsel states that because a Court 7 could not be found in relation to the appellant, the Court Officer also searched the Morning Report for March 25, 2005. Police Counsel states that the Court Officer reviewed the contents of this Morning Report and found that it did not contain a Court 7 or any other information pertaining to the appellant. Police Counsel submitted at the inquiry that the retention period for Morning Reports is also seven years from the date they are created.

With regard to video surveillance, Police Counsel acknowledges that there are video surveillance cameras in the holding cells that are being monitored by various officers. Police Counsel states that in 2005, at the time the appellant was in custody at Old City Hall, the video surveillance cameras were equipped to record events occurring in the holding cells in a 48 hour loop. Police Counsel indicates that the video equipment was programmed to record for approximately 48 hours, after which the tape would be reset to record over itself. Police Counsel states that

recorded videotape would not, as a matter of course, be reviewed unless a particular incident was brought to the attention of the Police through the completion of a Court 7, in which case the tape would be reviewed and preserved. Police Counsel states that because a Court 7 was not completed in this case, any videotape of the appellant in the holding cells was not reviewed or preserved. Accordingly, the Police state that there is no videotape of any surveillance of the appellant on March 25, 2005.

In terms of Standard Form Documents that record the comings and goings of various people, Police Counsel described two types of documents, Transportation Logs and Daily Intake Forms. Police Counsel states that these documents do not record information about any particular incident that might have occurred. Rather, they record administrative information about those in custody, including what detention centre they were transported from, their outstanding charges, what time they arrived at Old City Hall, the purpose of the court attendance, and whether or not they were injured at their time of arrival at Old City Hall. Police Counsel states that these documents exist in hard copy format only and are voluminous, due to the large number of people that make their way through the court system on a daily basis. Police Counsel advises that the retention period for Standard Form Documents is two years from the date they are created. The Police submit that a search was conducted to determine whether the Standard Form Documents from March 25, 2005 had been purged. The Police indicate that the Standard Form Documents from that date were not found.

Police Counsel advises that one record was located in relation to the appellant's period of custody at Old City Hall, namely a Property Log. The Police explain that the Property Log records all items of personal property that are with an individual at the time of arrest. The individual's property is then brought to the court and returned in accordance with the items listed on the Property Log upon release from custody. In this case, Police Counsel submits that the Property Log for Old City Hall for March 25, 2005 was searched for and located. The Property Log in question contains the appellant's name, an identifying number assigned to the envelope that contained his property, the badge number of the officer who returned the property, and the appellant's signature acknowledging receipt of his property. Police Counsel advises that the Property Log does not indicate a time when the appellant's property was returned to him or any notations regarding his physical status. Police Counsel indicated at the hearing that it had been the intention of the Police to disclose this record to the appellant, with the names of all other prisoners severed, but through inadvertence had forgot to bring it to the inquiry. I confirm that I have since received a copy of the severed Property Log for March 25, 2005 and I am satisfied that a copy of this record has now been disclosed to Appellant's Counsel.

With regard to the Court 7 reports, the Morning Reports and Standard Form Documents, Police Counsel states that the Court Officer conducted all of the searches for responsive records. Police Counsel submits that with the exception of the Property Log no other records were found pertaining to the appellant's custody at Old City Hall. Police Counsel states that the Court Officer actually conducted two separate searches of the Court 7 reports. She submits that the first search was in direct response to the appellant's access request and the second search was

conducted at the request of Police Counsel because she was unaware that an FOI request had been made.

The Court Officer also provided evidence outlining the procedure she follows to respond to a request of this nature and the details of her actual response to the request at issue. She indicated that in a case like this one she would first check her Access database, which contains an electronic record of all Court 7 reports. She indicated that each database entry contains the name of each individual involved in an incident, the court location and the type of incident. Some database entries also contain a brief summary of the incident. The Court Officer states that she would first search electronically under a requester's name and, using his or her name, she would search under the date at the court location. She states that if she did not receive a positive response to her electronic search she would then conduct a physical search for all Court 7 reports for the month in question as a cross-check. As an additional check she would consult the Morning Report for the day in question. The Court Officer states that this is the procedure she followed in this case. She states that she did not find a Court 7 report pertaining to the appellant or any mention of an occurrence relating the appellant in the Morning Report for March 25, 2005.

In reply, Appellant's Counsel questioned the whereabouts of the Standard Form Documents, noting that the appellant's request was submitted on January 12, 2007, more than two months before the expiry of the two year retention period for these records. Police Counsel states that the appellant's request for information was received on January 17, 2007. Immediately following receipt of the request the Police submit that emails were sent to various people with instructions to collect the information requested. In response, the memo book entries of the arresting officers were received.

Police Counsel states that in responding to the request their initial focus was on gathering the documentation relating to the arrest, such as, the police officers' memo book notes and the booking video, and in gaining consent for the release of information from a medical doctor. Police Counsel states that in early March 2007 they provided the appellant with a decision letter in which the Police agreed to provide access to the witness information and statement of a medical doctor as well as the appellant's booking video, and partial access to the memo book entries.

Police Counsel states that they then received a phone call in April 2007 from the Information and Privacy Commissioner's Office (the IPC) in which they were advised that the information identified to that point was incomplete and that there was more information being sought. Police Counsel state that it was at that point, in April 2007, that additional requests were sent out within the institution, seeking records relating to the period in which the appellant was in custody at Old City Hall on March 25, 2005.

Police Counsel submits that the Police committed an oversight when they restricted their initial search for responsive records to the period around the appellant's arrest and failed to search for records relating to the appellant's custody at Old City Hall on March 25, 2005. As a result,

Police Counsel states that their search for the Standard Form Documents was not initiated until April 2007, by which time the two year retention period had passed and those records had been destroyed. Police Counsel explains this oversight on the basis that the Police were looking for records that were directly responsive to the appellant's arrest and detention in Old City Hall and when they did not find a Court 7 they did not look further. Police Counsel states that they did not initially view the Standard Form Documents as being responsive to the appellant's request because they are general administrative documents that do not deal specifically with any incident that the appellant might have been involved in at Old City Hall.

Appellant's Counsel also questioned the existence of a Roster Sheet that would document the court officers that were on duty at the time in question on March 25, 2005 and any notes that would have been taken by court officers in the scope of their duties.

With regard to a Roster Sheet, Police Counsel acknowledges that a Roster Sheet does exist that would identify the Supervisor and the court officers that were present on March 25, 2005 at Old City Hall. However, Police Counsel submits that while the Police can see the Roster Sheet as being responsive to the appellant's litigation, she does not view it as responsive to his request for information since it is general in nature and does not relate specifically to the appellant's request.

During the course of the inquiry I asked the Police to provide me and the Appellant's Counsel with a copy of their Retention Schedule for court records. Following the inquiry I received a letter from Police Counsel with a copy of the Retention Schedule attached. I note that a copy of the letter and the Retention Schedule was also sent to Appellant's Counsel. The Retention Schedule lists the following documents with corresponding retention periods:

Document Type	Retention Period
Bail Sheets	2 years
Bailed Records of Arrest	2 months
Wagon In Sheets	2 years
Wagon Out Sheets	2 years
Jail Sheets	2 years
Daily Working Duty Sheets	2 years
Bi-weekly Schedules	2 years
Morning Reports (Hard Copies)	2 years
Original Dockets	2 years
Property Log	7 years
Medication Log	7 years
Restraint Log	7 years

DNA Log	2 years
Court 102 & 103 Log	2 years
Domestic Violence Log	7 years
Don Jail Load Master List	2 years
All MTP Numbered Forms (Court 7 Forms)	7 years + current year
Prisoner Intake Form	7 years + current year

In her cover letter, Police Counsel provides an explanation of the items listed in the Retention Schedule. I note that some of the document types listed do not correspond with the document names referenced during the oral inquiry. In addition, I note that some of the document types listed in the Retention Schedule were not discussed at all during the inquiry. However, Police Counsel does speak to these issues in her cover letter, which I address briefly below.

With regard to “Standard Form Documents”, Police Counsel states in her letter that the “Transportation Logs” referenced at the inquiry are the “Wagon In” and Wagon Out” sheets and that the “Daily Intake Forms” also referenced at the inquiry would include the “Bail Sheets”, “Bailed Records of Arrest” and “Original Dockets”.

At the inquiry Police Counsel indicated that both the “Morning Reports” and “Court 7” forms are retained for seven years. This position is reiterated in the Police Counsel’s cover letter. However, I note that the Retention Schedule itself indicates that the retention period for Morning reports is two years, not seven years, and that the retention period for Court 7 forms is seven years plus the current year. I invited Police Counsel to provide an explanation for these discrepancies. Police Counsel provided an additional letter in which she confirmed that the retention period for Morning Reports is, in fact, two years and that the retention period for Court 7 forms is seven years plus the current year. Police Counsel acknowledged that at the hearing she spoke of the Court 7 forms as having a seven year retention period but, she now admits that technically Court 7 forms may be retained for a longer period depending upon the point in time in the year that the document is created.

I allude above to the Police having delivered a severed copy of the Property Log for March 25, 2005 to the appellant. This Property Log is referenced in and included with Police Counsel’s cover letter.

With regard to the remaining document types listed in the Retention Schedule, Police Counsel states in her cover letter that none of the following document types would have contained information relating to the appellant:

- Jail Sheets: records identifying prisoners being taken to court from a jail (since the appellant was not in custody in a jail, this form is not relevant to him)

- Daily Working Duty Sheets and Bi-weekly Schedules: records relating to the assignment of court officers on duty
- Medication Log: records medication given to individuals in custody
- Restraint Log: records all occasions on which restraints must be used on individuals in custody
- DNA Log: records all individuals from which DNA samples are required pursuant to a order of the court
- Court 102 and 103 Log: records information relating to courtrooms 102 and 103 (the appellant was in neither one of these courtrooms)
- Domestic Violence Log: records information relating to domestic violence cases
- Don Jail Load Master List: records information relating to prisoners being transported to the Don Jail
- Prisoner Intake Forms: record the personal information of individuals who are taken into custody as a result of the order of the court

Analysis and findings

On my review of the parties' evidence, I reach the following two conclusions.

First, the Police, whether through inadvertence or some other error, initially omitted to search for records at the Old City Hall that may have been responsive to the appellant's request. These responsive records were then destroyed prematurely, contrary to the Retention Schedule provided to me. I will say more about this below.

Secondly, while I acknowledge the appellant's position that he was assaulted while in custody in a holding cell at Old City Hall on March 25, 2005, he has not provided any corroborative evidence relating to this alleged incident. I understand that this evidentiary gap is one of the challenges that the appellant is grappling with in his civil case and, clearly one of the principle reasons he is seeking information that would help to establish his assault allegations. However, I find that the Police have provided clear and thorough evidence outlining the types of documents that are created when an incident of this type and magnitude occurs, namely the Court 7 report and the Morning Report, and I am satisfied that no such documents exist in this case. Concurrently, I also accept the Police explanation that court officers do not maintain notebooks. Accordingly, I am satisfied that there are no notebook entries that document this alleged incident. In addition, I accept the evidence of the Police that any videotape of the incident would have been destroyed within 48 hours and, as a result, no longer exists. In that regard, I am partially satisfied with the Police's search efforts.

However, returning to my first conclusion, I remind the Police of its responsibilities to maintain records once a request has been made under the *Act*. The *Act* requires that personal information be maintained for a specified period of time as set out in Section 30 and Regulation 823 (section 5). In particular, sections 30(1) and (4) of the *Act* provide:

- (1) Personal information that has been used by an institution shall be retained after use by the institution for the period prescribed by regulation in order to ensure that the individual to whom it relates has a reasonable opportunity to obtain access to the personal information.
- (4) A head shall dispose of personal information under the control of the institution in accordance with the regulations.

Section 5 of Regulation 823 provides:

Personal information that has been used by an institution shall be retained by the institution for the shorter of one year after use or the period set out in a by-law or resolution made by the institution or made by another institution affecting the institution unless the individual to whom the information relates consents to its earlier disposal.

Former Assistant Commissioner Tom Mitchinson had occasion to consider the record retention schedule of the same police force as it relates to 911 tapes in Interim Order M-1121 and Final Order M-1135. In Final Order M-1135, he made the following comments on the retention of 911 tapes in the circumstances of that appeal, and on the more general issue of the retention of records that are the subject of an access request under the *Act*, including those that do not contain personal information:

In Interim Order M-1121, I also expressed concern regarding the fact that the original 911 tapes had been destroyed, despite the fact that an appeal involving these tapes was in progress. My order included the following comments:

By reviewing the original tapes in the course of responding to the appellant's request, the Police "used" the personal information contained in them within the meaning of section 5 of Regulation 823. I have reviewed the record retention by-law provided to me by the Police, and it does not reduce the minimum time period established by section 5. Therefore, in my view, the Police were obliged to maintain the original tapes for a period of one year following this use.

I would go further than this. While there are no specific provisions in the *Act* covering the retention of records which do not contain

personal information or records which are the subject of an ongoing access request, in my view, institutions have an inherent responsibility to retain original records containing information which is the subject of a request under the *Act*, regardless of the operation of any records retention schedule which may provide for their destruction. Clearly, in order to give effect to the access provisions in the *Act*, when an institution receives a request, that triggers an obligation on the institution to ensure that the original responsive records are retained and not destroyed until the request has been satisfied and any subsequent proceedings before the Commissioner or the courts is completed.

The Co-ordinator included the following statement in his representations:

In reference to the destruction of the original twenty four (24) hour reel to reel Dictaphone recording tapes. As the Freedom of Information Branch coordinator I did make Cassette Tape #1 from the original tapes. The tapes were not held but returned to the system. In order to be in Compliance in the future a revision will be made in future Woodstock City Police Department policies and procedures which will reflect that when a Freedom of Information request is made in relation to audio records of the Woodstock City Police Department, that the audio records be maintained for one year in accordance with Section 5 of Regulations 823 of the Freedom of Information Act.

This commitment is welcomed. However, it does not completely address my comments in Interim Order M-1121. In amending its policies and procedures, I would encourage the Police to also address the situation where records are subject to an ongoing access request **but do not contain personal information**. As previously stated, in my view, institutions have an inherent responsibility to retain original records which are the subject of a request under the *Act*, regardless of any records retention schedule, and regardless of whether or not they contain personal information. [emphasis in the original]

In this case, the appellant submitted his request on January 12, 2007 and it was received by the Police on January 17, 2007. At that point an institution-wide message ought to have been circulated to all departments alerting staff to the existence of the appellant's request in an effort to ensure that all potentially responsive information was properly maintained. The request should then have been carefully reviewed to determine its scope. Had this been done the Police would have realized that the appellant's request was for a wide range of records relating to his initial period of custody at Mount Sinai Hospital, his subsequent arrest and, finally, his custody at Old City Hall. The fact that the Police narrowly restricted their initial search to records responsive to the period around the appellant's arrest and failed to search for records relating to

his custody at Old City Hall on March 25, 2005 indicates that their overall approach to the search for responsive records was inadequate. In the end, this turned out to be a serious oversight since records that were responsive to the appellant's request, in particular, many that would appear to have fallen into the Standard Form Documents category, were destroyed when the two year retention period expired on or about March 25, 2007.

The Police have argued that they viewed the Standard Form Documents as not being responsive to the appellant's request because they are general administrative documents that do not deal specifically with any incident that the appellant may have been involved in at Old City Hall. I disagree with the Police's interpretation. On my reading of the appellant's request, I find that it is framed very broadly with reference to his initial custody, arrest, and subsequent period of custody at Old City Hall, to capture a wide range of documents including, administrative "forms" and "other documentary materials regardless of physical characteristics concerning the [incident]". Accordingly, I am satisfied that a document such as the "Roster Sheet" (or, "Daily Working Duty Sheets", as referenced in the Retention Schedule) for March 25, 2005 falls within the scope of the appellant's request, even though it likely did not contain any specific mention of the appellant or the incident in question.

Under the circumstances, due to the operation of the Retention Schedule it may be too late to recover records that would otherwise be responsive to the appellant's request. However, I feel that I would be remiss if I were to let this issue go without at least ordering a further search for responsive records. Accordingly, I will order the Police to conduct a further search for records responsive to the appellant's request, to include all Standard Form Documents for March 25, 2005, including the Daily Roster Sheet, Daily Working Duty Sheets and Bi-weekly Schedules, as well as all court and holding cell records for that date.

For future reference, I would also ask the Police to be diligent when processing access requests to ensure that all records that may be responsive are maintained after a request has been received. I would also ask that the Police take appropriate steps to become better familiar with the retention periods for documents covered by their Retention Schedule in order to avoid the confusing discrepancies that came to light in this inquiry and to ensure that a copy of the Retention Schedule is available for review at all future oral inquiries involving the reasonable search issue.

ORDER:

1. I order the Police to conduct further searches for responsive records, whether in printed form, on videotape, by electronic means or otherwise, within their record holdings for Old City Hall for March 25, 2005. In conducting these searches, the Police are requested to consult all of their staff employed at Old City Hall. With regard to this provision, I order the Police to provide me with affidavits sworn by the individuals who conduct the searches by **November 23, 2007**. At a minimum, the affidavit should include information relating to the following:

- (a) information about the employee(s) swearing the affidavit describing his or her qualifications, position and responsibilities;
 - (b) a statement describing the employee's knowledge and understanding of the subject matter of the request;
 - (c) the date(s) the person conducted the search and the names and positions of any individuals who were consulted;
 - (d) information about the type of files searched, the nature and location of the search, and the steps taken in conducting the search;
 - (e) the results of the search;
 - (f) if as a result of the further searches it appears that responsive records existed but no longer exist, details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.
2. If further responsive records are located as a result of the searches referred to in Provision 1, I order the Police to provide a decision letter to the appellant regarding access to those records in accordance with the provisions of the *Act*, considering the date of this order as the date of the request.
 4. The affidavits referred to in Provision 1 should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 2 Bloor Street East, Suite 1400, Toronto, Ontario, M4W 1A8. The affidavits provided to me may be shared with the appellant, unless there is an overriding confidentiality concern. The procedure for the submitting and sharing of representations is set out in *IPC Practice Direction 7*, which is available on our website.
 5. I remain seized of this appeal in order to deal with any other outstanding issues arising from this order.

Original signed by: _____
Bernard Morrow
Adjudicator

October 31, 2007