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

ORDER MO-2596

Appeal MA10-481

Toronto Police Services Board

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NATURE OF THE APPEAL:

On November 16, 2010, the Toronto Police Services Board (the Police) received eight separate requests under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), for information relating to the Police conduct during the June 2010 G20 summit meetings in Toronto. The request which is the subject of this Order reads as follows:

> …
> **Request # 2: Records regarding the public order unit, and the police tactic of "kettling"**
>
> This request is limited to records that were created in the past 10 years, and records created prior to that which continue to be used or referred to by the Toronto Police Service.
>
> [The appellant] requests access to and copies of:
> 1. policies, procedures, training materials, guidelines and manuals relating to the police tactic of "kettling", including
>   a) when to kettle,
>   b) what warnings must be read to the crowd (including frequency, content and how the warnings must be communicated to the crowd);
>   c) how to determine when to release persons that are kettled; and
>   d) how to determine when to arrest persons that are kettled.
> 2. policies and the associated manual regarding the public order unit, created by the Chief of Police as required by ss. 19(1) and 19(2) of Ontario Regulation 3/99 Adequacy and Effectiveness of Police Services (the "Adequacy Regulation");
> 3. records regarding public order unit training as required by the Solicitor General's Policing Standards Manual (2000) (the "Policing Standards Manual") s. 3 at PO-001;
> 4. policies regarding public disorder analysis, created by the Chief of Police, as required by s. 13(1)(d) of the Adequacy Regulation;
> 5. copies of any public disorder analysis created based on events that occurred during the G20 weekend;
> 6. policies and procedures regarding preliminary perimeter control and containment, created by the Chief of Police, as required by ss. 22(1) of the Adequacy Regulation;
> 7. if the Toronto Police Service utilizes a containment team, the policies and procedures regarding the containment team, and the associated manual created by the Chief of Police, as required by ss. 22(2) and 25(3) of the Adequacy Regulation; and

> 8. any additional policies, procedures, training materials, guidelines and manuals relating to mass detentions or policing mass demonstrations.
> …

In response to the eight requests, the Police issued one time extension decision. The decision to extend the time for responding to the appellant's requests was originally contained in a letter dated November 29, 2010. This decision stated that "the mandated time limit for a response of 30 days has been extended for an additional 90 days" in accordance with section 20 of the *Act*, and that the new due date for a response will be February 13, 2011.

The appellant appealed the time extension in relation to requests numbered 2 and 7. As noted above, this appeal relates to request number 2 only.

On January 4, 2011, the Police issued a revised decision letter indicating that an error was identified on the extension due date specified in the November 29, 2010 decision. The Police reiterated that the time limit for a response has been extended for an additional 90 days and specified that the correct due date for a response is March 15, 2011. The Police indicated that the reason for the extension was that "the request necessitates a search through a large number of records, as well as numerous consultations with Service members throughout the City. Meeting the time limit would unreasonably interfere with the operations of the institution."

In an effort to resolve this appeal, the parties participated in a teleconference during which the Police provided some information regarding the activities required in order to process the request. The Police clarified that the time extension decision had been issued with respect to each of the eight requests individually, and not collectively. The Police also advised that they are conducting the search for records responsive to the eight requests simultaneously, within a number of different Police units. They also advised that they will need to undertake multiple consultations with various departments.

The Police later sent an email to the appellant advising that the time extension could not be reduced "due to the volume of records currently identified, still to be produced, reviewed for responsive content, analysis, cross referencing with other areas of the Service and reviewed by subject matter experts. Further, once the process has been completed, further review/consultation with the Command and our Legal Services will also be a factor in the finalizing of the request. While reducing the time limit of 10 years will certainly increase the possibility of an earlier release; I am unable to commit to a specific earlier date other than what has already been set in the January decision letter".

The appellant subsequently narrowed the scope of request number 2 by "removing the 10-year time period". Instead, the appellant indicated that he requests:

> … (1) the most recent versions of the records in question and (2) any drafts or previous versions that are currently referred to or otherwise used by the Toronto Police Service (TPS) employees from time to time. Therefore, it is not necessary to retrieve all previous versions of the requested records going back ten years."

> However, we do not mean to limit [this request] to versions of the records that are final and approved. Again, if a version of a record (e.g. a policy) is a draft, or is not yet formally approved, but is currently in use, we also request a copy of that version of the record/policy, in addition to the most recent version/draft.

The Police later provided some additional details regarding their search for responsive records. They advised that as of January 21, 2011, approximately 20 hours had been spent on searching for records responsive to the appellant's requests and that a number of records had been located. The Police referred to a manual which had been located in response to the request and advised that it consists of approximately 5,000 pages. They also advised that as part of their searches, they will need to research their online educational program to locate responsive training materials. The Police reiterated that once all the responsive records have been located they will need to be reviewed and analyzed before a decision on access can be issued.

No further mediation was possible.

On January 24, 2011, I sent a Notice of Inquiry (NOI) to the appellant and the Police, setting out the issues in this appeal and inviting the parties to submit representations. In response, I received representations from both the appellant and the Police. In his representations, the appellant requested that his representations be forwarded to the Police and that the appellant be provided with a copy of the Police's representations in order to provide the parties with an opportunity to respond to each others' representations. After reviewing the parties' representations, I decided that it was not necessary to share them nor was it necessary to invite further representations.

DISCUSSION:

The sole issue for me to determine in this appeal is whether the extension of time claimed by the Police to respond to the appellant's request, was made in accordance with section 20(1) of the *Act*.

Section 20(1) of the *Act* states:

> A head may extend the time limit set out in section 19 for a period of time that is reasonable in the circumstances if,
>
> (a) the request is for a large number of records or necessitates a search through a large number of records *and* meeting the time limit would unreasonably interfere with the operations of the institution; or
>
> (b) consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit. [Emphasis added.]

In their representations, the Police do not specify whether they are relying on section 20(1)(a) or (b) of the *Act* to support their claim to a time extension. As outlined above, in their revised decision of January 4, 2011, the Police indicated that the reason for the extension was that "the

request necessitates a search through a large number of records, as well as numerous consultations with Service members throughout the City. Meeting the time limit would unreasonably interfere with the operations of the institution." Based on the wording of this decision, it appears that the Police are relying on section 20(1)(a) of the *Act*. There is no indication or evidence either in the Police's decision or in their representations that they are required to undertake consultations with a person "outside the institution" as contemplated in section 20(1)(b) of the *Act*. Consequently, even if they had made a claim that the time extension was justified on the basis of section 20(1)(b), I would not have upheld the extension. Accordingly, I will now turn to consider whether the extension of time claimed by the Police to respond to the appellant's request was made in accordance with section 20(1)(a) of the *Act*.

As previously stated, in response to the NOI, the appellant provided representations in support of his position that the 90-day time extension decision is unreasonable and unnecessarily lengthy. The appellant requests that the Police be ordered to release the requested records by February 14, 2011, which would provide the Police with a total of 90 days to respond to his request. He further requests that, if the records are not released on February 14, 2011 as ordered, the Police be ordered to release the records that have been processed by that date, on an interim basis. The appellant's arguments in support of his position that the time extension is unreasonable can be summarized as follows:

- The records are readily available and identifiable. The request was carefully crafted to focus on specific and identifiable documents.

- The volume of records requested is not sufficient to justify the length of the time extension. The appellant states:

> It appears that a major reason for the requested extension is the time required to process the Public Order Unit Manual ([appellant's] request # 2, item (2)), which consists of approximately 5,000 pages. We note that the [Police] did not indicate that any outside consultations were required in order to process this Manual. We submit that 120 days (the time requested by the [Police]) to locate and process this number of documents is unreasonable, and that 90 days should be more than sufficient.

- Ninety days is sufficient to review the requested records for exemptions. The appellant states:

> As discussed above, the requested records are readily available and identifiable. Therefore any time extension would have to be justified mainly based on the time required to review the documents for statutory exemptions, as opposed to the time required to locate the records and review them for relevance.
>
> It may be that the [Police] should have located and collected the requested records within the original 30-day time period. Instead,

> the institution only gathered the documents by mid-January, months after the initial request was made (in early November). Had the [Police] gathered the documents promptly, it would have had over 60 days to review the collected records to meet a deadline of February 14, 2011. The [Police] should have begun reviewing the records for exemptions long ago. To remedy this delay, the [Police] should now allocate more resources to the processing of the request.
>
> …

- The appellant goes on to submit that the Police should allocate more resources to the processing of the request. The appellant states:

> We note that the relevant issue in this appeal is whether the time extension decision by the [Police] is reasonable in the circumstances, not whether the [Police] is in a position, at the time of this appeal, to meet the February 14, 2011 deadline based on the amount of work they still have left to do. Again, the [Police] should be ordered to meet the earlier February 14, 2011 deadline, even if this means that the [Police] will have to allocate more resources to this request to remedy any initial delays in gathering the requested documents.
>
> …

- Time extensions are not appropriate to compensate for insufficient resourcing. It is not reasonable for the Police to extend the time to respond to the appellant's request if the time extension is required due to a lack of available personnel.

- The time extension must be justified based on the work required to respond to request # 2 alone, not based on the work required to respond to all of the appellant's eight requests.

In their representations, the Police provided the following information in support of their position that the time extension is necessary in order to process the request:

> The [Police] applied an additional 90-day extension to the above-noted appeal for the reasons outlined below and expressed independently to the appellant, the mediator and through the teleconference held in January, 2011.
>
> - To date, the Access and Privacy office has identified and located over 600 records responsive to the request.
> - Additional records are anticipated.
> - Each record must be reviewed by each area/subject-matter expert.
> - Upon review of these records, analysis and application of the [*Act*] must be applied.

- A final review and approval from various levels of the Service.

  Additional factors include staffing and the availability of resources to assist one of many access requests of this magnitude.

Analysis and findings

I have carefully considered all of the information provided to me by the Police and the appellant. In my view, based on the evidence before me, I am satisfied that the request is for a large number of records. However, that is not sufficient to support the application of section 20(1)(a). The Police must also establish that meeting the time limit to respond to the request "would unreasonably interfere with their operations." In my view, the Police have not provided sufficient evidence in their representations or in the information provided to me during mediation to satisfy me that meeting the time limit to respond to this request "would unreasonably interfere with" their operations.

In Order MO-1403, Adjudicator Hale made the following comments in relation to section 20(1)(a):

> … I was not provided with any particulars to indicate how long the searches required in each of the City Departments might take (other than the preliminary information about the Assessment Review Office) nor any explanation on how the time required for searching would unreasonably interfere with the City's operations. The City's representations including the affidavit invite an inference that the search would be time-consuming but this is not quantified. Nor have I been provided with any estimate of the number of responsive records the City may have.
>
> Moreover, for the purposes of section 20(1), it is not sufficient for the City to simply establish that a large number of records are involved, or that the search will be time-consuming. In addition, it must establish that this "would unreasonably interfere with" its operations. Though the deponent of the affidavit explains that she operates under "considerable time constraints" which "impact on [her] ability to review the significant number of documents related to the disclosure request…" this in itself is not, in my view, sufficient to satisfy this requirement.
>
> I therefore find that the City has not provided me with sufficiently detailed evidence to support its argument that meeting the 30 day time limit provided in section 19 of the *Act* would unreasonably interfere with its operations. Accordingly, I do not uphold the City's decision to seek a time extension under section 20(1) for an additional 90 days beyond the time frame provided by section 19.
> …

I agree with this approach and adopt it here. In the present case, although the Police did provide some information about the number of records that have been located as of the date of their submissions, they provided very little information regarding the extent of the searches that were required or the amount of time that it took to search for these records. They also do not address how much longer they anticipate it will take to complete the search for the remainder of the responsive records. In addition, aside from making general statements as outlined above, the Police do not provide any specific details about the extent of the other work that is required in order to process this request nor how much time this work would take. Similarly, the Police have not provided me with any explanation on how the time required for the processing of this request would unreasonably interfere with the Police's operations.

In view of the above, I find that the Police have not provided me with sufficiently detailed evidence to support their argument that meeting the 30 day time limit provided in section 19 of the *Act* would unreasonably interfere with their operations. Accordingly, I do not uphold the Police's decision to seek a time extension under section 20(1)(a).

As indicated above, the appellant's representations request that the Police be ordered to release the requested records by February 14, 2011, or alternatively that the records that have been processed by that date be released, on an interim basis.

It is important to note that given that this is an appeal relating to the Police's decision to extend the time to process the request, I am unable to order that the Police actually release any records to the appellant. I can only order that the Police issue a decision to the appellant on access to the responsive records.

Furthermore, although I did not uphold the Police's time extension decision, given the date of this order, I find that ordering the Police to issue an access decision by February 14, 2011 would not be reasonable in the circumstances. In my view, the most appropriate remedy in this case is to require that the Police issue a final access decision to the appellant on all records responsive to his request no later than February 24, 2011.

ORDER:

1. I do not uphold the Police's time extension decision.

2. I order the Police to issue a final access decision to the appellant on all records responsive to his request on or before **February 24, 2011.**

Original Signed By: February 9, 2011
Suzanne Tardif
Mediator