



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

INTERIM ORDER MO-2587-I

Appeal MA10-31-2

Brantford Police Services Board



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NATURE OF THE APPEAL:

The appellant submitted a five-part request to the Brantford Police Services Board (the Police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), for access to records relating to various meetings, communications and actions taken by the Police with respect to the Native protests, land claims, by-laws and criminal law within the Brantford area.

The Police did not issue an access decision within the statutory time frame and the appellant appealed the deemed refusal, which resulted in the opening of appeal MA10-31 by this office. That appeal was subsequently resolved by the issuance of an access decision by the Police.

In its decision, the Police claimed that the first four parts of the request were frivolous and vexatious on the basis that the appellant had requested this information previously and it had already been provided to him or he was told that it did not exist. The Police denied access to records relating to the fifth part of the request, which was for records relating to meetings and communications with the Crown Attorney's office, pursuant to section 12 (solicitor-client privilege) of the *Act*.

The Police subsequently issued a supplementary decision, claiming the application of sections 8(1)(a),(b),(f),(g) and (h), 8(2)(a)(c), 8(3) (law enforcement), 14(5) (refusal to confirm or deny the existence of records), 38(a) (discretion to refuse requester's own information) and (b) (personal privacy) of the *Act* to the information responsive to part 5 of the request.

The appellant appealed the Police's access decision and the current appeal file was opened.

This file underwent extensive mediation, which resulted in the Police issuing two additional access decisions. A number of issues were clarified, which ultimately resolved most of the outstanding matters on appeal.

However, the appellant continues to believe that records should exist for minutes of any meetings, which include *in camera* meetings with a specified municipality and/or government representatives, and that the search for these minutes continues to be at issue in this appeal. In particular, the appellant maintains that minutes or notes of Police meetings, including *in camera* meetings, with the specified municipality with respect to native protesting and the development of by-laws ought to exist, but they have not been located.

No further mediation was possible, and the file was forwarded to the adjudication stage of the appeal process. The sole issue remaining is whether the Police conducted a reasonable search for the minutes of any meetings, which include *in camera* meetings, with the specified municipality or other government representatives.

I sought representations from the Police, initially. The Police did not submit representations. After being contacted by this office, the Police stated that they would not be submitting representations in this matter.

In view of the position taken by the Police, I have decided not to seek representations from the appellant at this time. In this interim order, I will require the Police to conduct a further search for records and to provide me with representations on the steps taken, as outlined below.

DISCUSSION:

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 and 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** [Orders P-624 and PO-2559]. To be responsive, a record must be "reasonably related" to the request [Order PO-2554].

A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request [Orders M-909, PO-2469, PO-2592].

A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control [Order MO-2185].

This issue was set out in the Notice of Inquiry that was sent to the Police, as follows:

The institution is required to provide a written summary of all steps taken in response to the request. In particular:

1. Did the institution contact the requester for additional clarification of the request? If so, please provide details including a summary of any further information the requester provided.
2. If the institution did not contact the requester to clarify the request, did it:
 - (a) choose to respond literally to the request?
 - (b) choose to define the scope of the request unilaterally? If so, did the institution outline the limits of the scope of the request to the requester? If yes, for what reasons was the scope of the request

defined this way? When and how did the institution inform the requester of this decision? Did the institution explain to the requester why it was narrowing the scope of the request?

3. Please provide details of any searches carried out including: by whom were they conducted, what places were searched, who was contacted in the course of the search, what types of files were searched and finally, what were the results of the searches? Please include details of any searches carried out to respond to the request.
4. Is it possible that such records existed but no longer exist? If so please provide details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.
5. I note that the Police have indicated that some meetings were attended by the Chief in locations other than the Police premises and that any minutes would be held in the other locations. However, the responses do not indicate whether the Chief, as a participant of the meeting, received a copy of the minutes. The Police are asked to indicate whether searches were conducted to the copies of minutes that the Police might have received as an attendee of any meetings.

This information is to be provided in affidavit form. The affidavit should be signed by the person or persons who conducted the actual search. It should be signed and sworn or affirmed before a person authorized to administer oaths or affirmations.

By not submitting representations, the Police have not answered any of the above questions. In the absence of any information from the Police on this issue, I am unable to determine whether their search for responsive records was reasonable.

Accordingly, I have decided to issue an interim order in which I will require the Police to conduct a further search for the minutes of any meetings, which include *in camera* meetings, with the specified municipality or government representatives. I will also require the Police to provide me with representations in which they respond to the five questions posed above and provide any other information to assist in determining this issue.

ORDER:

1. I order the Police to conduct a further search for the minutes of any meetings, which include *in camera* meetings with the specified Municipality or Government representatives.

2. If, as a result of this search, the Police locate additional records, I order them to provide the appellant with an access decision, pursuant to section 19 of the *Act*, using the date of this order as the request date, without reference to a time extension under section 20(2).
3. I order the Police to provide submissions on the steps taken to search for responsive records in accordance with the above instructions, no later than **January 24, 2011**.
4. I remain seized of the issues in this appeal.

Original signed by: _____
Laurel Cropley
Adjudicator

_____ December 24, 2010