



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

# **ORDER MO-2580**

## **Appeal MA10-217**

### **Niagara Regional Police Services Board**



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## **NATURE OF THE APPEAL:**

The Niagara 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 “agent/informant” records from 1992 to the date of the request. Specifically, the requester sought access to “all notes/records from the Intelligence Unit with respect to the agent/informant relationship I had with [three named individuals].”

The police issued a decision on June 7, 2010 advising that no such record exists, and indicated the following:

Please be advised that I have contacted the Intelligence Unit and have been informed that no such record exists. The Intelligence Unit does not hire “agents/informants” nor is there any record of your having been in the employ of the Niagara Regional Police Service.

The requester (now the appellant) appealed the police’s decision.

During mediation, the appellant provided the mediator with a letter dated July 6, 2010 from the office of his Member of Parliament in support of his position that the records requested should exist within the Niagara Police Service. A copy of this letter was provided to the police’s Freedom of Information Coordinator (the coordinator) for review. In a follow-up discussion, the coordinator advised the mediator that she has confirmed with the Intelligence Unit that there are no records whatsoever relating to the appellant.

The appellant maintains that the police ought to have records relating to his request. Accordingly, the reasonableness of the police’s search is the sole issue in this appeal.

As no further mediation was possible, this file was transferred to adjudication. I initially sought the representations of the appellant on the reasonable search issue and received his submissions, which included three attachments. I shared the appellant’s cover letter and two of the attachments with the police to assist them in making representations. I did not provide the police with a third attachment, as I found it was not relevant to a determination of the search issue before me.

The police also provided me with representations, which I shared in their entirety with the appellant, seeking his reply submissions. I received additional representations from the appellant by way of reply.

## **DISCUSSION:**

The sole issue for determination in this appeal is whether the police have conducted a reasonable search for records responsive to the appellant’s request.

### ***General principals***

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].

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 [Order MO-2246].

### ***Representations of the parties***

The appellant maintains that the documentary evidence which he provided to me both with his initial representations and reply submissions substantiates his claim that he was engaged in certain intelligence activities on behalf of a number of law enforcement agencies, including the police, for nearly twenty years. This documentary evidence consists of several items, including:

- An undated form used by the Government of Canada entitled "Security Requirements Check List" which was completed using information about the appellant.
- A two-page contract form used by the Government of Canada dated November 1991 indicating the appellant's name and title.
- A letter from the office manager of the appellant's Member of Parliament indicating that she had reviewed a package of material received by the appellant from the Royal Canadian Mounted Police (the RCMP) in June 2010.
- An email from an Acting Assistant Deputy Minister employee with Public Works and Government Services Canada (PWGSC) verifying that the undated form referred to by the appellant above is "the standard form for use by government departments when identifying the security requirements of a contract." I note that the PWGSC employee is not certifying the veracity of the information contained in the form, only that the form is one used by the federal government to identify the security requirements of a contract.

- A certificate dating from July 1991 indicating that the appellant completed a Canadian Forces Training Course.
- An unsworn and unsigned draft affidavit from the appellant to which are attached a number of additional documents which he received as a result of other requests for information under the federal *Access to Information Act*.

The appellant argues that this information and documentary evidence supports his claim that the police must have additional records relating to him and his activities on behalf of the Government of Canada.

The police were provided with a copy of some of the material which the appellant filed in support of his claim that responsive records ought to exist. The police indicate that the form entitled "Security Requirements Check List" contains information that is neither accurate nor authentic. In addition, in response to the appellant's statements that he has been involved in intelligence work on behalf of the police for many years, the coordinator contacted the sergeant in charge of the police Intelligence Unit who advised that "there is no record of the appellant having been in the employ of the Niagara Regional Police Service." Similarly, an analyst with the police's Human Resources Department confirmed that no record of employment exists for the appellant.

The police also provided me with confidential representations respecting the authenticity of the documents relied upon by the appellant which I am unable to reproduce in the body of this order.

### ***Analysis and findings***

I have carefully reviewed the material provided to me by the appellant and the response made by the police respecting the authenticity of the documents, as well as the nature and extent of the searches undertaken for records responsive to the appellant's request. Based on the information contained in the records themselves and the representations of the police, I am satisfied that they have conducted a reasonable search for responsive records.

Specifically, I am satisfied that the police have made a reasonable effort to identify records which would be responsive to the request. In addition, I find that the police have made a reasonable effort to make inquiries as to the possible location of potentially responsive records by contacting staff with its Intelligence and Human Resources Units.

As a result of these findings, I uphold the searches undertaken by the police and dismiss the appeal.

**ORDER:**

I dismiss the appeal.

Original Signed by: \_\_\_\_\_ December 10, 2010  
Donald Hale  
Adjudicator