



F15-03-MS

Accused man wants police file after completion of prosecution

An applicant facing a criminal charge requested a copy of the police file related to his arrest. The police department denied his request because it was related to a prosecution that had not yet been completed. He asked us to review the decision to deny him access.

Section 3 of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) describes a range of records that fall outside the jurisdiction of FIPPA, including, under s. 3(1)(h), records related to a prosecution if all the proceedings with respect to the prosecution have not been completed. In other words, FIPPA does not apply to records used for prosecution until all the appeals have been exhausted. There was no doubt that this exception applied to the police file and that the police department had made the correct decision.

Several months later, the police department determined that the s. 3(1)(h) exemption no longer applied and released the requested records to the applicant. He then complained that the police department had not conducted an adequate search because certain records he wanted were missing from the response package. He gave us a detailed list of the records he thought were missing, which we forwarded to the police department.

Section 6 of FIPPA requires a public body to make every reasonable effort to respond openly, accurately and completely to access requests. Past orders from our office have determined that, in order to satisfy the s. 6 duty when responding to a request, a public body must make an effort to search that a fair and rational person would find acceptable in the circumstances.

Our investigation revealed that the police department had only responded with electronic records from its database. It also had paper files, but had assumed the applicant had already received those through the court process. We asked the police department to provide a revised response that included both electronic and paper records and to respond to the list of allegedly missing records submitted by the applicant. The police department did so and the matter was resolved.