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*Police Officers' Notebooks  
and the  
Municipal Freedom of Information  
and Protection of Privacy Act*

**A Guide for Police Officers**

Produced by the Durham Regional Police Service



in conjunction with



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The *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) provides citizens with a right of access to records within the custody or control of all municipal public sector organizations, including Police Services.

The term “records” includes any recorded information, including correspondence, books, plans, maps, drawings, diagrams, photographs, videotapes, as well as electronic records in whatever format they have been created. In the context of Police Services, “records” include police occurrence reports, witness statements, handwritten or typed interview notes, video and audio tapes, crime scene photographs, and officers’ notebooks.

This Guide has been prepared to help clarify the treatment of police officers’ notebooks under the *Act*, and to facilitate the processing of access requests which involve this type of record.

**Whose notebook is it anyway?**

A police officer may be under the mistaken impression that a notebook is his or her personal property. That is not the case.

A Police Service purchases notebooks and provides them to its officers for use in recording information relating to policing activities, to help in completing various police reports, and as a reference source when testifying in Court. Consequently, the notebooks are the property of the Police Service, and are subject to the *Act*.

Completed notebooks, or notebooks left behind by police officers no longer employed by a Police Service, are clearly

*in the custody or under the control* of the Police Service, as that phrase is used in section 4(1) of the *Act*. Similarly, notebooks in current use by police officers also fall within the wording of section 4(1) and are considered as responsive records if they contain information that falls within the scope of a particular request received by a Police Service under the *Act*.

### **What happens when a Police Service receives a request for a police officer's notebook?**

The Police Service has a statutory responsibility to respond to access requests within 30 days. This responsibility is assigned to the Police Service's Freedom of Information and Privacy Co-ordinator (the Co-ordinator), who must retrieve all records that respond to the request, including police officers' notebooks, in order to make an informed and adequate decision regarding access.

If a police officer's notebook is responsive to a request, the Co-ordinator must ask the individual officer to forward the notebook, and officers should respond within the specified due date. If the notebook is currently in use, the police officer may photocopy the front cover of the notebook, and provide it along with all entries made during the entire shift in question. Any deletions or severances will be made by the Co-ordinator based on the wording of the request and any clarifications obtained through conversations with the requester.

If notebooks are not promptly provided by police officers, this can have a serious impact on the Co-ordinator's ability to adhere to the statutory response time lines. For one thing, requesters who do not receive a response within 30 days

have a right to appeal the issue to the Information and Privacy Commissioner as a "deemed refusal." Also, if a decision is made without identifying police officers' notebooks as responsive records, this could result in an "adequacy of search" appeal and an order from the Commissioner requiring an additional search for records and/or an order requiring production of these records for the purpose of determining whether they should be disclosed.

Clearly, it is in everyone's interest, including requesters and Police Services, to ensure that decisions are made on time, and with full consideration of all responsive records, including police officers' notebooks.

### **What happens when a notebook is lost?**

If a police officer is unable to find the relevant notebook, the Co-ordinator may ask for a written explanation. For the purposes of responding to a request under the *Act*, a written response will usually be adequate, although in certain circumstances the Co-ordinator may require a sworn affidavit explaining the circumstances.

### **Whose information is it anyway?**

A police officer's notebook often contains information which falls within the scope of the definition of "personal information" contained in the *Act*. Personal information consists of any "recorded information about an identifiable individual" and includes, for example, an individual's name, address, telephone number, age, and sex. It also includes the personal views or opinions of that individual provided by others, such as witnesses, relatives or other people interviewed by police officers during the course of policing activities.

Barring exceptional circumstances, information recorded in a police officer's notebook is not the personal information of the officer. The most common exception to this general rule is where the police officer's performance has been called into question or when his or her conduct is under investigation. In these circumstances, the notebook entries may or may not contain the police officer's personal information, but this is a decision that must be made by the Co-ordinator after reviewing the content of the notebooks and considering all relevant circumstances.

Even if a police officer feels that a notebook may contain his/her personal information, that has no bearing on the officer's responsibility to promptly forward the notebook to the Co-ordinator.

### **Will the Co-ordinator disclose information not related to the request?**

The Co-ordinator is only required to make an access decision on information that is responsive to a particular request. Portions of police officers' notebooks that deal with unrelated activities taking place during the course of a shift are non-responsive and will not be disclosed.

If both responsive and non-responsive information is contained in the same notebook, and the responsive portions are being disclosed to the requester, the Co-ordinator will sever the remaining portions and label them "non-responsive." This makes it clear to the requester that the information not being disclosed relates to policing activities that are not related to the request.

### **Will the Co-ordinator *automatically* disclose all relevant information?**

No. If the request is for access to records that contain the personal information of other individuals, but not the requester, the Co-ordinator is prohibited from disclosing this information unless one of the allowable exceptions provided in section 14(1) of the *Act* are present. The most common exception is consent, and the Co-ordinator may contact other individuals to determine if they agree to provide their personal information to the requester. It is possible that other exceptions in section 14(1) may apply, but the strong privacy protection provisions of the *Act* make it difficult for requesters to obtain access to other individuals' personal information.

If, on the other hand, the requester is seeking access to his/her own personal information, then the *Act* requires disclosure, unless the notebook entry contains information that falls within the scope of the discretionary exemptions provided in section 38 of the *Act*. These exemptions include circumstances where the requester's personal information is combined with personal information of other individuals and disclosure could reasonably be expected to constitute an unjustified invasion of privacy; and where the personal information qualifies for the law enforcement (section 8) or solicitor-client (section 12) exemption claims. In these circumstances, the Co-ordinator must exercise discretion and balance the rights of the requester for access to his/her personal information against the privacy or confidentiality considerations outlined in section 38.

If a police officer has concerns for the safety of any individual mentioned in the notebook, or if the notebook entries relate to a Public Complaint, this information should be drawn to the attention of the Co-ordinator, as it will have an impact on the access decision.

## A Case Study: The Durham Regional Police Service

*As told by Sheri Lusted, Analyst — Information and Privacy Unit*

Whenever a group of new police officers completes basic training at the Ontario Police College, and prior to the officers being assigned to a platoon, the Learning Centre arranges for members of the Information and Privacy Unit to meet with the new officers to discuss the workings of the *Act* and how it relates to the various records produced during the course of their policing activities. We intend to conduct similar meetings with new civilian employees of the Police Service.

At this meeting, the staff of the Freedom of Information and Privacy Unit provide an overview of the *Act* and the role played by the Unit. The main focus of the session is to explain the process we follow whenever an access request is received by our Police Service under the *Act*.

We explain that all responsive records must be retrieved, including police officers' notebooks if they contain information relevant to the request, and that a response must be provided to the requester within 30 days.

We make it clear that police officers' notebooks are the property of the Police Service, not the individual officer. We also give officers a sample severed page of a notebook showing how it is possible to differentiate between the responsive portions that will be considered for disclosure and the non-responsive portions that are automatically blacked out by the Freedom of Information and Privacy Unit. This demonstrates to new officers that we can meet our legal obligations under the *Act* to identify all responsive records, while at the

same time protecting the confidentiality of other sensitive information gathered during the course of day-to-day police work.

Unit staff are dependent on the expertise and advice of individual police officers in making decisions under the *Act*, and we emphasize this point during the meeting. We ask officers to ensure that they advise us if their notebook entries relate to an ongoing law enforcement investigation or are the subject of Court proceedings. We also stress that officers should immediately tell us if they have any concerns for the safety of any individual mentioned in the notebook entries, or if any of the information forms the basis of a public complaint under the *Police Services Act*.

Finally, we ask officers to take care that their notes are made in a professional, legible and objective manner, and that they make efforts to avoid subjective statements or opinions.

We feel that our training session enables us to make new employees aware of our Unit's roles and responsibilities under the *Act* and how police officers' notebooks are treated. We find that when called upon to provide us with copies of their notebook entries, individual officers are knowledgeable, responsive, and respectful of both the rights of individual requesters and our Unit's role in ensuring the proper administration of the *Act*.



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