



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER MO-2107

Appeal MA-060154-1

Peel Regional Police Services Board



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NATURE OF THE APPEAL:

The Peel Regional Police Services Board (the Police) received the following request under the *Act*:

I need everything (audio tape and written materials) of the 911 - telephone call, which I personally made, on [an identified date in September of 2000], at about 2:50 PM from Terminal 3, Pearson International Airport. ...

My voice of what was happening to me, and the voice of the 911 operator are on the tape.

The Police identified a four-page Occurrence Report and a one-page Incident Report as responsive to the request. The Police granted the requester full access to the Incident Report and partial access to the Occurrence Report, while denying access to portions of it on the basis of the exemption in section 14(1) (invasion of privacy) of the *Act*. In the decision letter the Police also informed the requester that the tape recording of his 911 call no longer exists in compliance with the Peel Regional Police Record Retention By-Law and Schedule.

The requester (now the appellant) appealed the decision on the basis that a record of his 911 call, which was made in 2000, should exist.

During mediation, the appellant confirmed that he is not appealing the denial of access to the withheld portions of the Occurrence Report, and that the sole remaining issue is whether a tape or documentation exists regarding his 911 call in September, 2000.

Mediation did not resolve this issue, and the file was transferred to the inquiry stage of the process. I sent a Notice of Inquiry to the Police, initially, and received representations in response. I then sent the Notice of Inquiry, along with a complete copy of the representations of the Police, to the appellant, who also provided representations in response. I then sent the appellant's representations to the Police, and invited them to provide reply representations, which they did.

DISCUSSION:

REASONABLE SEARCH

Introduction

In appeals involving a claim that additional responsive records exist, as is the case in this appeal, the issue to be decided is whether the Police have conducted a reasonable search for the records as required by section 17 of the *Act*. If I am satisfied that the search carried out was reasonable in the circumstances, the decision of the Police will be upheld. If I am not satisfied, further searches may be ordered.

A number of previous orders have identified the requirements in reasonable search appeals (see, for example, Orders M-282, P-458, P-535, M-909, PO-1744 and PO-1920). In Order PO-1744,

acting-Adjudicator Mumtaz Jiwan made the following statements with respect to the requirements of reasonable search appeals:

... the *Act* does not require the [institution] to prove with absolute certainty that records do not exist. The [institution] must, however, provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records. A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request (Order M-909).

I agree with acting-Adjudicator Jiwan's statements.

Where a requester provides sufficient detail about the records that he/she is seeking and the institution indicates that records or further records do not exist, it is my responsibility to ensure that the institution has made a reasonable search to identify any records that are responsive to the request. The *Act* does not require the institution to prove with absolute certainty that records or further records do not exist. However, in my view, in order to properly discharge its obligations under the *Act*, the institution must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response, the appellant must, nevertheless, provide a reasonable basis for concluding that such records exist.

Representations

The Representations of the Police

In their initial submissions, the Police provided detailed representations in support of their position that the search they conducted for responsive records was reasonable. The Police indicate that the sole issue is whether a record of the appellant's 911 telephone call exists, and submit that:

The telephone call made to the Police was recorded. Pursuant to the Retention By-law and Schedule and internal procedures, the tape was erased for reuse thereby destroying the appellant's call to Police after the minimum retention period had expired.

The Police also provided a detailed review of how the appellant's request for a record of the telephone call was processed, and the procedures in place for the retention of records of telephone calls such as the one made by the appellant. The Police's representations can be summarized as follows:

- the appellant's request was processed by the Information and Privacy Unit of the Police;

- telephone calls such as the one for which records are requested are answered by a communicator with Radio Operations and Communications;
- the entire conversation between the communicator and a caller (in this case, the appellant) are recorded and retained on a master tape;
- Radio Operations and Communications are responsible for the master tapes including their continuity, storage, disposal, and the production of copies;
- the request for a copy of the tape was made to Radio Operations and Communications;
- the request was processed by the Communications Systems Operator (the Police then set out the duties of this individual, which includes dealing with the tapes);
- the response from Radio Operations and Communications was that the master tape no longer existed and that a copy could not be provided.

The Police describe in detail the manner in which the master tapes are retained, and who has access to these tapes. They also identify the approximate recording time of a master tape, and that master tapes are saved, stored and labelled with detailed information about the tape history (including the date, time, and person who changed the tape). The master tape is saved until such time as it may be required (ie: for evidence in court or for other reasons). If the tape is required for other reasons, a hold is placed on it, it is moved to another section of the secure storage cabinet, and it is labelled as a tape to be held. The Police identify that, at the time the master tape involved in this appeal was erased (according to the records retention schedule), no hold request was in effect.

The Police then identify the steps taken if a tape is no longer required and disposal is allowed in accordance with the records retention schedule. They relate that the tape is removed from the secure storage and erased for reuse, all of which is recorded on the tape history, including the date of erasure and the identity of the individual who erased the tape. The Police then state:

In this case, the appellant's call to Police was received on September 24, 2000. The master tape containing the call was removed from the recording system on September 25, 2000 and placed into secure storage. On October 30, 2002, the master tape was removed from secure storage and erased for reuse by the Radio Operations System Co-ordinator who also completed the notes on the tape history to reflect this.

The Police also refer to the disposal requirements under the *Act*, the Retention By-Law and Schedule, and their internal procedures. The Police take the position that the retention and subsequent disposal of the communications tape by erasing it complies with the *Act*. They also refer to the records retention period that was in place at the time the master tape containing the appellant's call to the police was erased, and confirm that the retention period was one year at that time. The Police also provide a copy of the relevant Procedure (Peel Regional Police General Procedure I-A-410). In addition, the Police note that the procedures have been changed since the time the tape was erased for reuse, and that the current directive specifies a three year retention period.

The Police summarize their position by stating that the appellant's request for the record was received by the Police's Information and Privacy Unit in March of 2006, five and one-half years after the original call. Without a hold being placed on the tape, the record would have been disposed of even if the current three year retention schedule had been in force, therefore, the Police identify that no responsive record exists.

As a final matter, the Police address the appellant's claim that he made a public complaint against the two police officers who attended the call, and that this ought to have resulted in the retention of the record. The Police indicate that this information provided them with another possible area to search. The Police identify that the Detective who investigated the complaint was contacted, and that this Detective confirmed the nature of the appellant's complaint. He advised that because the complaint did not relate to the 911 call, a copy of the 911 call was not requested from the Radio Operations and Communications. In addition, the Officer in Charge of the Police Public Complaints Bureau was consulted and confirmed that a copy of the 911 call to the Police was neither requested nor received by that Bureau.

The Representations of the Appellant

The appellant provides representations in support of his position that additional responsive records exist. He provides a review of the facts which he considers to be relevant to the appeal, and identifies his concerns regarding the incident which occurred in September of the year 2000. He describes the reasons why he made the initial 911 call, and the succeeding events which resulted in a subsequent 911 call being made by others. After this second 911 call was made, the appellant indicates that the Police arrived on the scene. The appellant also states that the Police took a statement from him, and that no arrests or charges were laid as a result of the incident. In addition, the appellant provides some attachments to his representations in support of his position regarding the events that occurred.

The appellant also identifies that in December of 2000 he contacted the Police regarding the incident and asked for certain information, including the names of the individuals involved, as well as the police officers. He states that the Police subsequently met with the appellant at his home and provided information to the appellant.

The appellant then identifies that one of the records provided to him in response to his request for access to the records (the Incident Report) documented the second 911 call which was made by another individual. The appellant states that if this documentation relating to the second call exists (which was made about 20 minutes after the appellant initially made his 911 call), documentation relating to the appellant's own call made on that date ought to exist as well. The appellant also makes a number of allegations against the others involved in the incident, including the police officers.

The Reply Representations of the Police

As indicated above, I sent the appellant's representations to the Police, and invited the Police to comment on them. In particular, I asked the Police to address the appellant's concern that a document relating to the second 911 call existed, while no similar record of the appellant's call was located.

The Police confirm that the initial search for responsive records produced the documentation relating to the second 911 call (the Incident Report identified as page 5 of the records) as well as the four-page occurrence report (pages 1-4 of the records). The Police also confirm that the initial search failed to locate any record of the appellant's call, and they explain that only three circumstances exist that would explain why no record of the appellant's call exists. These are:

- 1) That the appellant never made the call. The Police indicate that, although this is very unlikely, given that the recording of the call has been erased, it is not possible to determine whether the call was actually received.
- 2) That the 911 call was terminated or interrupted. The Police identify that call takers have the discretion to determine whether to deal with a call or not. They indicate that, if a call from the location identified by the appellant was made and was terminated at source, it is possible that the call taker determined that the Police were not required and did not enter the call. Again, the Police identify that, as there is no recording of the call, it is not possible to determine if the call was interrupted or terminated.
- 3) That the call taker, after hearing the details of the complaint, determined that the call did not require the Police to be dispatched. The Police state that, given the appellant's recollection of what the call was about, it is "likely" that the Police would not have been dispatched, and that no incident would have been logged. As a result there would be no record similar to the Incident Report documenting the second 911 call, where the Police were dispatched and responded to the call.

The Police then identify that calls for service which warrant Police attendance are entered by computer to the Computer Assisted Dispatch System. This system automatically generates incident numbers which are sequential. The Police identify that approximately 60% of the approximately 750,000 calls received in the year 2000 did not result in an occurrence report being submitted or in an incident report being generated by the system (such as the one generated by the second 911 call). The Police attach to their representations specific evidence relating to the number of calls received and the number of calls which resulted in the generation of incident reports.

Finally, the Police provided me with copies of all of the incident reports relating to calls to the Police which resulted in a record being generated on the date in question, beginning approximately forty minutes prior to the time the appellant indicates he called 911, and ending approximately forty minutes after the Police arrived at the scene of the

incident. These generated reports are numbered sequentially and recorded chronologically. No record of the appellant's call to the Police is contained in these records. Accordingly, the Police state that the appellant's call was not recorded as a call for service, and no record was generated. Again, the Police identify that, as there is no recording of the call, it is not possible to determine exactly which of three possible scenarios occurred.

Findings

As indicated above, in appeals involving a claim that additional responsive records exist, as is the case in this appeal, it is my responsibility to ensure that the institution has made a reasonable search to identify any records that are responsive to the request. The *Act* does not require the institution to prove with absolute certainty that records or further records do not exist. However, in order to properly discharge its obligations under the *Act*, the institution must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request.

In the circumstances of this appeal, I am satisfied that the searches conducted by the Police for records responsive to the request were reasonable.

With respect to the search for copies of the tape recording of the appellant's 911 call, the Police have provided detailed information regarding how these tape recordings are saved, stored and eventually disposed of. The Police also provided detailed information regarding the retention schedules for tapes of this nature, and why the tape recording would no longer exist. The Police provided documentary evidence supporting their position. As a result, I am satisfied that the search conducted by the Police for a copy of the tape recording of the appellant's call was reasonable in the circumstances.

With regard to whether the search for documents pertaining to the appellant's 911 conversation was reasonable, and in response to the appellant's particular questions regarding the existence of an Incident Report documenting the second telephone call, but not his telephone call, the Police provided detailed reply representations. They identify the process by which incident reports documenting 911 calls may be generated, provide explanations regarding the various scenarios which may have occurred resulting in no documentation, and provide copies of all of the documents which were generated for a time period of forty minutes on either side of the appellant's call. Given that the Police could not refer to a record of the appellant's telephone conversation, I am satisfied that the detailed explanations which they provided regarding the manner in which documentation relating to 911 calls are generated confirm that their searches for records of this nature were reasonable.

In the circumstances, I find that the search conducted by the Police for records responsive to the request was reasonable.

ORDER:

I find that the Police have conducted a reasonable search for records responsive to the request, and I dismiss the appeal.

Original Signed By: _____ October 24, 2006
Frank DeVries
Adjudicator