

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER MO-3072

Appeal MA13-275

Timmins Police Services Board

July 22, 2014

Summary: The Timmins Police Services Board received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for records about the requester. The police located responsive records and granted partial access to them, citing the exclusionary provision in section 52(2.1) (records relating to a prosecution) and the personal privacy exemption in section 14(1) to deny access to the undisclosed portions. The requester appealed the decision not to disclose all of the records and also claimed that additional records should exist. At the adjudication stage of the appeal process, the only issue remaining was whether the police conducted a reasonable search for responsive records. This order partially upholds the police's search for responsive records.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 17(1).

OVERVIEW:

[1] The Timmins Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA or the *Act*) for records about the requester, including phone records, investigative reports, dispatch logs, GPS and camera records, court transcripts, vehicle and driver licensing reports, and meeting notes.

[2] The police issued a decision denying access to the records pursuant to the exclusionary provision in section 52(2.1) of the *Act*, as the matter to which the records applied was before the courts.

[3] The requester (now the appellant) appealed the decision of the police to deny access to the records.

[4] During the intake stage of the appeal process, the police issued a revised decision granting partial access to the records that did not relate to a matter that was before the courts. Access was denied to the withheld portions of the records pursuant to the personal privacy exemption in section 14(1), as well as section 52(2.1) of the *Act*. The police also advised the appellant that no records existed with respect to certain parts of the request.

[5] During mediation, the appellant stated that he wished to appeal the application of sections 14(1) and 52(2.1) of the *Act* to the records and that he had information that suggested records existed relating to parts 2, 7, 8, 11, 12 and 13 of the request.

[6] As mediation did not resolve the issues in this appeal, this file was transferred to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry. I sought and received representations from the police and the appellant. Representations were shared in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[7] The police advised during adjudication that all prosecutions related to the subject matter of the records had been completed. Accordingly, section 52(2.1) is no longer at issue.

[8] The police also provided the appellant with further disclosure and related information, as follows:

Doc. No.	General Description	Page #'s	Released	Sections Applied	Comments/Explanations
	1. Phone records for OPP Timmins/Timmins Police Service for the days of [two dates] in regards to [requester's name] and charge [#]				

03	Report and Dispatch Log	5	Partial	14(1)	<p>Disclosure would constitute an unjustified invasion of personal privacy.</p> <p>A copy of the dispatch log has already been provided. The only information withheld was the name of the complainant and the complainant's contact information. The complainant's name is [name]. [His] home address and telephone number remain withheld.</p>
2. Officer [name] [cell phone] log and record as to numbers dialed and received, times and dates, to witnesses of charge [#]					
	No such records exist				The Timmins Police Service does not maintain the requested records, as such they do not exist within the control of the Timmins Police Service.
3. Report and dispatch logs and time for charge [#] including all time logs on witnesses					
	Dispatch log	5	Partial	14(1)	This is the same record as document number 03.
	"time logs to witnesses"				More clarification is required. The times statements were obtained from witnesses is recorded on the witness statement report. It is our understanding that this information has already been provided during the court disclosure process.
6. All officers' report's and dispatch log to "[place]" [date], in regards to tickets [three numbers]					
15	Dispatch log	2	Complete		
06	Officer's Reports	5	Complete		
10. Full disclosure on charge [#] and on traffic tickets [three numbers]					

10	Crown Brief		Was provided during court disclosure.		<p>It is our understanding that this document was provided during the court disclosure process and therefore no longer requested as the same documents would be the subject of this request.</p> <p>If this is inaccurate, then additional clarification as to what is "full disclosure" will be required.</p> <p>It is believed that anything not initially released as part of the court disclosure process is currently the subject of other requests.</p>
7. Any GPS records and tracking of police vehicles from [date] through to [date]					
07	GPS Records		Partial	8(1)(l)	<p>Records exist for Car [#] for [date] time frame. This record must be viewed on the computer screen by appointment. There will be no charge for the viewing of the data.</p> <p>No records exist for the other requested date and time frames for the involved vehicles.</p> <p>Records for any non-involved vehicles are withheld as per s. 8(1)(l).</p>
08	Camera records			No records exist	

09	Transcript of Court Proceedings				No records exist within the Timmins Police Service. All transcripts are created and maintained by the court clerk and are not associated to the Timmins Police Service.
11	Email			No records exist	
12	Meeting records			No records exist	
13 – Any information, dates and times, of searches on [vehicle, license number, appellant’s name]					
13	Date and time of Searches	15	Partial		Complete search results for licence plate queries are available. Computer responses for a query of the requested name do not contain any responses related to the request, but do contain the personal information of other persons who are not responsive to the request. The personal information of these third party subjects is denied.
13a	CPIC narrative message	1	Complete		Narrative message to [specific] County Sheriff.
13b	Response to request for Drivers Licence query	1	Complete		[Out of province] drivers licence information for drivers licence #
13c	Audit Log Query Results		Partial	8(1)(i)	Off line audit query of searches meeting request criteria. Data is in the form of an excel spreadsheet. Only withheld data is the querying member’s security credentials.

14.	Information on Ontario Drivers License			No records exist	Ministry of Transportation would have this information.
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[9] As set out above, the first caller's name in the 911 call tape had been disclosed by the police, as it was previously disclosed by the crown attorney. The appellant indicated that he was not interested in receiving this individual's contact information. Accordingly, the personal privacy exemption in section 14(1) was no longer at issue. The only remaining issue in this appeal, therefore, is whether the police conducted a reasonable search for responsive records.

[10] In this order, I uphold the police's search for responsive records, except for their search for camera and GPS records.

DISCUSSION:

Did the police conduct a reasonable search for records?

[11] 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 17.¹ 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.

[12] 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.² To be responsive, a record must be "reasonably related" to the request.³

[13] 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.⁴

[14] 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.⁵

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Order PO-2554.

⁴ Orders M-909, PO-2469 and PO-2592.

⁵ Order MO-2185.

[15] 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.⁶

[16] A requester's lack of diligence in pursuing a request by not responding to requests from the institution for clarification may result in a finding that all steps taken by the institution to respond to the request were reasonable.⁷

[17] The institution was required to provide a written summary of all steps taken in response to the request. In particular, it was asked:

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.

⁶ Order MO-2246.

⁷ Order MO-2213.

5. Do responsive records exist which are not in the institution's possession? Did the institution search for those records? Please explain.

The appellant's representations states that the following responsive records should exist

- [18] 1. the name and contact information of the second 911 caller,
- [19] 2. personal cell phone and text messages records of one specific police officer,
- [20] 3. information about meetings, emails and correspondence between the police, the crown attorney's office, and other government officials,
- [21] 4. camera and audio records of the police vehicles that were dispatched to the two incidents, and
- [22] 5. GPS records of the police vehicles that were dispatched to the two incidents.

The Police reply representations

- [23] 1. The police state that there was a second 911 caller but this person's identity is unknown.
- [24] 2. The police state that they do not reimburse officers who choose to use their personal telephones for work purposes and that the use of personal phones is discouraged, although not explicitly prohibited, unless the officer is operating a motor vehicle at the same time. They state that:

... the named officer indicated that he has not retained copies of any of the requested records. If any such records exist, they exist within the database of the cellular telephone provider and therefore not records held, or under the control of the Timmins Police Service. These records were never maintained, held by, or under the custody or control of the Timmins Police Service and therefore the appellant has no right of access as per section 4 through our institution...

The appellant references an entry in the dispatch log which is made at 22:07:48 as evidence that text messages were sent. The entry referred to is a computer generated response to the CAD [Computer Aided Dispatch] call taker. In this instance, the computer was telling the CAD operator that based on the information provided; this call only required a single officer be dispatched to the call.

[25] 3. The police state that they consider "full disclosure" on a charge to be all witness statements, the court synopsis, and any documentary evidence which may be required for the prosecution of the charge and that any additional items must be specifically requested. The police refer to an email where the mediator stated that the appellant had indicated that he has received full disclosure from the crown attorney.

[26] 4. The police state that camera equipment is installed in eight of their eleven marked patrol vehicles and that on the dates requested, none of the vehicles recorded as being involved had functioning cameras installed. As such, they state that the requested records never existed.

[27] 5. During adjudication, the appellant further narrowed his access request to include GPS records for all police vehicles for two dates for a one and half mile radius around a named intersection. He seeks GPS records for a two hours and 46 minutes time period for the first date and a two hour period for the second date. He requests that these records show the GPS position for "...1 minute before the vehicles starts to move until 2 minutes after they stop moving."

[28] The police state that the GPS records which exist for the immediate time frame of the interactions with the appellant can be released. The police were willing to provide the appellant with visual access to the system to view the data. The appellant does not want to attend in Timmins to view the data, and instead asked for screen shots. Due to issues with the software program, the only way the police are able to export this data is via screen shots.

[29] The police provided the appellant with a responsive screen shot of a police officer's vehicle's activity for a one hour period, which shows the data related to the vehicle's position in 15 second increments. The police explained to the appellant that the map has a number of icons layered on top of each other. This would indicate the vehicle was stationary for most of the one hour time period.

[30] The police advise that there will be a charge of \$7.50 per 15 minutes of preparation time (\$30.00 per hour) for any additional responsive GPS screen shots. As an estimate, they advise that it will take approximately thirty minutes to one hour to prepare screen shots of all of the activity captured by the one hour covered by the activity in the record disclosed to the appellant and that the length of time to produce the screen shots will be dependent upon the number of data spots. No data is recorded if the vehicle engine is off for more than 15 minutes, so some vehicles may have minimal data, while others will have data for the full time range in 15 second intervals.

[31] The police state that although data does exist for other vehicles operating at the intersection during the same time frames, they are not consenting to the release of data unrelated to the specific instance which took place at the interaction respecting the

tickets issued to the appellant. The police state that they would apply the discretionary law enforcement exemptions in sections 8(1)(c) and 8(1)(l) to the GPS records of police vehicles not involved in the interaction with the appellant.

Appellant's sur-reply representations

[32] 1. The appellant states that he did not receive a witness statement from the second 911 caller.

[33] 2. The appellant asks how the police completed their investigation if the officers did not retain the cell phone records.

[34] 3. The appellant states that he wants disclosure of all correspondence about himself relating to his charges by the Timmins police. He believes that there must be hundreds of pages generated as he or his representative had written to the justice minister, the attorney general, local MP's, the mayor of Timmins and others. As well, he states that the crown attorney's office must have had meetings with the police about his case.

[35] 4. The appellant wants the police to disclose the vehicle numbers of all of the four police vehicles involved in the first interaction with him and the two police vehicles involved in the second interaction with him in order to confirm that these vehicles had functioning cameras. If a camera was not functioning or a vehicle did not have a camera, he wants proof of that.

[36] He states that as only three cars in the Timmins police fleet do not have camera systems, he finds the probability very unlikely that these same three cars were involved in the incidents.

[37] 5. The appellant wants the police to disclose the vehicle numbers of all of the four police vehicles involved in the first interaction with him and the two police vehicles involved in the second interaction with him in order to confirm that these vehicles' GPS was functioning. If it was not functioning, he wants proof of that.

Analysis/Findings

1. the name and contact information of the second 911 caller

[38] The appellant confirmed that a witness statement did not exist for the second 911 caller. The police state that this caller was anonymous. I find that I have not been provided with a reasonable basis to conclude records exist identifying the second 911 caller.

2. *personal cell phone records and text messages of one specific police officer*

[39] I agree with the police that if there are any personal cell phone records of the police officer in question, they exist within the database of the cellular telephone provider and not records held, or under the control of the Timmins Police Service. The cell phone records would only show numbers contacted. It would not show the details of the investigation, which is what the appellant is concerned about.

[40] I also find that I do not have sufficient evidence to find that responsive text messages were sent by the police officer during the investigation. The appellant refers to one entry in the dispatch log as evidence that text messages were sent by the officer. I agree with the police that this entry in the CAD system is not a text message from a cellphone.

3. *information about meetings, emails and correspondence between the police, the crown attorney's office, and other government officials*

[41] I agree with the police that in the context of this request, when the appellant sought full disclosure on the specific charges laid against him, he was seeking information specific to the charges. At mediation, he confirmed that he had received full disclosure from the Crown. I find that if the appellant wants disclosure of records about meetings, emails and correspondence between the police, the crown attorney's office, and other government officials, that he will have to make a new request and specifically request this information.

4. *camera and audio records of the police vehicles that were dispatched to the two incidents*

[42] In his representations, the appellant refers to six police vehicles that were used in the two incidents where he was involved with the police. The police have only provided the appellant with information about camera records for three vehicles. Therefore, I will order the police to do another search for camera records in order that they can issue the appellant with a final access and fee decision letter for police vehicle camera records for the following dates and times:

For a one and a half mile radius around the intersection of [named] streets ...for the following dates:

[Date 1] at 9:15 pm to [next day] at 12:01 am, and [date 2] from 9:00 pm to 11:00 pm.

[43] The appellant did not seek audio records from police vehicles in his request. Nor was this item referred to as outstanding in the mediator's report. If the appellant wishes

to receive audio records from the police, he will have to file a new request seeking this information.

5. GPS records of the police vehicles that were dispatched to the two incidents

[44] The police have GPS records for the incidents involving the appellant and have indicated that it will require a fee from the appellant to provide him with the screen shots of the GPS records in paper form. The police have also stated that access to GPS records for vehicles not directly involved in the incidents may be denied under the discretionary law enforcement exemptions in sections 8(1)(c) and (l).

[45] The police have not provided the appellant with a final access and fee decision. Therefore, I will order the police to do another search for GPS records in order that they can issue the appellant with a final access and fee decision letter for GPS records for one minute before the vehicles start to move until two minutes after the vehicles stop moving, for the following dates and times:

For a one and a half mile radius around the intersection of [named] streets ... for the following dates:

[Date 1] at 9:15 pm to [next day] at 12:01 am, and [date 2] from 9:00 pm to 11:00 pm.

Conclusion

[46] In this appeal, I have found that the police have conducted a reasonable search for responsive records, other than for the camera and GPS records of the police vehicles involved in the two incidents set out above. I will order the police to conduct a new search for these records and to issue a final access and fee decision for the responsive camera and GPS records located by them.

ORDER:

1. I order the police to conduct a new search for camera and GPS records for the police vehicles that were at the following location on the following dates:

For a one and a half mile radius around the intersection of [named] streets [on] [date 1] at 9:15 pm to [next day] at 12:01 am and [date 2] from 9:00 pm to 11:00 pm.

2. I order the police to issue to the appellant a final access and fee decision concerning the responsive camera and GPS records, and the police vehicle numbers that this information was obtained from, in accordance with the provisions of the *Act*, treating the date of this order as the date of the request.
3. I uphold the police's search with respect to the other aspects of this request.

Original Signed By:
Diane Smith
Adjudicator

July 22, 2014