

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-3268

Appeal MA14-448

Toronto Police Services Board

December 3, 2015

**Summary:** The issues in this appeal are whether the Toronto Police Services Board (the police) conducted a reasonable search for records that are responsive to the request, and whether they are obliged to create a record under section 17 of the *Municipal Freedom of Information and Protection of Privacy Act*. The appellant's position is that the police did not conduct a reasonable search for a transcript of a 911 call, and that they are obliged to create a transcript of the call. In this order, the adjudicator upholds the police's search as being reasonable, and finds that they are not obliged to create a record in the circumstances of this request.

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

### OVERVIEW:

[1] The Toronto Police Services Board (the police) received an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) regarding an identified 911 call. The requester was seeking a voice recording and a "written certified forensic transcription" of the 911 call.

[2] The police issued a decision to the requester granting partial access to an Intergraph Computer Aided Dispatch – 911 Call (I/CAD) printout. The police denied access to portions of this record, claiming the application of the discretionary exemption in section 38(b) (personal privacy) of the *Act*. The police also noted that some of the information in the record was withheld, as it was identified as non-responsive to the

request.

[3] The requester (now the appellant) appealed the police's decision to this office.

[4] During the mediation of the appeal, the appellant advised the mediator that he was not seeking access to any further information in the I/CAD printout. Therefore, the application of the exemption in section 38(b) of the *Act*, as well as the non-responsive portions of the record, are no longer at issue.

[5] The appellant also advised the mediator that while he already has a copy of the audio recording of the 911 call,<sup>1</sup> he seeks access to an official transcript of the call, raising the issues of the reasonableness of the police's search, and whether the police are obliged to create a record. The police advised the mediator that they do not have a transcript of the record, and are not obliged to create a record under the *Act*.

[6] The appeal then moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry. I sought and received representations from the police. I attempted to seek representations from the appellant but was unable to locate him.<sup>2</sup> Consequently, the appellant did not provide representations in this appeal.

[7] For the reasons that follow, I uphold the police's search as being reasonable, I also find that the police are not obliged to create a record in these circumstances, and I dismiss the appeal.

## **ISSUES:**

- A. Did the institution conduct a reasonable search for records?
- B. Are the police obliged to create a record?

## **DISCUSSION:**

### **Issue A: Did the institution conduct a reasonable search for records?**

[8] 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.<sup>3</sup> 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.

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<sup>1</sup> According to the police, the appellant is not the 911 caller.

<sup>2</sup> The appellant did not provide contact information and could only be contacted sporadically by telephone.

<sup>3</sup> Orders P-85, P-221 and PO-1954-I.

[9] 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.<sup>4</sup> 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.<sup>5</sup>

[10] 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.<sup>6</sup>

[11] The police state that when they received the appellant's access request, the analyst processing the request contacted the Detective in charge of the case, who advised that a transcription of the 911 call was not done by, or on behalf of, the police. They go on to state that the appellant created a transcript from the call, which was submitted in court.

[12] I am satisfied that the police's representations demonstrate that they made a reasonable effort to address the appellant's request and provided an explanation as to why they do not have a copy of a transcript of the 911 call. The appellant has identified what he believes is the record at issue; namely a transcript of the 911 call. However, the appellant must provide a reasonable basis for concluding that such a record exists. In my view, the appellant has not provided a reasonable basis for concluding that the police have a copy of a transcript of the 911 call. Accordingly, I am satisfied that the police's response to the appellant's request, as well as their search for responsive records, is in compliance with their obligations under the *Act*.

### **Issue B: Are the police obliged to create a record?**

[13] The appellant is of the view that the police have an obligation to create a transcript of the 911 call. It has been established and recognized in previous orders that section 17 of the *Act* does not, as a rule, oblige an institution to create a record where one does not currently exist.<sup>7</sup> However, in Order 99, former Commissioner Sidney Linden made the following observation with respect to the obligations of an institution to create a record from existing information which exists in some other form:

While it is generally correct that institutions are not obliged to "create" a record in response to a request, and a requester's right under the *Act* is to information contained in a record existing at the time of his request, in my view the creation of a record in some circumstances is not only consistent with the spirit of the *Act*, it also enhances one of the major purposes of

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<sup>4</sup> Orders M-909, PO-2469 and PO-2592.

<sup>5</sup> Order MO-2185.

<sup>6</sup> Order MO-2246.

<sup>7</sup> Orders P-50, MO-1381, MO-1442, MO-2129, MO-2130, PO-2237, PO-2256 and MO-2829.

the *Act* i.e., to provide a right of access to information under the control of institutions.

[14] The police submit that in this context, the statements made by former Commissioner Linden are not applicable. The police state:

The Police mandate is not to review all 911 tapes and provide transcribed records, unless requested by a Crown Attorney for court purposes. For private individuals/organizations – the request for transcription can be accommodated via contacting the appropriate courthouse and/or through private agencies.

[15] Moreover, the police state that they advised the appellant that transcription services are available for hire.

[16] The appellant's position is that the police have an obligation to create a written transcript of the 911 call. I find that the police are not required to do so in the circumstances and that they have met their obligations under the *Act*. As identified above, an institution is not, as a rule, obliged to create a record where one does not currently exist, and I find that the circumstances present in this appeal are not such as to warrant the creation of a record. In my view, this is not the type of situation described by former Commissioner Linden in Order 99. In the absence of representations from the appellant, I find that the present circumstances are not such that the police are obliged to create a record containing the requested information.

**ORDER:**

1. I uphold the police's search as being reasonable, and I find that the police are not obliged to create a record in these circumstances.
2. I dismiss the appeal.

Original Signed by: \_\_\_\_\_  
Cathy Hamilton  
Adjudicator

December 3, 2015 \_\_\_\_\_