

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-3529

Appeal MA16-684

Toronto Police Services Board

November 23, 2017

**Summary:** The appellant requested records relating to an incident in a Toronto store which ended with her arrest. The appellant raised two issues with the Toronto Police Services Board's response to her request in this appeal. First, whether the Police conducted a reasonable search for video surveillance records and second, whether an audio recording of a 911 call was within the scope of her request. This order finds that the Police conducted a reasonable search and that the audio recording of the 911 call is responsive to the appellant's request for records.

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

**Orders and Investigation Reports Considered:** Order MO-3268

### OVERVIEW:

[1] The appellant made a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Toronto Police Services Board (the police) for access to records including:

1. The video of her shopping at a named store on a specified date. The request provided a specific reference number for the video recording.
2. The transcript of a 911 call made by store security to the police.

[2] The appellant's request arises from an incident where security personnel at a Toronto store alleged the appellant was shoplifting. Security detained the appellant at the store and called police, who attended and arrested the appellant.

[3] In response to the appellant's request for records, the police issued a series of decisions, including granting partial access to video surveillance footage it had obtained from the named store showing the appellant shopping in the store.

[4] After reviewing the video surveillance footage disclosed to her, the appellant believed that the police should have additional video footage responsive to her request that covered the entire period of the incident at the store, including her detention by security, not just the time she was shopping in the store. In response, the police conducted another search for video footage and advised that no additional video footage was located.

[5] The appellant also believed that the scope of her request for a transcript of a 911 call should include the audio of that call, if that is the format the record of the call was in. The police maintained the position that an audio recording of the 911 call was not within the scope of the appellant's request.

[6] The appellant decided to proceed to adjudication, where an inquiry is conducted, on the issues of whether the police's search for additional video surveillance footage was reasonable and whether an audio recording would fall within the scope of her request for the 911 transcript.

[7] During the course of the inquiry the parties exchanged representations on the issues above, which were shared in accordance with *Practice Direction Number 7*, issued by this office.

[8] This order finds that the police conducted a reasonable search for video surveillance records. The order also finds that the audio recording of the 911 call requested by the appellant is within the scope of her request.

## **ISSUES:**

- A. Did the police conduct a reasonable search for records responsive to the appellant's request for video surveillance records?
- B. What records are responsive to the appellant's request?

## **DISCUSSION:**

### **Search for surveillance video**

[9] The police disclosed video footage of the appellant shopping in the named store to her, using blurring technology to protect the privacy of others in the store at the time who appear in the video footage.

[10] The appellant does not take issue with the video disclosed to her. Rather, she believes the police have additional footage of her, because the video footage covers only her time in the store and not any of the period after she was detained.

[11] The appellant's position that there is video footage of the entire time she spent at the store is based on:

1. comments that her detention was video recorded the appellant says the police officer that arrested her made on the day of the incident; and
2. statements that the alleged crime and detention were video recorded the appellant says were made in charges filed in court by police.

[12] The appellant's documentary evidence comprises a letter from her lawyer addressed to the Crown's office that includes a request for a copy of all video surveillance footage and a response from the Ministry for Attorney General that advises that surveillance video has been requested from the store.

[13] The police say that there is no contradiction between officer's sworn statements and the response to the appellant's request. Both confirm that video footage exists, but only of the appellant shopping, not her subsequent detention by security.

[14] The police provided an affidavit from the police analyst who conducted the search for records. The analyst states that she sought and located the video footage with the specific reference number contained in the appellant's request. This is the video footage of the appellant shopping that the police disclosed to her in part.

[15] The police state that it confirmed with the officer in charge that the video with the reference number stated in the appellant's request was the only video that was seized by the police and submitted as evidence.

### ***Analysis***

[16] Based on the evidence before me I am satisfied that the police conducted a reasonable search for video footage responding to the appellant's request. The evidence before me is consistent with the police having identified and issued a decision regarding the video footage in their custody or control.

[17] The police located the video footage with the specific reference number contained in the appellant's request. While this footage only covers the period of her shopping and not her detention, there is insufficient evidence to support the appellant's position that the police have additional footage.

[18] The documents submitted by the appellant in evidence do not establish that additional video footage exists but merely that any video surveillance records were requested, and an acknowledgement that the requested records would be provided. These documents are consistent with the police's representations that state the video it identified is the only video in its custody or control.

[19] The appellant's other evidence is the hearsay statements made by the arresting officer and in police sworn statements. These statements, even if relied upon, at most suggest that the store itself has or had footage of the appellant's detention, not that there is additional video footage of the appellant's detention in the custody or control of the police, as the appellant maintains.

[20] Accordingly, I am satisfied the police conducted a reasonable search for video footage that responds to the appellant's request.

### **911 call transcript**

[21] The appellant requested a transcript of a 911 call made on a specified date. The issue in this appeal is whether an audio recording of the 911 call is within the scope of the appellant's request.

[22] The police did not provide a transcript of the call to the appellant. It advises that it does not produce transcripts of 911 calls unless requested by the Crown. The police also note in their representations that no-one within the police had requested a transcript be created, so no transcript record exists.

[23] The police further submit that the police do not have any obligation to create a record, which it would have to do to turn a 911 audio recording into a transcript. The police cite Order MO-3268 to support their approach, where Adjudicator Hamilton found that the police were not obliged to create a record in the circumstances of that appeal. However, in MO-3268 the appellant already had a copy of the audio recording of the 911 call, so the issue was whether the police also had to provide a transcript of the 911 call to the requester, not whether a 911 call recording was responsive to a request.

[24] Instead of a transcript the police disclosed in part an I/CAD Event Details Report, which it considered to be reasonably related to the appellant's request. The police submit that it is their standard practise to provide the I/CAD Event Details Report when an individual requests a 911 call. The police submit that is the responsive record as it is a report of the conversation between a citizen and a 911 operator. From my review of the I/CAD Event Details Report partially disclosed to the appellant, its connection to the 911 call at issue is that it contains the name, phone number and name of the store

from which the 911 call was made. I note the name and phone number of the call were withheld by the police.

[25] The issue in this appeal is whether an audio recording of the 911 call is responsive to the appellant's request. On this issue, the police simply state that an audio recording of the 911 call was not within the scope of the request. The basis for this position is that the appellant requested a transcript of the call, not the audio recording.

[26] The appellant submits that her request should encompass an audio recording of the call, if that is the format the call record was in. She submits that as a requester, even after reviewing the police's guidance for making an access request, she was unsure in what format 911 calls were kept, and assumed that transcripts of calls were kept. She submits that she was never specifying a format she wanted the call in, and that she was not advised that her request was deficient.

### ***Analysis***

[27] I am aware that as a pragmatic response to the police's position that the audio recording was not responsive to her request, the appellant made a new request to the police for that recording. The appellant has advised me that the police has recently issued a decision regarding the request, and that the decision may well be the subject of an appeal. Nonetheless, I do not consider that these developments render the question of whether the audio recording was responsive to the appellant's initial request moot, and I will proceed to consider the issue.

[28] Previous orders have made clear that institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*.<sup>1</sup>

[29] I am satisfied that taking an approach that serves the purpose and spirit of the *Act*, the audio recording of the 911 call is responsive to the appellant's request.

[30] The police's clear policy not to create transcripts of 911 calls in response to access requests meant that the appellant was never going to receive a transcript of the call under the police's literal approach to the appellant's request.

[31] Section 17(2) of the *Act* provides that if an access request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request. The police did not consider action under section 17(2) necessary because it considered the request was clear.

[32] While clear in a literal sense, the police must have understood from the context, that the intent of the appellant's request was to obtain access to the content of the 911

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<sup>1</sup> Orders P-134 and P-880.

call. This is apparent from the fact that the police partially disclosed to the appellant the I/CAD Event Details Report which provides some basic detail about the 911 call. Despite this, the police did not contact the requester to clarify its position that while it would not produce a transcript, it did have an audio recording of the 911 call.

[33] The police erred in not treating the audio of the call as reasonably related to the request. The police considered the I/CAD Event Details Report as reasonably related to the appellant's request. I do not need to express a view on the responsiveness of an I/CAD Event Details Report to a request for a 911 call. However, I consider that the audio of a 911 call recording is more closely related to the request for a transcript of that call than the I/CAD Event Details Report. In short, if an I/CAD Events Details Report is reasonably related to the appellant's request, the actual audio recording of the call certainly is reasonably related to the appellant's request.

[34] By not treating the audio recording as reasonably related to the appellant's request or clarifying with the requester whether the audio recording might best respond to her request for a transcript of the call, the police did not take a liberal interpretation of her request, and therefore failed to uphold the purpose and spirit of the *Act*.<sup>2</sup>

[35] I am satisfied that, in the circumstances, a liberal interpretation of a request for a 911 call or a transcript of a 911 call that serves the purpose and spirit of the *Act* would identify the audio recording of the requested call as a responsive record.<sup>3</sup>

[36] Finally, to the extent that the police has a policy to treat an I/CAD Event Details Report as a substitute for an actual 911 call record, I find that such an approach fails to fully comply with the police's obligations under the *Act* when responding to a request for a 911 call, including a request for a transcript of such a call.

## **ORDER:**

I find that the police conducted a reasonable search for video surveillance records.

I find that the audio recording of the 911 call at issue in this appeal is responsive to the appellant's request for records. However, as the police have issued a decision regarding access to the audio recording in response to a subsequent request from the appellant, I do not need to order the police to issue a decision regarding the audio recording.

Original Signed by: \_\_\_\_\_  
Hamish Flanagan  
Adjudicator

November 23, 2017 \_\_\_\_\_

<sup>2</sup> Orders P-134 and P-880.

<sup>3</sup> My finding would have been different if a transcript of the 911 call existed.