



**Information and Privacy
Commissioner/Ontario**

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

FINAL ORDER M-1135

Appeal M-9800019

Woodstock Police Services Board



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NATURE OF THE APPEAL:

This is my final order in respect of the outstanding issues from Interim Order M-1121.

BACKGROUND:

In Interim Order M-1121, I found that certain aspects of the search by the Woodstock Police Services Board (the Police) for records responsive to the appellant's request was not reasonable. My concerns related to discrepancies between the content of certain audio cassette tapes.

I included the following provisions in my order:

1. I order the Police to provide me with an affidavit, sworn by the Co-ordinator, explaining the discrepancies in the quality and the length of gaps between the speakers on the two cassettes provided to this office.
2. I order the Police to provide me with an affidavit, sworn by the individual who made the copies of the tapes, stating that the two cassettes provided to this office are true copies of the original segments of the 911 tapes.

The Police provided two affidavits; one by the Co-ordinator who conducted the search, and the other by the police inspector (the Inspector) who produced one of the cassettes.

DISCUSSION:

For the purposes of this order I will assume knowledge of the factual background of this appeal, as outlined in Interim Order M-1121.

In his affidavit, the Co-ordinator states that once the four recorded anonymous calls were located on the 24-hour reel-to-reel recording system used for 911 calls, he copied them to an audio cassette tape (tape #1). The Co-ordinator swears in his affidavit that tape #1 is a true copy of the original reel-to-reel tape. Tape #1 has been retained at all times by the Co-ordinator. Tape #1 was used to produce the first cassette tape provided to this office during the course of the appeal (tape #2).

The Co-ordinator goes on to explain that he did not personally make tape #2; this was done by the Inspector. The Co-ordinator also states that he did not check tape #2 to ensure that it was a true copy of tape #1 before sending tape #2 to this office. The Co-ordinator accepts that this was an error on his part.

In his affidavit, the Inspector states that in producing tape #2 he utilized the recorder's "Multi Music Scan" feature, which allows the recorder to locate and bypass blank portions or portions that contain no detectable information. The Inspector states that he did not review tapes #1 and #2 for consistency before returning them to the Co-ordinator.

Once tape #2 was determined by our office to be incomplete, the Co-ordinator personally made another copy of tape #1 and forwarded it to our office (tape #3). The Co-ordinator explains that he did not use the

“Multi Music Scan” feature in producing tape #3, and submits that this explains the difference in the length of the gaps on tapes #2 and #3. The Co-ordinator swears in his affidavit that tape #3 is a true copy of tape #1.

As far as the difference in quality of tapes #2 and #3 is concerned, the Co-ordinator swears in his affidavit that this is caused solely by a difference in the volume setting on the recording equipment when these two tapes were produced.

Having carefully reviewed the representations and affidavit evidence provided by the Police, I am satisfied that the provisions of Interim Order M-1121 have been complied with. In my view, the Police have adequately explained the reasons for the noted differences between the two cassette tapes provided to this office (tapes #2 and #3), and I accept the sworn statement from the Co-ordinator that tape #3 is a true copy of tape #1, which in turn is a true copy of the original segments of the original 911 tapes. Consequently, I find that the search conducted by the Police was reasonable in the circumstances of this appeal.

In Interim Order M-1121, I also expressed concern regarding the fact that the original 911 tapes had been destroyed, despite the fact that an appeal involving these tapes was in progress. My order included the following comments:

By reviewing the original tapes in the course of responding to the appellant's request, the Police “used” the personal information contained in them within the meaning of section 5 of Regulation 823. I have reviewed the record retention by-law provided to me by the Police, and it does not reduce the minimum time period established by section 5. Therefore, in my view, the Police were obliged to maintain the original tapes for a period of one year following this use.

I would go further than this. While there are no specific provisions in the Act covering the retention of records which do not contain personal information or records which are the subject of an ongoing access request, in my view, institutions have an inherent responsibility to retain original records containing information which is the subject of a request under the Act, regardless of the operation of any records retention schedule which may provide for their destruction. Clearly, in order to give effect to the access provisions in the Act, when an institution receives a request, that triggers an obligation on the institution to ensure that the original responsive records are retained and not destroyed until the request has been satisfied and any subsequent proceedings before the Commissioner or the courts is completed.

The Co-ordinator included the following statement in his representations:

In reference to the destruction of the original twenty four (24) hour reel to reel Dictaphone recording tapes. As the Freedom of Information Branch coordinator I did make Cassette
[IPC Order M-1135/July 22, 1998]

Tape #1 from the original tapes. The tapes were not held but returned to the system. In order to be in Compliance in the future a revision will be made in future Woodstock City Police Department policies and procedures which will reflect that when a Freedom of Information request is made in relation to audio records of the Woodstock City Police Department, that the audio records be maintained for one year in accordance with Section 5 of Regulations 823 of the Freedom of Information Act.

This commitment is welcomed. However, it does not completely address my comments in Interim Order M-1121. In amending its policies and procedures, I would encourage the Police to also address the situation where records are subject to an ongoing access request **but do not contain personal information**. As previously stated, in my view, institutions have an inherent responsibility to retain original records which are the subject of a request under the Act, regardless of any records retention schedule, and regardless of whether or not they contain personal information.

Original signed by:
Tom Mitchinson
Assistant Commissioner

July 22, 1998