



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1732**

**Appeal MA-030062-1**

**Toronto Police Services Board**



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## NATURE OF THE APPEAL:

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 relating to charges laid against him under the *Provincial Offences Act*. More specifically, the appellant sought access to:

1. Names, badge numbers and notes of police officers involved in the arrest
2. Police radio dispatch records relating to the incident, including recordings and transcripts
3. Surveillance video tape from outside the police building at the time of the incident
4. The Police policy, procedures or guidelines on video surveillance in the relevant areas
5. Name, badge number and notes of the officer who allegedly was involved in making the decision to charge the appellant
6. The records authorizing the Police to enforce the *Trespass to Property Act* on the site in question, such as any City by-law or specific written direction from the landowner
7. Notes that a specific detective made about the incident and his communications with the Peel Regional Police Service regarding efforts to return the appellant's camera or about the appellant in general

The Police identified 13 pages of responsive records. The Police granted the appellant access in full to 10 pages, and access in part to three pages (pages 1, 6 and 13). The Police withheld information from the three pages on the basis that they were not responsive to the request.

In addition, the Police identified a police radio audio tape as responsive to the request, and granted partial access to it, withholding portions on the basis of the exemption at section 38(a)/14(1)(l) (facilitate commission of an unlawful act) of the *Act*.

The Police also responded to specific aspects of the request as follows:

3. There is no transcript or any videotape of you concerning this matter, therefore access to the requested records cannot be provided, as such records do not exist.
5. Please be advised that no other police officers (except [named police officer]) have been identified as attending or having involvement with the matter related to your Provincial Offences Act ticket . . .
7. With respect to [named police officer], there are no memorandum book notes pertaining to this event, or concerning contact with Peel Regional Police about

return of your camera, therefore access to the requested records cannot be provided as such records do not exist.

The appellant then appealed the decision of the Police to this office.

During mediation, the appellant agreed to withdraw his request for items 4 and 6, leaving only items 1, 2, 3, 5 and 7 at issue.

Mediation was not successful in resolving all of the issues in the appeal, so the matter was streamed to the adjudication stage of the process.

I sent a Notice of Inquiry to the Police, initially, outlining the facts and issues and requesting written representations. The Police submitted representation in response, the non-confidential portions of which I shared with the appellant, along with a copy of the Notice. The appellant in turn provided representations.

## **RECORDS:**

The information at issue is contained in two pages of police officer's notes (pages 1 and 6), one page of a CAD event details report (page 13), and a police radio audiotape (approximately 2 minutes, 25 seconds long).

The appellant also believes additional records exist which the Police have not identified.

## **DISCUSSION:**

### **SCOPE OF THE REQUEST/RESPONSIVENESS OF INFORMATION**

Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
  - (a) make a request in writing to the institution that the person believes has custody or control of the record;
  - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and
- (2) If the 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 so as to comply with subsection (1).

To be considered responsive to the request, records must “reasonably relate” to the request [Order P-880].

The Police take the position that the withheld portions of pages 1, 6 and 13 relate to incidents other than that involving the appellant. More specifically, they submit:

[These portions] document other events in which the police were involved. These records contain information which is completely unrelated to the matter involving the appellant.

The withheld portion of page 1 relates to a complaint previously assigned to the identified officer. The requester has no involvement in this matter, which was detailed prior to the named police officer commencing his investigation of the requester for trespassing in the parking lot.

The withheld portion of page 6 relates to a timeframe after the requester’s investigation was concluded. This portion of the record contains the personal information of the named police officer (with respect to his tour of duty for payroll purposes with supervisor’s signature), and as such, is not related to the requester in any way.

Additionally, the withheld portion on page 13 relates to matters taking place on entirely different dates than the date on which the appellant was investigated by the named officer.

All the above-described information is totally unrelated to the requester in any way, and as such, was deemed to be non-responsive, and was severed from the records in question.

The appellant submits:

First of all the meanings of the codes used has been withheld and I have brought this to the attention of the IPC on many occasions. Without which I can not properly understand the records provided or make submissions to the Inquiry.

Next is defining the exact time frame that [named police officer] was involved with me. I would those [sic] records that have been severed or denied would show this. This I know, the officer above was leaving his station to attend a call when he looked up to see me as he was walking to his car, not as his notes would suggest. I believe this call was to do with someone’s credit cards/purse being stolen or used, as he showed me the paperwork he was hold [sic] as he left the station. It would important [sic] to know when he either resumed that call or took another, either way when he ended his involvement with me and/or started the paperwork on my case before doing other things. This time frame can be compared to what he claims to the case [sic] to discover the real length of time,

which should be considered part of a personal record. So yes, other records are in part responsive to my FOI request if they can define the above.

The information the Police withheld from pages 1, 6 and 13 clearly does not relate to the incident involving the appellant that is the subject matter of his request. Also, in these circumstances, I am not convinced that any time frames involving other matters are reasonably relevant to the appellant's request. Therefore, I find that the information the Police withheld from pages 1, 6 and 13 is not responsive to the appellant's request.

### **PERSONAL INFORMATION**

The Police have withheld portions of the audiotape on the basis of section 38(a) in conjunction with section 8(1)(l). Section 38(a) applies only where the record contains personal information relating to the requester. Therefore, the first issue for me to decide is whether or not the audiotape contains the appellant's personal information.

Under section 2(1) of the *Act*, "personal information" is defined, in part, to mean recorded information about an identifiable individual.

The Police submit:

. . . The audiotape does not contain any personal information, however, this record is part of a compilation of records which is the subject of this appeal.

The Management Board Secretariat states in their Annotation, "Any information which relates directly or indirectly to an individual or a matter which involves the individual could be considered personal information for the purpose of a request and for determining fees. Thus where the police were asked for all information related to a charge laid against an individual, all the information kept in this regard is the individual's personal information even where some of the pages only indirectly relate to the individual or his or her matter." [(Order) M-514].

Pursuant to the foregoing, the record at issue contain recorded information concerning the appellant which would include name, address, sex, date of birth, and driver's licence number, all of which are specifically designated in section 2(1) of the [*Act*].

The appellant's submissions do not address this issue.

The audiotape contains information about the appellant's involvement in the incident investigated by the Police, including a description of his activities before he was arrested and the fact that he was arrested. This information is "about" the appellant and therefore constitutes his "personal information" under the section 2(1) definition.

## **RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/LAW ENFORCEMENT**

Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

Under section 38(a), an institution has the discretion to deny an individual access to their own personal information where the exemptions in sections 6, 7, 8, 8.1, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that information.

In this case, the Police rely on section 38(a) in conjunction with section 8(1)(l) with respect to information withheld from the audiotape. Section 8(1)(l) reads:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

facilitate the commission of an unlawful act or hamper the control of crime.

The Police submit:

Section 8(1)(l) was applied to the ten-codes used in the police radio conversations between the named police officer and the police dispatcher.

The use of ten-codes by law enforcement is an effective and efficient means of conveying a specific message without publicly identifying its true meaning. The word code itself implies the intention that the information not be widely disclosed. If the ten codes and their meanings became widely known by the general public, their effectiveness would be compromised.

By encoding information, the police seek to reduce the ability of those involved in criminal activity from using such knowledge to circumvent detection while committing crimes. This information could also be used to counteract police response to such situations, and could result in risk of harm to either police personnel or members of the public.

The appellant's submissions on this issue are largely irrelevant and do not assist me in deciding this issue.

This office has consistently found that section 8(1)(l) applies to police "ten-codes" (see for example, Orders M-757, PO-1665, MO-1715). Based on these earlier orders and my review of the audiotape and the Police's representations, I find that disclosing the ten-codes in this case could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. Therefore, the information withheld from the audiotape is exempt under section 38(a) in conjunction with section 8(1)(l).

## EXERCISE OF DISCRETION

The section 38(a) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, this office may determine whether the institution failed to do so.

In addition, this office may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations

In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 54(2)].

The Police submit:

[We] examined the appellant's right of access to his own personal information, in conjunction with [our] mandate regarding crime prevention. It was determined the [our] responsibilities concerning safety and protection of both [our] officers and innocent people within the community prevailed over the requester's access rights under the legislation. In other words, when weighing the right of access of the appellant to his personal information versus [our] concerns, [we concluded] that the possible harm of compromising safety weighs in favour of non-disclosure...

The appellant submits that the Police exercised their discretion under section 38(a) in bad faith or for an improper purpose. The appellant supports these assertions by recounting his version of the events that lead to his arrest. However, the appellant fails to address the issue of how the Police's specific exercise of discretion to withhold the ten-codes from the audiotape was done in bad faith or for an improper purpose.

In my view, the appellant has provided no basis for a conclusion that the Police exercised discretion under section 38(a) in bad faith or for an improper purpose, or that the Police took into account irrelevant considerations or failed to take into account relevant factors. As a result, I find that the Police did not err in exercising discretion under section 38(a).

## REASONABLE SEARCH

The appellant takes the position that the Police have not identified all records responsive to his request.

In appeals involving a claim that further 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, I will uphold the Police's decision. If I am not satisfied, I may order further searches.

Where a requester provides sufficient detail about the records that he is seeking and the Police indicate that further records do not exist, it is my responsibility to ensure that the Police have made a reasonable search to identify any records that are responsive to the request. The *Act* does not require the Police to prove with absolute certainty that further records do not exist. However, in order to properly discharge its obligations under the *Act*, the Police must provide me with sufficient evidence to show that they have 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 the Police's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records exist.

The Police submit:

The original written request submitted by this requester (now the appellant) contained a considerable amount of detail and was laid out in a clearly itemized format. Although the requester and the assigned Analyst did discuss the request at length, no additional detail which would assist in the search for records was provided. However, the requester did, at this time, limit his request to personal information, when advised that fees would be applicable to the portions of his request concerning general information.

Based on the information provided, a comprehensive search was conducted for records responsive to the personal information portion of the request. The records located were comprised of arresting officer notes, the *Provincial Offences Act* ticket, the arrest report, a Manix entry, the CAD Event Report and radio voice tape.

A number of police employees, many having an extensive amount of experience within the Service, were involved in the search for records related to this request. This list of personnel includes the assigned FOI Analyst, the Tape Analysis Transcriber, the Unit Liaison Officers for both the named detective and the named police officer, the 14 Division Case Preparation Officer. Both the identified Detective and the identified Police Officer were spoken to at length.



Police databases, police radio transmissions, as well as hardcopy records and files were searched thoroughly. This search included the crown envelope for a criminal case involving the requester and for which the named detective was the Officer in Charge. This record was searched for notations by the named detective concerning his arrangements to return the camera, and/or involving contact with Peel Regional Police with respect to notification of the requester to pick up the camera, however, no records responsive to this portion of the request were located.

Additionally, the named detective's memorandum book was reviewed for a period which included several months prior to the date in question, however, the results of this search were negative.

It should be noted that at any given time (24/7), hundreds of personnel working within police facilities as well as those assigned to police vehicles are listening to on-the-air radio transmissions. As such, there is certainly a possibility that a number of officers may have been in the vicinity, especially given the location of the incident (police station). However, the arresting officer advised Police Radio that no assistance was required, and as a result, no other officers contacted the dispatcher or signed onto the related CAD Event Report. Since the requester was unable to provide identifiable detail such as badge numbers, a further search for officers was not possible. As indicated above, the details of this matter were discussed with the named police officer at length during the course of the search for records, and this officer, who was in fact, the arresting officer concerning the trespassing matter, confirmed that no other police personnel assisted with this case.

The Police also provide representations in response to the appellant's allegation that the Police are in custody of a videotape of the incident, which I am not at liberty to disclose. Finally, the Police submit:

In summary, based on the information provided by the requester both verbally and in written form, a very comprehensive search for records was conducted concerning this request, and all responsive records were released, at least in part, to the appellant. With all avenues of search exhausted, [we] have done [our] best in responding to this request.

The appellant's representations on the reasonable search issue are very lengthy and detailed but, for the most part, they are unhelpful and deal with issues only peripherally related to the issue at hand.

The appellant maintains that the Police hold a videotape of the incident. Based on the confidential representations of the Police, I am satisfied that there are no reasonable grounds to believe that such a videotape exists.

In addition, I am not persuaded that because other officers attended at the scene of the incident (not surprising, given that it took place at a police station), additional records created by additional officers must exist.

I find the Police's explanation as to what steps it took to locate records and the reasons why it does not believe further records exist to be reasonable and credible, and I uphold the Police's search for responsive records.

**ORDER:**

I uphold the decision of the Police.

Original signed by: \_\_\_\_\_  
David Goodis  
Senior Adjudicator

\_\_\_\_\_ December 22, 2003