



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2079

Appeal MA-050303-1

Toronto Police Services Board



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NATURE OF THE APPEAL:

The Toronto Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* for:

The communication record – of Apr 22 – 2000 between police div'n. 32 Desk Duty Officer the Duty Srg. – taking my call. Between – 7 pm to 9:30 pm til they finished my false [arrest]. [emphasis in the original]

In the request the requester states that he has sought this information since 2001. He adds “each time I got a bit piece [sic] not the real information”.

In its initial decision letter dated August 2, 2005, the Police responded to the request by informing the requester that:

...access to audiotaped communications between officers and the Toronto Police Service Communications Centre cannot be provided. Due to the extreme volume of such traffic, to search for the record would incur a hardship on the institution. Access is therefore denied to the audiotape of the communication pursuant to section 1 of Regulation 823 and subsection 52(1) of the *Municipal Freedom of Information and Protection of Privacy Act (the Act)*...

The requester (now the appellant) appealed the Police's decision. In a letter that commenced the appeal, the appellant stated that he sought:

The conversation details between the Police Duty dispatcher, officer, the sergeant on duty and the two officers; [identified officer] and [second identified officer] his partner on April 22nd, 2000.

During mediation the appellant further clarified that his request relates to communications between the Duty Desk or Duty Sergeant and the two officers involved in the incident of April 22, 2000. Also during mediation the Police forwarded a letter to the appellant, a copy of which was provided to the mediator, which indicated that, notwithstanding its earlier letter, they conducted a search for a responsive record but none was found. The letter also sets out that the appellant is already in possession of the attending officer's memorandum notes, the report and the record of arrest. The letter explains that there is no reference in the notes to a telephone or radio conversation between a Duty Desk Sergeant and the attending officers.

As set out in the mediator's report prepared at the conclusion of mediation, the sole issue in this appeal is whether the Police had conducted a reasonable search for an audiotape recording of the communications that responds to the appellant's request.

A Notice of Inquiry was sent to the Police, initially. The Police provided representations in response. A Notice of Inquiry, along with the complete representations of the Police was then sent to the appellant. The appellant provided extensive representations in response.

DISCUSSION:

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 of the *Act* [Orders P-85, P-221, PO-1954-I]. 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.

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 [Order P-624].

A reasonable search would be one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request [Order M-909].

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.

The Representations of the Appellant

The appellant filed extensive representations supplemented by an investigative report, excerpts from what appears to be a legal factum and materials relating to a criminal proceeding, as well as correspondence.

In summary, the appellant's representations focus on his concerns that the Police have engaged in a conspiracy to cover up what he alleges to be Police misconduct. I will assume that, for the purposes of this appeal, the appellant alleges that in furtherance of this conspiracy an audiotape record of the conversation(s) exists, but the Police are improperly withholding it.

The Representations of the Police

In addition to the explanatory letter provided during mediation, the Police set out the following in their representations:

1. The appellant is a repeat requester having submitted 4 requests since 2002. In the previous decisions, the appellant was supplied with all relevant information available to him, including the information of the only call recorded by the Toronto Police Service (TPS) Communications Centre for April 22, 2000.
2. On July 4, 2005 the fourth request was received with an attached previous decision letter dated April 20, 2005. Written on both the request letter and decision letter was the specific request for the "communication record... between

Police Div'n 32 Desk Duty Officer the Duty Srg. – taking my call". Additional writing includes the need for the tape specifically between 7 p.m. and 9:30 p.m. of the "verbal instructions of the Duty Desk or Duty Srg't."

3. [A freedom of information analyst with the Police] consulted with the T.P.S. Communications Centre to confirm that this information can not be provided. During this conversation it was explained that the ONLY calls recorded are; 1) 9-1-1 Emergency; 2) Call- Taker or Dispatch to officers; 3) Switchboard. Calls made to Divisions and from Divisions are NOT recorded.

4. [The analyst also] consulted with a member of the Public Complaints Bureau who reiterated Point No. 3. The Toronto Police Service does not record calls to, from, or within a Division, regardless of rank. Therefore, if a supervisor calls a Police Constable or the Duty Desk calls anyone at a Division, those conversations are not recorded.

....

It is the position of this institution that an extensive search for multiple requests on this matter has been conducted without success. Although it is not required for an institution to prove with absolute certainty whether or not a record exists, in this case it can be stated with certainty that this specific record DOES NOT EXIST. The technology is not, and has not previously been in place to create the record the appellant describes. The records have not been destroyed - they never existed. This institution has exhausted all resources in order to ascertain without doubt the non-existence of the record being requested.

Analysis and findings

I have carefully considered the parties' representations. As indicated above, 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 [Order P-624]. A reasonable search would be one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request [Order M-909].

In its representations, the Police provided a thorough explanation of the efforts it made to identify and locate records that are responsive to the appellant's request, and why such a record does not exist.

As noted above, 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. In my view, the requester has not provided a reasonable basis for concluding that responsive record(s) exist.

In short, I find that the Police have conducted a reasonable search for records as required by section 17 of the *Act*.

ORDER:

I uphold the decision of the Police and dismiss the appeal.

Original signed by: _____
Steven Faughnan
Adjudicator

August 23, 2006