



**Information and Privacy
Commissioner/Ontario**

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

FINAL ORDER MO-2359-F

Appeal MA-060178-2

Guelph Police Services Board



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NATURE OF THE APPEAL:

This order disposes of the remaining issues from Interim Order MO-2269-I, which I issued earlier this year. The appellant is seeking records from the Guelph Police Services Board (the Police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). For a complete summary of the background to this appeal and the records at issue, please refer to Interim Order MO-2269-I.

Interim Order MO-2269-I contained the following order provisions:

1. I order the Police to disclose the names of the two police officers (pages 89, 90 and 91), the social worker (page 91), the nurse (page 93) and the emergency room physician (pages 90-91).
2. I order the Police to disclose those portions of the records containing the appellant's personal information that I have found are not exempt under sections 38(a) or (b) of the *Act*. These portions are found on pages 20, 31, 43, 44, 52, 54, 89, 90, 91 and 94.
3. I am providing the Police with a copy of the pages referred to in Order Provisions 1 and 2 and have highlighted in green those portions that must not be disclosed to the appellant because they are exempt or not responsive to her request. For the purposes of this interim order, I have also highlighted in green any "900" codes, which the Police are not required to disclose at this time. To be clear, the portions of these pages that I have not highlighted in green must be disclosed to the appellant.
4. I order the Police to provide the appellant with a copy of the pages referred to in Order Provisions 1 and 2 by **March 3, 2008**.
5. I order the Police to decide whether to issue a revised decision letter to the appellant with respect to the "900" codes in the records at issue. If the Police decide to issue a revised decision letter that claims a new discretionary exemption with respect to the "900" codes, they must:
 - (a) issue this revised decision letter to the appellant by **February 15, 2008**, and
 - (b) provide this office, by **March 3, 2008**, with representations that: (i) support any new discretionary exemption claim, and (ii) explain why I should accept the new discretionary exemption claim at this late stage of the appeal, with particular reference to section 11.01 of this office's *Code of Procedure*.

6. If the Police decide not to issue a revised decision letter to the appellant with respect to the "900" codes in the records at issue, I order them to disclose those portions of the records to the appellant by **March 3, 2008**.
7. I order the Police to conduct a search of their Communications Centre for a recording of the telephone call from an MP's executive assistant that the appellant alleges was made before 5:00 p.m. on October 10, 2003. If the Police locate a responsive record, they must issue a decision letter to the appellant by **March 3, 2008**. In addition, the Police must provide this office with a copy of their decision letter, if any, and representations that detail the outcome of their search efforts, by the same date.
8. I am inviting the appellant to mail me the audiotape that she claims is not comprehensible. The audiotape must be received in this office by **March 3, 2008**.
9. In order to verify compliance with this order, I reserve the right to require the Police to provide me with a copy of the records that they disclose to the appellant.

To comply with Interim Order MO-2269-I, the Police sent a letter to the appellant, dated February 29, 2008. With respect to Order Provisions 1 and 2, the letter stated that they were disclosing 10 pages of records to her. The Police provided this office with a copy of that letter and the disclosed records. In addition, they also provided this office with representations on the steps that they have taken to comply with Order Provisions 6 (disclosing the "900 codes") and 7 (reasonable search).

With respect to Order Provision 8 (comprehensible form), which invited the appellant to provide me with the audiotape that she claims is inaudible by March 3, 2008, I did not receive the requested audiotape from her by that date.

However, on March 31, 2008, the Police left a message with this office stating that the records that they had sent to the appellant by courier had been returned to them. The appellant subsequently informed this office that she had received Order MO-2269-I, but not the records from the Police. Eventually, the appellant provided the Police with the name of her lawyer and indicated that the records could be sent to him. On July 14, 2008, the Police advised this office that the appellant had picked up the records from her lawyer on July 10, 2008.

I have carefully reviewed the records that the Police sent to the appellant and have concluded that they have fully complied with Order Provisions 1 and 2, because they have provided her with the withheld portions of the records that I ordered disclosed. In addition, Interim Order MO-2269-I gave the Police a choice to comply with either Order Provision 5 or 6. I am satisfied that they have complied with Order Provision 6, because they have disclosed those portions of the records that contain the "900 codes." In short, the only outstanding issues that remain to be addressed from Interim Order MO-2269-I relate to Order Provisions 7 and 8.

On September 4, 2008, I sent a letter to the appellant's lawyer, which stated, in part:

There are two outstanding issues that must be resolved in the final order that I will be issuing on this appeal:

(1) Whether the Police have conducted a reasonable search for responsive records, as required by section 17 of [the *Act*]. (See "Search for Responsive Records" on pages 15 to 18 and Order Provision 7 on page 20 of Interim Order MO-2269-I.) I am inviting your client to provide me with any additional submissions she may have as to whether the Police have conducted a reasonable search for records responsive to her request, with particular reference to Order Provision 7. I have also enclosed the relevant portions of a letter that the Police sent to your client in response to Order Provision 7.

(2) Whether the Police have provided the appellant with her personal information in a "comprehensible form", as required by section 37(3) of the *Act*. (See "Comprehensible Form" on pages 18 to 19 and Order Provision 8 on page 21 of Interim Order MO-2269-I). Under Order Provision 8, the onus is on your client to provide me with the audiotape that she claims is not comprehensible.

I recognize that you will need a reasonable amount of time to consult with your client and prepare representations on these remaining two issues. Consequently, I am prepared to provide you with four weeks to submit representations, which are due on **October 3, 2008**. If I do not receive representations by that date, I will proceed with issuing the final order in the above appeal.

If your client does not wish to submit any representations on these two issues, please advise me in writing.

I did not receive any response from the appellant's lawyer. In my view, it is necessary to dispose of the remaining issues in this appeal. Consequently, I have decided to issue the final order.

SEARCH FOR RESPONSIVE RECORDS

The appellant claims that the Police did not conduct a reasonable search for the records she is seeking, and that additional records exist.

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].

In Interim Order MO-2269-I, I stated the following with respect to the searches conducted by the Police for records responsive to the appellant's request:

... In my view, it is evident that the Police have devoted substantial time and resources to locating and retrieving records related to the appellant's broad request. An experienced employee conducted searches of the appropriate databases and required both officers and the Chief of Police himself to provide responsive records, which have been disclosed to the appellant, either in whole or in part.

However, the appellant has indicated that the phone call from the MP's executive assistant to the Police would have been made before 5:00 p.m. on October 10, 2003. Consequently, I will order the Police to conduct a search of their Communications Centre to locate the recording of this phone call. In addition, they must provide representations to this office that detail the outcome of their search efforts, including whether the time frame provided by the appellant ("before 5:00 p.m.") is sufficiently detailed to enable them to locate the records. If the Police locate a responsive record, they must issue a decision letter to the appellant, indicating whether access to this record will be provided. [See Order Provision 7.]

In my final order on this appeal, I will take this additional search into account in determining whether the Police have conducted a reasonable search for responsive records, as required by section 17 of the *Act*.

In accordance with Order Provision 7, the Police submitted the following representations to this office:

Upon receipt of the interim order, the legal assistant in the FOI Branch contacted the Sergeant in charge of the Communications Centre at the Guelph Police Service. All inquiries dealing with 911 and regular line telephone calls are directed to this Sergeant. The Sergeant advised that while the information provided by the appellant would be sufficient to search the system in order to locate a call, the retention period for all calls received by the Communications Centre is one year. The equipment used to record calls has the memory capacity to hold calls for up to two years, and deletes the oldest calls to record the newest. Thus, our policy would be to dispose of the alleged call generated in October 2003 the following year, October 2004. However, the call may have stayed in our memory bank up to October 2005 before it was deleted from the memory and our system. Therefore, we are unable to provide the complainant with a copy of that call, or verify if it ever occurred due to the capabilities of our recording system and retention schedule.

I did not receive any representations from the appellant on this issue.

I have carefully considered the Police's representations with respect to their efforts to locate the recording of the phone call identified by the appellant. In my view, the Police have provided a reasonable and credible explanation as to why they cannot locate a recording of this phone call. I find that the Police have complied with Order Provision 7 of Interim Order MO-2269-I.

Moreover, I have taken the Police's additional search efforts into account and concluded that the Police have conducted a reasonable search for responsive records, as required by section 17 of the *Act*.

COMPREHENSIBLE FORM

Section 37(3) of the *Act* requires that institutions provide requesters with their personal information in a "comprehensible form." This provision states:

Where access to personal information is to be given, the head shall ensure that the personal information is provided to the individual *in a comprehensible form* and in a manner which indicates the general terms and conditions under which the personal information is stored and used. (Emphasis added.)

In Interim Order MO-2269-I, I stated the following:

After providing her oral representations in this appeal, the appellant left a further voicemail message with this office which raised a new issue. She stated that she cannot understand one of the audiotapes that the Police provided to her because the sound is "distorted." She offered to play the audiotape over the telephone to the adjudication review officer to prove that the sound is not comprehensible.

Unfortunately, I cannot independently assess whether Police have provided the appellant with this audiotape in a comprehensible form, as required by section 37(3) of the *Act*, unless the appellant provides me with the specific audiotape that she is referring to. Although I appreciate the appellant's offer to play the tape over the telephone to an adjudication review officer, I am not persuaded that this mode of transmission would enable me to properly assess whether the tape is in a comprehensible form.

Consequently, if the appellant wishes me to consider this issue in the final order that I will be issuing on this appeal, I am inviting her to mail me the impugned audiotape, which must be received in this office by the date specified in Order Provision 8, below. I will return the audiotape to her after considering whether the Police have provided it in a comprehensible form, as required by section 37(3) of the *Act*. If the appellant does not wish to pursue this issue further, she is not required to submit the audiotape to this office.

The appellant did not provide me with this audiotape. Consequently, I have no evidence before me to support the appellant's allegation that the Police failed to provide her with her personal information in a "comprehensible form," as required by section 37(3) of the *Act*, with respect to that audiotape. In such circumstances, I find that the Police have complied with their obligation under section 37(3) of the *Act*.

ORDER:

1. I uphold the Police's search for responsive records, as required by section 17 of the *Act*.
2. With respect to the audiotape cited by the appellant, I find that the Police have complied with their obligation under section 37(3) of the *Act* to provide the appellant with her personal information in a comprehensible form.
3. As a result of Order Provisions 1 and 2 above, I dismiss the remaining parts of this appeal.

Original signed by: _____
Colin Bhattacharjee
Adjudicator

_____ October 30, 2008