



Information and Privacy  
Commissioner/Ontario  
Commissaire à l'information  
et à la protection de la vie privée/Ontario

# **ORDER MO-2497**

**Appeal MA09-183-2**

**Toronto Police Services Board**



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## **NATURE OF THE APPEAL:**

The Toronto Police Services Board (the Police) received the following request on April 16, 2009 under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act):

Recordings & logs of Toronto Police Service enquiries relating to my Ontario driver's licence. Logs & recordings made on or after July 22, 2008. ALL logs & recordings. Licence #J0497-72045-90622. Including names and badge numbers of the police enquiring. [emphasis in the original]

Following the completion of a deemed refusal appeal with this office, which resulted in an order requiring the Police to render a decision to the requester, the Police issued a decision on June 22, 2009 granting access to certain written records responsive to the request.

The requester (now the appellant) appealed the access decision, noting that he had requested "recordings" as well, but had received none.

During the mediation stage of the appeal process the appellant forwarded to the mediator an audio recording that he had made during an incident involving the Police on July 22, 2008 (the July 22<sup>nd</sup> incident). The mediator forwarded this recording to the Police, which undertook a search for recordings relating to the July 22<sup>nd</sup> incident.

The Police located an audio recording relating to the July 22<sup>nd</sup> incident, as well as an audio recording of an incident involving the appellant and the Police that occurred on August 29, 2008 (the August 29<sup>th</sup> incident). The Police provided full access to these recordings on CD.

During mediation, the appellant indicated that he was satisfied with the audio recording of the July 22<sup>nd</sup> incident; however, he advised that he has concerns with the recording of the August 29<sup>th</sup> incident. In the recording of the August 29<sup>th</sup> incident a police officer is heard calling in to the Police dispatch unit twice. The appellant believes that the police officer called in three times and that this third call should be reflected on the recording of the August 29<sup>th</sup> incident.

The parties were unable to resolve the appeal during mediation and the file was transferred to the adjudication stage of the appeal process to determine whether the Police have conducted a reasonable search for records responsive to the August 29<sup>th</sup> incident.

On February 3, 2010, I conducted an in-person hearing into the reasonable search issue. The appellant attended the hearing and gave oral evidence. Attending and providing oral evidence on behalf of the Police was a Privacy Analyst (the Analyst) employed with the Police's Access and Privacy Office.

## **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 [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.

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.

Where a requester provides sufficient detail about the records that he is seeking and the institution indicates that records do not exist, it is my responsibility to ensure that the institution has conducted a reasonable search to identify any records that are responsive to the request. The *Act* does not require the institution to prove with absolute certainty that the records do not exist. However, in order to properly discharge its obligations under the *Act*, the institution must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request [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].

### **Parties' representations**

The appellant's position that the Police have failed to conduct a reasonable search for records responsive to his request flows from the following assertions:

- the unwillingness of the Police to comply with his request
- the unexplained inconsistency in the contents of the Police audio recordings of the July 22<sup>nd</sup> and August 29<sup>th</sup> incidents despite the similarity of the two events

With regard to the first assertion, the appellant focuses on the manner in which the Police initially responded to his request. He points out that the Police failed to respond to his request within 30 days, as required under the *Act*, necessitating the filing of a deemed refusal appeal with this office. He suspects that the Police attempted to obtain an extension of the 30 day deadline after the deadline had already expired. He also indicates that the Police failed to comply with its extended deadline when it did not deliver a decision by June 14, 2009. He believes that the Police were not committed to responding to his request until this office became involved and issued an order requiring the Police to deliver a decision letter by a certain date.

Also, during the mediation stage of the appeal, the appellant recalls being told by the mediator that the Police had advised her that they do not record calls to dispatch by police officers in the field. The appellant states that he independently confirmed that, in fact, the Police do record such calls.

He views all of the above as support for his view that the Police have attempted to "frustrate his efforts" to gain access to the records requested. As a result, he is sceptical that the Police have conducted a reasonable search for responsive records.

With respect to his second assertion, the appellant believes that the July 22<sup>nd</sup> and August 29<sup>th</sup> incidents were so similar that the contents of the audio recordings produced by the Police as a result of these incidents should also be similar. However, in the appellant's view, the contents of these audio recordings are oddly dissimilar.

In each of the two incidents, the appellant describes encountering the Police while on foot in his neighbourhood. In each case, the appellant was asked to provide his name and driver's licence. On the audio recording of the July 22<sup>nd</sup> incident, there are three separate calls to dispatch. In the third call the disposition of the incident by the Police is addressed. However, on the audio recording of the August 29<sup>th</sup> incident there are only two calls made to dispatch. As stated above, the appellant believes that a third call would have been made as well regarding the Police disposition of the incident. It is the contents of this alleged "missing" third call that the appellant is seeking. The appellant believes that "something took place during that August 29<sup>th</sup> radio call that the Police do not want to part with" and "do not want [him] to hear." The appellant arrives at this conclusion for two reasons:

- He submits that there is a "normal procedure" that Police follow when making an inquiry through dispatch regarding a person of interest. The appellant suggests that there may have been irregularities in the way in which this process was followed with regard to the August 29<sup>th</sup> incident. The appellant believes that the "normal procedure" requires the Police to complete the following stages when processing a dispatch inquiry about a person of interest:
  - police officer places an initial call to dispatch to briefly outline the nature of the encounter,
  - police officer obtains personal information from the person of interest, such as a name and a drivers licence,
  - police officer places a second call to dispatch seeking a report on the person's criminal status, and
  - police officer places a third call to dispatch confirming the disposition of the matter.

The appellant states that this procedure was followed on July 22<sup>nd</sup> and is documented on the Police audio recording of this incident. However, the appellant submits that the recording of the August 29<sup>th</sup> incident only addresses the first three stages of the procedure. The appellant concludes that either normal police procedure was not followed on August 29<sup>th</sup> or the substance of a third call by a police officer to dispatch has not been provided.

- During the July 22<sup>nd</sup> incident the appellant states that he was carrying a recording device, which he used to record his encounter with the Police. He later provided the Police with a copy of this recording and he believes that the Police, armed with this audio evidence, had no alternative but to produce a complete recording of the July 22<sup>nd</sup> incident. The appellant states that he was also carrying his recording device on August 29<sup>th</sup> but that on this occasion the recorder was knocked from his hand by a police officer during the incident and he was unable to record. He suggests that because he was unable to

produce his own recording of the August 29<sup>th</sup> incident, the Police were able to withhold the information that they did not want to disclose to the appellant.

During the course of the inquiry, the appellant described himself as someone who is known to the Police. He acknowledged that while he has never been charged with a criminal offence, he has had “quite a bit of interaction” with the members of the Police from 13 Division. He views himself as a person who likes to “keep [the Police] on their toes.” He perceives that his past relationship with the Police may have motivated the Police to not be completely forthcoming in their disclosure of information relating to the August 29<sup>th</sup> incident.

The Analyst responded with a thorough review of the steps she took to search for records responsive to the appellant’s request.

The Analyst submits that she has been employed with the Records Management Department of the Police for 20 years. She states that the Access and Privacy Office is part of the Records Management Department. She indicates that for the past four years she has been employed as an Analyst in the Access and Privacy Office. She advises that in her role it is her job to process access requests by conducting all necessary searches for responsive records, assembling the records found and then providing access under the *Act*.

The Analyst states that she takes her job seriously and appreciates the mandate that the Access and Privacy Office delivers on behalf of the Police to the community. She also appreciates that responding to a request in a timely fashion is critical and she apologizes for any delays or misunderstandings that might have caused the appellant to feel that the Police have been trying to avoid compliance with the *Act* in respect of his request. She recalls that at the time the request was being processed she was on vacation and while she does not offer this as an excuse for any delays, she suggests that staffing issues may have played a part.

The Analyst submits that in this case, the request submitted by the appellant was “fairly typical,” to the extent that it was the type of request that is made often by members of the community and processing it did not require the severance of records since the personal information of other identifiable individuals was not involved.

The Analyst states that when she was assigned the request she conducted a search of the appellant’s name using the Police Unified Search System and located three FIR Reports (Field Information Reports), dated March 19, 2008, July 22, 2008 and August 29, 2008 respectively. She states that these records were disclosed to the appellant in their entirety. She acknowledges that during the course of mediation the appellant’s request was clarified and it became clear that the appellant was also seeking access to Police audio recordings of the July 22 and August 29 incidents. The Analyst states that she takes responsibility for this oversight, as she misunderstood the appellant’s request.

The Analyst then provided the following breakdown of the steps she followed in conducting her search for records responsive to the August 29<sup>th</sup> incident, including a complete review of each stage of her search supported by the documents that were generated during the course of conducting her search:

- She generated a FIR report for the August 29<sup>th</sup> incident, which contains the badge numbers for the two police officers involved in the incident.
- Using the Police I/CAD (Intergraph Computer Aided Dispatch System) she ran the officers badge numbers for the August 29<sup>th</sup> incident and generated Event Summary Reports for each officer for August 29<sup>th</sup>. The Event Summary Report set out, line-by-line, the times over the course of August 29<sup>th</sup> that each officer responded to a call and the subject matter of each call.
- On the Event Summary Reports she located the incident involving the appellant and then using the event number assigned to the incident in the Event Summary Reports she was able to generate an Event Details Report, which provides the details of the incident, including the times when the incident commenced and concluded, along with the ultimate disposition. Any searches or queries regarding current or past criminal activity carried out by a police officer during the incident would also be recorded on this document. In this case, the Event Details Report show that no additional searches or queries were carried out by police officers.
- She then made an email request to Police Audio Systems and Data Analysis, which is the office that maintains all recordings of calls, for all audio recordings of the August 29<sup>th</sup> incident.
- She received recordings of the August 29<sup>th</sup> incident in CD format, which she states she copied and turned over to the appellant.
- She also received from Police Audio Systems and Data Analysis a document that provides a breakdown of the actual calls made by the police officers to dispatch in respect of the August 29<sup>th</sup> incident. The Analyst explained that this document sets out the details of two calls made to dispatch (including the actual times at which they were made) which are the number of calls documented on the audio recording.

The Analyst submits that prior to attending this inquiry she sent another request to Audio and Data Systems requesting that the audio searches be conducted again for the August 29<sup>th</sup> incident. And, as an additional precaution she asked that they run the audio searches twice. She states that she obtained two new copies of recordings on CD. The Analyst submits that she checked these recordings against the initial audio recording for the August 29<sup>th</sup> incident that had been provided to the appellant and she confirmed that all three recordings are identical.

The Analyst also states that she conducted a new I/CAD search, again as a precaution, and she reports that no further records were located. As a final precaution, the Analyst states that she enlisted a senior colleague in the Access and Privacy Unit to run the same I/CAD searches as a means of ensuring quality control of her work and no further records were found.

In total, the Analyst reports that I/CAD searches were run three times and audio searches were conducted four times, all with the same results.

The Analyst asserts that all appropriate search techniques were used and all relevant databases were searched. She states that all audio recordings of the August 29<sup>th</sup> incident have been disclosed to the appellant in their entirety, and she can attest with “absolute certainty” that no further records exist.

As to the discrepancy between the audio recordings of the July 22<sup>nd</sup> and August 29<sup>th</sup> incidents, while she does not wish to speculate on what occurred in this case, the Analyst notes that when an officer makes a call regarding a person of interest he or she has the option of initiating a call through dispatch or conducting a search of the person directly from the mobile work station computer available in the police cruiser. The Analyst suggests that if the officer chooses to utilize his or her mobile work station to initiate an inquiry no audio recording would be created.

### **Analysis and findings**

Having carefully considered the parties representations, I am satisfied that the Police have conducted a reasonable search for records in the circumstances of this case.

The appellant has made certain allegations against the Police regarding the handling of the August 29<sup>th</sup> incident. While I acknowledge the appellant’s concerns regarding the initial handling of this request by the Police and the alleged inconsistencies between the treatment of the July 22<sup>nd</sup> and August 29<sup>th</sup> incidents, I am not satisfied that these concerns on their own point to an attempt by the Police to frustrate the appellant’s efforts to gain access to records or, more importantly, to hide records from the appellant.

This office addressed the Police’s responsibility under the *Act* to respond in a timely fashion to an access request in a deemed refusal appeal that gave rise to an order. In addition, during the course of this inquiry the Analyst provided what I consider to have been a sincere apology for any delay in the processing of the request. I am not proposing to examine that issue again. My mandate is to determine the extent to which the Police have demonstrated that they conducted a reasonable search for responsive records. I see no reasonable correlation between the Police’s failure to respond in a timely fashion and the reasonableness of their searches.

With regard to the appellant’s concerns pertaining to the consistent application of Police procedure, it may very well be the case that Police did not follow normal Police procedure during the August 29<sup>th</sup> incident. On the other hand, it may also be the case that a third audio recording was not created if the police officers involved used the mobile work station computer available in the police cruiser to assist in processing the incident. However, in reviewing the extent to which the Police have completed a reasonable search, I do not find such speculation helpful. In addition, I am also not convinced, on the evidence provided, that the Police have somehow managed to withhold responsive information from the appellant. And, even if they have broken from normal protocol or withheld information, I do not see how ordering further searches at this point will assist in determining the reasonable search issue before me.

The Analyst presented herself credibly and provided a thorough and complete review of her efforts to search for responsive records. I am satisfied on the evidence presented that the Analyst was an experienced employee and an appropriate person to conduct the search on behalf of the

Police. In my view, the Analyst appears to have expended considerable effort in demonstrating that all reasonable attempts were made to locate additional information, including undertaking a number of follow-up searches and enlisting the assistance of a senior colleague to check her work.

In cases of this nature the institution is required to demonstrate that it conducted a “reasonable” search for responsive records. In meeting this standard the *Act* does not require the institution to prove with “absolute certainty” that further records do not exist.

I reiterate that I find that the Police have conducted a reasonable search in the circumstances of this case. Accordingly, I uphold the Police’s search for records responsive to the appellant’s request and I will dismiss the appellant’s appeal.

**ORDER:**

I uphold the Police’s search for responsive records and dismiss the appeal.

Original signed by: \_\_\_\_\_  
Bernard Morrow  
Adjudicator

February 19, 2010 \_\_\_\_\_