

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

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## ORDER PO-3040

Appeal PA10-392

Ministry of Community Safety and Correctional Services

January 19, 2012

**Summary:** The appellant requested a copy of a 911 call she made to the Ontario Provincial Police. The ministry obtained a CD recording of the call and provided it to the appellant. The appellant believed that the information on the CD provided to her was incomplete and questioned the reasonableness of the ministry's search. The ministry's search was reasonable, but there was insufficient evidence to conclude that the CD that was made of the call was a true and accurate copy of the original. The ministry was ordered to provide another CD to the appellant after the constable responsible for retrieving and copying the information listened to and compared the copy with the original and provided a sworn statement that the CD was a true and accurate copy of the original.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 24.

### OVERVIEW:

[1] The appellant placed a 911 call requesting the assistance of the Ontario Provincial Police (the OPP). She subsequently submitted a request to the Ministry of Community Safety and Correctional Services (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the names of the four OPP officers that responded to the emergency call, as well as a copy of the recording of the 911 call.

[2] The ministry issued a decision, providing access to the names of the four OPP officers. In addition, the ministry granted partial access to the 911 recording, citing the discretionary exemption at section 49(b) (personal privacy) of the *Act* to deny access to the remaining information in the record.

[3] The appellant appealed the ministry's decision.

[4] During mediation, the ministry issued a revised decision letter in which it indicated that it no longer relied on the discretionary exemption at section 49(b) of the *Act*, and granted full access to the 911 recording.

[5] Upon review of the 911 recording, the appellant expressed her belief that it should contain more information. She provided some examples of the information that she felt was missing and questioned the pauses that form part of this recording. With the appellant's consent this information was shared with the ministry.

[6] As a result, the ministry conducted additional searches for any further information and confirmed that the call, in its entirety, was released to the appellant. Further, the ministry advised that the silences in the recording might possibly be caused by the dispatcher pressing mute during the call while taking down information. The ministry confirmed there was no change made to the record at issue and that the long silences are in the original record.

[7] The appellant was not satisfied and the file was forwarded to the adjudication stage of the appeal process. I sought and received representations from both parties. The representations were shared in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[8] In this order, I find that the ministry's search for the 911 call recording was reasonable. I also find that the affidavit sworn by the constable who retrieved and copied the call did not sufficiently address whether the CD provided to the appellant was a true and accurate copy of the original information. Accordingly, I order the ministry to provide the appellant with another copy of the 911 recording, along with a sworn statement by the constable that she has listened to both versions and confirms that the CD is a true and accurate copy of the original.

## **DISCUSSION:**

[9] The sole issue to be determined is whether the ministry conducted a reasonable search for the 911 tape.

[10] 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 24 [Orders P-85, P-221 and 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.

[11] 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 [Orders P-624 and PO-2559]. To be responsive, a record must be "reasonably related" to the request [Order PO-2554].

[12] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request [Orders M-909, PO-2469, PO-2592].

[13] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control [Order MO-2185].

[14] 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 [Order MO-2246].

[15] The ministry provided an affidavit sworn by a constable with the OPP who has been posted to the Provincial Communications Centre (P.C.C.) in London, Ontario for a number of years. She indicates that London is the dispatch centre for the area from which the 911 call was made.

[16] The constable states that part of her duties includes the retrieval of taped voice communications that involve dispatchers in the P.C.C. She indicates that there are currently 15 telephone lines that are constantly recorded, and that voice communications are archived to an electronic storage device, which is "stored in a tamper-proof plastic casing that is maintained in locked cabinet, in a locked room, and in a locked building." She notes that she and an OPP sergeant are the only two key holders for the cabinet. She affirms that:

I am the only one with the proficiency required to make the recordings. I can say with certainty that this recording was not altered in any way.

[17] The constable describes the methods she employs in retrieving information from the electronic storage device, using the approximate date and time of the communication, any relevant names and occasionally the type of call. She states:

When the request is located I then copy it in its entirety to a CD/DVD and then return it to the Unit/Branch that requested it. I do not delete, remove or otherwise censor any portions of the communications that have been requested. Notably, when the storage devices are initially removed from the recorder, they are sealed with a Centre of Forensic Sciences seal. When I retrieve the storage device to search for the communication in question, I am required to break this seal. I then conduct a search for the requested communication, and when I am finished with the electronic storage device, I am required to replace this seal. The seal ensures that the storage devices cannot be tampered with.

[18] The constable indicates that she followed this procedure in responding to the appellant's request for a copy of the 911 tape of her call. The constable notes that to ensure that she captures all of the communication, she expands the search criteria on either side of the times given by approximately one hour. She confirms that "the communication was copied in its entirety and at no time did I delete, remove or otherwise censor or change any portions of those communications."

[19] The constable indicates that during the processing of this appeal, she was advised that the appellant was concerned because of a "long pause" on the recording. She states that she reviewed the recording and confirmed that the communication from the storage device does contain a pause.

[20] The constable states that there are a number of reasons for a pause in the recording, "including a pause in the conversation between the requester and the dispatcher as the dispatcher was inputting information or writing information down. Alternatively, it could have been caused by the dispatcher placing the call on hold while making inquiries about the availability of officers."

[21] In her representations, the appellant indicates that she is involved in litigation relating to the matter in which the 911 call was made. She attaches a number of documents to her representations, including the transcripts she had prepared by a certified court reporter of the two CD's the ministry gave her during the processing of this appeal.

[22] The appellant raises two main concerns about the completeness of the copy of the 911 tapes she received. First, the appellant indicates that she recalls "all aspects of her conversation with the dispatcher." However, on reviewing the transcript she had made of the first CD recording of the call, she noted that portions of her conversation with the dispatcher were not on the CD. She indicates that she contacted the ministry and it sent her another CD of the call. However, when she had this CD transcribed, "it had omissions of the remembered conversation with the dispatch and now included negative spaces in various places on the CD where she recalled having conversation but

which were omitted.” This raised a second concern for her about the completeness of the ministry’s search for the entire content of the 911 call.

[23] The appellant indicates that the ministry has not explained why the two CD’s varied in content, nor has it informed her of the methodology and process undertaken to conduct the search. She believes that the ministry is acting in bad faith in its dealings with her and that it has failed to assist her by not providing the rationales for the search parameters.

## **Findings**

[24] As I indicated above, a reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request [Orders M-909, PO-2469, PO-2592]. The ministry has provided an affidavit from an OPP constable who is not only experienced in the subject matter of the request, but has the expertise to extract the information that was requested from its location in the electronic storage device. In addition, in her affidavit, she explains how the information is stored and how she retrieves it. She has provided a sworn statement that she was the only person dealing with the information and that she did not alter the information contained in the communication in any way. I find the constable’s affidavit to be compelling evidence of the accuracy of the information retrieved from the electronic storage device.

[25] Accordingly, I am satisfied that the search was conducted by an experienced employee, that she conducted the search in the appropriate location, and that she utilized appropriate methods in extracting the information requested. She also provided a reasonable explanation for the pauses in the recording. Although the appellant believes the recording should contain additional information, I am satisfied that whatever information is on the recording is the only information that exists. As a result, I am not persuaded that the CD has been altered in any way.

[26] Moreover, I am not persuaded that the ministry’s actions in dealing with the appellant demonstrate bad faith or that it was required to “provide rationales for its search parameters” at the time that it was responding to the appellant’s request. With one exception, the evidence before me as described by the appellant and the constable persuades me that the ministry has attempted to assist the appellant in obtaining a copy of her 911 call. On this basis, I find that the ministry’s search for the responsive record was reasonable.

[27] However, I am not persuaded by the evidence that the ministry has fully addressed the appellant’s second concern, that is the discrepancy between the two copies of the CD, and whether the copy of the call that was made is the same as that contained in the original recording as found on the electronic recording device. In my

view, this is not a search issue, but rather, a question of the clarity of the reproduction of the information that was provided to the appellant.

[28] In the case of most records, it is not difficult to determine whether a copy is an accurate representation of the original. In this case, it is not as easy to make that determination. It appears that the nature of the 911 call system itself can create a recording that may differ from what the caller expects, due to "muting" or other pauses during the conversation. In addition, I am not able to hear the original recording to compare it with a copy in order to satisfy myself that the content is the same. After reading the transcripts that were prepared for the appellant, I will confirm that there are some very minor discrepancies between the two, and that the transcription of one CD refers to specific pauses, whereas the other transcript does not. It appears that some clarification of this issue was made during mediation, but I do not have the details before me, nor does the constable address this in her affidavit.

[29] Accordingly, in order to ensure that the information that the appellant receives is the same as contained in the recording of the 911 call on the electronic storage device, I will require the ministry to provide the appellant with another copy of the CD. Prior to sending the CD to the appellant, the constable responsible for transferring the data from the storage device to the CD shall listen to both recordings to ensure that they are the same, and shall attach a statement to the CD that it is an accurate reproduction of the original.

**ORDER:**

1. The ministry's search for responsive records was reasonable and this portion of the appeal is dismissed.
2. I order the ministry to provide another CD of the 911 call made by the appellant to her after the constable responsible for retrieving and copying the information to CD listens to and compares the copy with the original and attaches a sworn statement that she has done so and that the CD contains a true and accurate copy of the original.

Original Signed by: \_\_\_\_\_  
Laurel Cropley  
Adjudicator

January 19, 2012 \_\_\_\_\_