

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 MO-2746

Appeal MA11-436

Toronto Police Services Board

May 31, 2012

**Summary:** The police received a request for records related to an accident in which the requester was injured while on a TTC bus. The police provided the requester with responsive records. The sole issue at the oral inquiry was whether the police conducted a reasonable search for responsive records. This order upholds the police's search as reasonable.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, s. 17(1).

### OVERVIEW:

[1] The Toronto Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to the requester's involvement in a Toronto Transit Commission (TTC) bus accident. Specifically, the requester sought "... a copy of any witness statements, and [the lead police officer's] field notes."

[2] The police issued a decision granting partial access to the responsive records. Access to a portion of the records was denied pursuant to the personal privacy exemption in section 38(b) of the *Act*. The police removed portions of the records that were non-responsive to the request and also advised that there were no independent witnesses to the accident identified. The police also stated that other records about motor vehicle accidents including field notes, statements, photographs and

reconstruction reports were disseminated through their Records Management Services, Records Release Section.

[3] The requester, now appellant, appealed the police's decision.

[4] During mediation, the appellant's representative stated that he was not appealing the severances from the records but was of the opinion that more responsive records should exist. Specifically, he was seeking the cell phone record of the bus driver who was involved in the accident, witness statements and the incident or occurrence report.

[5] In response, the police stated that in addition to the records already disclosed to the appellant, they also located the ICAD (computer assisted dispatch report) and a record of the 911 call. The police stated that the appellant did not mention these in his letter of request; therefore, they did not identify them as being responsive to his request. The police stated that the appellant could make a new access request for those records. The appellant's representative informed the mediator that the appellant intended to make a new access request for the ICAD and the record of the 911 call.

[6] The police also stated that they had a record of the collision field notes relating to this accident. They referred the appellant's representative to page two of their decision letter which informed him that the appellant can obtain the collision field notes from their Records Management Services, Records Release Section. The appellant's representative subsequently contacted the Records Release Section and obtained the collision field notes.

[7] The police also took the position that they do not have a copy of the bus driver's cell phone records and that no witness statements or occurrence reports exist.

[8] The appellant's representative advised the mediator that he still believed more records exist. He requested that the police provide him with a written confirmation that during their investigation of the accident, they did not obtain a copy of the bus driver's cell phone records.

[9] The police responded in a letter to the appellant dated February 3, 2012 stating that "...a review of the responsive motor vehicle accident report does not show any paperwork regarding the Toronto Transit Commission (TTC) bus driver's cell phone record."

[10] The appellant's representative then informed the mediator that he was not satisfied with the information in that letter. He stated that the wording in the letter only states that the accident report does not mention the cell phone record. The letter does not confirm that the police did not obtain the cell phone record.

[11] The appellant then requested that the police provide him with written confirmation that they did not obtain a copy of the bus driver's cell phone record and that they did not obtain any witness statements.

[12] The mediator relayed this information to the police.

[13] The police responded by referring to their two previous decisions and reiterated that "... there were no independent witnesses identified" and that "... a review of the responsive records involved in this case did not include anyone's cell phone records."

[14] The mediator discussed the above with the appellant's representative and he advised that he remains dissatisfied with the information provided by the police because it does not answer his questions. He explained that the wording of the police's initial decision and subsequent letter does not confirm that the police did not obtain a copy of the bus driver's cell phone records and did not interview any witnesses, including the appellant and the bus driver. Consequently, he advised the mediator that he wanted to proceed to the adjudication of the appeal process on the issue of search, as he believes that more records should exist, including witness statements, the bus driver's cell phone record and an incident or occurrence report.

[15] On May 29, 2012, I held an oral inquiry into the sole remaining issue in this appeal, namely, whether the police conducted a reasonable search for responsive records.

[16] In attendance were the appellant's lawyer, an observer from the appellant's lawyer's office, and an analyst from the police's Access and Privacy Section. The appellant did not attend the inquiry. In this order, I uphold the police's search for responsive records as reasonable and dismiss the appeal.

## **DISCUSSION:**

[17] In appeals where the only issue remaining is where the appellant believes that additional records exist as is the case in this appeal, the sole issue to be decided is whether the institution has conducted a reasonable search for the records as required by section 17 of the *Act*. If the adjudicator is satisfied that the search carried out was reasonable in the circumstances, the decision of the institution will be upheld. If the adjudicator is not satisfied, further searches may be ordered.

[18] Important factors in assessing the reasonableness of the search will be whether the appellant provided sufficient identifying information to assist the institution in its search and has provided a reasonable basis for concluding that such records exist.

[19] 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 records must be "reasonably related" to the request (Order PO-2554).

[20] 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 and PO-2592].

[21] 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].

[22] At the inquiry, the appellant's lawyer was asked to provide details concerning records which have not been located, or any other information to indicate that the search carried out by the police was not reasonable. He indicated that the following records should have been located by the police in their search for responsive records:

- Witness statements from the TTC driver, the TTC supervisor, the appellant and witnesses to the accident;
- Additional notes from a specific police officer; and
- Cell phone records of the TTC driver.

[23] In support, the appellant provided me with a copy of the following records also disclosed to him by the police:

- The motor vehicle accident report; and,
- Seven pages of field notes from the lead investigating officer.

[24] The appellant's lawyer also stated that the reference in the mediator's report to an incident or occurrence report should actually have been a reference to additional notes from a specific officer.

[25] The appellant's lawyer indicated that he believes that the TTC supervisor, who arrived on the scene after the accident, would have taken statements from the other passengers of the bus. As well, the police officer would have interviewed the bus driver. He also indicated that as the bus driver was using his cell phone when the accident occurred, that the police should have the driver's cell phone records. The appellant's lawyer also stated that the records and other documents do not indicate how the accident occurred; thereby demonstrating that crucial information is missing from the records located by the police.

[26] In response, the analyst representing the police directed me to a particular portion of the collision field notes which include the following information:

- m[ale] was on bus across from rear doors
- serviced stop, began pulling away from curb
- heard a commotion, looked back and saw m[ale] fall on floor
- m[ale] with rolling walker, elderly...

[27] Therefore, the analyst submits that the field notes do contain the statement of the bus driver and that any other witness statements would be included in the field notes. She indicated that she reviewed the entire case file and did not locate any other responsive records including witness statements, cell phone records or other police officer notes.

[28] The analyst also testified that, in addition to there not being any other responsive records in the case file, the lead police officer who would have been responsible for the investigation into the accident advised her that no other responsive records exist. She also testified that the police did not request a copy of the bus driver's cell phone records as part of their investigation.

[29] The analyst also verified that the complete notes taken by a named officer who attended at the scene of the accident were wholly contained within page 1 of the records. She indicated that she reviewed the officer's notebook and that the notes taken by him subsequent to this were on another matter.

### ***Analysis/Findings***

[30] Based upon my review of the records and the evidence provided by the appellant's lawyer and the analyst, I find that the police have conducted a reasonable search for responsive records. Although other responsive records may exist, these records are not within the custody or control of the police. The appellant's lawyer agreed at the hearing that some of these responsive records could be accessed through a request to the TTC, which he was pursuing. In particular, the TTC may have a copy of any statements taken by its supervisor on arrival at the scene of the accident. As well, the TTC may have custody or control of its driver's cell phone records indicating what phone calls were made by him at or just prior to the time of the accident.

[31] In addition, I am satisfied that the police have provided the complete notes of the named officer at page 1 of the records, except for a severance of the ambulance call number.

[32] I am also satisfied that the field notes disclosed to the appellant by the police contain any statement taken by them from witnesses, which in this case is that of only the bus driver.

[33] I find that the police have provided sufficient evidence to show that an experienced employee knowledgeable in the subject matter of request expended a reasonable effort to locate records which are reasonably related to the request. As the police have made a reasonable effort to identify and locate responsive records within their custody or control, I am upholding the police's search for responsive records and dismissing the appeal.

**ORDER:**

I uphold the police's search for responsive records and dismiss the appeal.

Original Signed by: \_\_\_\_\_  
Diane Smith  
Adjudicator

\_\_\_\_\_ May 31, 2012 \_\_\_\_\_