

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2731

Appeal MA10-15-3

Toronto Police Services Board

May 10, 2012

Summary: The appellant sought access to information for a specified time frame from a police car's Global Positioning System/Automated Vehicle Location System. The police advised that the associated software could not print-out the requested information and that due to security concerns the appellant could not view a computer screen showing the data. The police were prepared to disclose a transcription of the data for a fee. The appellant was not satisfied with a transcription of the data, and sought access to an original record. In the course of the appeal, the global Automatic Vehicle Location tracking file data for the time period was purged from the police's computer server in accordance with the police's purge protocol. A "subset record" containing the responsive information could not be found. The police disclosed the transcribed information and waived the fee. This order finds the police's search for the "subset record" was reasonable and that because the subject of the inquiry no longer exists, the appeal is moot.

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

Case Considered: *Borowski v. The Attorney General of Canada* (1989), 57 D.L.R. (4th) 231 (S.C.C.).

BACKGROUND:

[1] Police cars in Toronto have an onboard Global Positioning System/Automated Vehicle Locating System (GPS/AVLS) which is similar to a Global Positioning System that is found in a private citizen's motor vehicle. The appellant sought information in relation

to a traffic incident and requested access to a copy of a segment of an identified DVD from a police car's on-board video camera for a specified time frame. He also requested matching information for the specified time frame from the Global Positioning System/Automated Vehicle Locating System (GPS/AVLS) for the police car.

THIS APPEAL:

[2] The appellant's access request resulted in three consecutive appeals.¹ Because the segment from the identified DVD was disclosed to the appellant, this appeal was originally constituted to address the appellant's challenge to the fee estimate for access under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to a responsive record, as well as the police's proposed method for granting access.

[3] During the inquiry into this appeal, I sought and received representations from the police and the appellant. Representations were shared in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[4] The police had initially taken the position that it was not possible to use the software associated with the GPS/AVLS to create a print-out of the requested information. The police submitted in their representations that:

Much like a GPS system on a private citizen's vehicle, the equipment was not configured to print-out a line-by-line information sheet.

[5] After some consultations, the police determined that although the software could not create a print-out, a dedicated employee of the Professional Standards Information Security Unit could be assigned to extract and analyze the data. As set out in the police's supplementary decision this would be done by manually transferring the data from the GPS/AVLS screen to text "line by line", "listing time/vehicle call-sign/location/speed" and that it would take four hours to complete the task. Therefore the police provided a fee estimate under section 45(1)(b) of the *Act* of \$120.00 for access to this information.

¹ The first appeal was a deemed refusal appeal which arose as a result of the police failing to issue a decision letter within the thirty day time frame set out in section 22(4) of the *Act*. That appeal (Appeal Number MA10-15), was closed when the police issued an access decision. The police decided to grant access to a copy of a segment of the identified DVD for the specified time frame but advised that the GP/AVLS tracker software could not "give a print-out of the requested information". The appellant appealed this decision and a second appeal file (MA10-15-2) was opened. The police issued a supplementary decision letter providing a fee estimate of \$120.00 for a transposition of the GPS/AVLS screen data to text advising that the "estimated search time for a dedicated Examiner to extract and analyze the data, transposing the data from the screen to text 'line by line' listing time/vehicle call-sign/location/speed, would require four (4) hours". In its fee estimate the police also advised that additional preparation fees and photocopy charges might apply. As a result of the supplementary decision letter, appeal MA10-15-2 was closed.

[6] The appellant's position throughout this appeal was that the process for creating a responsive record proposed by the police does not result in access to a "true" record, nor allay his concerns about the accuracy of any information that the police might provide. He was adamant about obtaining access to an original record.

[7] In their representations, the police submit that it is not possible to obtain a print-out of the GPS/AVLS screen data and that, for security reasons, it is not reasonably practicable for the appellant to attend to view the data on the GPS/AVLS screen in person.

[8] The appellant submits in response that:

There is no reason why the [police] cannot provide the machine readable data together with the name of the software program and the name of the vendor for this program so that the vendor can be contacted for a price for independent, and trusted, reproduction of the requested information.

[9] The appellant submitted that this would also allow him to seek the opportunity to investigate options with the software vendor to independently playback the machine readable data, which can then be stored on media such as a compact disc or flash drive.

[10] In their reply, the police provided the name of the software vendor, but advised the appellant that this would not assist him as the software could not facilitate copying the information onto a storage device. Seeking to determine this for himself, the appellant then requested and was provided the name of the actual software product.

[11] It was at this stage in the appeal that the police made a suggestion for resolution, made possible because they were changing the current software. Accordingly, the police said that their initial security concerns were lessened and they might now be prepared to allow the appellant to attend to view the GPS/AVSL screen in person.

[12] In the course of investigating that option, the police advised this office that the data at issue had been purged from their computer servers through the application of their standard purge protocol.

[13] The police then sent a supplementary decision letter to the appellant advising that they were now prepared to disclose their previously prepared manual transcription of the data and waive the fee for access. The letter was accompanied by a copy of the manual transcription of the data.

[14] In response to an inquiry from this office with respect to the sufficiency of this supplementary decision letter, the appellant advised that street locations in the previously disclosed DVD do not match the locations set out in the police's manual transcription of data.

[15] I then sent the police a letter seeking particulars of the purge. In response, the police provided a copy of a memorandum from one of their Information Security Officers. The Information Security Officer explained that the responsive data was extracted from a main Automatic Vehicle Location (AVL) Tracking File, creating a "subset record". The security officer detailed the efforts and locations she searched in her unsuccessful attempts to locate this "subset record". She also explained that no AVL Tracking file data prior to January, 2010 exists on their computer servers. She confirmed that the responsive data in the main AVL Tracking File was purged on January 2, 2011 in accordance with their approved corporate standard retention policy, and no longer exists. I note that the appellant requested access to the information on December 11, 2009, the Mediator's Report in this appeal was issued on October 6, 2010 and first representations were invited from the police by way of letter from this office dated November 23, 2010. All of this predated the data purge.

[16] I shared the memorandum with the appellant. In response, the appellant expressed his disappointment and strongly urged this office to order the police to:

Establish a protocol which allows for persons requesting information in an electronic format to access it in such a manner that it provides that same contextual meaning as that which [the police] is able to derive from it.

[17] The appellant further suggests that:

... such a protocol might involve maintaining a computer with a copy of the software required to read the data in a location which the members of the public may be permitted to access. No data from the "AVL Tracking File" would need to be kept on this computer's installed memory devices – this would ensure the security of any information which is not subject to the legislation. A "subset record" ... could be extracted from the main "AVL Tracking File" and stored on a memory device for playback or viewing on the "public" computer terminal. In the absence of a requestor having the software required to read the record (data) requested, this would allow the requestor to "transcript" the information free of any vague distrust of the transcription which [the police] might provide.

ISSUES REMAINING TO BE ADDRESSED IN THIS APPEAL:

[18] As a result of changing circumstances during the course of this appeal, there now remains two issues to be addressed:

- the adequacy of the police's search for the "subset record"
- the police's purging of the main AVL Tracking File data

Reasonableness of Search

[19] In the normal course, 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 17.² In my view, based on the police's memorandum, I have been provided with sufficient evidence to conclude that the police have made a reasonable effort to locate the "subset record".

Purging of AVL Tracking Data

[20] I am satisfied that the police have indeed purged the source of the underlying data from which the "subset record" was extracted, and I also accept the police's submission that the destruction took place on January 2, 2011. Since the appellant requested access to the information on December 11, 2009, the Mediator's Report in this appeal was issued on October 6, 2010 and first representations were invited from the police by way of letter from this office dated November 23, 2010, it is clear that the data was purged in the course of this appeal. As a result of the "subset record" not being found and the purging of the main AVL Tracking File data, the subject matter of the inquiry no longer exists and the appeal has been rendered moot.³ Furthermore, in my view, in the circumstances, no useful purpose would be served by making a determination on the issue of whether the appellant should be granted access to an original record.

[21] This is not a case where the police purged the main AVL Tracking File data without first creating a "subset record" containing the information responsive to the request. Unfortunately, notwithstanding the police's reasonable search, this "subset record" cannot be found. In my view, however, failing to take adequate and appropriate steps to ensure the maintenance of responsive data that is the subject of an appeal, when there is a policy in place to purge the underlying data, has effectively compromised the integrity of the access process under the *Act*. The police should therefore ensure that in future they understand and meet their record retention

² Orders P-85, P-221 and PO-1954-I.

³ See in this regard *Borowski v. The Attorney General of Canada* (1989), 57 D.L.R. (4th) 231 (S.C.C.).

obligations under the *Act*, particularly when it involves a record that is responsive to a current request or appeal with this office.

[22] As I have concluded that the appeal has been rendered moot and that no useful purpose would be served by making a determination on the issue of whether the appellant should be granted access to an original record, I therefore dismiss the balance of the appeal.

ORDER

1. I find that the police conducted a reasonable search for the "subset record".
2. I dismiss the balance of the appeal.

Original Signed By: _____
Steven Faughnan
Adjudicator

_____ May 10, 2012