

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-4030

Appeal MA20-00130

Chatham-Kent Police Service

March 24, 2021

**Summary:** The Chatham-Kent Police Service (the police) received a request for access to all information about the appellant, including 911 calls, from 2000 onwards. The police conducted a search and located five responsive records that it disclosed to the appellant in part. The appellant appealed the police's decision based on his belief that additional records should exist. This order upholds the police's search for responsive records and dismisses the appeal.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 4(1) and 17.

### OVERVIEW:

[1] This appeal addresses the reasonableness of a search by the Chatham-Kent Police Service (the police) for records in response to the appellant's request for all records relating to him from 2000 to the date of the request, including specific 911 calls. The request was for:

All information including 911 calls – parole instruction from 2000 on to present. Any other police agency but not limited to OPP and any actions taken – information including tips and any and all actions taken and including any doctors. Any and all information or correspondence from attorney general's office or courts. Record of date if purged and dates of purging.

[2] The police conducted a search and located responsive records. They issued a decision granting partial access to responsive records. In their decision (the February 2020 decision), the police wrote that:

- they had previously granted partial access to 48 police reports dating from 2005 to 2018 in a decision issued in February 2019. The February 2019 decision was made in response to an earlier request by the appellant for access to “all documents and occurrences pertaining to” him;
- the police also previously granted partial access to officers’ notes in an April 2019 decision. The April 2019 decision was in response to another access request by the appellant for access to notes and 911 calls relating to three specified occurrences. The police also wrote in the April 2019 decision that the calls relating to the same three occurrences had been purged and could not be retrieved.<sup>1</sup>

[3] In response to the current request, the police’s February 2020 decision granted partial access to five occurrence reports for incidents that occurred after they had processed the appellant’s last request (that was the subject of the April 2019 decision). The police wrote that these five occurrences did not originate from 911 calls. The police also wrote that they did not have custody or control over parole records,<sup>2</sup> or correspondence regarding the appellant from the Ministry of the Attorney General or the courts, and that they did not have access to doctors’ records.

[4] In the February 2020 decision, which is the only decision before me in this appeal, the police denied access to certain information contained in the responsive records, claiming it is exempt pursuant to the discretionary personal privacy exemption in section 38(b). The police also claimed the application of the presumption in section 14(3)(b) (investigation into possible violation of law), and the exemption in section 8(1)(d) (confidential source of information).

[5] The appellant appealed the police’s decision to the Information and Privacy Commissioner of Ontario (the IPC). The parties participated in mediation. During mediation, the appellant did not dispute the exemptions claimed by the police to withhold information from the records. Those exemptions are therefore not at issue in this appeal.

[6] However, the appellant indicated during mediation that he made seven calls to 911 on May 3, 2016, and that he specifically seeks access to the records and/or transcripts relating to those calls. As a result, the police conducted a further search, but could not locate any records of 911 calls for this date. The appellant maintained that he

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<sup>1</sup> According to the April 2019 decision, two of the three occurrences were initiated by calls to 911, while the third was not originally called in as a 911 call; the appellant, during the course of the occurrence, ended up contacting police dispatch through 911.

<sup>2</sup> For records of this type, the police directed the appellant to the Ministry of the Solicitor General.

called 911 seven times on that date and that further responsive records (the 911 recordings or transcripts) exist that the police have not disclosed.

[7] With no further mediation possible, the appeal moved to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry. The parties participated in a written inquiry on the issue of the reasonableness of the police's search for responsive records.

[8] In this order, I find that the police's search was reasonable and dismiss the appeal.

## **DISCUSSION:**

[9] The only issue in this appeal is whether the police conducted a reasonable search for records that are responsive to the appellant's request and, specifically, for the recordings or transcripts of the 911 calls that the appellant claims were made on May 3, 2016.

[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 17.<sup>3</sup> 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 it has made a reasonable effort to identify and locate responsive records.<sup>4</sup> To be responsive, a record must be "reasonably related" to the request.<sup>5</sup>

[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.<sup>6</sup>

[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.<sup>7</sup>

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<sup>3</sup> Orders P-85, P-221 and PO-1954-I.

<sup>4</sup> Orders P-624 and PO-2559.

<sup>5</sup> Order PO-2554.

<sup>6</sup> Orders M-909, PO-2649 and PO-2592.

<sup>7</sup> Order MO-2185.

## **Representations**

### ***The police's representations***

[14] The police submit that they conducted multiple and thorough searches for responsive records, and, specifically, for the seven 911 calls the appellant says he made on May 3, 2016. With their representations, the police submitted two affidavits. The first is sworn by the freedom of information (FOI) coordinator and describes the police's searches of the records management system relating to the appellant, and specifically for any 911 calls made on May 3, 2016. According to her affidavit, the FOI coordinator conducted searches using the appellant's name and address, as well as his telephone number.

[15] The police also say that they searched their in-house computer system, which located records relating to two additional incidents in 2016 (one in January and a second in April), but that neither had originated as 911 calls. A search using the appellant's telephone number did locate two 911 calls, however these were placed in January 2016 and in January 2017. The police's searches also located records of five calls from the appellant in 2019 that were made to the police non-emergency number, but no 911 calls.

[16] The second affidavit is sworn by the manager of the Emergency Communication Centre. This affidavit describes the system the police use to record and log calls, including calls that have been disconnected. According to her affidavit, the emergency communication manager searched for all audio calls for May of 2016. This included searching through more than 2500 911 calls answered by the police, as well as almost 400 records for 911 calls that were either disconnected or abandoned. According to the police, both searches were conducted using the appellant's telephone number, but located no 911 activity associated with his number on May 3, 2016. According to their searches, no calls entered the 911 network from the appellant's phone, including disconnected or abandoned calls in May of 2016, including on May 3, 2016.

[17] The police also submit that no records have been destroyed that would have included the requested information, as these records are kept for five years, the 911 calls were allegedly made in May 2016, and the most recent search was completed in January 2021.

### ***The appellant's representations***

[18] The appellant maintains that he called 911 seven times on May 3, 2016. With his representations, the appellant submitted excerpts from a police occurrence report, partially identified as CK14...665, documenting an incident on May 3, 2014.<sup>8</sup> The

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<sup>8</sup> The appellant's representations include his concerns regarding the police's response to some of the occurrences that are the subject of his calls to the police. Although I reviewed the appellant's representations in their entirety, including the various attachments, I have only considered those portions

appellant also refers in his representations to an occurrence report partially identified as CK14...744 (for an occurrence on May 4, 2014 and reported on May 12, 2014) that he says documents that an incident that took place on May 3, 2016 and for which he says a record of a 911 call should exist. Finally, the appellant submitted his telephone records, namely, a bill dated May 7, 2014, which shows seven calls from his telephone number to 911 on May 3, 2014.

### **Analysis and findings**

[19] I am satisfied that the police conducted a reasonable search for records responsive to the appellant's request, and, in particular for the seven 911 calls the appellant claims he made on May 3, 2016. The police's representations demonstrate that experienced employees, knowledgeable in the records related to the subject matter of the appellant's request, made reasonable efforts to locate all responsive records. The police conducted searches for responsive records using different search parameters to locate "all reports" relating to the appellant and provided details of the results. The police conducted additional searches for 911 calls in particular. The police also reached out to the manager of the emergency communication centre who, I am satisfied, conducted a thorough search for 911 calls in an effort to locate the calls allegedly made on the date specified by the appellant. This individual's search included a search for any calls made by the appellant in the entire month of May 2016.

[20] 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 such records exist.<sup>9</sup>

[21] In this case, in support of his position that he made the 911 calls on May 3, 2016, the appellant submitted as "proof" excerpts from a partially disclosed occurrence report from May 3, 2014 (not 2016) and his own telephone records from May 2014 showing that seven 911 calls were, in fact, made from his telephone, but on a different date: May 3, 2014 (not 2016).

[22] In these circumstances, I find that the appellant has not provided a reasonable basis for concluding that records of 911 calls that the appellant says he made on May 3, 2016 exist but have not been located by the police.

[23] For the reasons set out above, I find that the police's search for responsive records was reasonable and I dismiss this appeal.

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of the representations that are relevant to the issue of the reasonableness of the police's search for responsive records.

<sup>9</sup> Order MO-2246.

**ORDER:**

I uphold the police's search as reasonable and dismiss this appeal.

Original Signed by: \_\_\_\_\_  
Jessica Kowalski  
Adjudicator

\_\_\_\_\_ March 24, 2021