

Information and Privacy Commissioner,  
Ontario, Canada



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

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## INTERIM ORDER MO-4202-I

Appeal MA19-00373

Toronto Police Services Board

May 25, 2022

**Summary:** In January 2019, the appellant, a journalist, made a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the police for wait time data for Toronto 911 callers over the two-year period 2017 and 2018. She specified that she would like to receive the information “electronically, in a machine-readable format” where possible. The police initially denied the request on the basis they could not produce the requested information in the form of a “record” within the meaning of the *Act*, and on other grounds. After the appellant’s appeal to the IPC, there were a number of developments, including the police’s revelation at the adjudication stage that the 911 call data sought by the appellant no longer exists. After further discussions that included the appellant’s amending the timeframe of her request to cover call data that does exist, the police issued a revised decision, nearly two years after the original request, identifying one responsive record. This record is a 1,508-page PDF record that the appellant maintains is not responsive to her request for an electronic record in machine-readable format.

In this interim order, the adjudicator finds that the PDF record is not a responsive record in the circumstances. She orders the police to issue a decision on access to the requested call data in one of the formats specified by the appellant during the appeal process (i.e., XLS or CSV format), or to provide detailed representations to the IPC on why the police are unable to provide the information in the requested format.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M.56, section 17.

## **OVERVIEW:**

[1] This interim order concerns an appellant's request to the Toronto Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for information about wait times for Toronto 911 callers over the two-year period 2017 to 2018. The appellant specified that she would like to receive the information "electronically, in a machine-readable format." The appellant appealed the police's denial of her request to the Information and Privacy Commissioner/Ontario (IPC). There followed a number of developments in the appeal (which are described in detail below), following which the police, nearly two years after the request, identified one responsive record totalling 1,508 pages in PDF format. The appellant maintains that this PDF record is not responsive to her request.

[2] In this interim order, in consideration of the circumstances surrounding the request and the appeal, I find the PDF record is not responsive to the request. I order the police to issue a decision on access to the requested information in one of the electronic formats specified by the appellant during the appeal process—namely, XLS or CSV format, which presents data in table form. (I describe these file types in more detail below under the heading "Record.") In the event the police take the position they cannot provide the requested call data in one of these electronic formats, they are to provide me with detailed representations to explain why.

## **BACKGROUND:**

[3] In the time between the appellant's January 2019 access request and the police's November 2021 revised decision, there were a number of developments and discussions between the parties (including outside the IPC's inquiry process) in an attempt to resolve the issues. Because the lengthy background to this appeal provides the necessary context for my decision, I summarize relevant portions, below.

### **The appellant's access request and the police's decision**

[4] On January 17, 2019, the appellant, a journalist, made a request under the *Act* to the police for the following information:

- a. Wait time data for Toronto 911 callers between January 1, 2017 and December 31, 2018.
- b. ... [H]ow many 911 callers were put on hold (or were played an automated wait message) during that time period.

[5] The appellant's request contained the following statement:

Whenever possible, I would like to receive the records electronically, in a machine-readable format.

[6] Several months later, on May 6, 2019, the police issued an access decision denying the appellant access to the requested information. The police's decision letter stated, in part:

Please be advised that after consultation with relevant stakeholders, it has been determined that fulfilling your request will cause an undue burden on this institution. Due to the manner in which the records are organized and/or the manner in which the records would have to be retrieved to define responsiveness, access cannot be provided pursuant to Reg. 823, S. 1:

"A record capable of being produced from machine readable records is not included in the definition of "record" for the purposes of the Act if the process of producing it would unreasonably interfere with the operations of an institution."

[7] The police's decision letter further stated that providing access to the requested information could pose operational threats to the police and to the public, citing various discretionary law enforcement exemptions in section 8 of the *Act* as an alternative basis for denying access.

### **The appellant's appeal of the police's decision**

[8] The appellant appealed the police's decision to IPC. After attempts at mediation did not resolve the issues, the appeal proceeded to the adjudication stage.

[9] At the adjudication stage, the adjudicator formerly assigned to this appeal conducted an inquiry under the *Act*. He began his inquiry by seeking representations from the police.

[10] In a Notice of Inquiry to the police dated July 24, 2020, the adjudicator sought representations on the police's claim that the information sought by the appellant is not a "record" within the meaning of the *Act* (and therefore not accessible under the *Act*) because the process of producing a record containing that information would unreasonably interfere with the police's operations. The adjudicator also sought representations on the alternative claim that the requested information is exempt under various law enforcement exemptions at section 8 of the *Act*.

[11] The police submitted representations on September 30, 2020. In these representations, the police reported, apparently for the first time, that the 911 call data requested by the appellant (covering the 2017-2018 time period stipulated in the request) no longer exists, because the retention period for that information had lapsed. The police stated the following in their representations:

Upon receipt of the Notice of Inquiry, the institution conducted additional consultations with the relevant stakeholders. Please be advised that

subsequent to discussions with Communications Services, it has been determined that the requested data is no longer available.

**On July 12<sup>th</sup>, 2018, Communications Services increased the retention on this data to 175 days, prior to this it was 30 days.**  
[emphasis in original]

[12] In light of the police's statements, the adjudicator, in seeking representations from the appellant, added the issue of how the IPC should address the police's revelation that the requested 911 call data (covering the specified time period) no longer exists. The adjudicator asked the appellant if she were willing to modify the time frame of her access request to instead seek records containing 911 call data that does exist.

[13] The appellant provided representations, which the adjudicator shared with the police for a reply. The police provided reply representations, which the adjudicator shared with the appellant. The appellant made representations in sur-reply.

[14] At this stage, after considering all the representations he had received from both parties, the adjudicator moved the appeal to the order stage. He also wrote a letter to the police (with copy to the appellant), in an attempt to resolve certain issues arising from the parties' representations.

### **The adjudicator's June 16, 2021 letter to the parties**

[15] In the adjudicator's June 16, 2021 letter, he shared with the police the appellant's sur-reply representations. He also asked the police to respond to him on two matters:

1. Average-based 911 data; and
2. Data responsive to the appellant's access request [for specific 911 call data].

[16] Item 1 concerned the potential disclosure of average-based 911 data (i.e., not the specific 911 call data the appellant had requested).

[17] The adjudicator noted that the police had stated in their representations that "it is possible for the institution to provide the appellant with the following data: 911 average wait times, average 911 talk times, and average calls per hour per Operator, broken down by month for the year of 2020." In her sur-reply representations, the appellant had responded that she would be amenable to a discussion about receiving this average-based data, in view of the fact that the specific 911 call data she actually seeks no longer exists.

[18] In view of this, the adjudicator encouraged the police to contact the appellant to discuss the potential disclosure of average-based 911 call data. He asked that after

these discussions, the police issue an access decision to the appellant with respect to this average-based data, in accordance with the requirements of the *Act*.

[19] Item 2 concerned the appellant's original request, for specific 911 call data: namely, the wait time data for Toronto 911 callers over the period January 1, 2017 to December 31, 2018; and the number of 911 callers put on hold (or who were played an automated wait message) during this same time period. As noted above, the appellant had requested that this information be provided "electronically, in a machine-readable format" where possible.

[20] The adjudicator noted that based on the police's assertion that the requested information no longer exists, the appellant had stated in her representations that she would be agreeable to amending the time frame of her original request to capture call logs that do exist. Based on the information provided by the police, this would cover the 175-day period immediately preceding the date on which the police retrieved such data.

[21] In reply, the police had stated:

It may be possible for someone to write a script to pull the data; however, Communications Services would require someone with a specific level of expertise to clean up the data. Due to the level of skill required to facilitate this request, it would mean Supervisory level staff would be tied up for the entirety of this undertaking. Consequently, highly significant projects will be neglected during that time period.

[22] In her sur-reply representations, the appellant noted that the police had referred to the possibility of writing a script to pull the requested data. She stated:

This to me sounds much more feasible, and would be ideal for us as well. I should also stress that we are not asking them to 'merge' or 'clean up' any data. We are happy to do that work on our end, if it would help to make the process less cumbersome for the police service. [The police] did not make mention of how long it might take (or what it might cost) to write such a script, but I'd be happy to join a conference call with the police service and the adjudicator to discuss those details.

[23] The adjudicator informed the parties that given his role (as an adjudicator and not a mediator), he could not participate in or facilitate any discussion between the parties on this matter. However, he encouraged the police to consider the appellant's offer and to have further discussions with her about the possibility of writing a script to pull the data that does exist (covering the above-noted 175-day period).

[24] He also noted that the police appear to be maintaining their position that records containing the specific information sought by the appellant would fall outside the *Act's* definition of "record" (by virtue of section 1 to Regulation 823 under the *Act*), or, alternatively, that such records would be exempt from disclosure under various section

8 exemptions.

[25] The adjudicator stated that if the police wish to maintain their original position, these issues would be addressed in an order issued by the IPC. He asked the police to advise him whether the police were maintaining their original position with respect to the appellant's request for specific 911 call data (now amended to cover the 175-day period preceding the date the police retrieve the data).

[26] The adjudicator fixed a deadline of July 14, 2021 for receipt of the police's responses to both items.

### **Developments after the adjudicator's June 16, 2021 letter**

[27] After the adjudicator issued the above-noted letter, this file was transferred to me to continue the inquiry.

[28] On July 5, 2021, the police wrote to the IPC to request a 90-day extension to respond to the adjudicator's letter. The police explained that they needed to conduct further internal consultations, as well as external consultations with a vendor, in order to respond to the letter. The police agreed to share this explanation for the extension request with the appellant.

[29] Based on the explanation provided by the police, the appellant did not object to the police's extension request. In view of the police's explanation for requiring additional time, and the consent of the appellant, I granted the police a 90-day extension to respond to the IPC's June 16, 2021 letter. Through an IPC Adjudication Review Officer, I advised the parties that the police's deadline for response was extended to October 15, 2021.

[30] On October 8, 2021, the police issued a revised decision with respect to "item 1" of the adjudicator's letter (regarding average-based 911 data). The police granted the appellant access to a one-page record (with severances of non-responsive information) containing the following information: 911 average wait times, average 911 talk times, and average calls per hour per operator, broken down by month for the year 2020. This record is in PDF format.

[31] The appellant did not raise concerns about the police's release of average-based 911 call data in PDF format. The appellant later advised that this average-based information does not suit her purposes, and she confirmed that she continues to seek access to the specific 911 call data described in her original request (albeit for a different time period).

[32] Through the Adjudication Review Officer, I asked the police to provide a response to "item 2" of the IPC's June 16, 2021 letter, being the request for clarification of the police's current position in respect of the appellant's request for specific 911 call data, amended to now cover the 175-day period for which such data is retained. In

particular, I asked the police to set out in writing certain developments that they had communicated orally to the Adjudication Review Officer, and to provide that written response to the appellant and to me.

[33] On November 1, 2021, the police issued a letter to the appellant (with copy to the IPC), informing the appellant of the steps they were taking to respond to her request for specific 911 call data. This letter stated, in part:

Please be advised that our Information Technology Services Unit is actively working with an outside vendor in developing a script to extract the last 175 days of data for the number of calls put on hold or played an automated message prior to being answered.

Unfortunately at this time we are unable to provide a date on which this work will be completed. Once we receive follow up from our internal stakeholders we will notify you of any levied fees.

[34] The appellant confirmed her continued interest in obtaining this data.

#### **My November 8, 2021 letter to the police**

[35] After considering all of the above, I decided to fix a deadline for receipt of the police's decision on the appellant's request for specific 911 call data over the most recent 175-day period for which such data is available.

[36] As I described in my letter to the police, I decided to set a firm deadline in view of all the circumstances, including, most notably, the following:

- At the date of the appellant's original access request (made on January 17, 2019), there would have existed at least some of the specific 911 call data she was seeking (being data covering the time period January 1, 2017 to December 31, 2018).
- The police did not issue an access decision in response to the appellant's January 17, 2019 request until May 6, 2019. At this point, some of the requested data would still have existed (based on the 175-day retention period in effect as of July 12, 2018).
- The police did not advise the appellant or the IPC that the requested 911 call data was subject to any retention period (either the previous 30-day retention period, or the current 175-day retention period) until their representations of September 30, 2020—more than a year and a half after the appellant's access request, and well into the appeal process. By this time, none of the requested information existed.

- The appellant has demonstrated a willingness to work cooperatively with the police to obtain the information of interest to her, including by amending the time frame covered by her request.
- Although the police asked for and were granted a 90-day extension in order to conduct internal and external consultations to respond to the IPC's June 16, 2021 letter, they failed to provide a response on the appellant's request for specific 911 call data ("item 2" of that letter) by that extended deadline.
- While the police's November 1, 2021 letter addressing "item 2" indicated that the police were actively working with an outside vendor to develop a script to extract the requested data, the police did not provide a timeline for a final decision or a fee estimate in this letter.

[37] I noted, in addition, that while it was my understanding (based on the police's conversations with the Adjudication Review Officer) that the police were no longer relying on either of the grounds cited in their original decision to deny the appellant's request for specific 911 call data, the police had not made this clear in their November 1, 2021 letter. I reminded the police that in his June 16, 2021 letter, the previous adjudicator had asked the police for clarification of their position.

[38] For all these reasons, I required the police to issue an access decision under the *Act* in respect of the appellant's request for specific 911 call data (namely, the wait time data for Toronto 911 callers; and the number of such callers who were put on hold or were played an automated wait message), now amended to cover the most recent 175-day period for which such data is available. I noted again in that letter that the appellant had specified that where possible, she would like to receive the records "electronically, in a machine-readable format."

### **The police's November 29, 2021 revised access decision**

[39] On November 29, 2021, the police issued a revised interim access decision and fee estimate. In this decision, the police identified as the responsive record a 1,508-page record in PDF format, and set out a fee estimate of \$1,508, based on an estimate of 3,106 minutes to "prepare the requested data for disclosure."

[40] Based on the revised decision, it is clear the police are no longer claiming that the requested information cannot be produced in the form of a "record" within the meaning of the *Act*, at least in relation to the PDF document they identified. The police did not indicate in this decision the basis for any severances they expect to make to the record. In the decision, the police requested a deposit of 50% of the fee estimate (or \$754) in order to proceed with the request.

[41] The appellant takes the position that the PDF record identified by the police is not responsive to her request. She seeks the information in a machine-readable electronic format, such as XLS or CSV, that will allow her to analyze the data. She did



not pay the requested deposit as a result.

[42] Given this, the issue now before me is the responsiveness of the PDF record identified by the police in their revised decision. I sought and received representations from the parties on this issue. I also asked the police to explain the basis for their fee estimate, which is an issue to be addressed in the event I find the PDF record is responsive to the appellant's request. Because I find in this interim order that the PDF record is not responsive, it is not necessary to address the fee estimate.

[43] In the discussion that follows, I explain why I find the PDF record is not responsive to the appellant's request. I order the police to issue a decision on access to the requested information in the electronic format the appellant seeks, or else to explain why they cannot provide it in this format.

## **RECORD:**

[44] In their November 29, 2021 revised decision, the police identified a 1,508-page record in PDF format as the responsive record.

[45] However, in her original access request, and throughout this appeal process, the appellant has stated that where possible, she would like to receive the requested information electronically, in a machine-readable format. The appellant confirms that this does not mean PDF format, but rather electronic formats such as XLS or CSV.

[46] An XLS file (a file with the extension .xls) is a Microsoft Excel spreadsheet file.

[47] A CSV file (a file with the extension .csv) is a plain text file that structures data in table form.

## **DISCUSSION:**

### **Is the PDF record identified by the police responsive to the request?**

[48] The sole issue to be decided in this interim order is whether the PDF record identified by the police is responsive to the appellant's request for specific 911 call data provided "electronically, in a machine-readable format" where possible.

[49] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. The relevant portions of this section state:

1. A person seeking access to a record shall,

- a. make a request in writing to the institution that the person believes has custody or control of the record and specify that the request is being made under this Act;
  - b. provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record[.]
2. If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[50] To be considered responsive to the request, records must “reasonably relate” to the request.<sup>1</sup> Institutions should interpret requests liberally, in order to best serve the purpose and spirit of the Act. Generally, if there is ambiguity in the request, this should be resolved in the requester’s favour.<sup>2</sup>

[51] In this case, the dispute between the parties turns on whether, in the circumstances of this appeal, a record in PDF format appropriately responds to the appellant’s request for specific 911 call data in an electronic, machine-readable format. For the reasons that follow, I find it does not.

[52] The police assert that the appellant never specified that there was a preferred format for the information she seeks. The police say they understood the appellant’s request to receive records “electronically, in a machine-readable format” to mean **any** form of electronic, machine-readable format (emphasis by police). They assert that a PDF record, being one that is “rendered intelligible by the use of the computer program Adobe,” is a “machine-readable” record within the meaning of the request.

[53] The appellant takes issue with the police’s interpretation of her request, which in her view is a disingenuous reading that implies, inaccurately, she is simply looking for any file that can be opened on a computer. It is clear her view is informed by her experience during this lengthy request and appeal process, and her concerns about the changing explanations given by the police during this process for refusing her request. She questions whether the police’s identification of a PDF record at this late stage is another attempt to move the goal posts. For their part, the police acknowledge the appellant’s frustration, but object to any claims of malfeasance or lack of cooperation on their part.

[54] As is clear from the background set out above, the appellant’s request to the police for 911 call data in electronic format began a nearly two-year process that resulted in the police’s identification of a PDF record. I observe that this delay has prejudiced the appellant, beginning with the fact the 911 call data she originally sought, covering the 2017-2018 time period, no longer exists. I am also mindful that the

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<sup>1</sup> Orders P-880 and PO-2661.

<sup>2</sup> Orders P-134 and P-880.

police's delay in responding to the original access request (well after the thirty-day period for an institution's response required by section 19 of the *Act*), and the police's failure to inform the appellant and the IPC in a timely way of the retention period for this type of information further prejudiced the appellant's ability to pursue her appeal.

[55] I took these factors (and others) into account when I decided to require the police to issue an access decision under the Act in respect of the appellant's request for specific 911 call data, as I described above. However, these factors do not directly pertain to the question of whether the PDF record now identified by the police is responsive to the appellant's request to receive this information in electronic, machine-readable format.

[56] What is directly relevant, in my view, is the fact that throughout the appeal, the appellant has expressed that she seeks this information in a format that would enable accurate analysis and reporting. Specifically, in her representations made during the inquiry (which were shared in full with the police), the appellant proposed receiving the requested information in a Microsoft Excel spreadsheet, and discussing with the police the particular columns the final spreadsheet would contain. The police's claim that the appellant never specified her preferred electronic format for receiving the information is simply untrue.

[57] Even if the appellant had not specified a preferred format, I would still find it inappropriate in the circumstances for the police to have unilaterally decided to provide the information in PDF format. If the police had any question about the appellant's preferred format, they should have contacted her to seek clarification, as they are required to do by section 17(2) of the *Act*. The police's justification that a PDF file can be opened on a computer, and is thus a machine-readable record within the meaning of the appellant's request, is an unduly rigid reading of the request, and one that leads to a result that is particularly unfair to the appellant in these circumstances.

[58] Through the long history of this request and appeal, the appellant has made repeated efforts to work cooperatively with the police to clarify and refine her request as necessary, including to account for the police's delay in telling her that the information she seeks no longer exists. The parties did engage in some conversations outside the inquiry process in an attempt to resolve the issues informally between them. I do not find credible the police's claim that after all these events at the appeal stage, they still did not understand that a record in PDF format would not suit the appellant's purposes.

[59] On this point, I am not persuaded by the police's observation that they previously provided average-based call data to the appellant in PDF format, and she did not take issue with the format of that document. It is important to place that document in context. It was the police who offered, at the inquiry stage, to provide average-based call data to the appellant, after revealing that the specific call data she actually wants no longer exists. Although the appellant accepted the police's offer to receive this

average-based data, she continued to pursue the specific (not average-based) call data she had originally requested, while accepting that it would cover a later time period than she had specified. The average-based data she eventually received was not useable for her purposes (for reasons unrelated to the PDF format in which it was provided), so she did not ask the police to provide it in a different format.

[60] If the police are claiming that they wholly relied on the fact the appellant previously received different information in PDF format without complaint, rather than on the appellant's own statements (including in her representations) about her preferred electronic format, then this was an unreasonable assumption on the part of the police. I also note here that in their initial representations during the inquiry, the police, in making the case that fulfilling the appellant's request would unreasonably interfere with their operations, listed the following as one of the several steps in this process: "Plot each call on an excel spreadsheet in a format the requester deems 'readable.'" This suggests the police understood that the appellant's preference was to receive the data in XLS format, or, at the very least, that she had a specific preference for the format of the data that had to be ascertained.

[61] Finally, I acknowledge that the police have described a complex process for extracting the specific 911 call data sought by the appellant. For the purposes of this decision (which addresses only the issue of responsiveness of the PDF record), it is not necessary to describe all the steps of this process. However, it is important to recognize that it has been the police's position from the outset that this information is maintained by a third party (the vendor), and that because of the way the information is stored by the vendor (i.e., not by individual call, but rather in 15-minute intervals), the process of pulling, organizing, and reviewing 911 call logs to produce a record that responds to the request is difficult and labour-intensive.

[62] I mention this because the police indicate in their last set of representations that the PDF record they identified in their revised decision is the one their vendor provided to them, after the vendor created a script (at the police's request) to extract raw data responsive to the appellant's request. The police also state that their internal stakeholders "advised not being able to produce the record in excel format."

[63] In this interim order, it is my finding that the PDF record provided by the police (through their vendor) is not responsive to the appellant's request. I will therefore order the police to issue a decision on access to the requested 911 call data in the appellant's preferred electronic format (i.e., XLS or CSV).

[64] During my inquiry, I asked the police to address the possibility of producing responsive information in the electronic format requested by the appellant. In particular, I posed the following question to the police (emphasis in original):

Is it possible to produce the requested information in the electronic, machine-readable, format(s) requested by the appellant (for example, .xls

or .csv formats)? Why or why not? Please explain, with specific details about how the police arrived at their determination about the possibility of producing the requested information in the electronic formats sought by the appellant.

[65] In response to this question, the police continued to assert that the appellant had not specified XLS or CSV as her preferred format. The police then stated:

Therefore, we did not endeavour to make specifications to the vendor regarding the format of the data. Subsequently, the institution received the records at issue, from the vendor in pdf format, and can not produce them in an alternative format.

[66] Based on the police's own admission that they never asked their vendor to produce the requested information in the particular electronic formats specified by the appellant, I will require that they now do so. In the event the police take the position that they cannot provide the requested information in one of these formats, I will require the police to provide me with detailed representations to explain why.

[67] I remain seized of this appeal to address issues arising from this interim order.

## **ORDER:**

1. I order the police to issue an access decision to the appellant in respect of her request for specific 911 call data in XLS or CSV format. The police are to make this decision in accordance with section 19 of the *Act*, treating the date of this interim order as the date of the request. For clarity, this requires the police to immediately preserve responsive information for the 175-day period immediately preceding the date of this order.

I direct the police to provide me with a copy of this decision.

2. Alternatively, in the event the police take the position they cannot provide the requested information in XLS or CSV format, they must provide me with detailed representations to explain why. These representations must be sent to me by **June 24, 2022.**

I may share the police's representations unless they meet the confidentiality criteria identified in the IPC's *Code of Procedure*. If the police believe that portions of their representations should remain confidential, they must identify these portions and explain why the confidentiality criteria apply to these portions.

3. I remain seized of this appeal to address issues arising from order provision 2.

Original Signed by: \_\_\_\_\_

Jenny Ryu  
Adjudicator

\_\_\_\_\_ May 25, 2022