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Toronto (Police Services Board) (Re), Order MO-4727, 2025 CanLII 125443 (ON IPC)

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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-4727

Appeal MA22-00297

Toronto Police Services Board

November 27, 2025

Summary: The appellant asked the Toronto Police Services Board for records about an incident which resulted in her arrest. The police located several records, including two reports, police officers' notes, an audio recording of a 911 call, and an audio recording from an officer's in-car camera system. They gave her many parts of these records but withheld some information under the personal privacy exemption in section 38(b) of the *Municipal Freedom of Information and Protection of Privacy Act*. They also claimed that other information in the records is not responsive to her request.

The appellant appealed because she disagreed with the police's decision, and she also claimed that the police failed to find other records that she is seeking, such as the body camera footage of the two investigating officers and the recording from the in-car camera system of one officer.

In this order, the adjudicator finds that the personal information of the individual who called 911 cannot be disclosed to the appellant because doing so would be an unjustified invasion of his personal privacy under section 38(b). The adjudicator finds that some of the appellant's own personal information also cannot be disclosed to her because it is closely intertwined with the personal information of the other individual and cannot be reasonably severed under section 4(2). He also finds that the police properly withheld some information because it is not responsive to the appellant's access request, and that they conducted a reasonable search for records.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, sections 2(1) (definition of "personal information"), 4(2), 14(2)(h), 14(2)(i), 14(3)(b), 17 and 38(b).

OVERVIEW:

[1] Officers from the Toronto Police Service (the police) arrested the appellant after another person called 911 because the appellant entered his home through the back door. The police cautioned the appellant but did not lay any charges against her under the *Criminal Code*.

[2] The appellant submitted the following access request to the police under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

> I would like to get access to three records:
>
> 1. 911 Domestic Radio Call: A phone call was made to 911 by a civilian [name of person] between Thursday 5th 2021 at 11:45 pm and Friday 6th at 00:15 am at address: [address of person who called police]. Integrated Computer Aided Dispatch (ICAD) Radio Call Event Detail Report #21-1479834.
>
> 2. Camera and Audio: [Name of police officer] – Police Constable Badge #10343-41 Division Unit Pro. I have been arrested by the Police on Friday 6th, 2021, between 0:00am and 1:15am, address: [address of person who called police].
>
> 3. Camera and Audio: [Name of police officer] – Police Constable Badge #11535-41 Division Unit Pro. Friday 6th, 2021, between 0:00am and 1:15am.

[3] In response, the police located records that are responsive to the appellant's access request, including a general occurrence hardcopy – domestic incident, an I/CAD event details report, the handwritten notes of two police officers, an audio recording of the 911 call of the individual who called the police, and an audio recording from a police officer's in-car camera system.

[4] The police decided to provide the appellant with access to many parts of these records, including those that contain information about her. However, they denied access to some information about the appellant in the records, and also about the individual who called 911, under the discretionary personal privacy exemption in section 38(b) of the *Act*. They also denied access to some information in the records because it is about other incidents not involving the appellant and is therefore not responsive to her access request.

[5] The appellant appealed the police's decision to the Information and Privacy Commissioner of Ontario (IPC), which assigned a mediator to assist the parties in resolving the issues in dispute.

[6] During mediation, the mediator contacted the individual who had called 911 after the appellant entered the back door of his house. He refused to consent to any information about him being disclosed to the appellant.

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[7] The appellant told the mediator that she is pursuing access to all of the withheld information in the records, including the information that the police decided is not responsive to her access request. She also claimed that the police had not located all records that are responsive to her access request, such as the body camera footage of the two police officers who arrested her and a recording from the in-car camera system of one of the officers. Consequently, whether the police have conducted a reasonable search for records is at issue in this appeal.

[8] This appeal was not resolved during mediation and was moved to adjudication, where an adjudicator may conduct an inquiry to review an institution's access decision. The adjudicator initially assigned to this appeal and a subsequent adjudicator both sought and received representations from the parties. This appeal was then transferred to me to complete the inquiry. I sought and received reply representations from the police that respond to the appellant's representations.

[9] In this order, I find that:

- the police properly withheld the personal information of the individual who called 911 under section 38(b) of the *Act*;
- some of the appellant's own personal information cannot be disclosed to her because it is closely intertwined with the personal information of the other individual and cannot be reasonably severed under section 4(2);
- the police properly withheld some information in the records because it is not responsive to the appellant's access request; and
- the police conducted a reasonable search for records.

RECORDS:

[10] The records at issue are set out in the following chart:

General description of record	Page number(s)	Police's decision	Exemption(s) claimed/reason for not disclosing parts of records
General occurrence hardcopy – domestic incident	1-8	Disclose in part	Section 38(b)
I/CAD event details report	9-13	Disclose in part	Section 38(b)

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Handwritten notes of two police officers	14-19	Disclose in part	Section 38(b) Non-responsive information
Audio recording of 911 call	N/A	Withhold in full	Section 38(b)
Audio recording from a police officer's in-car camera system	N/A	Disclose in part	Non-responsive information

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ISSUES:

A. Do the records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?

B. Does the discretionary personal privacy exemption at section 38(b) apply to the personal information in the records?

C. Is some information in the records not responsive to the appellant's access request?

D. Did the police conduct a reasonable search for records?

DISCUSSION:

Issue A: Do the records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?

[11] The police have withheld some parts of the records under the discretionary personal privacy exemption in section 38(b). This exemption can only apply to records that contain the "personal information" of both the requester and another individual. Consequently, it must be determined whether the parts of the records remaining at issue contain "personal information" and if so, to whom it relates.

[12] Section 2(1) of the *Act* gives a list of examples of personal information. Those that are relevant to this appeal are:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> . . . .

> (c) any identifying number, symbol or other particular assigned to the individual,
>
> . . . .
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

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[13] The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be "personal information."[1]

[14] Information in records about individuals that reveals that they are complainants, victims, witnesses or the subjects of a criminal investigation, is their "personal information," as that term is defined in section 2(1) of the *Act*.[2]

Analysis and findings

[15] The information in the parts of the records remaining at issue in this appeal relates to both the appellant and the individual who called 911. For the reasons that follow, I find that this information is the "personal information" of these individuals.

[16] The police state that the records contain the personal information of the individual who called 911. They submit that this information falls within paragraphs (d) and (g) of the definition of "personal information" in section 2(1) of the *Act*.

[17] The appellant does not address whether the records contain the "personal information" of any individuals, including herself.

[18] There is a substantial amount of information in the withheld parts of the records about the individual who called 911. In particular, his name appears with other information relating to him, including his birthdate, sex, home address, phone number, driver's license number, height, and family status. He is also identified in the records as the complainant in a criminal investigation and the records include an account of what he did after the appellant entered his home.

[19] I find that all of this information is his "personal information." In particular, it is "recorded information about an identifiable individual" that is personal in nature that falls within paragraphs (a), (c) and (h) of the definition of "personal information" in section 2(1).

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[1] Order 11.
[2] E.g., Orders PO-2604, PO-4336, PO-4411-F, MO-4274, MO-4409 and MO-4474.

[20] Although the police disclosed to the appellant most of the information about her in the records, there is also some information relating to her in the withheld parts of the records. For example, the audio recording of the other individual's 911 call contains his views and opinions of the appellant, and he also provided the police with other information about her and how they know each other.

[21] I find that this information about the appellant constitutes her "personal information." In particular, it is "recorded information about an identifiable individual" that is personal in nature that falls within paragraphs (a), (g) and (h) of the definition of "personal information" in section 2(1).

[22] Because the records contain the personal information of both the appellant (who is the requester) and another individual, it must be determined whether this personal information is exempt from disclosure under section 38(b) of the *Act*.

Issue B: Does the discretionary personal privacy exemption at section 38(b) apply to the personal information in the records?

[23] The personal privacy exemption in section 38(b) of the *Act* states:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > if the disclosure would constitute an unjustified invasion of another individual's personal privacy.

[24] Under the section 38(b) exemption, if a record contains the personal information of both the requester and another individual, the institution may refuse to disclose the other individual's personal information to the requester if disclosing that information would be an "unjustified invasion" of the other individual's personal privacy.

[25] The records at issue include a general occurrence hardcopy – domestic incident, an I/CAD event details report, the handwritten notes of two police officers, an audio recording of the 911 call of the individual who called the police, and an audio recording from a police officer's in-car camera system. I have found that the parts of these records that the police withheld from the appellant contain the personal information of both her and the individual who called 911.

[26] In the circumstances of this appeal, it must be determined whether disclosing the personal information of the individual who called 911 would constitute an unjustified invasion of his personal privacy under section 38(b).

[27] The requester's (i.e., the appellant's) own personal information, standing alone, cannot be exempt under section 38(b) as its disclosure could not, by definition, be an unjustified invasion of another individual's personal privacy.[3] However, as will be explained below, in the circumstances of this appeal, some of the appellant's personal

[3] Order PO-2560.

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information cannot be disclosed to her because it is too closely mixed with the personal information of the individual who called 911, and the records cannot reasonably be severed under section 4(2) of the *Act*.

[28] With respect to the personal information of the individual who called 911, sections 14(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold under section 38(b) is met:

- if the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b);
- section 14(2) lists "relevant circumstances" or factors that must be considered;
- section 14(3) lists circumstances in which the disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy; and
- section 14(4) lists circumstances in which the disclosure of personal information does not constitute an unjustified invasion of personal privacy, despite section 14(3).

[29] There is no evidence before me to suggest that the exceptions in section 14(1)(a) to (e) or the circumstances in section 14(4) apply to the personal information of the individual who called 911. I find that none of these provisions apply in the circumstances of this appeal, and I will not consider them.

Sections 14(2) and (3)

[30] In determining whether disclosing the personal information of the individual who called 911 would be an unjustified invasion of his personal privacy under section 38(b), I must consider and weigh the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.[4]

Section 14(3)

[31] Section 14(3) lists circumstances in which the disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy.

[32] The police claim that the section 14(3)(b) presumption applies to the personal information in the records of the individual who called 911. This provision states:

[4] Order MO-2954.

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> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> > was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

[33] This presumption requires only that there be an investigation into a *possible* violation of law.[5] So, even if criminal proceedings were never started against the individual, section 14(3)(b) may still apply.[6]

[34] The appellant does not address whether the section 14(3)(b) presumption applies to the personal information of the individual who called 911.

[35] Based on my review of the records, I am satisfied that the personal information of the individual who called 911 was compiled and is identifiable as part of an investigation into possible violations of the *Criminal Code* by the appellant. In these circumstances, I find that this personal information falls within the section 14(3)(b) presumption and its disclosure to the appellant is presumed to constitute an unjustified invasion of the other individual's personal privacy.[7]

Section 14(2)

[36] Section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.[8]

[37] The factors in paragraphs (a), (b), (c) and (d) of section 14(2) generally weigh in favour of disclosure, while those in paragraphs (e), (f), (g), (h) and (i) weigh in favour of privacy protection.[9] The list of factors under section 14(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2).[10]

[38] The police submit that the factors in sections 14(2)(h) and (i), which weigh in favour of privacy protection, apply to the personal information of the individual who called 911. These provisions state:

> A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the

[5] Orders P-242 and MO-2235.
[6] The presumption can also apply to records created as part of a law enforcement investigation where charges were laid but subsequently withdrawn (Orders MO-2213, PO-1849 and PO-2608).
[7] None of the other presumptions have been claimed and it does not appear that any are relevant in the circumstances of this appeal.
[8] Order P-239
[9] Order PO-2265.
[10] Order P-99.

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relevant circumstances, including whether,

. . .

(h) the personal information has been supplied by the individual to whom the information relates in confidence; and

(i) the disclosure may unfairly damage the reputation of any person referred to in the record.

[39] Section 14(2)(h) applies and weighs against disclosure if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. This requires an objective assessment of whether the expectation of confidentiality is "reasonable."[11]

[40] Section 14(2)(i) applies and weighs against disclosure if disclosure of personal information might create damage or harm to an individual's reputation that would be considered "unfair" to the individual.[12]

[41] With respect to section 14(2)(h), the police submit that it is highly reasonable to expect that there is a pre-existing understanding of confidentiality when information is supplied to officers during an investigation. With respect to section 14(2)(i), the police appear to be arguing that if they disclose the audio recording of the other individual's 911 call to the appellant, there is a risk that she might post it on social media, which may unfairly damage the caller's reputation.

[42] The appellant does not address whether any of the section 14(2) factors apply to the withheld parts of the records that contain the personal information of the individual who called 911.

[43] In my view, the police's suggestion that the appellant might post the other individual's personal information on social media is speculative. As a result, I find that the factor in section 14(2)(i) is not a relevant factor to consider in determining whether disclosing the personal information of the individual who called 911 would constitute an unjustified invasion of his personal privacy.

[44] However, I find that the factor in section 14(2)(h) is relevant and applies to the personal information of the individual who called 911. I am satisfied that both the individual who called 911 and the police expected that the personal information that he supplied would be treated confidentially, and that this expectation of confidentiality was reasonable in the circumstances, particularly given the adversarial relationship between the appellant and him. I find, therefore, that the section 14(2)(h) factor, which weighs in favour of privacy protection, applies to his personal information in the withheld parts of

[11] Order PO-1670.
[12] Order P-256.

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the records.

Conclusion

[45] In assessing whether the personal information of the individual who called 911 in the withheld parts of the records qualifies for exemption under section 38(b), I have found that it fits within the section 14(3)(b) presumption and disclosing it is presumed to be an unjustified invasion of his personal privacy. In addition, I have found that the section 14(2)(h) factor, which weighs in favour of privacy protection, applies to his personal information in the withheld parts of the records.

[46] Given that the section 14(3)(b) presumption and the section 14(2)(h) factor apply to the personal information of the individual who called 911, and there are no section 14(2) factors weighing in favour of disclosure, I find that this personal information is exempt from disclosure under section 38(b), because disclosing it to the appellant would constitute an unjustified invasion of the other individual's personal privacy.

Appellant's personal information

[47] The police also withheld some of the appellant's personal information, particularly in the audio recording of the 911 call. As noted above, a requester's (i.e., the appellant's) own personal information, standing alone, cannot be exempt under section 38(b) as its disclosure could not, by definition, be an unjustified invasion of another individual's personal privacy.[13] However, in the withheld parts of the records, particularly the audio recording of the 911 call, the appellant's personal information is not standing alone. Instead, it is mixed with the personal information of the individual who called 911.

[48] Section 4(2) of the *Act* obliges the police to disclose as much of the records as can reasonably be severed without disclosing the information that is exempt. It states:

> If an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 6 to 15 and the head of the institution is not of the opinion that the request is frivolous or vexatious, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions.

[49] The IPC has found in previous orders that it is not reasonable to sever a record containing the personal information of both the requester and other individuals if this information is too closely intertwined. In addition, it is not reasonable to sever a record if doing so would result in the disclosure of only disconnected snippets of information or worthless, meaningless or misleading information.[14]

[50] The appellant's personal information in the withheld parts of records is closely

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[13] *Supra* note 3.
[14] Orders PO-2033-I, PO-1663 and PO- 1735 and *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 71 (Div. Ct.).

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intertwined with the personal information of the other individual, particularly in the audio recording of that individual's 911 call. I find that the appellant's personal information cannot reasonably be severed without disclosing the personal information of the other individual, which falls under the section 38(b) exemption. As a result, the appellant's personal information in those withheld parts of the records cannot be disclosed to her.

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Exercise of discretion

[51] The section 38(b) exemption is discretionary. This means that an institution can decide to disclose the other individual's personal information to the requester even if doing so would result in an unjustified invasion of the other individual's personal privacy.[15]

[52] An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[53] In addition, the IPC may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose;
- it takes into account irrelevant considerations; or
- it fails to take into account relevant considerations.

[54] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.[16] The IPC may not, however, substitute its own discretion for that of the institution.[17]

[55] The police state that in applying section 38(b) of the *Act* to the personal information of the individual who called 911, they balanced the access rights of the requester with the privacy rights of that individual. They submit that they exercised their discretion under section 38(b), took into account all relevant considerations, did not consider any irrelevant considerations, and did not exercise their discretion in bad faith or for an improper purpose.

[56] The appellant's representations do not address whether the police exercised their discretion properly in deciding to withhold the personal information of the individual who called 911 under section 38(b) of the *Act*.

[57] I am satisfied that the police exercised their discretion and did so appropriately in

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[15] See below in the "Exercise of Discretion" section for a more detailed discussion of the institution's exercise of discretion under section 38(b).
[16] Order MO-1573.
[17] Section 43(2).

withholding the personal information of the other individual under section 38(b). There is no evidence before me to suggest that they exercised their discretion in bad faith or for an improper purpose or that they took into account irrelevant considerations. In short, I uphold the police's exercise of discretion under section 38(b).

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Issue C: Is some information in the records not responsive to the appellant's access request?

[58] The police withheld some information in the records because it is about other incidents not involving the appellant and is therefore not responsive to her access request. During mediation, the appellant told the mediator that she is pursuing access to all of the withheld information in the records, including the information that the police decided is not responsive to her access request.

[59] To be considered responsive to the request, the information in a record must "reasonably relate" to an access request.[18] 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.[19] However, an institution it not required to disclose to a requester information or records that is not responsive to the access request.

[60] Neither the police nor the appellant clearly address whether some information in the records is not responsive to the appellant's access request.

[61] Based on my review of the records, it appears that the police withheld some information about other incidents that are completely unrelated to the appellant and the individual who called 911. I am satisfied that the information about these other incidents does not reasonably relate to the appellant's access request and I find that the police have properly withheld it.

Issue D: Did the police conduct a reasonable search for records?

[62] The appellant claims that the police have not located all records that are responsive to her access request, such as the body camera footage of the police officers who arrested her and a recording from the in-car camera system of one officer. She also alleges that the records the police provided to her have been "fraudulently altered," particularly the audio recording from the in-car camera system of the other officer.

[63] If a requester claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act*.[20] If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision. Otherwise, it may order the institution to conduct another search for records.

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[18] Orders P-880 and PO-2661.
[19] Orders P-134 and P-880.
[20] Orders P-85, P-221 and PO-1954-I.

[64] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.[21]

[65] The *Act* does not require the institution to prove with certainty that further records do not exist. However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;[22] that is, records that are "reasonably related" to the request.[23]

[66] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are reasonably related to the request.[24] The IPC will order a further search if the institution does not provide enough evidence to show that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[25]

[67] For the reasons that follow, I find that the police conducted a reasonable search for records, as required by section 17 of the *Act*.

[68] As noted above, the appellant alleges that the police provided her with a "fraudulently altered" version of the audio recording from an officer's in-car camera system. She also does not believe the police's claim that the officers who responded to the incident that she was involved in did not have body cameras. She claims that police officers were provided with body cameras almost a year before this incident. In addition, she states that there should be a recording from the in-camera recording system of the other officer.

[69] To support her position that the audio recording from the in-car camera system was "fraudulently altered," she provided two short reports that she commissioned from a sound engineer and a forensic analyst. These individuals say their analysis shows that there are gaps and stops and starts in the recording and other evidence showing that it was altered.

[70] Confusingly, however, the sound engineer also claims that he analyzed three recordings and that two of them came from the "same body camera source," even though the appellant alleges that the police have not provided her with the body camera recordings of the two officers who investigated the incident that she was involved in. It is possible that the sound engineer is simply referring to the fact that the recordings came from a single officer and he is actually talking about the audio recording of one officer's in-car camera system that was disclosed to the appellant. However, this discrepancy is not clearly explained in the appellant's representations, and I will therefore assume that the police did not provide her with any body camera recordings from the two officers.

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[21] Order MO-2246.
[22] Orders P-624 and PO-2559.
[23] Order PO-2554.
[24] Orders M-909, PO-2469 and PO-2592.
[25] Order MO-2185.

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[71] The police submit that the appellant has not offered any concrete evidence to support her belief that additional records exist. They state that input was sought from the attending officers, who confirmed that no body worn camera recordings exist because the program had not been rolled out to these officers at the time of the incident. One officer also stated he was driving a spare vehicle with no in-car camera system, which means that no recording was made from that vehicle.

[72] With respect to the appellant's claim that the police provided her with a "fraudulently altered" version of the audio recording from the other officer's in-car camera system, the police submit that this recording was heavily redacted due to the amount of radio calls (unrelated to the incident involving the appellant) being received by 911 dispatchers, which is heard in the audio recording.

[73] The police also state that they sought clarification from their Video Service Unit (VSU) about the redacting of the audio recording from the in-car camera system. An analyst from this unit stated that when a video file is imported into the editing program, all microphones merge into one audio file and thus cannot be isolated. These parameters would have resulted in additional conversations of other individuals being redacted for privacy reasons.

[74] I have considered the evidence submitted by the parties and am satisfied that the police have provided sufficient and credible evidence to explain why they could not locate body camera recordings for the two officers and an audio recording from an in-car camera system for one of the officers. I also find that the police have provided a credible explanation as to why there are gaps and stops and starts in the audio recording of the in-car camera recording system that they disclosed to the appellant.

[75] In these circumstances, I find that the police have conducted a reasonable search for records, as required by section 17 of the *Act*.

ORDER:

I uphold the police's decision and dismiss the appeal.

Original Signed By: November 27, 2025
Colin Bhattacharjee
Adjudicator

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