

**REPORT WITH RESPECT TO THE APPLICATION  
FOR REVIEW OF [REDACTED] IN RELATION TO  
INFORMATION REQUESTED FROM SASKATCHEWAN JUSTICE**

1. [REDACTED] (the “Applicant”) filed an Access to Information Request Form with Saskatchewan Justice dated March 22<sup>nd</sup>, 2002. The letter that accompanied the Access to Information Request Form detailed the nature of the information desired by the Applicant, as follows:

“Please provide a copy of the audio tape or a copy of the transcript of the audio tape of the proceedings of the hearing by hearing officer [REDACTED] into a matter concerning [REDACTED] of the Regina Police Service, of February 25<sup>th</sup>, 2002 – up until the time [approximately 1:45 p.m.] the public was banned from **the balance** of the hearing. For greater clarity, the hearing officer [REDACTED] ordered that the public be banned from the hearing from the moment forward of his making that order, in his words “*the balance of the hearing*”.”

2. John D. Whyte, Access Officer Freedom of Information, of the Respondent, replied to the request by letter dated April 16<sup>th</sup>, 2002. The relevant portions of the reply read as follows:

“Thank you for your Freedom of Information request which was received in this office March 22, 2002. In that request, you asked for a copy of the audio tape or a copy of the transcript of the audio tape, of the proceedings of the hearing by hearing officer [REDACTED] into a matter concerning [REDACTED] of the Regina Police Service, of February 25, 2002 – up until the time the public was banned from the balance of the hearing.

This letter is to advise you that the record you have requested does not exist. The department is not in possession of an audio tape or of a transcript of the proceedings related to [REDACTED] hearing heard by [REDACTED] on February 25, 2002.”

3. The Applicant filed a Request For Review with me dated May 14<sup>th</sup>, 2002. The Applicant’s contention is as follows:

“It is my contention that the document – while possibly not in the actual “physical” possession of the department, to date – is easily obtained by the department. As the very least the department, I submit, is the ultimate custodian of the document.

It is also my contention that the document does exist. It is required by the Police Act. As well, prior to being barred from attendance to the balance of the proceedings, I witnessed a stenographer making a record of the proceedings using a taping system. I have also been in contact with hearing officer [REDACTED] who confirms there is a transcript of the proceedings. [I am currently in the process of obtaining a copy of that part of the proceeding during which my presence was discussed].”

4. On May 22<sup>nd</sup>, 2002, I forwarded the Request For Review together with materials, to the Respondent, and also on May 24<sup>th</sup>, 2002, I forwarded additional material received from the Applicant to the Respondent. This material included the transcript of the portion of the [REDACTED] Hearing, 12 pages.

5. On June 21<sup>st</sup>, 2002, I received the following response from the Respondent in a letter dated June 19<sup>th</sup>, 2002:

“The materials being requested by [REDACTED] are not, and have at no time ever been, in the possession or under the control of this Department.

Audio tapes of hearings are retained by the hearing officer involved in each case. A transcript of those recordings would only come into the possession and control of a government institution, as defined in section 2(d) of *The Freedom of Information and Protection of Privacy Act*, upon an appeal to the Saskatchewan Police Commission. In that case, it would be the Commission, rather than Saskatchewan Justice, which would be the government institution having possession of the record.

The most recent amendments to *The Police Act, 1990* provide that discipline hearings are open to the public, unless an exclusion order is made by the hearing officer. As well, the decisions in such hearings are to be made available to the public. [REDACTED] is entitled to attend such discipline hearings, subject to an order of the hearing officer. He is also entitled to a copy of the decisions. No decision was rendered in the case of Sgt. [REDACTED] as he chose to resign from the service prior to the conclusion of the matter. No decision has been handed down in the case of [REDACTED].”

6. On July 5<sup>th</sup>, 2002, I received a response dated July 3<sup>rd</sup>, 2002 from the Applicant, wherein the Applicant’s response to the Respondent’s letter of June 21<sup>st</sup> is that because the Department of Justice is the administrative authority for *The Police Act*, and *The Act* mandates the creation of a record of hearing conducted pursuant to *The Act*, the overwhelming evidence is that creation of the record does fall within the control of the Department, and as such, the record ought to be released. The Respondent, originally in their letter of April 16<sup>th</sup>, 2002, advised the Applicant that the record requested does not exist. Later, in their letter of June 19<sup>th</sup>, the Respondent advised the Applicant that the materials requested have, at no time ever been in the possession or

in the control of the Department. Of course, the evidence is that the record does, in fact, exist. The material provided to me by the Applicant clearly indicates an Audio Tape exists of the hearing.

7. As previously stated, the Applicant argues that the Respondent does, in fact have the ultimate control of the Tapes, and therefore, should produce the requested material.

8. Once again, I am confronted with the problem of whether or not the Respondent has these records. It is not the duty of the Information and Privacy Commissioner to locate records, but rather to review the records and determine whether or not they are to be released to the Applicant. Without any other evidence to the contrary, I must take the word of the Respondent that they do not have the records in question.

9. The Applicant has requested the Audio Tape up to the time the hearing officer excluded the public. I note the hearing officer did release some documentation to the Applicant, and whether or not further records are released to the Applicant is in the discretion of the hearing officer.

Dated at the City of Swift Current, in the Province of Saskatchewan, this 17<sup>th</sup> day of September, 2002.

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FRANK A. MacBEAN, Q.C.  
Acting Freedom of Information  
and Privacy Commissioner  
Province of Saskatchewan