



Information and Privacy  
Commissioner of Ontario  
Commissaire à l'information et à la  
protection de la vie privée de l'Ontario

November 9, 2022

**VIA EMAIL**



Dear [REDACTED]

**RE: MA22-00467 and MA22-00469**  
**Respondent File Numbers 22-0118 and 22-0119**

On or around August 17, 2022, the Office of the Information and Privacy Commissioner of Ontario (the IPC) received the above noted appeals. These appeals were submitted under the *Municipal Freedom of Information and Protection of Privacy Act* ("the Act") against decisions made by the Ottawa Police Service (the police). Appeal files MA22-00467 and MA22-00469 were opened to address these matters.

**Summary of Appeal:**

You submitted two access requests for general records to the police. In these access requests, the requested records were described as follows:

Provide copies of all documents, including memos, briefing notes, e-mails, texts or instant messages, slack messages, WhatsApp messages, etc., regarding the proposal development, posting of and responding to tweets about the trucker protests/convoy in Ottawa, since January 1, 2022. (22-0118 and MA22-00467)

Provide copies all documents, including memos, briefing notes, e-mails, texts or instant messages, slack messages, WhatsApp messages, etc., regarding the WhatsApp chat group "Social Musical Ride 2022" and the posts made there by police officers regarding the trucker convoy/protests in Ottawa since February 1, 2022. (22-0119 and MA22-00469)

You provided a copies of the police's decision letters, both dated July 11, 2021, which you received in response to these access requests. In the decision letters for both 22-0118 and 22-0119, the police appear to confirm that it completed a search for records responsive to your request and denied the access request in full, writing:

Please be advised that in cooperation with OPS Legal Service Directorate, a decision has been made to deny the information requested.



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Access pertaining to WhatsApp and Slack messages is denied as the Ottawa Police Service does not collect, maintain, or retain any messages or information from the WhatsApp or Slack application or any personal cellular devices such as text messages; therefore, no records exist.

Access to text messages and instant messaging is denied as the content of text messages to and from Ottawa Police Service cellular devices (work phones) is not collected, maintained nor stored on any Ottawa Police Service networks or storage locations; therefore, no records exist.

Access to Ottawa Police Service memos, briefing notes, emails is denied pursuant to sections 8(1), 14(1), 15(b) and 52(2.1) of the Act.

### **Summary of the Police's response:**

On September 9, 2022, the IPC requested that the police provide the records responsive to your request, for the purposes of mediating your appeal.

The police provided the following response on September 10, 2022:

The responsive documents to this request are part of larger collection of records actively being prepared for the [Public Order Emergency Commission](#) (POEC). The Ottawa Police Service, in conjunction with contract staff, legal advisors, and an E-discovery document management firm, is actively gathering and preparing 12,000+ records for submission to the POEC.

In acknowledgement of the unprecedented circumstances of the *Freedom Convoy*, we are requesting a time extension to **February 20, 2023**. The requested extension recognizes that current OPS staffing efforts are prioritizing the fulfillment of requirements to the POEC and that the records submitted therein will be publicly available via the POEC either before or at the time the report of the Public Inquiry into the Public Order Emergency is laid before the House of Parliament on February 20, 2023.

In response to the police's request for a time extension, we contacted them for further clarification. The police confirmed that they are seeking to place this appeal on hold until February 20, 2023 (the date the report of the Federal Inquiry is to be presented in Parliament). They also noted the following:

Currently, all efforts are focused on providing the necessary records to the Commission as per Section 7 of the Inquiries Act. Fulfilling individual MFIPPA requests prior to February 20<sup>th</sup>, 2023 would be a doubling of efforts that could delay and/or taint the record submission to the Federal Inquiry.

The police also noted that there is the possibility that they revisit and revise their decision, following the results of the inquiry.

We subsequently asked the police for more detailed information regarding the challenges they face in participating in the Federal Inquiry and these appeals, concurrently. They provided the following response:

Participating in the National Inquiry while concurrently fulfilling MFIPPA presents unique staffing and record management challenges.

In early 2022, Ottawa Police Service Interim Chief Bell issued a General Order directing All Members to preserve all records in their possession, power and control relating to the 2022 Freedom Convoy / Illegal Occupation Demonstration.

It was anticipated that record collection associated to All Members of OPS across the entire service for a 30+ day operation that involved multiple partner agencies would be a massive undertaking. To support this task, OPS engaged the services of a Paralegal who is methodically gathering all Convoy related records from key OPS members involved. These records are being processed/organized by an EDiscovery Firm to ensure they are organized and searchable for the inquiry. A Nuix document collection will be available for use by FOI at the end of the production.

Were FOI to process MFIPPA requests concurrently we would need to begin a new collection of the records from within the organization thus duplicating the extensive work already being done by our Paralegal and by the EDiscovery Firm. A primary difficulty of this is also that many records were handwritten field notes that are in the process of being scanned and organized.

It is operationally challenging to either extract specific documents from the overall collection or begin collecting duplicate records from within the service currently.

The police were asked when they anticipate being able to supply the documentation and responsive records, if the report from the Federal Inquiry is presented on February 20, 2023. They responded, advising that this would be dependent upon the number of records identified as responsive to this request, but that they may be fulfilled to coincide with the February 20<sup>th</sup> 2023 date, or shortly thereafter.

### **Preliminary View:**

Under certain circumstances, the IPC will consider granting an institution's request to place an appeal file on hold. The Commissioner has delegated authority to me to decide whether or not your appeal should be placed on hold.

Given the information currently available to me, it is my preliminary view that due to the strain on the police's resources, presented by the Federal Inquiry and the potential duplication of work, their request to place this appeal on hold until February 20, 2023, should be granted. In addition, they have confirmed that the documentation requested will be provided on or around February 20, 2023 and that they may be willing to reconsider their access decision, at that time. I would also note that it will be extremely difficult for a mediator to mediate your appeal without the responsive records and for the police to participate in mediation, in a meaningful manner.



Before making my final decision, I would like to extend the opportunity for you to provide me with written submissions on the police's request to place this file on hold, and to explain why this appeal should proceed. Please provide any written submissions by November 30, 2022. You may provide your written submissions via e-mail to [lorne.swartz@ipc.on.ca](mailto:lorne.swartz@ipc.on.ca).

After I have considered your submissions and the circumstances of this appeal, I will provide you and the institution with a final written decision. If I do not receive any written submissions by the above noted date, I will assume that you have no objection to the hold request.

Yours truly,



Lorne Swartz  
Registrar

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