

IN THE MATTER OF: Law Enforcement Review Act
Complaint #2005/186

AND IN THE MATTER OF: An Application pursuant to s. 13(2)
of The Law Enforcement Review Act
R.S.M. 1987, c.L75

BETWEEN:	)	Mr. N. Boudreau,
	)	for the Complainant
B.J.P.,)	
Complainant	)	Mr. S. Boyd,
	)	for the Commissioner
- and -)	
	)	Mr. J. Weinstein,
CST G.H.	)	for the Respondents
CST B.Z.)	
SGT. G.M.	)	Ms. S. Hanlin,
Respondents	)	for the Winnipeg Police Service
)	
	)	Judgment delivered
	)	June 6, 2007

PRESTON, P.J. (Orally)

This is a matter where a publication ban arises on the names of the officers in the normal course of events.

I have before me, and this is in the matter of a section 13 review of a complaint to The Law Enforcement Review Act, where the Commissioner has made a decision that there is insufficient evidence to support a complaint.

I have before me a motion for leave to admit what is referred to as new evidence, and a motion for costs.

NOTE: For the purposes of distribution, personal information has been removed by the commissioner.

And this complaint, the LERA complaint, arises from a domestic incident, a domestic violence allegation from some years ago. The complainant alleges in her complaint that the officers that dealt with her had no reasonable and probable grounds to arrest her, and were discourteous to her. There was an investigation by the Commissioner in the usual course of events, and the Commissioner was sent Winnipeg Police Service particulars, and witness statements, and the officers were interviewed by the Commissioner.

At some point down the road, the complainant told the Commissioner that she had 911 tapes that she wanted the Commissioner to listen to, and told the Commissioner that she was going to bring them in. But she, unfortunately, did not do that.

So what happened was the Commissioner made a decision, based on the evidence he had before him, and without having ever heard the 911 tapes, and his decision was that there was insufficient evidence to support the complaint.

And now I have had the opportunity to hear the tapes, read the transcripts of those tapes, and these are a 911 call firstly made by the male involved in this incident.

Leaving aside the new information about the male that I think counsel, or Mr. Boudreau concedes is not evidence that is relevant to this complaint, in the sense that a letter saying that, from 2007, it is not part of what I am making my decision on.

I have read the transcript of the tapes, I have heard the tapes. The first 911 call made by the male is to the police. The second 911 call is the neighbours down the street calling the police. That evidence is relevant, and cogent, and material.

Section 12(2) of The Law Enforcement Review Act mandates disclosure by the police at the request of the

NOTE: For the purposes of distribution, personal information has been removed by the commissioner.

Commissioner, of relevant police information pertaining to the complaint and the file.

The onus is not on the complainant to obtain this evidence. Once the Commissioner became aware of the existence of the 911 tapes, those tapes could have been requested, and I am advised by counsel for the Winnipeg Police Service that if those 911 tapes were requested, that they would have been provided by the Winnipeg Police.

It would be helpful in these types of cases for 911 tapes to be forwarded as part of disclosure. 911 calls in domestic violence cases, emergent calls in general, are important pieces of the narrative.

Based on everything that I have heard, I will be granting the motion, and it is on the basis that I am not dealing with the merits of the complaint right now. I want to make that clear. But I do find that the Commissioner has erred in declining to take any further action by not first receiving the relevant 911 tapes.

So by way of section 13(3)(b) of The Law Enforcement Review Act, I am ordering that the complaint be sent back to the Commissioner, and of course, that the evidence, the 911 tapes be part of what the Commissioner takes a look at when this matter is referred back.

Now, the complainant has asked for costs.

MR. WEINSTEIN: If I can speak to that.

THE JUDGE: Yes, Mr. Weinstein.

MR. WEINSTEIN: There are no provisions in the Act for the awarding of costs.

THE JUDGE: All right. That's my decision. So again, thank you, counsel, for your help in this matter.

NOTE: For the purposes of distribution, personal information has been removed by the Commissioner.

NOTE: For the purposes of distribution, personal information has been removed by the commissioner.