



Information and Privacy
Commissioner/Ontario

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

ORDER M-200

Appeal M-9300233

Municipality of Metropolitan Toronto



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ORDER

On September 20, 1993, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and make orders under the provincial Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

The Municipality of Metropolitan Toronto (the Municipality) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for personal information relating to the requester compiled in the years 1966, 1967 and 1968 which is in the custody or control of the Municipality's Works Department. Specifically, the appellant sought access to records which substantiate his allegation that, upon discharge from the employ of the Municipality, he was promised "his old job back, a new job, re-training or some other form of support". Any records describing why he did not receive these benefits were also sought.

The Municipality granted access to the complete record with the exception of severances to two pages containing the personal information of other individuals.

The Municipality transferred part of the request to the Workers' Compensation Board (the Board) pursuant to section 18 of the Act as the Board had a greater interest in that part of the record. The Board granted full access to the records within the time frames set out in the Act.

The requester appealed the Municipality's decision to the Commissioner's office.

During mediation, the appellant expressed his belief that additional records relating to his discharge from employment with the Municipality should exist. Also in the course of mediation, the Appeals Officer attempted to determine if the appellant was interested in obtaining access to the personal information of other individuals which was withheld from disclosure pursuant to section 14 of the Act. A satisfactory response to this question was not given by the appellant. In my view, the appellant has not met his obligation to clarify the nature of his request despite being requested to do so. I am prepared, therefore, to deal only with the issue of the sufficiency of the search for records responsive to the request which was undertaken by the Municipality.

Mediation was not successful and notice that an inquiry was being conducted to review the Municipality's decision was sent to the appellant and the Municipality. Representations were received from the Municipality only.

The sole issue to be decided in this inquiry is whether the Municipality has conducted a reasonable search for responsive records as required by section 17 of the Act.

In its representations, the Municipality provided an affidavit from the Manager of Administrative Services of the Municipality's Works Department who is responsible for conducting searches within the Department for records responsive to requests under the Act.

In the affidavit, the Manager outlines the steps taken to search for records responsive to the request. She indicates that searches were conducted through the departmental docket and Workers' Compensation files, the Corporate Personnel file, and for inactive records stored at the Archives and Records Centre.

The Manager also states that no records were located which indicate that the appellant was promised his old job back, or another job. Records were, however, located which relate to an assessment of the appellant's ability to perform former or new duties. These records were subsequently disclosed to the appellant, along with other records which outline the training provided to the appellant.

Finally, the Manager indicates that the appellant had been employed with the Municipality for approximately 20 months when he suffered an injury. In her experience, as a Manager of Administrative Services with responsibility for departmental docket files, she believes that the records which were located were those which would normally be part of administrative employment history of this duration. The Manager also states that, during mediation, a further search for records was conducted through the departmental file and the inactive file and that no other responsive records were located.

Where a requester provides sufficient detail about the records which he or she is seeking and an institution indicates that additional records do not exist, it is my responsibility to ensure that the institution has made a reasonable search to identify the records which are responsive to the request. While the Act does not require that an institution prove to the degree of absolute certainty that such records do not exist, the search which the institution undertakes must be conducted by knowledgeable staff in locations where the records in question might reasonably be found.

After reviewing the descriptions of the records disclosed to the appellant contained in Appendices A and B of the Manager's affidavit, and considering the Municipality's representations regarding the extent of the search undertaken, I am satisfied that the search conducted by the Municipality was reasonable.

ORDER:

I uphold the Municipality's decision.

Original signed by: _____

Donald Hale
Inquiry Officer

_____ October 15, 1993