



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-226

Appeal M-9200468

Transit Windsor



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ORDER

Transit Windsor received the following request for personal information and general records under the Municipal Freedom of Information and Protection of Privacy Act, (the Act):

Description of your institution's record(s) giving rise to this request

During the month of August and in the year of 1991 this writer dispatched and did receive correspondence to and from the attention of your General Manager and Secretary-Treasurer on subject matters concerning Transit Windsor and to include my "... keen interest in labour relations ...".

Access request

I request to be provided with original copies of **all** such relevant records under your institution's custody and/or control in relation to these subject matters containing my "personal information" and other records of support inclusive.

Transit Windsor conducted a search for the requester's personal information, and responded that:

... a comprehensive search of our records has been completed. Our record search has failed in producing any information that relates to you in any way.

In addition, Transit Windsor indicated that its search for responsive records included a search for employment records and the requester's resume, and advised that such records are retained for only a four month period.

The requester appealed the decision on the basis that Transit Windsor had misinterpreted his request.

During mediation, the Appeals Officer contacted the Freedom of Information Co-ordinator at Transit Windsor and indicated that, based on discussions with the appellant, the request did not involve employment records. Rather, the request was concerned with a letter written by the appellant to the General Manager of Transit Windsor, and the General Manager's reply on the subject of labour relations. The Appeals Officer also clarified that the appellant wished to obtain the support documents relied upon by the General Manager in formulating his reply to the appellant's original query. As a result, the Appeals Officer asked the Co-ordinator to conduct a further search for records responsive to this request.

The Co-ordinator conducted a further search, and informed the Appeals Officer that he was unable to locate any responsive records. As noted later in this order, Transit Windsor did locate and disclose to the appellant, several responsive records. This occurred during the inquiry stage of this appeal.

The mediation of this appeal was not successful and notice that an Inquiry was being conducted was sent to the appellant and to Transit Windsor. Representations were received from both parties. The appellant indicated that he would like all previous correspondence provided by him to the Commissioner's office to be considered as part of his representations.

The sole issue in this appeal is whether Transit Windsor's search for responsive records was reasonable in the circumstances.

Section 17(1) of the Act states:

A person seeking access to a record shall make a request for access in writing to the institution that the person believes has custody or control of the record and shall provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record.

Section 17(2) of the Act goes on to provide that:

If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

In my view, where a requester has provided an institution such as Transit Windsor with sufficient details describing the record sought, section 17(1) of the Act imposes an obligation on the institution to make a reasonable effort to identify records responsive to the request. On appeal, the onus is on Transit Windsor to demonstrate that it has discharged this obligation. Therefore, in reviewing the decision of Transit Windsor, my responsibility is to ensure that the institution has made a reasonable effort to identify the records, as required under section 17(1). In my view, the Act does not require that Transit Windsor prove to the degree of absolute certainty that the requested records do not exist.

In his representations, the appellant indicates that he is not satisfied with the standard of "reasonableness" for determining whether the search conducted to locate responsive records has been adequate. My reliance on reasonableness as a standard is not arbitrary but rather is determined by the wording of section 17 of the Act which requires that "a reasonable effort" be made to identify responsive records. I am bound by the wording of the Act, and the standard of "reasonableness" is therefore the criterion against which any search to identify and locate records is measured.

With respect to its initial search, Transit Windsor submitted that:

... the search for records originated at the General Manager's office. The General

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Manager, and his Executive Assistant, conducted a thorough and exhaustive search of their respective files without success. Failure to locate any record of [the appellant] or his correspondence demanded a further search involving the Human Resources department. A thorough search of files and records within the Human Resources department revealed no records or files that related to [the appellant]. Files searched included general correspondence files, resume files and any files relating to general labour relations.

In its representations, Transit Windsor explained that its searches, for both original and support documents, were arduous because the:

... General Manager and the Executive Assistant to the General Manager, who were present at the time of the request, are no longer employed with Transit Windsor.

The institution indicated that, after receiving the Notice of Inquiry, it conducted a third extensive search during which responsive records were located. As a result of this search, access to the following records was granted to the appellant in full:

1. Letter from the appellant to Transit Windsor dated August 1, 1991.
2. Transit Windsor's reply to the appellant dated August 9, 1991, which identifies two statutes and a Transit Windsor resolution relevant to his query.
3. Copy of Transit Windsor's Resolution No. T.W. 122/79 referring to the incorporation of Windsor Chartabus Inc.

The appellant continues to maintain, however, that additional "records of support inclusive" must exist, including records containing his own personal information. In support of this claim, he refers to a letter dated August 11, 1992 written by Labour Canada to an unidentified person regarding the issue of the jurisdiction for labour relations purposes of Transit Windsor. However, the appellant does not indicate why this letter would be considered to be responsive to his request, nor does he indicate in what other area of Transit Windsor either his "personal information" or other information responsive to his request may be found.

Transit Windsor's search for responsive records is determined by the parameters set out in the wording of the request. In the circumstances of this appeal, the records which Transit Windsor has identified contain information which is fully responsive to the request. In my view, the appellant's request for "... records of support inclusive" limits the request to those records utilized by the General Manager in the formulation of his reply to the appellant on August 9, 1991. It is not a request for all records in the custody and control of Transit Windsor relating to the matter of this institution's labour relations jurisdiction.

In the circumstances of this appeal, the request was clarified through the process of mediation. In response, Transit Windsor conducted numerous searches and identified records which contain the information sought by the appellant. Where the records contained any responsive information, they were disclosed to the appellant.

I have reviewed the representations of Transit Windsor and the appellant. In my view, the searches conducted by Transit Windsor for additional responsive records were reasonable in the circumstances of this appeal.

ORDER:

I uphold the decision of Transit Windsor.

Original signed by: _____
Donald Hale
Inquiry Officer

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