



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-489**

**Appeal M-9400654**

**Regional Municipality of Ottawa-Carleton**



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## **NATURE OF THE APPEAL:**

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The requester filed a detailed request with the Regional Municipality of Ottawa-Carleton (the Region) in which he sought information about the Region's decision to enter into a severance agreement with one of its senior employees. The requester also submitted a second narrower request where he asked for the details of the actual severance package provided to the employee as well as the reasons underlying the individual's decision to leave his position.

The Region advised the requester that, in its view, portions of the first and second requests overlapped and that it would address these common elements in its response to the second request. The requester accepted this proposal.

The Region subsequently provided the requester with a copy of the final severance agreement as well as several records which explained why the employee had left the institution. The Region also advised the requester that it did not possess any records which were responsive to the other aspects of his requests.

The Region then provided the requester with 118 pages of additional documentation. The Region indicated that it had identified these records as being responsive to another access request relating to the same employment matter. Although the Region maintained that these documents were not specifically responsive to the requester's application, it decided to send them to him as a matter of courtesy.

The requester appealed the Region's decision to the Commissioner's office on the basis of his belief that further responsive records should exist. A Notice of Inquiry was provided to the appellant and the Region. Representations were received from both parties.

## **DISCUSSION:**

### **REASONABLENESS OF SEARCH**

The first issue which I must determine is whether the Region's search for responsive records was reasonable in the circumstances of the appeal.

In his representations, the appellant states that some of the records provided to him as a "courtesy" are in fact responsive to his request and ought to have been supplied to him at an earlier stage in the access process. In this respect, he has asked that the Commissioner's office obtain affidavits signed by two senior officials within the Region to provide assurances that additional responsive records do not exist.

Along with its representations, the Region has provided the Commissioner's office with an affidavit sworn by its Regional Solicitor. In this document, this official indicates that the institution's search for responsive records extended to six separate departments or offices within the institution. He further indicates that, as a result of these inquiries, a number of specific documents were located and that these records have already been released to the appellant and to other requesters. He also states that, with the exception of the two categories of documents referred to below, every record relating to the departure of the named employee is now in the public domain.

In his affidavit, the Regional Solicitor also indicates that the institution located two additional sets of documents which have not been publicly disclosed. These records consist of (1) correspondence of a confidential nature exchanged between the Region's Legal Department and counsel for the senior employee relating to the negotiation of the severance agreement and (2) notes taken by one of the Region's solicitors which describe how the severance agreement should be drafted. The Regional Solicitor indicates that these documents were not disclosed to the appellant because the Region concluded that they were not responsive to his request.

In addition, along with the records which the Region provided to the Commissioner's office, there is a letter dated August 18, 1994 from the Regional Solicitor to the Chief Administrative Officer. I have confirmed with the Regional Solicitor that this document, while originally identified by the institution, was inadvertently omitted from the affidavit.

I will first comment on the adequacy of the Region's search for responsive records. In situations where a requester provides sufficient details about the documents to which he is seeking access and a government organization indicates that documents of this nature cannot be found, it is my responsibility to ensure that the institution has made a reasonable search to identify any records which are responsive to the request. While the Act does not require that a government organization prove to the degree of absolute certainty that such records do not exist, it must provide sufficient evidence to show that it has made a reasonable effort to identify and locate records that are responsive to the request.

Following a careful review of the evidence, I am satisfied that the various searches conducted by the Region were reasonable in the circumstances of this appeal in that they identified all records which might potentially be responsive to the appellant's request.

The next question is how to treat the two categories of records which the Region identified but which it claims are not responsive to the appellant's first request as well as the August 18, 1994 memorandum. As indicated previously, the appellant's application was phrased in a detailed fashion and includes a request for records "including notes/memos kept by senior officials on any investigations on the advisability [of the employee's departure] ... and on a possible need for and actual severance agreement [for the named employee] ...". Based on the nature of this request, and not having personally reviewed all of the documents identified by the Region, I cannot say definitively whether or not these records are responsive to the appellant's request.

In this particular case, I believe that the most appropriate course would be for the Region to issue a supplementary decision letter to the appellant where it (1) generally describes the records which it has located but not released to him, (2) indicates why it considers that all or parts of these documents are not responsive to his requests and (3) in the alternative sets out the exemptions which it would apply to withhold these records or parts thereof from disclosure.

With this information in hand, the appellant can then decide whether he wishes to obtain access to these records. Should the appellant decide to file an appeal respecting the Region's decision, and in light of the connection between such an application and the present appeal, the Commissioner's office would process the matter as expeditiously as possible.

**ORDER:**

1. I uphold the adequacy of the Region's search for records which could potentially respond to the appellant's request.
2. I order the Region to provide the appellant with a supplementary decision letter respecting the documents which it has located but which it has not released to him in accordance with sections 19 and 22 of the Act within 21 days of the date of this order. The decision letter must (a) generally describe these records, (b) indicate why the Region considers that all or parts of these records are not responsive to the appellant's requests and (c) in the alternative set out the specific provision(s) of the Act which the Region would apply to withhold these records or parts thereof from disclosure.
3. In order to verify compliance with this order, I reserve the right to require that the Region provide me with a copy of the supplementary decision letter which it provides to the appellant pursuant to Provision 2 of this order.

Original signed by: \_\_\_\_\_  
Irwin Glasberg  
Assistant Commissioner

\_\_\_\_\_ March 14, 1995