



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

ORDER M-644

Appeal M_9500431

London Hydro



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NATURE OF THE APPEAL:

London Hydro received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to information relating to the appellant's employment with London Hydro. In particular, access was sought to information relating to the appellant's ineligibility for permanent full-time employment with London Hydro, his familial relationships and background, job competitions in which he was involved, his Human Resources file and London Hydro's internal policies relating to hiring.

London Hydro granted the appellant access to the records it identified as responsive to the request. The appellant appealed this decision on the basis that additional responsive records exist.

Specifically, the appellant believes that records exist relating to his alleged familial relationship to another individual employed by London Hydro. The appellant believes that such a record(s) must exist as he was found ineligible for permanent employment with London Hydro based on the alleged familial relationship. Some background information may be useful to add context to this appeal.

Article 30 of London Hydro's collective agreement reads "[t]he management shall not hire persons on the permanent staff who are related by blood or marriage to existing employees." The appellant was employed on a temporary basis by London Hydro, from time to time, for many years and during that time, applied for various permanent positions. Under Article 5.01, if no permanent employee applies for a position, temporary employees are given consideration for permanent employment. In response to his most recent application for a permanent position, the appellant was notified by London Hydro that he was ineligible for the position applied for as he was related by marriage to an existing employee. Thus, the appellant sought access to information relating to the alleged familial relationship between himself and an unidentified current employee.

The sole issue to be determined in this appeal is whether London Hydro's search for records responsive to the appellant's request was reasonable in the circumstances.

A Notice of Inquiry was provided to the appellant's representative and London Hydro. In this order, reference to the appellant will connote reference to the representative. Representations were received from both parties.

PRELIMINARY MATTER

SCOPE OF THE REQUEST

During the course of mediation, the appellant narrowed the scope of the request to records relating to the appellant's alleged familial relationship to an unidentified person employed by London Hydro. The appellant confirmed the above in writing on August 3, 1995. The Notice of Inquiry, provided to both parties, also noted the narrowed scope of the appeal.

The appellant's representations appear to indicate that he is now seeking access to all of the records **originally** requested.

In Order P-931, former Assistant Commissioner Irwin Glasberg addressed a similar issue and stated:

Previous orders have held that the Commissioner's office has the power to control the manner in which the appeals process is undertaken. As part of this general authority, this tribunal's policy is that, once an appellant has narrowed the ambit of an appeal, he or she cannot reintroduce the excluded information at a later date.

This approach has been adopted for a number of reasons. First, absent such a policy, there would be no certainty as to the scope of an appeal. Second, unless the exact nature of the records at issue is known at an early stage in the proceedings, it will not be possible to successfully mediate the appeal under section 51 of the Act [the equivalent of section 40 of the Municipal Act]. Finally, the issue identification and notification functions performed by the Commissioner's office could not be conducted effectively unless the records in question are accurately identified.

I have carefully reflected on the appellant's application. While I appreciate his reasons for wishing to address all of his access-related issues in the context of the present appeals, I believe that it would be unfair to expand the scope of these proceedings at this late stage in the process. In making this determination, I am also mindful of the fact that the appellant would be entitled to make a further access request to the Ministry for the specific information that he is seeking....

The result, therefore, is that I will not consider Part A of the two requests in the context of the present appeals.

I agree with former Assistant Commissioner Glasberg's approach and reasoning and adopt them for the purposes of this appeal. For the reasons articulated above, I am not prepared to expand the scope of the request to its original extent. In this order, I will only consider the issues as they apply to the existence of records relating to the alleged familial relationship between the appellant and another London Hydro employee.

DISCUSSION:

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records which he or she is seeking and London Hydro indicates that such a record does not exist, it is my responsibility to ensure that London Hydro has made a reasonable search to identify any records which are responsive to the request. The Act does not require London Hydro to prove with absolute certainty that the requested record does not exist. However, in my view, in order to properly discharge its obligations under the Act, London Hydro must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request.

In response to the Notice of Inquiry, London Hydro provided an affidavit sworn by the General Manager of the Hydro Electric Commission of the City of London. The affidavit describes the types of records disclosed to the appellant in response to an initial request and lists the five staff members who conducted searches for responsive records. The General Manager states that a sixth staff member conducted a subsequent search, and all information responsive to the current request in the possession of London Hydro was provided to the appellant. Finally, he states that there are no records, other than the records already disclosed, which relate to the familial relationship of the appellant.

The appellant, a former temporary employee of London Hydro, points out that he was found to be ineligible for permanent, full-time employment because of an alleged familial relationship to another employee of London Hydro, under Article 30 of the collective agreement. The appellant submits that, considering the seriousness of this decision with all of its implications, records forming the basis for this decision should exist. The appellant states that during the whole period of his temporary employment with London Hydro and the various other permanent positions that he applied for, there had never been any reference to such an allegation.

I agree with the appellant that in an employment situation such as this, it is reasonable to expect documentation to exist which would first, establish a familial relationship and second, reflect the decision making process which found the employee ineligible for permanent full-time employment.

As I stated earlier, London Hydro is required to establish that it has conducted a **reasonable** search for records which respond to the request. London Hydro has provided me with the names of the individuals who searched for responsive records. It has, however, provided me with no **details** of the searches such as the places searched, who was contacted in the course of the searches, the types of files searched and finally the results of each search. I note also that there is no reference to any files searched or individuals contacted with respect to the possible investigation and verification of the allegation.

Based on the representations of the parties, I am not satisfied that London Hydro has conducted a reasonable search for responsive records.

ORDER:

1. I do not uphold the decision of London Hydro.
2. I order London Hydro to conduct a further search for responsive records and to notify the appellant of the results within twenty (20) days of the date of this order.
3. If, as a result of this further search, London Hydro identifies any records responsive to the request, I order London Hydro to provide a decision letter regarding access to these records to the appellant in accordance with sections 19 and 22 of the Act, considering the date of this order as the date of the request and without recourse to a time extension.

4. In order to verify compliance with this order, I order London Hydro to provide me with a copy of the letter referred to in Provisions 2 and 3 within thirty (30) days of the date of this order. This copy should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____

Mumtaz Jiwan
Inquiry Officer

November 10, 1995