



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

# **ORDER M-895**

**Appeal M\_9600343**

**Municipality of Metropolitan Toronto**



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## **NATURE OF THE APPEAL:**

The City of Toronto received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to a detailed history of certain repairs which were undertaken on a specified building owned by the Metropolitan Toronto Housing Company Ltd. (MTHC). The City of Toronto transferred the request to the Municipality of Metropolitan Toronto (the Municipality). The Municipality granted the requester partial access to various documents but denied access to the contractor's submission, including the unit prices, relying on the third party information exemption contained in section 10(1)(a) of the Act.

The requester (now the appellant) appealed the Municipality's decision. During the course of mediation, the appellant clarified that he was not seeking the unit prices but was seeking the "quantity measurements related to drops 1, 2, 5, 6, 10 & 11" in relation to the construction project. The appellant provided this office with a form illustrating what he was seeking, with the quantity measurement amounts deleted.

The Municipality advised the Appeals Officer that it has available a form similar to the one provided by the appellant which contains the **total** quantities, but not the quantities broken down by specific drops as requested by the appellant. The Appeals Officer was advised that the only document which contained a breakdown of the quantity measurements by drops were invoices submitted to the Municipality by the contractor. Once these invoices were located, the Municipality agreed to provide a copy of them to the appellant.

Upon receiving the invoices, the appellant advised the Appeals Officer that he was not seeking access to the quantity measurements as reflected on them. Rather, he required only the information described on the exact form which he had provided at the outset of the appeal. As this matter has not been resolved to the appellant's satisfaction, it was moved to inquiry. A Notice of Inquiry was provided to the appellant and the Municipality and representations were received from both parties.

## **DISCUSSION:**

### **REASONABLENESS OF SEARCH**

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

The Municipality submits that, in an effort to locate the requested record, it contacted the Program Analysis and Review Engineer of the Maintenance and Technical Services Unit (the Unit) of MTHC. The Municipality states that this Unit is responsible for maintaining the types of records at issue and that the Engineer contacted is knowledgeable in these matters. The

Engineer advised that the quantity measurements related to specific drops would only be contained on the invoices supplied by the contractor.

As noted above, copies of the invoices were provided to the appellant, who advised that he was only seeking the quantity measurements for specific drops on the form which he had provided. The Municipality once again contacted the Maintenance and Technical Services Unit to conduct a further search for any such record. The Engineer of the Unit advised that the Municipality does not create, maintain or require the contractor or the engineering consulting firm to supply it with a copy of this record. The Municipality attached to their representations a letter from the Engineer stating the MTHC only requires that the "consulting engineer, hired to inspect the project, verify the quantities the contractor claims per invoice".

In his representations, the appellant has provided me with another copy of the document which he originally forwarded to this office stating that this is the specific document which he requires. The appellant has not however provided me with any submissions outlining why he feels the Municipality should have a copy of that specific document.

Based on my review of the representations which I have received, I find that the Municipality has made a reasonable effort to identify and locate the responsive record and that the search which it undertook was reasonable in the circumstances of this appeal.

**ORDER:**

I uphold the Municipality's decision and dismiss the appeal.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_ February 5, 1997