



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

## **ORDER MO-1419**

Appeal MA\_990240\_2

City of Toronto



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## **BACKGROUND AND NATURE OF THE APPEAL:**

The appellant submitted a request to the City of Toronto (the City) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for all documentation of any staff or consultants regarding the job descriptions for Council Staff Members, including the positions of Executive Assistant, Constituency Assistant and Councillor's Assistant.

The City denied access to the records it identified as responsive to the request, in their entirety, claiming the exemptions found in sections 52(3)2 and 52(3)3 of the *Act*.

The appellant appealed the City's decision and Appeal MA-990240-1 was opened. During the course of mediation, the City disclosed a number of records to the appellant. Including duplicates, this removed approximately 110 pages from the records at issue.

At inquiry, the Assistant Commissioner determined in Order MO-1307 that section 52(3) of the *Act* is not applicable in the circumstances of this case and that the records at issue are subject to the provisions of the *Act*. The Assistant Commissioner ordered the City to issue an access decision in accordance with the provisions of sections 19, 21 and 22 of the *Act*.

The City issued a decision in accordance with Order MO-1307. The City denied access to the records in their entirety, applying the exemptions found in sections 7, 11(f), 11(g), 12 and 14 of the *Act* to deny access.

The appellant appealed this decision and Appeal MA-990240-2 (the current appeal) was opened.

During the course of mediation, the City disclosed additional records to the appellant. As well, the appellant confirmed that she is only seeking access to records which relate to the Executive Assistant position. As a result, additional records were removed from the scope of the appeal.

The appellant subsequently narrowed the scope of the request further to a compensation evaluation for the Executive Assistant position. The appellant believed that this document was created prior to the combining of the Executive Assistant and Constituency Assistant positions to form the Councillor's Assistant position. The time frame for which she is seeking records is from November 1998 to May 1999. The appellant indicated that the record should contain a list of Executive Assistant functions with assigned points, along with a salary range. The appellant is also seeking access to any records which relate to the compensation evaluation document, within the time frame mentioned above. She believed that all of these documents should have been prepared by Human Resources staff. In particular, the appellant suggested that the Executive Director of the Human Resources department would have knowledge of the existence of a file that would contain the information responsive to her narrowed request. The City confirmed that the Executive Director would be the individual most likely to be knowledgeable about such a file and the steps taken to search for it.

Based on the results of an additional search for these records by the City and the Mediator's conversation with the appellant, the exemptions claimed by the City are no longer an issue in this appeal. The sole remaining issue in this appeal is reasonableness of search.

I sent a Notice of Inquiry to the City, initially. The City provided representations in response which I then sent, in their entirety, to the appellant along with the Notice of Inquiry. The appellant also provided representations.

## **DISCUSSION:**

### **REASONABLE SEARCH**

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

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in the City's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records may, in fact, exist.

The City's representations on this issue are in the form of an affidavit sworn by the Executive Director of Human Resources (the EDHR). She explains the circumstances surrounding the events which led to the creation of records responsive to the appellant's request:

During 1998 and 1999, my staff in the Human Resources Division conducted a review of the job descriptions for Council staff members, including the Executive Assistant and Constituency Assistant positions. During this review, salary ranges were discussed. However, a formal factor-by-factor job evaluation analysis was not undertaken for the two positions.

... Senior Human Resources Consultants, Compensation and Benefits reviewed the positions against the benchmarks and the level of work model developed by [named] Management Consultants.... were of the opinion that the salary range for the Executive Assistant and Constituency Assistant positions should be at the Analyst Level (4/5) in the Administrative Job Family.

[Named] Management Consultants were subsequently retained to conduct salary surveys and to make recommendations with respect to the salary of the two positions. The Consultants did not perform a job evaluation of the positions but determined that the salary should be approximately in the same range.

The EDHR indicates that upon receipt of the appellant's request, she directed the Senior Human Resources consultant who was the contact person for the incumbents of the various Council staff positions and who was also responsible for finalizing the job descriptions (the consultant) to conduct a search for responsive records.

The EDHR states that the consultant searched through her own files, those of another Human Resources staff member as well as those of the EDHR. In addition, according to the EDHR, the

consultant reviewed the files of a number of City staff, including: the Director, Human Resources, Employment Services; the Director, Human Resources, Community and Neighbourhood Services; the Manager, Human Resources, Corporate Services; the Manager, Human Resources, Compensation and Benefits and the Director, Clerk's, Council and Support Services.

The EDHR indicates that most of the 295 pages of responsive records were located in the consultant's files and that the search conducted through the other staff files produced only limited or no responsive records.

The EDHR indicates that because a formal factor-by-factor evaluation of the salary range for the Executive Assistant position was never undertaken, no such document as described by the appellant was created or included in the 295 pages of records located during the original search.

Following the initiation of the appellant's appeal, the consultant conducted a further search of her files for records that would be responsive to the appellant's narrowed request. However, she did not find any compensation evaluation document or any records relating to such a document.

The EDHR indicates that records of the nature of those which are at issue in this appeal are generally retained in the Human Resources office for two to three years and are then forwarded to Central Records for inactive storage. She confirms, however, that no files relating to this appeal have been destroyed or sent to Central Records.

The appellant believes that the City is being untruthful about the existence of the records that she is seeking. She believes that, even if a formal factor-by-factor job evaluation analysis was not undertaken, there must, at least, have been a written informal analysis.

The appellant also explains why she believes that such an analysis was done. However, she has requested that I not make this information public.

Finally, the appellant indicates that she requested that the actual staff involved in the compensation review of the Executive Assistant position description be asked to swear the affidavit. She believes further that the City's subterfuge regarding this issue was directed by the EDHR. She states that the EDHR is no longer with the City and she expects that staff would now be more willing to respond differently.

I am satisfied that the search for responsive records was conducted by the appropriate staff as this individual was the most directly involved in the matter. Further, contrary to the appellant's assertion that she requested the staff involved in the compensation review provide affidavits, her discussions with this office identified the EDHR as the appropriate person. This information was confirmed by the City. Based on the information contained in the affidavit, I am satisfied that it accurately and adequately reflects the actions taken by the Human Resources department.

The appellant makes a number of critical allegations against the EDHR and suggests that since she has left, staff would respond more openly and accurately to her request, and thus identify that responsive records do, in fact, exist. However, the appellant has provided no evidence to substantiate her claim, even when her undisclosed submissions are considered. Further, the

conclusion that could be drawn from her confidential submissions are entirely consistent with the explanation provided by the EDHR.

As a result, I am satisfied that it is likely that no records of the nature requested by the appellant exist. Further, even if it were possible that such documentation might exist, I am satisfied that the City has searched in locations where it could reasonably expect such records to be found and that the search was conducted by, not only an experienced employee, but the employee most knowledgeable of the circumstances under which records relating to this matter would have been created. Accordingly, I am satisfied that the City's search for responsive records was reasonable in the circumstances, and this appeal is dismissed.

**ORDER:**

This appeal is dismissed.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Adjudicator

\_\_\_\_\_ April 17, 2001