



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

ORDER MO-1440

Appeal MA_010014_1

City of Ottawa



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The appellants submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the City of Ottawa (the City) for any documents containing information relating to themselves and their children.

The City granted access to all records contained in the appellants' joint Social Services file which it identified as responsive to the request.

The appellants appealed the City's decision on the basis that additional records should exist beyond those located by the City. During the mediation stage of the appeal, the City conducted a further search for records and located several further documents.

At the request of the Mediator assigned to this appeal, the appellant provided the City with a written explanation as to his reasons for believing that additional records should exist. Specifically, the appellant is seeking access to a letter dated December 16, 1999 which he sent to the City by Registered Mail and to any correspondence passing between the Children's Aid Society of Ottawa-Carleton (CASOC) and the City or any of its agencies regarding the appellants' children. The City responded by advising that the letter dated December 16, 1999 could not be located and that no correspondence exists between the City and the CASOC relating to the appellants or their children.

The appellant indicated to the Mediator that he wished to continue with his appeal, believing that additional records should exist in the City's record-holdings. I initially provided a Notice of Inquiry to the City requesting that it address the issues described below. The City conducted a further search for responsive records in which it located and disclosed in its entirety the contents of another file from 1996 relating to one of the appellants. The City made representations and consented to their disclosure to the appellant, in their entirety. In response to the Notice of Inquiry which I provided to them, the appellants also made representations.

DISCUSSION:

REASONABLENESS OF SEARCH

In appeals where an appellant believes that additional records exist, as is the case in this appeal, the sole issue to be decided is whether the City has conducted a reasonable search for the records as required by section 17 of the *Act*. If I am satisfied that the search carried out was reasonable in the circumstances, the decision of the City will be upheld. If I am not satisfied, further searches may be ordered.

Where a requester provides sufficient detail about the records which he/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 exist.

The City's Representations

The City has provided me with a detailed explanation as to how its record-holdings are maintained along with details as to the nature and extent of the searches which it undertook to locate records responsive to the appellants' request. The City indicates that the appellants were provided with the entire contents of their joint Social Services file in December 2000, following the receipt of the request. A search of the City's Eligibility Review Office indicated that it did not maintain a file on either of the appellants.

A second search was conducted by the City in March 2001, during the mediation stage of the appeal. This search involved the cross-referencing of the appellants' file with the information disclosed in December 2000. An additional eight records were located and disclosed to the appellants on March 20, 2001. A further search was undertaken by the City following its receipt of the Notice of Inquiry. This search successfully located a second central file dating from 1996 involving one of the appellants. The contents of this file were disclosed to the appellants in its entirety on May 14, 2001.

The City also provided me with an explanation as to its inability to locate a copy of a letter sent by registered mail by the appellants to the City in December 1999. The City indicates that it located the envelope which contained the letter but that the letter itself has been misplaced. This letter had been received by the City's Regional Clerk's Department and was forwarded to its Legal Department. In an effort to locate the letter, searches were also conducted in four general legal files which could potentially contain information which the Legal Department would receive from the Social Services Department. These searches were unsuccessful in locating the requested letter.

In addition, the appellants were advised in March 2001 that the City does not have any correspondence with the CASOC which relates to them, contrary to the assertions made by the appellants.

The Appellants' Representations

The appellants are understandably reluctant to concede that the City has located all of the records which are responsive to their request. They point out that each time a search is undertaken by the City, additional records are uncovered. The appellants also question whether the searches were conducted by the most appropriate persons and argue that the City does not appear to have contacted various staff persons who may have knowledge of the location of records relating to them.

The appellants also are of the view that the City has not conducted a complete and thorough search for a letter which they sent to it by registered mail in December 1999 and that additional records related to an allegation of fraud made against them have not been disclosed. Finally, the appellants suggest that additional electronic and "general" records should exist, along with records relating to any discipline proceedings undertaken by the City in response to various complaints they have raised about City staff and records describing contact between the City's Social Services Department and the CASOC.

The appellants conclude their arguments by suggesting that until such time as searches are undertaken by the appropriate City staff, it would be premature for me to make a determination as to the propriety of the searches completed to date by the City.

Findings

The City has described in considerable detail the nature and extent of the searches which it has undertaken for records responsive to the appellants' request. The appellants' file with the Social Services Department was searched a total of four times. The City also attempted to contact two Supervisors with the Department in an effort to ascertain whether additional records beyond those contained in the appellants' file might exist.

The City also describes the efforts which it has made in locating the December 16, 1999 letter sent by the appellants to the City by registered mail. Again, the City has been unable to locate the letter despite the fact that searches were conducted in both its Social Services and Legal Departments. The City also indicates that no records relating to contacts between the City and the CASOC with respect to the appellants exists. The City also relates how the 1996 file involving one of the appellants came to be first overlooked and then located during the course of its searches.

In my view, the City has provided me with sufficient evidence to demonstrate that it has conducted a reasonable search for records responsive to the appellants' request. While it is unfortunate that the City did not locate all of the responsive records when it first conducted its search in December 2000, I find that the steps which it has taken since the initiation of this appeal to retrieve all of the responsive information have been reasonable in the circumstances.

I can see no viable reason to delay the determination of this issue until such time as the City is able to contact all of the individuals, many of whom are no longer employed by the City, who may have come into contact with the appellants. In my view, I am satisfied that the City has expended a reasonable effort to locate and identify all records which it maintains with respect to the appellants and that nothing further would be gained by requiring that it attempt to contact other staff, current or past, to seek their assurances that no additional records exist.

ORDER:

I find that the City has conducted a reasonable search for responsive records and dismiss the appeal.

Original Signed By: _____ June 18, 2001
Donald Hale
Adjudicator