



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1566

Appeal MA-020079-1

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/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The City of Ottawa (the City) received a request pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the Act) for the following:

A report from the City of Ottawa financial information system which provides a summary of all costs (organized by a chart of accounts) incurred by the city to establish and enforce the two city bylaws banning smoking in public places and workplaces during the period January 2, 2000 to date.

In response to the request, the City created a four-page memorandum that included detailed information concerning the City's Public Health Department and its mandated objectives. The memorandum outlined various financial information relating to the amount of money spent on tobacco control programming, smoke-free bylaw activities prior to the passage of Ottawa's smoke-free bylaws, as well as information relating to the funding for by-law implementation, broken down by specific time periods. The memorandum also included financial information relating to certain legal costs incurred by the City during 2001. Finally, the memorandum contained a summary of the total cost for the City's smoke-free by-laws for the time period of January 1, 2000 – December 31, 2001, specifying that at the time of this report, no financial data was available for the time period of January 1, 2002 – January 22, 2002 (the date of the request).

The requester (now the appellant), appealed the City's decision stating that it had failed to "provide information organized by chart of the accounts" and that "key data" was missing, such as training costs and capital costs, as well as financial information relating to consulting services, staffing, advertising, claims for personal expenses for the Chief Medical Officer, certain legal costs and the cost of prosecuting tickets issued under the smoke-free by-law.

In addition to the information outlined above, the appellant, in his letter of appeal, also requested that the City respond to or supply information relating to eight additional points, which appeared to fall outside the scope of the appellant's original request. During the intake stage of the appeal process, however, the Intake Analyst confirmed with the appellant that this would not be addressed as part of this appeal and that he may submit a new request to the City, if he wishes.

This office provided the appellant and the City with a Notice of Inquiry informing them that an oral inquiry will be held to determine whether the City conducted a reasonable search for records responsive to the request. The inquiry was conducted via teleconference. Present were the appellant, together with an assistant, as well as certain staff from the City's MFIPPA Core Office, Public Health Branch and Legal Services Branch.

At the commencement of the inquiry, it was confirmed that the City e-mailed additional information responsive to the request to the appellant that morning. The appellant indicated that he had not yet had an opportunity to review the material and was unable to access a certain file attached to the e-mail. The City agreed to fax the additional material to the appellant by the end of the day and the parties agreed to adjourn the inquiry for a period of one week so that the appellant could review the additional information. The inquiry was later adjourned one more time at the request of the parties.

When the inquiry resumed, again via teleconference, the appellant was present, together with two assistants, and the City was again represented by staff from the City's MFIPPA Core Office, the Public Health Branch and the Legal Department. Both the appellant and the City provided oral representations.

DISCUSSION:

Introduction

Where a requester provides sufficient details about the records that he or she is seeking, and the institution indicates that records do not exist, it is my responsibility to ensure that the institution has made a reasonable search to identify all responsive records. The *Act* does not require the institution to prove with absolute certainty that records do not exist, however, in order to properly discharge its statutory obligations, the institution must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.

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

As indicated above, the appellant believes that further records responsive to his request should exist. At the outset of the inquiry, however, the appellant confirmed that the scope of the appeal was limited to the following:

- The cost of the presentations delivered by the Medical Officer of Health and his staff in relation to the smoke free by-law;
- Costs to the Legal Department to establish the smoke free by-law; and
- Capital costs relating to the establishment and ongoing enforcement of the smoke free by-law.

Representations

During the inquiry, the appellant explained that with respect to the records relating to the presentations delivered by the Medical Officer of Health and his staff, he is seeking expenses incurred by the Health Department in the carrying out of these duties.

With respect to legal costs, the appellant submitted that the legal costs outlined by the City represent only the portion that was paid to a named law firm and did not provide the costs to the City relating to the work of its in-house lawyers.

With respect to capital costs, the appellant submitted that the City had not provided information relating to ongoing equipment costs, only new equipment costs.

The City, in response, provided the following representations.

The cost of the presentations delivered by the Medical Officer of Health and his staff in relation to the smoke free bylaw

The Healthy Living Project Officer from the Tobacco Prevention section of the City's Public Health Branch submitted that the costs of presentations delivered by the Medical Officer of Health and his staff in relation to the City's smoke free by-law was not information that the City could identify in a specific record and, therefore, not included as an item in the City's response to the appellant. The City explained that the Medical Officer of Health personally reviewed the expense lists for the time period of January 1, 2000 – January 22, 2002 and that none of these expenses related to the smoke free by-law.

The City further explained that it does not keep a separate budget for each by-law. For example, the City's Tobacco Program has a budget, but not all expenses in that budget relate to the smoke free by-law, and include other mandated activities. City staff submitted that the Medical Officer of Health's budget encompasses his job as a whole and is not broken down. This budget was not provided to the appellant, as there were no specified expenses relating to the smoke free by-law.

Costs to the Legal Department to establish the smoke free bylaw

In terms of the search for responsive records relating to costs incurred for work relating to the establishment of the smoke free by-law by in-house legal staff, legal counsel stated that there was no new information other than what was previously provided to the appellant that can be summarized as follows.

External Legal Costs

The City submitted that the former City of Ottawa or the Regional Municipality of Ottawa-Carleton incurred no external legal fees for the year 2000. No responsive records were found for any other formerly existing municipality for the year 2000. For the year 2001, the external legal fees for the (new) City of Ottawa amounted to \$167,861.50 and for the months of January to February 18, 2002, the external legal fees amounted to \$15,967.07. However, the City updated the external legal costs for 2002 for the appellant to include information to the end of April 2002 increasing the figure to \$71,978.09. The City noted that this figure represents legal costs incurred beyond the date of the request.

In-house Legal Costs

With respect to the in-house legal costs, the City explained that for the year 2000, in-house legal counsel at the Regional Municipality of Ottawa-Carleton had a time reporting system in place to track legal services provided to various departments within the Region. However, this system did not capture time spent specifically on the legal issues relating to the creation of the smoke free by-law. In-house counsel at the former City of Ottawa did not have a time reporting system in place for 2000. No other formerly existing municipality had in-house legal counsel.

Therefore, the City explained that there are no responsive records with respect to this portion of the request.

The time reporting system used in 2001 at the new City of Ottawa also tracked legal services provided to various departments within the City, however, it did not track time spent specifically on the smoke free by-law. Therefore, according to the City, it is not possible to determine the amount of in-house counsel time spent on the subject, nor the internal costs related to in-house legal services. In 2002, one in-house counsel at the City dealt with the smoke free by-law on a regular basis. Time reporting records for this lawyer specifically reflect time spent on the smoke-free by-law. These records show that the internal costs for in-house counsel related to the smoke free by-law from January 1, 2002 to January 22, 2002 amount to approximately \$1,155.31. This figure does not include "overhead" costs related to the management of the City's Legal Services Branch and that such costs are tied to all services provided by Legal Services to the City of Ottawa.

Capital costs relating to the establishment and ongoing enforcement of the smoke free by-law

The City explained that as a result of its search, the only records that specifically responded to this part of the request were related to vehicles.

The City's Healthy Living Project Officer stated that vehicles are part of the by-law services fleet. The City stated that records are not kept per by-law, but for by-law enforcement in general. According to the City, there is a monthly maintenance fee for each vehicle that includes mileage, gas, etc. The City explained that there was a one-time rental fee of \$5,245.00 that was incurred at the time that the smoke free by-law took effect, at the beginning of August 2001, for a period of two months due to a shortage of operable cars. The City further explained that it was back to its normal fleet from October 2001.

In response, the appellant raised a concern that the Healthy Living Project Officer, who had provided the evidence related to capital costs, was from the Public Health Branch and asked how she ascertained all capital costs relating to the establishment and ongoing enforcement of the smoke free by-law. The City responded that there was a broad-based consultation for records responsive to this part of the request across the corporation and that the City's evidence, with respect to this part of the request covered all departments including by-law services and legal services.

Post-Inquiry Issues Raised by the Appellant

Subsequent to the inquiry, the appellant provided additional information and submitted a number of articles from the *Ottawa Sun* raising two issues.

First, the appellant was concerned that the media reported legal costs incurred as a result of work on the smoke free by-law as \$300,000.00 and noted that this figure was different from the approximately \$250,000.00 figure provided by the City at the inquiry. The second issue related

to the cost to the City for a “personal bodyguard” for the Medical Officer of Health, as reported in the newspaper articles.

I subsequently sent the City a copy of the articles and provided it with an opportunity to respond to the above.

The City, in its response to the appellant’s first concern, explained that the discrepancy between the two figures was attributed to the fact that the 2002 figure provided to the appellant at the time of the inquiry was reflective of the information available at the time, which was to the end of April 2002, and the \$300,000.00 figures incorporated legal costs incurred since that time.

With respect to the appellant’s second concern, the City explained that security was present at the smoke free by-law related meetings, as is the case routinely for certain City business. The Medical Officer of Health was escorted around the building at these times, which was at no extra cost to the City as existing security services were utilized. The City pointed out that since September 11, 2001 security has been increased in all municipal buildings.

In my view, the appellant’s second issue, relating to a “personal bodyguard” for the Medical Officer of Health, falls outside of the scope of the appeal, as narrowed by the appellant during the oral inquiry. The appellant may, however, submit a new request to the City for records relating to this issue, if he wishes.

Conclusion:

I have carefully considered all of the representations provided by the parties. In my view, the appellant has not provided a reasonable basis for concluding that additional records might exist. Although, as outlined above, the appellant questioned the existence of certain additional records on a number of different occasions, each time, the City addressed the appellant’s concerns by providing him with additional information, as well as detailed explanations as to why certain records do not exist. Moreover, based on the material before me, I am satisfied that the searches conducted by the City were conducted by experienced, knowledgeable individuals and that all reasonable steps have been taken to respond to the appellant’s request.

On this basis, I find that the City’s search for responsive records was reasonable in the circumstances.

ORDER:

I find that the City’s search for records was reasonable and I dismiss the appeal.

Original signed by:
Giselle Basanta
Acting-Adjudicator

September 3, 2002