



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

ORDER MO-1844

Appeal MA-030086-2

City of Toronto



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NATURE OF THE APPEAL:

The City of Toronto (the City) received an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act). The requester (now the appellant) asked for information concerning his neighbour's dog. Specifically, the appellant requested:

A complete copy of [identified person and address] dog records for attackings, chargings and barkings to strangers [pursuant to complaints].

In his request the appellant cited two known complaints about the dog, one that he filed on June 24, 1997 and an earlier one by a letter carrier. He stated that the dog in question had been put to death by its owner.

The City issued a decision letter in which it confirmed that the appellant had clarified his request to include all records on file pertaining to the dog as well as information regarding the date of death of the animal. The City denied access to records stating that no responsive records exist. The City indicated that a thorough search had been conducted, including a search of archival records, by the Toronto Public Health Animal Control Service.

The appellant appealed the City's decision. In his letter of appeal, the appellant stated that the dog had been deliberately euthanized on November 26, 2002 to destroy the evidence of its attacking records.

During the mediation stage of the appeal, the appellant provided this office with a letter explaining why he believed records exist. In his letter the appellant stated that he had visited a Toronto Animal Control Services office and met with a named Animal Control Officer who displayed relevant records on his computer screen. The mediator passed this information on to the City. With this information, the City was able to identify and print the information from the computer activity screen. The City also indicated that it wanted to conduct additional searches of their archives.

The City conducted additional searches for records. Subsequently, the City issued a revised decision letter identifying records responsive to the request and granting partial access. The only portion of the records to which access was denied was the telephone numbers of his neighbour, the dog owner. In denying access to severed portions of the records, the City relied on section 14 of the Act (personal privacy) claiming that disclosure of this information would constitute an unjustified invasion of this individual's privacy.

No further issues could be resolved during mediation.

The appellant confirmed that he received the City's decision but that he was not satisfied with the information disclosed. In a letter to this office, the appellant states that although he received copies of the dog's records, it did not include the records he sought. The reasonableness of the City's search for responsive records is therefore an issue in this appeal.

The responsive records located by the City are comprised of printouts of computer generated database documents and activity screens related to the appellant and his neighbour's dog. The

severed portions of ten pages of records withheld pursuant to the exemption at section 14 of the *Act* remained at issue at the conclusion of mediation. These severed portions consist solely of telephone numbers for the appellant's neighbour.

To begin the adjudication stage of this appeal, this office sent a Notice of Inquiry to the City inviting representations on the issues of the section 14 exemption claim and the reasonableness of the City's search for responsive records.

Representations on both these issues were received from the City. The non-confidential portions of these representations were shared with the appellant, who addressed both these issues in replying to the City's representations.

In his representations, the appellant stated, "I am not interested in the information for telephone, address.....of the dog's former owner...."

He also stated, "I have received 10 pages of the dog's records... . I am not interested in the information about the dog's former owner that is said to have been severed from pages 1, 4, 5, 8 and 9...." The information referred to is telephone numbers for the appellant's neighbour.

As the only information severed from the records provided to the appellant is information in which he has stated he is not interested, it is not necessary to determine whether this information is exempt under section 14. Access to the telephone numbers is no longer in issue in this appeal.

Therefore, the remaining issue is whether the City conducted a reasonable search for records.

DISCUSSION:

REASONABLENESS OF SEARCH

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17 [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [P-624].

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

In his representations during this inquiry, the appellant asked,

“(W)here is the description of my complaint about the dog’s attacking, charging and barking The City is requested to articulate if the description of my complaint has been deleted from the memory of computer hard disk.”

It appears to me that the requester’s belief that there must be additional records has two bases. First, the records contain no reference to the euthanization of the dog, and he believes that the City would have a record of this event. Secondly, he appears to believe that additional records must exist because those provided to him do not describe the contents of his complaint.

Regarding the first concern, I do not find that the failure of the records to refer to the euthanization of the dog provides a sufficient basis to find that the search was unreasonable as the evidence does not show that the City knew or should have known of this event.

Regarding the requester’s second concern, in my view, it is reasonable for a person making a complaint to a public authority to expect that this will result in a record that contains details of his or her complaint. Therefore, the fact that records produced to a complaint do not appear to describe his or her complaint may provide a reasonable basis for that person’s belief that there must be additional records which do address the complaint.

The requester described the information in the computer printouts provided to him as “Greek to me”. Much of the information in these printouts is in the form of codes and abbreviations. The forms do not describe in plain English the nature of the complaints with which they deal.

Despite this, I am satisfied from the contents of the records and from the representations of the City that the records in question do, in fact, relate to the incidents referred to by the requester and that the City has made reasonable efforts to determine whether any additional records exist.

While the records themselves do not contain a plain-English description of the nature of the appellant’s complaint, they do refer to dates that are consistent with the dates of concern to the appellant and contain other information that is consistent with these records being reports of the events in question. In addition, while the records do not refer explicitly to attacks, charging or bites by a dog, they refer to the *Dog Owner’s Liability Act*, either by its full name or by its acronym, *DOLA*. The subject matter of this statute is liability of owners for bites and attacks by dogs. There is no evidence that it is the City’s practice to produce any additional documentation when such a complaint is received.

In its representations, the City stated that numerous efforts were made by three experienced employees in the Animal Services Department to locate records responsive to the appellant’s request. Although the complainant initially requested all records relating to the dog in question, his representations make it clear that he is concerned primarily, if not solely, with a complaint made in June of 1997. The access request was made more than five years later. Therefore, in addition to searching files currently on hand, the staff searched archived files.

In light of the fact that the records retrieved by the City do appear to relate to the complaint in question and in light of the City's description of the efforts made to determine whether any additional records exist, I am satisfied that the search made by the City is reasonable.

ORDER:

I find that the search for responsive records conducted by the City is reasonable.

Original Signed by: _____
John Swaigen
Adjudicator

_____ October 1, 2004