



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

ORDER PO-2365

Appeal PA-040145-1

Ministry of Agriculture and Food



Tribunal Service Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Ministry of Agriculture and Food (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the Act) for access to records about pound facilities in the City of Toronto, for the period of June 17, 2003 to February 9, 2004. Specifically, the appellant sought access to the following:

1. Records of all pound inspections of all pound facilities in the City of Toronto;
2. Copies of all correspondence relating to the provision of animal care, control and pound services in the City of Toronto;
3. Information on which the City of Toronto pounds send animals to research facilities, and complete records of the number of animals requisitioned to be sent to research facilities. The appellant specified that it required "all specifics including but not necessarily limited to dates, age, sex, breed, the eventual use and disposition of pound animals, to which research facilities the animals were sent in each instance, the stated purpose of the research to be carried out and copies of the requisition forms".

In its decision letter, the Ministry advised as follows.

With respect to item 1 of the request, the Ministry identified two inspection reports for facilities of Toronto Animal Services, as responsive to the request. Access was granted to the two reports: one for an inspection conducted on August 31, 2003 at the York Animal Centre and the second for an inspection conducted on November 5, 2003 at the South Region Animal Centre.

In response to item 2 of the request, four letters were located and access was granted to them, in full.

The Ministry also advised that if any correspondence relating to the provision of animal care, control and pound services in Toronto was received by the Minister of Agriculture and Food between June 17, 2003 and October 23, 2003, it is now in the custody of the Archives of Ontario.

In response to item 3 of the request, the Ministry advised that it does not have custody or control of records responsive to this item. The Ministry indicates that an earlier Ministry decision concerning these records was appealed to this Office and that in Order PO-2127, the Adjudicator found that pound records held by the City of Toronto, and/or municipal pounds are not under the control of the Ministry.

The appellant appealed the Ministry's decision.

During mediation, issues relating to items 1 and 2 of the appellant's request were resolved.

Mediation did not resolve the custody or control issues regarding item 3 and this appeal was moved to adjudication.

I initially sent a Notice of Inquiry to the appellant along with a copy of orders PO-2103 and PO-2127. These two orders dealt with the issue of whether the Ministry had custody or control of pound records. The appellant was asked to provide representations on the application of these orders to the current appeal. The appellant provided representations in response.

DISCUSSION:

Section 10(1) of the *Act* provides a right of access to records “in the custody or under the control of an institution”. The right of access will not apply if the records are neither in the Ministry’s custody nor under its control.

In Order PO-2127, the Ministry took the position that it did not have custody to the following item in the appellant’s request.

...[F]ull information on which Metro Toronto pounds send animals to research facilities, and complete records of number of Toronto pounds for the last five years, from 1996 to the present date, inclusive. (We require all specifics including but not necessarily limited to dates, age, sex, breed, the eventual use and disposition of pound animals, to which research facilities the animals were sent in each instance, the stated purpose of the research to be carried out and copies of the requisition forms).

This request is almost identical to part three of the appellant’s request above except for the fact that instead of requesting information for “Metro Toronto pounds” the appellant is now asking for information for “City of Toronto pounds”.

Senior Adjudicator Goodis in Order PO-2127 reviewed his finding in Order PO-2103 where the information at issue related to records held by a specific municipal pound. He stated:

In Order PO-2103, the appellant (not the same appellant as in this case) made a request to the Ministry for access to records held by a specific municipal pound. The pound in question was a private business providing pound services by contract to several municipalities. After conducting a detailed analysis of the various factual and legal circumstances, I concluded as follows:

The legal framework under the [*Animals for Research Act (ARA)*] and the majority of the other factors discussed above all point to the conclusion that pound records are not in the Ministry’s custody, including those in this case, [and] are not “under the control” of the Ministry for the purposes of section 10(1) of the Act. The only factor which weighs in favour of a control finding is the “authority to regulate use” factor. In my view, this factor carries, at most, only moderate weight and cannot overcome the overwhelming factors weighing against a control finding in the circumstances of this case.

Therefore, I uphold the Ministry's decision that the requested records are not in the custody or under the control of the Ministry for the purpose of section 10(1) of the Act.

Senior Adjudicator Goodis then reviewed the appellant's representations submitted in the appeal in Order PO-2127 and concluded:

The appellant has not persuaded me that I should depart from my conclusions in Order PO-2103, and the appellant has not provided me with any "new evidence" that would compel me to do so. In my view, the essential facts and regulatory framework are the same here as in the previous order. As in Order PO-2103, I am not persuaded that because the Ministry has regulatory responsibilities regarding pounds, it therefore has "control" over the pound's records, as that term is defined in section 10(1) of the Act. The fact that some records responsive to the appellant's request may be in the custody of the City of Toronto, as opposed to a pound, does not alter this conclusion. I note also that the appellant's request to the City of Toronto is being dealt with in another appeal.

Finally, the appellant's submissions regarding personal privacy issues do not advance his position. Personal privacy considerations were not relevant to my finding in Order PO-2103 that the Ministry does not have control of pound records, and the lack of a personal privacy issue in this case has no impact.

I conclude that any records responsive to items 2 and 3 of the appellant's request, held by the City of Toronto and/or municipal pounds, would not be under the control of the Ministry. Therefore, the section 10(1) right of access would not apply to those records.

I adopt the reasoning and findings in orders PO-2103 and PO-2127 and will apply them here.

In the current appeal, the appellant submits that the Ministry now admits that it does exercise custody and control of records under the *Animals for Research Act* relating to animal control and shelter operations run by the City of Toronto. The appellant makes this assertion without providing evidence to support it.

After reviewing Orders PO-2103 and PO-2127 and the facts in the current appeal, I am satisfied that the Ministry does not exercise custody or control over the records relating to item 3 of the appellant's request. In my view, there is no meaningful distinction between "Metro Toronto" and "City of Toronto" for the purposes of determining the custody or control issue under the *Act*. Furthermore, the appellant's unsupported assertion about the Ministry does not provide evidence in favour of a finding that the Ministry has custody or control of the records described in item 3.

As a result, I find that the appellant does not have a right of access under section 10(1) from the Ministry for the records relating to item 3 of his request.

ORDER:

I uphold the Ministry's decision that it has no custody or control of the records described in item 3 of the appellant's request.

Original Signed by: _____
Stephanie Haly
Adjudicator

February 2, 2005 _____