



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1950**

**Appeal MA-050063-1**

**City of Toronto**



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## **NATURE OF THE APPEAL:**

The City of Toronto (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for handwritten minutes of settlement relating to two court actions.

The City responded to the request and granted full access to the responsive records. The requester (now the appellant), appealed the decision to this office on the basis of his belief that additional records exist.

Specifically, the appellant claimed that the record which the City had provided to him was a copy of a record which the appellant's lawyer had previously provided to the City. The appellant indicated that this fact is evident from the fax transmission entry located at the top of the front page of the record. The appellant stated that the record that he is seeking is the City's copy of the hand written minutes of settlement.

The issue was not resolved through mediation and the appeal proceeded to an oral hearing.

A Notice of Inquiry was sent to the appellant and the City informing them that an oral inquiry would be held to determine whether the City had conducted a reasonable search for the responsive records. The oral inquiry was conducted at this office. The appellant was represented by legal counsel. Present on behalf of the City were its Manager of Public Access, a solicitor and a legal assistant. Oral representations were submitted by the appellant, his legal counsel, and the attending representatives of the City.

## **DISCUSSION:**

### **REASONABLE SEARCH**

In appeals involving a claim that additional records exist, as is the case in this appeal, the issue to be decided is whether the City has conducted a reasonable search for records as required by section 17 of the *Act*.

The *Act* does not require the City to prove with absolute certainty that further records do not exist. The City must however, provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate any responsive records. A reasonable search is one in which an experienced employee expends a reasonable effort to identify any records which are reasonably related to the request (Order M-909).

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.

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.

## **APPELLANT'S SUBMISSIONS**

At the outset of the oral inquiry, the appellant stated that, contrary to what was set out in his letter of appeal, he does not believe that his former legal counsel provided the City with the copy of the minutes of settlement. The appellant stated that he does not know how the City obtained a copy of the record which it released to him in response to his request.

In his submissions, the appellant stated that, in April 1995, minutes of settlement were entered into, disposing of two legal actions. The appellant advised that he did not receive a copy of the minutes of settlement at that time. The appellant maintained that the minutes which he and the City ultimately received were not the minutes which he had signed. The appellant alleged that this version of the minutes of settlement that he received from the City was forged. The appellant introduced into evidence another version of the minutes of settlement obtained from court files and pointed to differences between the two documents.

The appellant pointed out that the solicitor for the City in attendance at the hearing was a signatory to the minutes of settlement at issue. As a result, the appellant believes that the solicitor retained a copy of these minutes, knows their whereabouts, and is deliberately withholding them.

The appellant acknowledged that the City has provided him with a copy of the minutes of settlement however, he maintained that the City should have its own version of these minutes.

## **CITY'S SUBMISSIONS**

In its representations, the City stated that, as a related court action was ongoing, the documents relating to the two actions at issue were retained in boxes and kept in the office of the attending solicitor. The City advised that the search for the record at issue was conducted by the legal assistant present at the hearing.

The City's legal assistant stated that, in response to the request she searched the boxes of records relating to the two court actions at issue. She estimated that there are approximately ten boxes. She advised that, on two separate occasions, she conducted a page by page review of the documents in the boxes for any record containing the words "minutes of settlement" on it. She stated that it took two days to review all of the boxes and that the only document which was located was the document which the City provided to the appellant in response to his request.

In addition, the City contacted its Records and Archives Centres to determine if any relevant records could be located there. The Records Centre confirmed that the document in question would be located in the legal department. The Archives Centre advised that it did not have the relevant documentation and that information relating to the court actions at issue were never sent to that department.

The solicitor advised that, while he did not search through each of the boxes, he did search through some of the files himself and could not locate another version of the minutes of settlement at issue.

In response to the appellant's submissions, the solicitor maintained that he did not personally recall the circumstance surrounding the minutes of settlement. However, he stated that any minutes of settlement which would have resulted from a court action would have been placed in the City's files for that action and would not have been filed in any other location. He further stated that he did not recall if every party to those proceedings obtained executed copies of the minutes of settlement. He stated that it is possible that only two sets of minutes were signed by the parties.

The City concluded its submissions by stating that the City could not have done a more thorough search and that there were no other places where the document in question could be located.

## **FINDINGS**

I have carefully considered the submission of both parties. As I set out previously, my responsibility is to ensure that the City has conducted a reasonable search to locate the responsive record. The *Act* does not require the City to prove with absolute certainty that additional records do not exist. The issue for the purposes of this appeal is whether the City has conducted a reasonable search for the records.

The appellant is of the view that the City has its own version of the minutes of settlement. In addition, as the solicitor for the City was involved in the execution of the minutes of settlement, the appellant believes that he should be aware of the location of this document.

While the appellant raised the possibility that more than two versions of the minutes of settlement were executed, the City stated that it was also possible that it may not have generated its own version but merely had a copy of that agreement.

In this case, as the solicitor for the City could not recall the circumstances surrounding the creation and filing of the document at issue, the City could only offer evidence on how records relating to court actions are generally stored. In my view, given that the minutes of settlement at issue were entered into in 1995, it does not appear to be unreasonable that the City's solicitor could not personally remember the details regarding this particular matter.

Based on the evidence presented at the oral inquiry, I find that the searches conducted by the City were carried out by experienced, knowledgeable employees. In addition, I find that the City expended reasonable efforts to identify and locate the responsive record at issue. As a result, I am satisfied that the search to locate the record at issue was reasonable.

**ORDER:**

I uphold the City's search for the responsive record and I dismiss the appeal.

Original signed by: \_\_\_\_\_  
Andrea Schwartz  
Acting Adjudicator

\_\_\_\_\_ August 4, 2005