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

ORDER MO-2063

Appeal MA-050330-1

Kingston & Frontenac Housing Corporation

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NATURE OF THE APPEAL:

The Kingston & Frontenac Housing Corporation (the Corporation) received a request dated August 2, 2005, under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all records relating to the Corporation's decision to revoke the rental subsidy of a named individual (requester #1). The request was made by legal counsel for requester #1 on his behalf.

Legal counsel for requester #1 was the Executive Director of a Kingston area legal clinic. The access to information request was prepared on the letterhead of the legal clinic. The request was signed by another employee of the legal clinic on behalf of the legal counsel.

On the 23rd of June 2005, prior to the delivery of the request for access, the legal counsel had sent an "Authorization" dated June 16, 2005, to the Corporation. The Authorization authorizes and directs the Corporation "to disclose to my solicitors … any and all information they may request with respect to: My File. And for so doing, this shall be your good, sufficient and irrevocable authority." This authorization was signed by requester #1. An identical authorization was provided by another individual (requester #2), who was also represented by the legal counsel.

On August 16, 2005, in response to the request, the Corporation wrote to the legal counsel for requester #1 and stated:

> In response to correspondence from your office and received by this office on August 5, 2005, in order to confirm that it was your intention to initiate the undertaking detailed in the letter, please resend the letter with your confirmation over the original signature to my attention.
>
> In addition, your request under the Municipal Freedom of Information and Protection of Privacy Act is incomplete as the written consent of the client was not attached. Accordingly, I am returning both your original letter and your cheque as the request can not be processed as submitted.

The Corporation did not issue a decision letter in response to the request for access.

Through their counsel, requester #1 and requester #2, (now the appellants #1 and #2), appealed the Corporation's decision not to process the access request and not to issue a decision letter. As mediation was unsuccessful, this matter moved to the adjudication stage of the appeal process.

I commenced my inquiry by issuing a Notice of Inquiry to the Corporation. The Corporation prepared representations in response. I then sent a Notice of Inquiry and a copy of the representations of the Corporation, in their entirety, to the counsel for the appellants. Representations were then submitted by counsel on behalf of the appellants.

DISCUSSION:

At issue in this appeal is whether the request dated August 2, 2005 was a valid request for access to information with respect to appellant #1 and appellant #2. If I find that the request was a valid request, then it follows that an order should issue compelling the Corporation to process the request and to issue a decision letter.

In determining whether the request was valid, I need to consider three issues:

1. Was the request for information valid even though the request letter was signed by a staff member of the legal clinic on behalf of the legal counsel and not the legal counsel himself?

2. Was the authorization delivered to the Corporation on June 23, 2005 sufficient authority for the Corporation to deal with the legal counsel for the purposes of the access to information request?

3. Did the request of August 2, 2005 encompass records relating to both appellant #1 and appellant #2?

Representations of the Corporation

In support of its position that the request for access was not valid, the Corporation submits that the access request was addressed to the wrong staff person in the Corporation's office and was not signed by the legal counsel but by a member of his staff. Further, the request did not enclose a written authorization from the appellant and it did not make any reference to a previous, written authorization signed by the appellants in the file. The Corporation takes the position that these facts suggest that the legal counsel was not aware of the request and may not have authorized his staff member to sign the request. In addition, it was unreasonable to expect staff in the Corporation's office to search for authorizations that may or may not have been sent prior to the access request.

With regard to the scope of the request, the Corporation submits that the request was for the records of one appellant only, that being appellant #1. Therefore, the scope of the appeal should not be extended to appellant # 2.

In summary, the Corporation submits:

> …[the legal counsel] as the solicitor representing the clients [appellant #1 and appellant #2] ought to be aware of the requirements under the Municipal Freedom of Information and Protection of Privacy Act based on the numerous requests he has submitted over the years. Historically, [the legal counsel] allows for no discretion when dealing with KFHC and as such KFHC must always ensure that all municipal, provincial and federal legislative requirements are tightly adhered

> to in **ALL** situations in order to avoid appeals, complaints and litigation initiated by [the legal counsel].

Finally, the Corporation attached to its representations two emails sent from the legal clinic to the Corporation requesting action on the access to information request. One email is from the legal counsel. The second email, from a staff member of the legal clinic, is identical to the first and was sent some eight minutes prior to the first. The Corporation submits that the emails were:

> …threatening, rude, condescending, intimidating and harassing in nature. This email is an indication of the abuse that KFCH staff members are continually subjected to. The emails also indicate that [a named individual] in fact initially sent the email in error claiming representation of [counsel], hence our concerns on having anyone other than the requester signing a request under MFIPPA.

Representations of the Appellants

In representations submitted on behalf of the appellants, the legal counsel stated that a staff person in his office signed the written request for access on his instructions. This staff person and other staff in the legal counsel's office sign correspondence on his behalf on a regular and routine basis:

> Part of [the staff person's] routine work involves either making requests directly herself, or preparing letters that I (and since January 2006 my colleague) dictate. Where the letters are of a routine nature, [the staff person] may sign letters on the lawyer's behalf. This is a practice common to many law offices, including private law offices. Without this practice, the Legal Clinic would not serve as many tenants. If so, these tenants would be at risk of receiving no legal services at all.

The legal counsel submits that two authorizations, signed by the appellants, were enclosed in his correspondence to the Corporation dated June 23, 2005. Those authorizations read:

> THIS IS TO AUTHORIZE AND DIRECT YOU to disclose to my solicitors, KINGSTON COMMUNITY LEGAL CLINIC, any and all information they may request with respect to: My File. And for so doing, this shall be your good, sufficient and irrevocable authority.

Subsequently, an access request was submitted to the Corporation on August 2, 2005 and states:

> This is further to your July 15, 2005 letter, denying [the appellant #1's] request for an internal review.

> Regretfully, your denial provided no reason. In view of the foregoing, kindly provide me with a copy of all information relating to the decision to revoke [the appellant #1's] subsidy.
>
> Please consider this request under the *Municipal Freedom of Information and Protection of Privacy Act*. Attached is our cheque in the sum of $5 in support of this request.

The legal counsel submits that the Corporation was at all times aware that he represented the two appellants. There was a continuing exchange of correspondence on the issue of the appellant #1's eligibility for subsidized housing. Copies of that correspondence would have been stored, along with the authorizations for the release of information previously sent to the Corporation, in the same file. If the request was directed to the wrong staff person, that individual could have simply forwarded the request to the appropriate person.

Finally, the legal counsel submits that the Corporation's approach to this request is evidence of harassment. Its main objective is to limit the capacity of the legal counsel's office to advocate for the tenants of the Corporation and to overturn the decisions that it makes that are unfavourable to their clients.

Analysis and Finding

The Office of the Information and Privacy Commissioner/Ontario was created for the purpose of administering the *Act* in a manner that facilitates the purposes of the legislation. In the role of administrator of the *Act*, this office has the authority to control its own processes and to supervise the processes of institutions under the *Act* in a manner that is consistent with the purposes of the *Act* and with a view to minimizing or eliminating the potential for abuse. [Orders M-618 and MO-1353-I, see also comments of the Divisional Court in *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]

Where the processes for access to information are not specified in the *Act* or by regulation, this office has the authority to review, comment on and establish processes for institutions. The following comments of former Commissioner Wright in Order M-618 support this view:

> Those processes are, in large part, specified in the Act. In other respects, they are left to the institution or to my office, as the case may be, to establish and adapt for the better administration of the Act.

The process for making access requests under the *Act* is set out in sections 17 to 23. Section 17(1) provides that a request for access shall be made in writing "to the institution" and that the request must provide "sufficient detail to enable an experienced employee of the institution, upon reasonable effort, to identify the record". Section 17(2) provides that if the request does not sufficiently describe the record sought, the institution shall inform the requester of that defect and "shall offer assistance in reformulating the request".

Section 11 of Regulation 823 provides that a request for access under Part 1 of the *Act* or for access to or correction of personal information under Part II of the *Act* shall be in the prescribed form "or in any other written form that specifies that it is a request made under the Act."

As noted above, where the *Act* is silent, I must consider the appropriate form of the request having regard for the purposes of the legislation. Section 1 of the *Act* describes the purposes of the legislation. It provides:

> The purposes of this Act are,
>
> (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
>
> (i) information should be available to the public,
>
> (ii) necessary exemptions from the right of access should be limited and specific, and
>
> (iii) decisions on the disclosure of information should be reviewed independently of the institution controlling the information; and
>
> (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

If the purpose of the *Act* is to provide a right of access to information, in my view, to achieve the purpose of the *Act*, I must interpret the provisions that relate to the access process in a consistent manner. Technical and bureaucratic obstacles to the right of access are not consistent with the stated purpose of the *Act*.

I am supported in this view by a reading of the *Act* as a whole. It is replete with provisions that evidence an intention of the Legislature that the access process should be structured and applied by the institution in a reasonable and flexible manner. Section 5 of the *Act* creates an obligation to disclose the information requested "as soon as *practicable*". Section 17(1) of the *Act* provides that the request for access shall provide sufficient detail "to enable an experienced employee of the institution, *upon reasonable effort*, to identify the record". Section 17(2) provides that if the detail provided in the request is not sufficient, the institution has an obligation to "*offer assistance* in reformulating a request so as to comply with subsection (1)". Section 50 provides that nothing in the *Act* prevents an individual from making an access request in oral format (emphasis added).

In my view, these provisions along with section 1 of the *Act*, demonstrate an intention on the part of the Legislature that an individual's access requests will be processed by the institution in a fair, reasonable, open and flexible manner.

My view is also supported by a number of previous orders of this office. In Order MO-1360-I former Senior Adjudicator David Goodis stated:

> The Legislature intended that government information which is not exempt should be disseminated to the public at large, and *restrictions on the capacity of an individual or organization to make a request based on technical grounds*, such as whether an organization is incorporated, *would undermine its intention*. (emphasis added)

The validity of an access request was at issue in Order MO-1353-I where the Police took the position that their decision could not be appealed to our office as it was not a decision provided in response to a valid request under the *Act*. In that appeal, the request was not accompanied by the appropriate fee or a written consent to the release of the personal information signed by the person to whom the information in the record related. Former Assistant Commissioner Mitchinson found that these irregularities were technical in nature and could be remedied without prejudice to the Police. The former Assistant Commissioner stated:

> A phone call for clarification would have resolved any ambiguity and, in my view, the Police were obliged to take this step. *Sound and customer-focused public administration requires it*. (emphasis added)

Recent comments of the Saskatchewan Information and Privacy Commissioner, Gary Dickson, in Report F-2006-001 are of interest to the facts of this appeal. In that report, the Commissioner considered an allegation similar to that made by the Corporation in this appeal. The requester sought access to records pertaining to a fire investigation report from the Saskatchewan Corrections and Public Safety Department. The institution denied access on the basis, among other things, that there was no written authorization from the deceased person's family evidencing counsel's authority to request personal information on their behalf.

The Commissioner stated:

> Furthermore, our office has consistently stated that every government institution has an implicit duty to assist Applicants by responding to every access request openly, accurately and completely.
>
> …
>
> [I]f a solicitor makes a representation to a public body that he or she has authority to act for a particular client, in my view, it would not normally be necessary for the public body to require documentation to support that authority. Unless there are circumstances which reasonably raise questions about the authority of a solicitor to act for an Applicant, I would anticipate that the public body would be fully entitled to accept that representation of authority and act on that representation. Parenthetically, if a solicitor makes false representations of authority to act for anyone, this would be a serious matter for the Law Society of Saskatchewan to address. The Law Society has extensive powers to discipline

> members of the Law Society. My hope is that in Saskatchewan we can avoid unnecessary documentation and barriers to the processing of access requests wherever possible.

I have reviewed the submissions of the parties, the relevant provisions of the *Act* cited above and the orders noted. I find that the fact that a request under this *Act* was signed by a staff member in legal counsel's office does not render the request invalid. The Corporation's refusal to process the request on that basis is unreasonable and contrary to the spirit of the *Act*.

I accept the submission of counsel for the appellants that it is a recognized fact that legal staff, in both the public and private sector law firms, signs correspondence on behalf of the counsel who employ them on a regular and routine basis. It is a practise that is in widespread use and that is widely accepted by tribunals, courts and fellow counsel alike.

There is no persuasive evidence before me that there was any reason for the Corporation to question the authority of the staff member to sign the legal counsel's letter. The Corporation seems to suggest that the fact that the request was addressed to the wrong person, did not include the authorization and makes no reference to the previous authorization is all evidence to suggest that the staff member who signed the letter did not have the authority to do so. I do not think that it is reasonable to draw this conclusion from these facts. If the Corporation had any concerns about the staff member's authority to sign the letter, it could have raised those concerns with the legal counsel in a telephone call or email. No such efforts by the Corporation were made in this case. Instead, the Corporation took the position that the failure of the legal counsel to sign the letter himself invalidated the request.

With respect to the failure of counsel to enclose an authorization signed by his client with the request, I find that this was, in the circumstances of this appeal, not a defect in the request. The representations of both parties clearly indicate that there had been an ongoing exchange of correspondence between the legal counsel and the Corporation over a period of time and that the appellants had authorized this exchange of correspondence and information with their counsel by the delivery of a written authorization at the outset. There is no evidence before me that the Corporation challenged the authenticity or effectiveness of that authorization at any time following its delivery and indeed, acted upon it by agreeing to correspond with the appellants' counsel. In the light of this ongoing communication and exchange of what was clearly confidential information, I find it hard to understand why the Corporation would not be willing to act on that authorization in response to this request. If staff in the office of the Corporation had any concerns about the authorization, it was open to those individuals to telephone the legal counsel's office and make inquiries about the authorization. Again, no such efforts were made by the Corporation in this case.

The Corporation submits that the access request was addressed to the wrong individual in the Corporation's office. In my opinion, this is not a relevant factor in determining whether the Corporation had an obligation to process the request. The staff in the office of the Corporation had the responsibility to forward the request to the individual responsible for processing these

requests. The Corporation has provided no evidence that its ability to process the request was in any way prejudiced or harmed by the way in which the legal counsel addressed the request.

The only possible evidence of prejudice to the Corporation that resulted from the receipt of the alleged ambiguous or incomplete access request is the Corporation's submission that it would have necessitated an extensive search of files created over an indeterminate period of time to locate the previously-provided authorization. I am not persuaded by this evidence. First, a search of this nature could have been avoided by a simple telephone call. Second, the legal counsel in his email of August 19, 2005 (attached as an appendix to the Corporation's representations) directs the Corporation to the fact that authorizations were delivered to the Corporation on behalf of the appellants on June 23, 2005. The provision of this information by the legal counsel would have negated the need for a search by staff of the Corporation.

I am therefore satisfied that the Corporation should have relied upon the authorization dated June 23, 2005 and the request letter dated August 2, 2005 and proceeded to process the access to information request. I now must decide whether the scope of that request includes both appellant #1 and appellant #2.

I have reviewed the original access request and the letter of appeal sent to this office. I have also reviewed the submissions of the parties. The original access request referred only to appellant #1, as did the subsequent correspondence between the legal counsel and the Corporation. It was not until the legal counsel wrote to this office to request a review of the Corporation's decision not to process the request that reference is made to appellant #2. Based on this, in my opinion, the request submitted on August 2, 2005 did not encompass a request for the records of appellant #2.

In conclusion, I find that the Corporation was required to issue a decision letter in response to appellant # 1's access request.

Counsel for the appellants and the Corporation have both made representations in this appeal concerning the behaviour of the other amounting to "harassment". I have already expressed my views as to the manner in which the Corporation dealt with this request. In future, I would urge the Corporation to consider the requirements of the *Act*, in a manner consistent with its spirit and intent, in responding to requests under the *Act*. I have no further comment on these allegations.

ORDER:

1. I find that the August 2, 2005 letter from the legal counsel is a valid access request under Part I of the *Act* for access to the records of appellant #1.

2. The request dated August 2, 2005 was not a valid request for access to information of appellant #2.

3. I order the Corporation to issue a decision letter by **July 5, 2006** with regard to appellant #1's request for access.

Original signed by: June 28, 2006
Brian Beamish
Assistant Commissioner