



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2521**

**Appeal PA06-209**

**Ontario Rental Housing Tribunal**



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## **NATURE OF THE APPEAL:**

The requester, now the appellant, submitted the following request to the Ontario Rental Housing Tribunal (the O.R.H.T.) under the *Freedom of Information and Protection of Privacy Act* (the *Act*):

Order August 16, 2005 File NOT-01698 Vice Chair O.R.H.T. Charles Gascoyne.  
I request that the O.R.H.T. send copies of all evidence given as submissions, documents, records that the O.R.H.T. based their decision on. Including the criminal act of “stalking”.

The O.R.H.T. did not provide a decision to the appellant within the 30 day deadline and the appellant appealed to this office initially on the basis of deemed refusal. However, shortly after the date of the filing of the appeal, the O.R.H.T issued its decision. The O.R.H.T.’s response indicated that it was disclosing all documents contained in the above-noted file, which included all documents that were submitted during the course of the proceedings. The O.R.H.T. also enclosed a list of the documents included in the file. A list of 28 documents was attached to the decision.

The appellant believed that more records should exist, specifically, records upon which Vice Chair Gascoyne based his statement, “[t]he member also found out that the Landlord vacated the rental unit because the Tenant was stalking her”, contained in his order of August 16, 2005. The basis of the appeal was then changed from deemed refusal to that of reasonable search, that is, whether the O.R.H.T. conducted a reasonable search for all records that respond to the request.

The issue was not resolved during mediation and the matter was referred to adjudication. I decided to seek representations from the O.R.H.T. initially. It made representations in response which were shared with the appellant in their entirety at the time I sought submissions from him. The appellant also submitted representations in this matter.

## **DISCUSSION:**

### **SEARCH FOR RESPONSIVE RECORDS**

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 24 [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 [Order 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 the course of this appeal, the appellant identified that he believes that additional records exist because of the statement made by the Vice Chair in his August 2005 decision. The information provided by the appellant was discussed with the O.R.H.T.'s Freedom of Information Co-ordinator, who confirmed that the appellant's entire file was provided to him.

In determining this issue, it is helpful to review the history of the O.R.H.T. matter in order to put the appellant's request for information into context. The appellant applied for an order determining that his landlord gave a notice of termination in bad faith. This application was heard on November 25, 2004 and a decision rendered December 13, 2004. In describing the evidence that was before her and again in the "findings" section of that decision, the presiding member made several references to the landlord's testimony regarding her perception that the appellant was stalking her as her explanation for vacating the rental unit to which she had only a few weeks earlier taken over after terminating the appellant's tenancy. The member also noted that the allegation (of stalking) was beyond her jurisdiction and the landlord would need to pursue a remedy through other authorities.

The appellant sought a review of this decision, which was refused in January 2005. The appellant again sought a review of both the December and January decisions later in 2005, which was determined by the Vice-Chair referred to above in August 2005. In referring to the evidence that was before the original decision-maker at the November 2004 hearing, the Vic-Chair made the statement: "[t]he member also found out that the Landlord vacated the rental unit because the Tenant was stalking her."

The appellant believed that the O.R.H.T. made a legal finding of a criminal act against him and that it must have some evidence to support or relating to this finding that was not disclosed to him. Consequently, he took the position that the disclosure of the contents of his file in this matter was incomplete.

In his submissions, the appellant submitted that the O.R.H.T. violated his rights and fabricated a criminal act which it used against him in order to free his landlord from a wrongful eviction. The appellant reiterated his previous position that the O.R.H.T. does not have the jurisdiction or authority to use a criminal allegation unless it has been proven by a proper authority and that therefore, such evidence should be in the file.

In discussing the steps taken by the O.R.H.T. to respond to the appellant's request, the Freedom of Information Co-ordinator stated:

All the documents that meet the description in the requester's letter would be found in the record file for the application. There is no other location in which to search for evidence, documents or other records a member relied on to make a decision.

The only other documents which potentially exist related to a member's decision for a specific application would be the member's personal notes. Such notes, if they exist, are in the custody and control of the member who issued the order, and not in the [O.R.H.T.'s] custody and control (IPC order P-396).

At the time the search was conducted, all record files for applications from the [O.R.H.T.'s] Northern Regional Office were kept at the [O.R.H.T.'s] Eastern Regional Office in Ottawa (they are now being kept at the Northern Regional Office in Sudbury). Therefore, I asked...the Co-ordinator of Customer Service with the Eastern Regional Office to make me a complete copy of the file...As indicated above, all documents related to an application are kept in the record file for the application - there was no need for me to search any additional locations for documents related to NOT-01698.

...

I chose to respond literally to the request, and did not seek further clarification from the requester. I defined the scope in the only way possible for this type of request. In any case where an individual requests information related to a member's decision in an order on a [O.R.H.T.] application, the responsive records will be found in the record file for the application. The [O.R.H.T.] does not keep any kind of secondary files with respect to its applications, nor does it keep any additional documents are not placed in the record file...There are no additional locations or types of files to search.

In this case, the only documents in the [O.R.H.T.'s] custody which would satisfy the request are found in the record file...Contacting the requester to clarify the request would not have changed the outcome of the search in any way. Also, as a party to the application, the requester is entitled to access all documents in the file. There were no issues related to any exemptions under FIPPA and the client was sent the complete file.

Based on his correspondence, the requester is clearly not satisfied with the Vice Chair's decision...The requester appears to believe that there should be some kind of physical document contained in the file that justifies this reference and provide a specific legal authority for making it. However, if such a document existed, it would be found in the record file, which was disclosed in its entirety to the requester. While the requester may feel that such a document *ought* to exist, based on what I firmly believe to be a reasonable search, it does not.

...I can only provide the physical documents contained in the application file. To go beyond this would be asking me to provide insight into how the Vice Chair put his mind to the information contained in file and obtained at the hearing. I have no authority to do this.

The issue of custody and/or control of Tribunal Member's personal notes taken at a hearing was discussed by former Assistant Commissioner Tom Mitchinson in Order P-396, referred to by the O.R.H.T. This issue was not raised during the appeal, nor am I persuaded in the circumstances of this appeal, that it is an issue that is necessary to address. Although the appellant appears to disagree with the O.R.H.T.'s decision regarding his application, he has not persuaded me that additional records on which the decision was based do or should exist. Moreover, I find that the documentation that he submitted throughout the mediation stage of this appeal relating to the various decisions made by the O.R.H.T., as noted above, do not support his contention that such documents might exist. It is clear from the O.R.H.T. decisions he provided that the references to stalking made by both the original member and the Vice Chair related to the landlord's testimony as opposed to some independent documentary source. I am satisfied that the appellant has received the entire O.R.H.T. file relating to his application.

Moreover, based on the O.R.H.T.'s submissions, I am satisfied that it has taken all reasonable steps to locate records in the area in which records would reasonably be expected to be located and that the search was conducted by staff who would likely know or be in a position to determine whether such records do or would likely exist. I am therefore satisfied that the O.R.H.T.'s search for responsive records was reasonable in the circumstances.

**ORDER:**

I dismiss the appeal.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Adjudicator

\_\_\_\_\_  
November 8, 2006