



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2504

Appeal PA-050219-1

Hydro One



Tribunal Services 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/Téloc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

Hydro One Inc. (Hydro One) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for “invoice and cancellation records for gas, electric and long distance accounts for the period July 2000 to June 2003 (sample provided). Required by payment # and pay period. Electronic records, if possible.”

In response to the request, Hydro One issued a decision in which it stated that records for the period March 2001 to January 2002 were in its custody and control, and provided partial access to them. Hydro One also identified that the personal information of certain identifiable individuals contained in these records had been severed, in accordance with section 21(1) [invasion of privacy] of the *Act*. In addition, Hydro One confirmed that the described records were provided to the requester on CD-ROM.

The requester (now the appellant) appealed Hydro One’s decision on the basis that more records should exist. He did not appeal the part of the decision that stated that portions of the records were exempt under section 21(1) of the *Act*.

During the mediation stage of this appeal, and following discussions with the appellant, Hydro One conducted a new search for records and issued a new decision letter [the second decision letter]. That decision letter confirmed that, as a result of information provided during mediation, additional paper records had been located for the period August 2000 to February 2001, and that no electronic records for this period existed. Hydro One also stated that no records existed (electronic or paper) for the period February 2002 to June 2003, and that the program was discontinued as of February 2002.

After receiving Hydro One’s revised decision letter, the appellant continued to take issue with Hydro One’s position that no records exist from the period February 2002 onward, and provided Hydro One with additional information concerning a named company. In response, Hydro One conducted another search for records, and issued a further decision letter [the third decision letter]. In that decision letter, the Freedom of Information Co-ordinator for Hydro One stated:

- Records for the period March 2001 to January 2002 for [Company H] were provided to you electronically in March 2005 on CD. ... I have reconfirmed that all [Company H] cancellation records for the period above, in the custody or control of Hydro One Inc., are included on the CD.
- You indicated during mediation that invoice cancellation records must exist for [Company H] for periods earlier than March 2001. Paper records for the period August 2000 to February 2001 for [Company H] were located and subsequently released to you in October 2005, with personal information severed, as described above. Not all of these invoices contained cancellation records. I have reconfirmed that all [Company H] cancellation records for the period above, in the custody or control of Hydro One Inc., have been released to you.
- You indicated during mediation that invoice cancellation records must exist for [Company M] for the periods beyond January 2002. This letter provides you with our findings with respect to this claim.

The letter then stated:

[Company M] did assume responsibility for agent-based sales of retail gas, electricity and long distance contracts for Ontario Hydro Energy Inc. (OHE) in January 2002 until March 2002, when all new sales activity was suspended.

During the transition period between [Company H] and [Company M], (January 2002 only), [Company M] submitted one invoice in the same format as that previously used by [Company H]. This invoice included cancellation records similar to your sample. These cancellation records are included in the CD you previously received [from Hydro One] ...

In February 2002, the requirements for supporting details for invoices and the OHE staff assigned to manage the program were changed. We have 4 additional invoices from [Company M] for agent-related activities in February 2002 and March 2002. ... these invoices do not include cancellation records

Following receipt of the third decision letter, the appellant confirmed that he wished to continue his appeal. Mediation did not resolve this file, and it proceeded to the adjudication stage of the process.

Upon my initial review of this file, and in particular the detailed explanations provided by Hydro One regarding the reasons why additional cancellation records did not exist, I was satisfied that Hydro One had provided a reasonable explanation as to why additional records were not located. Accordingly, I sent a Notice of Inquiry to the appellant, initially, inviting him to provide representations regarding why he was of the view that the search for responsive records was not reasonable. The appellant provided brief representations in response. In the circumstances, I have decided that it is not necessary for me to seek representations from Hydro One.

As a preliminary matter, it should be noted that the decision letters issued by Hydro One in the context of this appeal focus on the requested cancellation records (which are at times described as "invoice cancellation" records), and the responsive records provided to the appellant in the course of this appeal are specifically identified as cancellation records. The third decision letter, which confirms the mediation process to the date of that letter, states that the remaining issue relates to invoice cancellation records post-dating January 2002 (see above), and the appellant has provided me with a separate decision letter that identifies that the specific request for other invoices post-dating January, 2002 was dealt with as a separate request. Accordingly, this appeal only deals with the reasonableness of the search for the requested cancellation records.

DISCUSSION:

REASONABLE 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 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 [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.

Representations

In response to the Notice of Inquiry, the appellant provided brief representations in support of his position that the search conducted by Hydro One was not reasonable. The appellant's representations focus solely on his position that Company M records post-dating January 28, 2002, ought to exist. In support of his position, the appellant refers to a portion of a transcript of the testimony of a Hydro One employee (giving testimony in a separate court action) which refers to a "reconciliation" with Company M. The appellant also refers to two letters which he received from Hydro One (the relevant portions of which were received in the context of two separate appeals under that *Act*), and identifies what he considers to be an inconsistency in the dates when the requested records remained in Hydro One's possession.

Finally, the appellant states that any evidence regarding the reasonableness of the searches conducted would require the direct involvement of an identified Hydro One employee, given her position during the time the requested records were created.

Findings

I have carefully examined the information provided by the parties in this appeal.

As identified above, in this appeal Hydro One responded to the appellant's questions regarding the existence of additional cancellation records by providing detailed explanations about the nature of the requested records and how these records were kept during the relevant time period, the transitions which took place when different companies were involved, and how the information contained in the records changed as a result of the transitional arrangements made.

I have reviewed the transcript referred to by the appellant, which contains the testimony of a Hydro One employee and refers to a “reconciliation” with Company M. In the transcript referred to by the appellant, the employee is providing evidence in a separate legal action. The employee does indeed refer in passing to a “reconciliation” between Hydro One and Company M; however, the subsequent discussion focuses on the invoice and cancellation records involving Company H. Furthermore, the transcript evidence appears to support Hydro One’s position regarding the existence of cancellation records up to a certain time, and the changes that took place after that time period. On my review of the evidence, the transcript does not appear to address issues relating to subsequent dealings with Company M.

I have also carefully reviewed the two Hydro One letters which the appellant considers refer to an inconsistency in the dates when the requested records remained in Hydro One’s possession. Again, these documents do not relate primarily to issues raised in this appeal. On my review of the letters, one refers to the date upon which “business records were transferred” to another entity, whereas the other identifies the date of a particular invoice. It is unclear to me how these different dates for different matters not directly relating to the requested records supports the appellant’s position that additional cancellation records ought to exist.

In addition, certain information contained in one of the letters refers to a final invoice being provided in one format in January, 2002, and the discontinuation of that format in February of 2002. This supports the position taken by Hydro One in its third decision letter that the supporting details for invoices were changed after January, 2002.

As identified above, in reasonable search appeals, 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 my view, in the three decision letters provided to the appellant, Hydro One has provided a reasonable explanation as to why additional cancellation records responsive to the request do not exist. I find that Hydro One has explained the nature of the responsive records which were provided to the appellant, and has also explained why additional records of this nature do not exist. Hydro One has also adequately addressed the circumstances surrounding the changes which took place regarding the manner in which records of this nature were created.

In the circumstances, I find that the appellant has not provided a reasonable basis for concluding that additional records responsive to his request exist (beyond those identified and disclosed by Hydro One). Accordingly, I am satisfied that reasonable efforts have been made by Hydro One to locate records responsive to the request, and I dismiss this appeal.

Finally, with respect to the appellant’s position that an identified employee ought to be required to provide evidence in this appeal, the issue to be determined in this appeal is whether Hydro

One has conducted a reasonable search for records as required by section 24 [Orders P-85, P-221, PO-1954-I]. Based on the evidence provided by Hydro One in its decision letters issued throughout the course of this appeal, and upon my review of the appellant's representations, I have found that the search carried out by Hydro One was reasonable in the circumstances, and it is unnecessary for me to elicit further evidence from Hydro One.

ORDER:

I dismiss this appeal.

Original signed by: _____
Frank DeVries
Adjudicator

_____ September 25, 2006