



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2534**

**Appeals PA-060014-1; PA-060052-1; PA-060053-1**

**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>

## **BACKGROUND AND NATURE OF THE APPEALS:**

Hydro One received a four-part request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for certain records relating to Ontario Hydro Energy (OHE) and its “Door to Door Program”. Hydro One divided this request into four parts and assigned a separate number to each. It issued one access decision addressing all four parts. The requester, now the appellant, appealed Hydro One’s decision as it relates to parts one through three of his request on the basis that additional records should exist in response to each of these three parts of his request. This office opened Appeals PA-060014-1, PA-060052-1 and PA-060053-1 to deal with these matters.

In order to better understand Hydro One’s “Door to Door Program”, which is the focus of the appellant’s requests and subsequent appeals that are addressed in this order, it is helpful to set out Hydro One’s description of the history of that program. The following was provided by Hydro One as part of its written submissions in one of these appeals.

In 2000, the Province of Ontario “opened” the electricity market to competition. Whereas previously essentially all electricity had been provided to consumers by Ontario Hydro at prices set by the Ontario Energy Board, now third parties could register themselves as “retailers” and sell electricity to consumers at “competitive prices”. Hydro One established a subsidiary named “Ontario Hydro Energy” (OHE) to sell electricity through 3-5 year fixed price contracts. OHE, to differentiate itself from its competitors, also decided to sell fixed price gas and fixed price long distance contracts, in a bundled offering that would save consumers money overall. OHE also offered sales and service of residential water heaters as part of its package.

The “Door to Door” program was established to enable representatives/agents for OHE to go door to door to homes and businesses, selling the above fixed price contracts. Rather than hire and manage these representatives/agents as employees of OHE, the decision was made to hire other companies who would hire and manage these representatives. Two of these companies were [Company A] and [Company B]. These companies, along with others such as [Company C] also performed other services for OHE, such as “verification/reaffirmation” or other back office processing functions, thereby enabling OHE to remain something of a virtual organization.

The Door to Door program was established in the fall of 2000 and ended UNDER OHE/HYDRO ONE on May 1<sup>st</sup>, 2002. In 2002, for a variety of reasons, Hydro One decided to divest the bulk of the assets and the name/brand of OHE to a third party. Other assets were divested to another third party. These transactions were officially completed on May 1<sup>st</sup>, 2002. All records relating to OHE, with the exception of those required for tax or other legal purposes, were to have either been destroyed or transferred to the new owners of the assets/brand. Many of the records already received by the appellant, including those that are subject of this appeal [PA-060014-1], should not have been available at the time of his requests.

With respect to consumer contracts for electricity and gas, in order to ensure fair treatment of consumers, retailers were bound by specific regulations established by the Ontario Energy Board. Consequently, once a contract had been signed with a consumer, the consumer had a period of time to reconsider the commitment, and also had to be contacted by an independent representative of the retailer (not the agent) to “reaffirm” the consumer’s interest in the contract and “verify” that they had been treated fairly. [Company C] performed this service for OHE.

As of today, [Company A] is no longer in business, [Company B] is no longer in business, and [Company C] appears to no longer be active in the electricity or gas market. The third parties to whom OHE divested its assets are either no longer in business or have subsequently divested the assets received from OHE to other third parties.

At the time of the divestiture, all staff employed directly by OHE either left the company or were transferred to other subsidiaries. Today (and at the time of the appellant’s requests), only two former OHE employees remain with Hydro One.

During the mediation stage of the appeals, a number of mediation sessions took place between the parties. Subsequent to these sessions, Hydro One wrote to the appellant providing additional information relating to the requests and appeals in question. The nature of each request and appeal, as well as the additional information provided to the appellant by Hydro One during mediation is outlined below.

#### **Appeal PA-060014-1**

Appeal PA-060014-1 deals with the appellant’s request for:

Weekly Manager Hand-In Reports from [Company A] to O.H.E. Jan. 7/02 example provided.

According to Hydro One’s access decision, during the request stage, the appellant clarified this request to cover the time period from the start of the Door to Door Program in 2000 to the end of the program in 2002. He also asked Hydro One to “include the [Company B] equivalents”.

In its response to the request, Hydro One granted full access to the records it identified as responsive to the request. The records consisted of 676 pages of information and included hand-in reports for Company A for the period October 27, 2000 to January 14, 2002. The records also included hand-in reports for Company B for the period January 14, 2002 to January 21, 2002.

The appellant appealed Hydro One’s decision on the basis that more records should exist.

In an April 28, 2006 letter to the appellant, Hydro One provided the following information relating to this appeal in response to questions raised by the appellant during mediation:

**Question 1: Manager Hand-In Sheets**

During mediation you asked about manager hand-in sheets for:

A. periods prior to October 27, 2000

- There were no hand-in sheets produced for periods earlier than October 27, 2000. As explained, the Door to Door Program was in pilot mode in these prior periods, and only two managers were active. Manager hand-in sheets were established when the first wave of independent agents began work in October of 2000.
- For these prior periods, the net number of contracts sold appears on the [Company A] invoices themselves, and is not broken down by manager or agent - only a total by category is shown.
- The table below captures sales activity, by category, for each period earlier than the above:

The table referred to above included information under the headings, *Invoice #*, *Date*, *Electricity Registrations*, *Long Distance Registrations* and *Gas Registrations*. The letter continued:

B. periods after January 21, 2002

- One additional manager hand-in form was provided to you by e-mail on April 19<sup>th</sup>, 2006. This covered the period to Jan 28, 2002, for [Company B].
- The manager hand-in form process appears to have been discontinued in February 2002. The net number of contracts sold appears on the [Company B] invoices themselves, and is not broken down by manager or agent - only a total by category is shown.
- As noted in previous correspondence with you, all agent-based sales activity stopped in March 2002, due to a decision by Hydro One to divest this business.
- The table below captures sales activity, by category. You will note that the first invoice below overlaps the period of time covered by the manager hand-in form sent to you on April 19<sup>th</sup>, 2006.

Hydro One then provided a separate table outlining information using the same headings as noted in part A. above.

This appeal could not be resolved in mediation.

## **Appeal PA-060052-1**

Appeal PA-060052-1 deals with the appellant's request for:

Any and all information on the verification, reaffirmation process of [OHE's] Door to Door Program.

According to Hydro One's access decision, the appellant clarified this request at the request stage to mean, "how did this work, who did it and may I review the product of this work". In its decision, Hydro One stated that it interpreted this to mean that the appellant wanted any and all records that provide information on the verification, reaffirmation process.

In its decision, Hydro One granted access to the records it identified as responsive to the request. The records totalled 10 pages of information and consisted of a Contact Verification Script, used by OHE staff when confirming enrollments by telephone, and a sample mail-in confirmation, used when customers wished to confirm their enrollment by mail. The records also included a Customer Enrollment and Billing Timeline flowchart that documents the lag time, in business days, between customer sign-on and first bill.

The appellant appealed Hydro One's decision on the basis that the information identified and provided by Hydro One was not the information he had requested and that records that do respond to his request should exist.

During mediation, in its April 28, 2006 letter to the appellant, Hydro One indicated the following as it relates to this appeal:

### **Question 2: Verification/Reaffirmation Process**

As you indicated during mediation, the records provided are not the records requested. We also did not address your specific questions around who performed verification/reaffirmation work and whether you could view the products of this work.

We indicated to you during mediation that [Company C] performed this service for OHE and that the only product we received from this service was Invoice Cancellation Records, which is the subject of [another request], also under appeal. You asked us that we confirm whether:

#### **- the service performed by [Company C] covered outbound verification/reaffirmation**

- We confirm that [Company C] was engaged in outbound verification/reaffirmation. Six of their staff performed this service on behalf of OHE. An individual by the name of [name provided] at [Company C] was OHE's contact for this service.

**- the contract with [Company C] could be located with a view to providing more detail about the process**

- We have been unable to locate any contract documentation for the arrangements with [Company C]. However, after a search of our computer files, we have located two additional records related to this request and attach them to this response:
  - OHE Direct Door Sales Campaign Verification Script, executed by [Company C] staff on behalf of OHE (Attachment A)
  - An extract from the OHE Oakville Office Operations Manual, confirming the process by which [Company C] obtained the list of verifications to be made and what they were to return to OHE as a result (Attachment B)

In a subsequent letter dated May 17, 2006, Hydro One advised the appellant as follows:

**Question 3: Sample Reaffirmation File**

During mediation, [a former Manager of OHE] referred to one reaffirmation file that was found among our records, containing details for approximately 20 customers. You asked for a copy of this file.

- As noted in our previous mediation response (see our letter of April 28<sup>th</sup>, 2006, Question 2), the only product OHE received from third party verification was cancellation files. Cancellation files arising from third party verification were combined with other cancellation files to produce a master cancellation file for any given period.
- Because you previously requested cancellation files ([request number], also under appeal), the referenced file has already been provided to you.
- The referenced file is identified as “Third Party Verification Cancels [sic] to Aug 27 01” and can be found in the “August 2001” folder on the CD you received.
- No other similar files have been found.

**Question 4: Letter from [Company C] Confirming Their Role in Reaffirmation/Verification**

You asked us to contact [Company C] to confirm their role in reaffirmation/verification and to supply evidence of same.

- We attach, as Appendix A, a letter received from [named individual], President of [Company C], confirming that [Company C] was the service provider to OHE for reaffirmation services.
- [Company C] verbally confirms that they no longer have any records detailing the customers who were called for reaffirmation/verification as part of this service. Such records were removed from their premises when OHE assets were sold to [Company D].

**Question 5: Accounts Payable Search for [Company C] Invoices**

We agreed to perform a search via our Accounts Payable system for invoices prepared by [Company C] for the above service, in order to confirm the delivery of verification/reaffirmation services.

- Verification/reaffirmation was one of several services provided to OHE by [Company C]. Their invoices do not label or break out this service. Instead, [Company C] advises that this service was captured under a collective label of “Contractor Network Services”, which included several different services to support gas, electricity, long distance and water heater contracts.
- [Company C] has been consulted regarding the release of sample invoices to you to illustrate the above (sample attached as Appendix B).

**Question 6: Review of [Company D] Asset Purchase Agreement for any Reference to Reaffirmation/Verification**

We agreed to review the asset purchase agreement of 2002 for the sale by OHE of all assets related to its retail electricity, gas and water heater business. Such review was for the specific purpose of finding any reference to reaffirmation/verification services.

- No reference to the above service appears in any part of the agreement, including its appendices.
- However, all benefits, obligations and liabilities arising from the agreement between OHE and [Company C] were assigned to [Company D] as a result of this agreement. All records relating to these benefits, obligations and liabilities and related to the services performed by [Company C] were transferred to [Company D] as part of the agreement, with the exception of internal OHE administrative documents used by [Company C] (such as the verification script already provided to you) and invoices from [Company C] to OHE.

**Question 7: Discussions with [Company B] and [Company D] Regarding Any Role in Reaffirmation/Verification and Access to Possible Records of Same**

You asked us in e-mails after Mediation Session #2 to discuss with [Company B] and [Company D] their role in reaffirmation/verification and whether they have records relating to such activities and would facilitate access to these records, if they exist.

- Any such enquiry by Hydro One was confined to the period of time related to the Door to Door program in OHE, specifically August 2000 to March 2002.
- [Company B] verbally confirms that they played no role in reaffirmation/verification and have no such records.
- [Company D] has not been contacted. Unlike the other parties in these matters ([Company C and Company B]), [Company D] was not a service provider to OHE. Under the terms of the asset purchase agreement, [Company D] purchased all assets related to the retail electricity, gas and water heater business of OHE. Ownership of records relating to such assets was transferred to them as part of the sale of assets. Should you wish to contact them, you may do so on your own time and at your own cost. We remind you, however, that [Company D] divested its retail gas and electricity assets in subsequent transactions beginning in 2003 with [Company E] (an unrelated third party). It is unlikely that [Company D] will have any records to assist you.

This appeal could not be resolved in mediation.

**Appeal PA-060053-1**

Appeal PA-060053-1 deals with the appellant's request for:

Copies of Independent Agent Agreements signed by Agents during the OHE Door to Door Program.

Hydro One granted access to the records it identified as responsive to the request. The records totalled 60 pages of information and consisted of three executed agreements between OHE and Company A and one unexecuted revision. The records also included executed Reciprocal Confidentiality Agreements. The time periods covered by the agreements included:

- August 9, 2000 to August 30, 2000
- September 8, 2000 to December 31, 2000
- January 1, 2001 to December 31, 2001 (executed original and unexecuted revision)



The appellant appealed this decision on the basis that responsive records should exist in addition to those identified by Hydro One.

In its April 28, 2006 letter to the appellant, Hydro One addressed this appeal as follows:

**Question 3: Independent Agent Agreements**

During mediation you asked why only approximately 130 independent agent signatures were included on these documents, when at its peak, the OHE program used as many as 400 or so. During mediation, we discussed the fact that agent signatures appear only on the 2000 document, whereas only the binding authorities for [Company A] (example name provided) signed in 2001 and later.

Although we agreed during mediation that the implications of who signed what contract are possibly a matter for the courts to pursue, there is one additional fact to help you understand the records:

In late 2000, [Company A] had not fully set up its offices and administrative processes. OHE recognized this, and assisted [Company A] with some of the administrative processes around agent recruitment, including the collection of signatures on contracts. Once [Company A] had set up its operations, and certainly by the time of the next contract renewal in 2001, all administration around agent recruitment was carried out by [Company A] and its staff, and all records relating to such processes were retained by [Company A] in its offices.

In its letter of May 17, 2006, Hydro One provided the following information:

**Question 8: Correction to Statement re: Independent Agents**

You asked us to correct a statement in our letter of April 28<sup>th</sup>, 2006, specifically in relation to Question 3: Independent Agent Agreements. The existing statement reads:

“During mediation you asked why only approximately 130 independent agent signatures were included on these documents, when at its peak, the OHE program used as many as 400 or so.

The correct statement now reads: “During mediation you asked why 23 independent agent signatures were included on these documents, when at its peak, the OHE program used as many as 400 or so.” In Mediation Session #1, you said that the actual number of unique signatures is 23. We have not verified this, as it is not relevant to our response. Our response in our letter of April 28<sup>th</sup>, 2006 still stands (see Question 3).

Mediation did not resolve this appeal.

**Appeals PA-060014-1, PA-060052-1 and PA-060053-1**

I sent a Notice of Inquiry to the appellant and Hydro One informing them that an oral inquiry would be held to determine whether Hydro One conducted a reasonable search for all records that respond to the appellant's three requests. The oral inquiry was conducted by teleconference. Hydro One was represented by its Freedom of Information Co-ordinator, assisted by the former Manager of OHE referred to above and the Assistant General Counsel for Hydro One. The appellant provided representations on his own behalf.

During the oral inquiry, the parties agreed to adjourn the inquiry as it relates to Appeal PA-060014-1 because of ongoing matters that may have had an impact on the outcome of that appeal. I subsequently continued the inquiry in that appeal by asking the parties to submit any further representations in writing. Both parties provided written representations which each then shared with the other.

**DISCUSSION:**

*Introduction*

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 of the *Act* [Orders P-85, P-221, PO-1924-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.

A number of previous orders have identified the requirements in reasonable search appeals [Orders M-282, P-458, P-535, M-909, PO-1744 and PO-1920]. Generally, a reasonable search is one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request [Order M-909]. 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 [Orders P-624, M-909, PO-1744].

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.

I will first set out the parties' representations as they relate to each appeal. I will then outline my findings regarding all three appeals.

### ***Representations***

At inquiry, the appellant explained that he made his three requests because of information he obtained in the course of a civil matter between the appellant and a third party. During the course of those proceedings, the former Manager of OHE, who participated in this oral inquiry, testified to certain matters. The appellant explained that he submitted his requests to Hydro One in order to obtain documentation he believed should exist, based on that testimony. At the inquiry, the appellant also relied on the transcript of that testimony to support his view that additional records responsive to his requests should exist. The appellant provided a copy of the transcript to both Hydro One and this office.

### **Appeal PA-060014-1**

As outlined above, this appeal dealt with the appellant's request for Manager Hand-In Reports. As also previously mentioned, the oral inquiry for this appeal was adjourned. Before the adjournment, however, both parties presented some information relating to the issue in the appeal. The parties subsequently also submitted written representations.

In its written representations, Hydro One described Manager Hand-In Reports in the following way.

Each representative/agent in the "Door to Door program" turned over signed contracts for the week to a "manager", who was responsible for counting them and preparing any required paperwork to enable [Company A] or [Company B] to be paid for the work. Payments were made by OHE on a fee per contract basis, so finalizing the number of contracts signed was key. For at least a portion of the 2000-2002 period, managers were required to prepare "Manager Hand-in Forms" that listed, by representative/agent, the number and type of contracts signed by consumers in a given period (typically weekly). "Manager Hand-in Forms" were used by [Company A] and [Company B] (the latter for apparently only a brief period) to prepare monthly invoices to OHE.

These forms are the subject of this appeal. These forms for the period October 27<sup>th</sup>, 2000 to January 21<sup>st</sup>, 2002 have been released to the appellant. For reasons that are not clear, "Manager Hand-in Forms" appear to have been discontinued after January 21<sup>st</sup>, 2002 and only the total counts of contracts signed for the month appear on the invoices submitted by [Company B]. Our searches during and subsequent to mediation on this matter have not resulted in the discovery of any additional "Manager Hand-in Forms" beyond January 21<sup>st</sup>, 2002.

During the oral inquiry, the appellant questioned why Hydro One had not provided him with Manager Hand-In Reports after January 2002. This was the period when Company B had assumed Company A's responsibilities. The appellant believes that these Manager Hand-In Reports should exist.

In his written representations, the appellant referred to his letter of appeal in which he mentioned the Manager Hand-In Reports previously provided to him by Hydro One, and then listed a number of reports he believed were missing for particular invoices.

The appellant also referred to a document he received from Hydro One at the time that Hydro One disclosed the invoices from Company B. The appellant stated that this document, entitled OHE Agent Compensation, Proof Analysis-Comp Run, “communicates sales/cancellation totals between [Company B] and Hydro One. The bottom left hand corner has the words OHE Invoice Support 01-28-02. This document would have to be backed-up with detail reports outlining submissions and cancellations.”

At the oral inquiry, in response to the appellant’s concern that Manager Hand-In Reports from Company B dated after January 2002 had not been provided, Hydro One referred to its answer in Question 1B of its April 28, 2006 letter to the appellant (quoted above) which indicates in part that the “manager hand-in form process appears to have been discontinued in February 2002. The net number of contracts sold appears on the [Company B] invoices themselves, and is not broken down by manger or agent – only a total by category is shown”. Hydro One also explained that it had extracted all of the information from the invoices for the relevant period that responds to this request and provided it to the appellant. According to Hydro One, it has provided the appellant with all information in its possession that responds to the request.

In its written representations, Hydro One referred to the representations provided at the oral inquiry regarding appeals PA-060052-1 and PA-060053-1 (outlined in more detail below), which it indicated also apply to this appeal. Hydro One concluded by saying:

At the oral enquiry, I [Hydro One’s Freedom of Information Co-ordinator] indicated that I had performed the following:

- Conducted searches of offsite storage locations and Hydro One offices where any records related to OHE could possibly have been stored.
- Conducted searches of electronic document servers and backups for any records related to OHE.
- Conducted searches of our Accounts Payable system for invoices related to OHE and specifically for those issued by [Company B] and [Company C].
- Interviewed current Hydro One employees either previously directly employed by OHE or who had provided support to OHE.
- Attempted to contact or successfully contacted individuals previously connected to [Company B] and to [Company C] respectively.

In closing, Hydro One has conducted a full and complete search for records responsive to the three requests that are the subject of the previous oral enquiry and this written enquiry. We have released all responsive records found to date without severances. We have provided additional records requested during mediation. Given the fact that OHE was divested in 2002,

and based on all of the above, we offer the view that there is no other location where we can search for responsive records and no logical reason for us to withhold any additional records if in fact they were available.

### **Appeal PA-060052-1**

As outlined above, this appeal addressed the appellant's request for information relating to the Door to Door Program's verification/reaffirmation process.

At the oral inquiry, the appellant referred to what he believed were inconsistencies between the former Manager's testimony given as part of the civil proceedings mentioned above and the results of Hydro One's search for responsive records. Specifically, the appellant referred to a portion of the former Manager's testimony regarding Ontario Energy Board rules that were to be followed by OHE when entering into customer service contracts, including their subsequent verifications. He questioned why Hydro One had not provided him with information about these rules.

Furthermore, according to the appellant, the testimony indicates that verification took place "in house" by OHE, eventually involving approximately 30 OHE staff before being turned over to Company A. The appellant maintained that if that was the case, there should exist employee records, such as the results of contacts with customers and other records reflecting the product of their work.

The appellant also believes that Hydro One should have a contract with Company C, which assumed the reaffirmation function, as well as records of internal and external communications relating to that process. The appellant further maintained that there should be additional invoices to reflect billing by Company C for their services. The appellant stated that he was provided with only two invoices from this company, dated months apart. He questioned why only two invoices were provided and felt that additional invoices should exist to cover the rest of the time period in which Company C carried out this function.

In its submissions, Hydro One relied in part on the information contained in its letters of April 28, 2006 and May 17, 2006, portions of which are quoted above.

Hydro One explained that the rules governing verification/reaffirmation that were referred to by the former Manager in her testimony are found in the *Ontario Energy Board Act, 1998*, and provided the relevant chapter and sections. It explained that this Act required OHE to reaffirm all signed contracts. Hydro One went on to explain that OHE contracted Company C to reaffirm electrical, long distance and natural gas contracts.

With respect to the verification/reaffirmation process, Hydro One explained that all contracts were sent to Hydro One's Oakville office and inputted into a database. Extracts from that database were sent weekly to Company C. That company's staff contacted the customers to reaffirm the contracts. Any contract cancellations would be forwarded to OHE for inclusion in "claw backs" to the contract company. I note that in its April 28, 2006 letter, Hydro One

explained that cancellation records are subject to a separate access request made by the appellant which was subsequently appealed to our office and is not included in the three appeals addressed in this Order.

Hydro One further explained that the consultant companies involved in the Door to Door project paid all of the door to door sales people and their support staff as well as support staff working for the former Manager of OHE. According to Hydro One, it did not pay any of these employees because they were not Hydro One staff, but employees of the consultant company. Hydro One submitted that there was, therefore, no reason for Hydro One to be in possession of their personal employee records.

Hydro One explained that the two invoices from Company C, referred to by the appellant, were provided to him in response to his request, during mediation, for confirmation of Company C's role in the verification/reaffirmation function. The two sample invoices were provided as evidence to show that company's participation in the process, as the appellant had requested. Although at the inquiry, Hydro One took the position that the remainder of the invoices from Company C are not responsive to the appellant's request, Hydro One subsequently disclosed these invoices to the appellant. It is therefore not necessary for me to deal with the issue of whether or not these invoices are responsive to the request.

Hydro One went on to explain that OHE's business was divested by Hydro One in early 2002. OHE operated out of independent offices not physically tied to other Hydro One offices. When OHE's business assets were sold, the receiving owner assumed custody of the records relating to the assets they were purchasing and these records were removed from Hydro One facilities.

According to Hydro One, the Door to Door Program ended in March of 2002. During the next two months, OHE, working in conjunction with Company D, the receiving owner, prepared the databases and files, including reaffirmation files, for transfer to the new owner and closed the existing offices. Customer contracts were also removed from the Oakville office. OHE staff were declared surplus and the contract staff were either absorbed by their consulting company or let go.

In response to the appellant's concerns regarding what he considered to be inconsistencies between the former Manager's testimony and the results of the searches, the former Manager explained that she had been called to testify to provide an overview of her former responsibilities. Although she had testified to the best of her ability and recollection, she had been given very short notice before her testimony, it had been four years since she had been involved in the Door to Door Program and she was on strike at the time she was subpoenaed and did not have access to her records in her office in order to refresh her memory.

Hydro One explained that the three requests that are the subject of this inquiry form part of twelve requests submitted by the requester since early 2005. All of these requests dealt with the Door to Door Program or OHE's relationship with its contractors, with the exception of two requests which related to employee records. Hydro One explained that the searches for

responsive records in all of these requests have been very similar and have been ongoing since February of 2005.

Hydro One then provided a description of the searches conducted to locate records responsive to the requests, summarized as follows:

- After OHE staff were declared surplus, only two employees involved in the Door to Door Program remained as active employees of Hydro One. This included the former Manager who participated in the inquiry. Both of these staff members were consulted during the search for records.
- Hydro One also consulted with its Chief Information Officer, who had been actively involved in the transfer of the business to the new owner and other parties to the agreement. He confirmed that he has no knowledge of the location of any additional responsive records.
- Hydro One contacted former employees of OHE, now working for other companies, who confirmed that they have no knowledge of current locations of responsive records.
- Facility managers were also contacted. They confirmed that any responsive records, if they still exist, would be located in one location – an off-site storage facility, contracted with a third party, that also houses all of its other business records. Hydro One conducted a search of this location.
- Hydro One searched electronic records, including “document shared drives” in its financial transaction systems.
- During the mediation stage of these appeals, Hydro One contacted Company B as well as Company C to enquire about the availability of records.

Hydro One submitted that there is no reasonable basis to conclude that it would have possession of much of the requested information because Hydro One divested the business and the only related records Hydro One should have on file are records relating to tax implications or to other statutory requirements.

Hydro One submitted, in summary, that it searched physical locations, contacted contractors, contacted former employees and consulted with all internal staff who may have had dealings with OHE. When OHE closed and the business wound up, relevant files were transferred to the successor companies that purchased the business.

### **Appeal PA-060053-1**

As outlined above, this appeal deals with the appellant’s request for Independent Agent Agreements.

During the oral inquiry the appellant again referred to what he believed were inconsistencies between the former Manager's testimony, referred to above, and the results of Hydro One's search. In his view, in light of these inconsistencies, Hydro One did not conduct a thorough search.

Referring to specific portions of the transcript of the former Manager's testimony, the appellant submitted that according to her testimony, the former Manager had in her possession, specifically in her office, agreements signed by independent sales agents. Furthermore, he pointed out that according to the testimony, each agent, including the appellant himself, signed these agreements more than once.

According to the appellant, Hydro One provided him with copies of agreements, but one agreement contained only 23 signatures, many fewer signatures than he believed should exist, given that there were as many as 400 independent agents working on this program. The appellant pointed out that based on the former Manager's testimony, he had signed the agreement four times and the latest signed agreement was in her office. The appellant submitted that he had been provided with only one such agreement, that being the earliest one. The appellant clarified that his concern in this regard is not that all agreements were not provided, but that not all signatures were provided. The appellant took the position that Hydro One should have searched for agreements containing all the signatures and that if additional agreements with his signature exist, they should be provided to him.

At the inquiry, the appellant also took issue with a statement made by Hydro One in its May 17, 2006 letter to the appellant (identified in bold below). In this letter, in referencing the transcript of the testimony given by the former Manager in response to certain questions, Hydro One stated as follows:

...The questions posed referred to how many agreements were signed by you, and whether [the former Manager] had copies of the agreements. [The former Manager] responded to the best of her recollection, given that said documents were not available to [the former Manager] at the time of her testimony. She also spoke truthfully, in that we do have copies of the agreements. Copies of the agreements in our files have been released to you. **Whether or not you signed these agreements and how many agreements you signed is irrelevant for purposes of fulfilling your FOI request.**

[emphasis added]

Hydro One submitted that it had provided the appellant with all responsive agreements in its possession. Hydro One suggested that having disclosed all of the independent agent agreements to the appellant, it would not logically follow that it would not disclose all of the signatures accompanying the agreements. Hydro One referred to the information it had previously provided to the appellant in its letters of April 28, 2006 and May 17, 2006, which have been quoted in part above.



Hydro One relied also on its description in Appeal PA-060052-1 of the searches conducted to support its position that a reasonable search was conducted for records responsive to the appellant's request in this appeal. Hydro One confirmed that a search for records was also conducted of the former Manager's office.

### *Findings*

#### **Appeals PA-060014-1, PA-060052-1 and PA-060053-1**

As stated earlier, a reasonable search is one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request. 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.

I have carefully considered all the representations, both oral and written, that have been provided to me in the three appeals in reaching my findings.

Based on the information before me, I am satisfied that Hydro One expended reasonable efforts to identify and locate the records responsive to all three requests. In making my decision, I took into consideration Hydro One's explanation that many of the records of the nature being requested by the appellant would have been transferred to the new owner when OHE sold the business. Furthermore, based on Hydro One's description of the searches conducted for any records that may have remained in its possession, I am satisfied that the searches were thorough and carried out by experienced and knowledgeable employees. Specifically, I make the following findings with respect to each appeal.

With respect to Appeal PA-060014-1, involving a request for Manager Hand-In Reports, I find that Hydro One has provided sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate responsive records within its custody or control. Hydro One provided detailed explanations and responses to the questions raised by the appellant and I am satisfied that it has adequately responded to this request.

With respect to Appeal PA-060052-1, dealing with records relating to the verification/reaffirmation process, I accept Hydro One's explanation of the consultant companies' responsibility for the employment of the Door to Door sales people, their support staff and the support staff working for the former Manager of OHE. I also accept that when OHE's business was divested, the records relating to that business, including the reaffirmation files, were transferred to the new owner. Furthermore, based on Hydro One's description of the searches conducted for any records that may be in its possession, I am satisfied that those searches were reasonable in the circumstances.

Appeal PA-060053-1 dealt with Independent Agent Agreements. I am satisfied with Hydro One's explanation in its April 28, 2006 letter that, "Once [Company A] had set up its operations,

and certainly by the time of the next contract renewal in 2001, all administration around agent recruitment was carried out by [Company A] and its staff, and all records relating to such processes were retained by [Company A] in its offices.”

With respect to the appellant’s view that additional signatures accompanying Independent Agent Agreements should exist, in particular in the former Manager’s office, I note that the former Manager participated in the oral inquiry, provided an explanation regarding her previous testimony and was consulted during the search for records. Furthermore, according to Hydro One’s representations, a search was conducted of her office. Based on the information provided, I am satisfied that the searches for agreements with additional signatures, including any that may be in the former Manager’s office, were reasonable.

Although I am not persuaded by Hydro One’s position that the number of agreements signed by the appellant and whether he signed agreements is irrelevant to the request, it is clear from the information before me that despite this view, Hydro One did in fact conduct a search for all relevant agreements, including all signatures that accompanied those agreements. In my view, Hydro One has made a reasonable effort in this appeal to locate responsive records.

As previously indicated, while Hydro One does not have to prove with absolute certainty that additional records do not exist, it does have to provide me with sufficient evidence to show that a reasonable effort was made to locate records responsive to the requests. In the particular circumstance of these three appeals, I am satisfied with the explanations provided by Hydro One and I find that the searches conducted by Hydro One for records responsive to the requests were reasonable.

Accordingly, I find that in all three appeals, Hydro One has adequately discharged its responsibilities under section 24 of the *Act* to conduct a reasonable search for records responsive to each of the appellant’s request.

**ORDER:**

I dismiss all three appeals.

Original signed by: \_\_\_\_\_  
Alex Kulynych  
Acting Adjudicator

December 21, 2006 \_\_\_\_\_