



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-2202**

**Appeal MA-050375-1**

**City of Peterborough**



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

## **NATURE OF THE APPEAL:**

The City of Peterborough (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), for access to all records contained in the requester's social services file, including all relevant internal memoranda.

The City located the social services file and the requester was granted partial access to it. Access to some of the information was denied pursuant to section 14(1) (invasion of personal privacy) of the *Act*.

After viewing her file, the requester filed a request for correction regarding information in her file that related to the monetary values of certain shares which date back to 1999. The City denied her request for correction on the basis that the Social Services Department considers the information relating to the shares to be accurate "as they were dealt with through a Social Benefits Tribunal Hearing in March 2003." The appellant was advised that, under section 36(2)(b) of the *Act*, she could request that a statement of disagreement be attached to the information reflecting any correction that was requested but not made.

The requester, now the appellant, appealed the City's decision to this office on the basis that:

- she believes additional records exist,
- she was denied access to some of the information in her file,
- her request for correction was not granted,
- she was concerned that personal information of other unrelated individuals was in her file.

During mediation, the parties engaged in a teleconference in an attempt to resolve some of the issues.

With respect to the personal information of other individuals that was withheld under section 14(1), the appellant agreed that she did not wish to pursue access to this information.

With respect to her request for correction, the City advised that she could file a statement of disagreement and the statement would be attached to the relevant records relating to her assets. The appellant agreed that she would file a statement of disagreement.

With respect to the appellant's concern that the personal information of other individuals was in her file, the mediator advised that a privacy complaint would be opened to address her concerns. The appellant was satisfied that this matter would be addressed in a privacy complaint.

Additionally, the City agreed to provide the appellant with another opportunity to review her file and clarify any outstanding issues.

Following her review of her file, the appellant advised that she continues to believe that additional records should exist. Specifically, the appellant states that there are some documents which she had previously seen in her file which no longer appear to be there. Accordingly, she believes that the City has not conducted a reasonable search for records responsive to her request as required by section 17 of the *Act*.

I began my inquiry into this appeal by sending a Notice of Inquiry to the appellant, initially. The appellant submitted representations.

I then sent a copy of the Notice of Inquiry to the City, enclosing a copy of the appellant's representations, in their entirety. The City provided representations in response.

As the City's representations raised issues to which I felt the appellant should have an opportunity to reply, I provided the appellant with the City's complete representations. The appellant responded with further representations.

## **DISCUSSION:**

### **REASONABLE SEARCH**

Where a requester claims that additional records exist beyond those identified by the institution, as is the case in this appeal, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17 [Orders P-85, P-221, PO-1954-I]. Accordingly, if I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the City's decision. If I am not satisfied, I may order the City to conduct further searches.

A number of previous orders have identified the requirements in reasonable search appeals [Orders M-282, P-458, P-535, P-909, PO-744 and PO-1920]. 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, M-909, PO-1744]. 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].

Where a requester provides sufficient detail about the records that he is seeking and the institution indicates that further records do not exist, it is my responsibility to ensure that the institution has made a reasonable search to identify any records that are responsive to the request.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, in my view, 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.

## Representations

The appellant takes the position that additional records responsive to her request should exist in her file. She submits:

I have a reasonable expectation that all of my personal information collected, delivered, and gathered by the City of Peterborough Ontario Works Department to be placed in my file.

I have reason to believe that additional records exist for the following reasons.

I dropped this information off to the local office.

Information such as health related information, workfare agreements, employment counsellor information, special diet forms, income statements, copies of pay stubs, childcare receipts, letters sent to caseworker including request both verbal and written that my personal information not be released to named parties.

...

My younger daughter who is identified as special needs lost her special benefit.

...

The receipt for the hearing aide batteries was not in the file. A caseworker stated it was not received. In viewing the records a second time it was in the file.

The City's representations are wholly contained in an affidavit sworn by its Coordinator of Family Services at the Social Services Department. This individual submits the following with respect to whether additional records responsive to the appellant's request might exist:

I can inform the IPC [Information and Privacy Commissioner/Ontario] that Social Services collects "health related information" for the purpose of providing a benefit or permitting a client to be exempt from a requirement. Typically, if Social Services fails to provide a benefit or fails to permit an exemption, this results in a client appealing our decision, or failure to make a decision, to the Social Benefits Tribunal (SBT). I am not aware that the appellant has made appeals to the SBT which have not been resolved. I concluded that all of the Appellant's health related information is contained within the four volumes of her master file.

I am assuming that by "workfare agreement", the appellant is actually referring to a record called a "participation agreement". Participation agreements are filed in

a client's master file and the client also receives a photocopy of each participation agreement.

I can inform the IPC that Social Services has employees with the job title "employment counsellor". Records created by an employment counsellor are filed on each client's master file. Without more specific information from the appellant concerning the alleged missing "employment counsellor information" there is no information upon which Social Services could conduct a reasonable search.

I can inform the IPC that special diet forms are a generic form created by Social Services and issued to certain clients. Upon issuance, each client then takes the special diet form to his/her family doctor or other health professional. It is my understanding that each family doctor, or other health professional who fills out these forms also keeps a copy of the Special Diet Form. Social Services is prepared to file any copy of a Special Diet Form that the appellant is able to obtain from her family doctor, or other health professional.

I can inform the IPC that the general practice followed by Social Services Concerning pay stubs is that they are not retained. The client's pay stub is used to verify their income statement and then the pay stub is returned to the client. Income statements are retained and placed in each client's master file. While the Appellant reviewed her entire file twice, she never indicated to the City which time periods she believed income statements were missing for.

Concerning the alleged missing "child care receipts", I can further inform the IPC that while Social Services does collect child care receipts to verify the amount of each client's child care costs, the child care receipts themselves are not retained but are returned to each client.

Furthermore, despite the new information contained in the appellant's Representation concerning the general nature of the alleged missing additional records, without further detail concerning the year, month, or circumstances concerning how each of these allegedly missing records came into the possession of Social Services, it would impossible for the City to undertake a reasonable search of its records to attempt to locate these records.

Concerning the letters the appellant alleges she sent to "caseworker including a request both verbal and written that my personal information not be released to named parties", I can inform the IPC that it is Social Services' standard practice to file letters from clients on the master file. I have also been informed by [the City's lawyer], and verily believe him, that the appellant's privacy concerns are being addressed separately by the IPC.

However, following the conclusion of the mediation concerning the appellant's access complaint, Social Services, under my direction undertook the following departmental-wide review of its filing practices. Namely, each of the six Social Services Supervisors were requested to randomly review at least 10 files to see if they could locate any documents filed on incorrect files. The purpose of this undertaking was to determine whether Social Services was maintaining an adequately high standard of filing accuracy. The results of this departmental-wide review were delivered to me. I can inform the IPC that, out the 68 files which were reviewed, 8 misfiled records were discovered. Those filing errors were corrected.

I can also inform the IPC that, as part of a new quality assurance programme, initiated independently of the appellant's concerns, each Supervisor within Social Services will also be randomly reviewing master files and this review will include a search for any misfiled records. In addition, our standard file review protocol results in each Social Services file being reviewed one a year. As part of this standard practice, the Consolidated Verification Process workers will be looking for misfiled records. The object of this two-stage review process is to develop a practice whereby each Social Service file is reviewed annually.

Concerning the IPC's question about what search were carried out and by whom, if that question refers to the alleged "missing records", I can inform the IPC that no additional searches have been conducted since 11 August 2006. However, prior to the appellant viewing her file for the second time on or about 18 and 25 April, 2006, I contacted all the caseworkers who had had carriage of the appellant's file. We did locate records in the possession of an Eligibility Review Officer [named officer]. Those records related to the Social Benefits Tribunal matter which is at the centre of the appellant's stated desire to file a "Statement of Disagreement". These records were copies of records already in the appellant's Master File.

Concerning the IPC's question, "Is it possible that such records existed but no longer exist?", I can inform the IPC that there is no protocol in place for Social Services to purge records from an active file.

In reply, the appellant submits:

If I had copies of information or viewed information in my records that I felt should exist and it was contained in the master file during the viewing it would be unnecessary to pursue this issue further.

I viewed the records in April 2006 a second time which only contained information from the time the first request was made in 2005.

I can only attempt to describe what I think should be in my records based on several facts

- a) unrelated third person's information in my personal file
- b) misfiled information.

A request was made both verbally and in writing regarding the correction to be appended to my file. This was discussed with the caseworker at the time regarding this matter.

I was told that the matter was brought before the [Social Benefits Tribunal] and a decision was rendered. Therefore, it was not necessary to note a correction or append information to my file.

I sent in a letter in August of 2005 advising of the inaccurate information. A small dividend was paid quarterly by Clarica which was reported on the income reporting statement and deducted from the benefits issued. In viewing the records I saw no notes or record of conversations regarding this matter.

...

Personal health related information was required by social services in order to obtain benefits but I did not view this in the file.

Some information not present during the initial request was contained in records after the IPC mediation process took place. For example, a request for assistance for my daughter's hearing aid batteries was not processed as a worker stated it was not received. I saw this in the file on April 2006 but it was not there during prior viewings.

...

During the viewing of the file only one memo or internal email was noted so is it correct to presume that no other information relating to me exists such as caseworker comments, written notes etc.?

Some medical information was not present during the viewing of my files. The concern is that this information may be misfiled and not where it should be.

...

According to the response from the City of Peterborough they have provided all the information except for what is held by the employment counsellor and the

ERO and that is a separate request and that no internal memo's, emails or notes by any caseworker exists.

I do believe that some information could be misfiled and was not available and this is based on the missing letter requesting a correction and conflicting information and the information that was missing but later located.

### **Analysis and finding**

As set out above, in appeals involving a claim that additional responsive records exist, the issue to be decided is whether the City has conducted a reasonable search for responsive records as required by section 17 of the *Act*. In this appeal, if I am satisfied that the City's searches for responsive records were reasonable in the circumstances, the decision will be upheld. If I am not satisfied, I may order that further searches be conducted.

In the circumstances of this appeal, I am satisfied that the search by the City for records responsive to the request was reasonable.

In her representations, the appellant identifies a number of different types of records that were not found in her file, despite the fact that she believes such records should exist. She explains that her belief is based, in part, on the fact that she provided certain information to the Social Services Department and, therefore, she believes that such information should have been recorded in her file. Moreover, the appellant's belief that additional records exist is also based on the fact that an unrelated third party's information was found in her own file. As a result, she believes that information belonging to her may be missing because it too was misfiled.

The City's representations, submitted as an affidavit sworn by the Coordinator of Family Services, not only describes the search conducted for the responsive records but also specifically addresses each type of information described by the appellant and explains, in each case, why such information is not found in her file. The affidavit also describes the action taken by the City, subsequent to this appeal, including a departmental-wide review of its filing practices in which the City reviewed its filing accuracy and an initiation of a new quality assurance programme to regularly review files to ensure no records are misfiled.

Given that the appellant found personal information related to an unknown third party in her file (a matter which was addressed in a separate Privacy Complaint), I acknowledge and understand the appellant's concern that some of her own personal information might be misfiled. This experience, coupled with the appellant's belief that there were documents that were previously in her file but as of her second viewing of her file were no longer there, would certainly cause anyone to be concerned. However, I have not been provided with sufficient evidence to conclude, nor do I find any factual basis upon which to establish, with any certainty, that additional records might exist but have been misfiled either by accident or through any bad faith on the part of the City.



Despite the City's explanations, I also acknowledge and understand why the appellant might reasonably believe that certain types of information that she provided to the Social Services Department ought to form part of her master file. However, as noted above, the issue before me is not to determine whether additional records exist with absolute certainty or even that additional records *ought* to exist, but rather, whether the City, has made a *reasonable* effort to identify and locate responsive records.

Based on the information provided by the City with respect to its search for responsive records, which I find to be credible, as well as the City's explanations as to why certain information was not found in the appellant's file, I am satisfied that it has demonstrated that it made a reasonable effort to identify and locate additional responsive records.

Accordingly, I find that the City has conducted a reasonable search pursuant to section 17 of the *Act* and I dismiss the appeal.

**ORDER:**

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

Original signed by: \_\_\_\_\_  
Catherine Corban  
Adjudicator

\_\_\_\_\_ June 19, 2007