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

ORDER MO-2236

Appeal MA07-12-2

City of Vaughan

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NATURE OF THE APPEAL:

The City of Vaughan (the City) received the following request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

> 1) Any and all Records that relate to [the requester], that are in the control, and/or the possession of [four named individuals] from the time period of June 28th, 2006 to the present time, on or about the 4th of December, 2006.
>
> 2) Furthermore, I, [the requester], submit that the location of these Records regarding [the requester], that [the four named individuals] have, can be found either in their possession, and/or in the custody of other parties that would be known but not limited to [the four named individuals].
>
> 3) Notwithstanding the above request, I, [the requester], further request, that in the event, that the Records regarding [the requester] that are being requested are in the custody and/or control of another institution and/or a 3rd Party, I, [the requester] extend the request for personal information to this institution and/or 3rd Party, and rely on the "Request to be Forwarded under section 18(2)(a) and (b)".

In response, on December 22, 2007, the City issued an interim fee estimate decision. The City advised the requester that it would cost $45 to search for records, based on a charge of $7.50 for each 15 minutes, for 90 minutes. The requester (now the appellant) paid the fee and appealed the City's fee estimate on the basis that it was "excessive" and that the decision letter was inadequate as it made no mention of records.

This office opened Appeal MA07-12.

On January 9, 2007, the City issued an access decision. The City provided the appellant with complete access to two records that were in the possession of one of the individuals named in the request. The City informed the appellant that no responsive records exist in the record-holdings of the three other individuals named in the request.

During the mediation of Appeal MA07-12, the appellant submitted a fee waiver request to the City, which the City declined. In addition it conducted another search for responsive records, but did not locate any further documents.

The appellant also separately appealed the City's final access decision, on the basis that she believed more records ought to exist. Upon receiving this appeal from the appellant, this office closed Appeal MA07-12 and combined all issues (fee, fee waiver, reasonable search and adequacy of decision letter) relating to the request into Appeal **MA07-12-2**, the present appeal.

Because these issues could not be resolved in mediation, the file was transferred to the adjudication stage of the appeal process. This office initially sent a Notice of Inquiry to the City, and received its representations. A complete copy of the City's representations was provided to the appellant, who also submitted representations in response to the Notice of Inquiry. I then

shared the representations of the appellant with the City and invited it to provide me with submissions by way of reply. The City did so.

PRELIMINARY ISSUE

Did the City's decision letter meet the requirements of sections 19 and 22(1) of the *Act*?

The appellant takes the position that the interim access decision issued by the City on January 9, 2007 did not comply with the requirements of the *Act* as it did not inform her of the number of responsive records and whether access to them would be granted.

Sections 19 and 22(1) of the *Act* describe how an institution which receives a request under the *Act* is to respond to the requester. These sections state:

> 19. Where a person requests access to a record, the head of the institution to which the request is made or if a request is forwarded or transferred under section 18, the head of the institution to which it is forwarded or transferred, shall, subject to sections 20, 21 and 45, within thirty days after the request is received,
>
> (a) give written notice to the person who made the request as to whether or not access to the record or a part of it will be given; and
>
> (b) if access is to be given, give the person who made the request access to the record or part, and if necessary for the purpose cause the record to be produced.
>
> 22. (1) Notice of refusal to give access to a record or part under section 19 shall set out,
>
> (a) where there is no such record,
>
> (i) that there is no such record, and
>
> (ii) that the person who made the request may appeal to the Commissioner the question of whether such a record exists; or
>
> (b) where there is such a record,
>
> (i) the specific provision of this Act under which access is refused,
>
> (ii) the reason the provision applies to the record,
>
> (iii) the name and position of the person responsible for making the decision, and

(iv) that the person who made the request may appeal to the Commissioner for a review of the decision.

I have carefully reviewed the contents of the City's January 9, 2007 decision letter and, with respect, I must disagree with the statements made by the appellant about its contents. The letter clearly indicates that three of the individuals cited by the appellant in her request do not have any records relating to her. It goes on to state that one individual has two records and that complete access to them would be granted. Copies of these records were then attached to the decision letter.

As a result, I find that the City's January 9, 2007 decision letter satisfied its obligations under sections 19 and 22(1) of the *Act* and I dismiss this aspect of the appeal.

DISCUSSION:

ADEQUACY OF THE FEE

General principles

Where the fee exceeds $25, an institution must provide the requester with a fee estimate. Where the fee is over $25 and under $100, the fee estimate must be based on the actual work done by the institution to respond to the request. [MO-1699]

The purpose of a fee estimate is to give the requester sufficient information to make an informed decision on whether or not to pay the fee and pursue access [Orders P-81, MO-1367, MO-1479, MO-1614, MO-1699]. The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees [Order MO-1520-I]. In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated [Order P-81, MO-1614]. This office may review an institution's fee and determine whether it complies with the fee provisions in the *Act* and Regulation 823, as set out below.

Section 45(1) requires an institution to charge fees for requests under the *Act*. That section reads:

> A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,
>
> (a) the costs of every hour of manual search required to locate a record;
>
> (b) the costs of preparing the record for disclosure;
>
> (c) computer and other costs incurred in locating, retrieving, processing and copying a record;

(d) shipping costs; and

(e) any other costs incurred in responding to a request for access to a record.

More specific provisions regarding fees are found in sections 6, 6.1, 7 and 9 of Regulation 823. Those sections read:

> 6. The following are the fees that shall be charged for the purposes of subsection 45(1) of the *Act* for access to a record:
>
> 1. For photocopies and computer printouts, 20 cents per page.
>
> 2. For floppy disks, $10 for each disk.
>
> 3. For manually searching a record, $7.50 for each 15 minutes spent by any person.
>
> 4. For preparing a record for disclosure, including severing a part of the record, $7.50 for each 15 minutes spent by any person.
>
> 5. For developing a computer program or other method of producing a record from machine readable record, $15 for each 15 minutes spent by any person.
>
> 6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.
>
> 6.1 The following are the fees that shall be charged for the purposes of subsection 45(1) of the *Act* for access to personal information about the individual making the request for access:
>
> 1. For photocopies and computer printouts, 20 cents per page.
>
> 2. For floppy disks, $10 for each disk.
>
> 3. For developing a computer program or other method of producing a record from machine readable record, $15 for each 15 minutes spent by any person.

> 4. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.

The appellant argues that she ought not to be charged a fee for the search time required to locate the records, as they contain her personal information. Accordingly, she argues that section 6.1 of Regulation 823 precludes the charging of a fee for search time and that she ought to have this amount refunded. The term "personal information" is defined in section 2(1) of the *Act* as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except if they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

I have reviewed the contents of the two pages of records which have been disclosed to the appellant. I find that each contain references to her name along with other information relating

to her, thereby qualifying as her "personal information" for the purposes of section 2(1) of the *Act*. Specifically, I find that the reference to the appellant contained in Document 1, Page 1 refers to certain actions undertaken by a City employee with respect to the execution of a letter of reference on behalf of the appellant. I find that this reference qualifies as the personal information of the appellant under paragraph (h) of the definition. In addition, the reference to the appellant's name in Document 1, Page 2 includes certain allegations made by her which I also find constitute her "personal information" within the meaning of the definition of that term in paragraph (h) of section 2(1). This record also contains the appellant's views and opinions about certain other identifiable individuals, thereby qualifying as the personal information of the other individuals under paragraph (g) of the definition in section 2(1).

Because I have determined that the information in one of the responsive records qualifies as the personal information of the appellant, I find that the City cannot charge a fee for the time expended in searching for these documents. As a result, I will order the City to refund to the appellant the $45 fee which she paid to the City in order to obtain access to the requested records. Because of this finding, it is not necessary for me to consider whether the City's decision not to grant a fee waiver was in accordance with the provisions of section 45(4) of the *Act*.

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 17 [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 must still provide a reasonable basis for concluding that such records exist.

In both its initial submissions and those made in reply to the representations of the appellant, the City has provided detailed and cogent descriptions of the locations searched for records responsive to the request and the reasons why, in some cases, they were not found. The City provided me with a detailed breakdown of the searches conducted of the record-holdings of each of the four individuals identified by the appellant, as well as affidavit evidence from them setting out the steps they took to locate the information sought by the appellant.

The appellant has provided me with specific submissions on the reasons for her belief that additional records responsive to her request ought to exist in the record holdings of four identified individuals covering the time period described in her request. The appellant is a

former employee of the City and the identified individuals are the former Mayor of the City, the Director of Engineering Services, the Commissioner of Engineering and Public Works and the City Manager. Her submissions include detailed references to her contacts and relationships with the individuals named during the time period described in her request, from June 28, 2006 to December 4, 2006, the date of the request.

It should be noted that the appellant made an earlier request for access to information under the *Act*, covering an earlier period of time, from August 1997 to February 28, 2006. In response to that request, the City identified 2,042 pages of responsive records. In order to limit the expense of reproduction, the appellant agreed to amend the scope of her request to include only those records maintained by one individual, totaling 291 pages. Access to those records was apparently granted by the City, subject to certain severances of personal information under the exemptions in sections 38(b) and 14(1) of the *Act*.

In its reply representations, the City has taken great care in responding to each of the circumstances and situations referred to by the appellant in her submissions. The City has provided explanations as to why the records which the appellant feels ought to exist do not in fact exist.

As identified in the discussion above, the issue to be determined is whether the City has conducted a reasonable search for records as required by section 17 of the *Act*. I have carefully reviewed all of the circumstances of this appeal and the evidence provided to me by the appellant and the City respecting the quality and thoroughness of the searches it has undertaken. I am of the view that the City has conducted thorough and complete searches for records responsive to the appellant's request. The City has provided significant and detailed evidence in support of its position that it has conducted a reasonable search for responsive records. The individuals identified in the request have been contacted and have provided affidavit evidence describing in great detail the nature and extent of the searches they have undertaken and the results of those searches. As a result, I find that the City has provided me with sufficiently cogent evidence to demonstrate that it has undertaken the kind of searches of its record-holdings which are required under the *Act*.

As a result, I find that the City has satisfied its obligations under the *Act* with respect to its efforts to identify and locate responsive records. Accordingly, I dismiss this aspect of the appeal, as well.

ORDER:

1. The City's January 9, 2007 decision letter satisfied its obligations under sections 19 and 22(1) of the *Act* and I dismiss this aspect of the appeal.

2. The City has made a reasonable effort to locate responsive records and I dismiss this aspect of the appeal.

3. I order the City to refund to the appellant the sum of $45 paid to obtain access to the requested records.

Original Signed By: October 17, 2007
Donald Hale
Adjudicator