



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

ORDER MO-2498

Appeal MA09-203

Toronto Community Housing Corporation



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NATURE OF THE APPEAL:

The Toronto Community Housing Corporation (the TCHC) received an eight-part request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), for access to the requesters' tenant file. Specifically, the requesters sought access to the following information:

1. A copy of the lease between [one of the requesters (Requester #1)] and [the named co-tenant].
2. Copies of mailed documents from [named TCHC building manager] to [Requester #1's brother] that were for [Requester #1's] review as mentioned on pages 99 & 100 of the previous FOI request completed March 11, 2009 with reference [#].
3. All documented correspondence between [above-named TCHC building manager] and [Requester #1's brother]. This would include all emails, notes, recordings, mailed documents and any and all other correspondence between the two. [Requester #1] is entitled to any copies of the correspondence as his [brother] was acting on his behalf as Power of Attorney.
4. All documented correspondence between [above-named TCHC building manager] and [first identified individual]. This would include all emails, notes, recordings, mailed documents and any and all other correspondence between the two. [Requester #1] is entitled to any copies of the correspondence as [first above-identified individual] in collaboration with [Requester #1's brother], dealt with [Requester #1's] affairs.
5. All documented correspondence between [above-named TCHC building manager] and [second identified individual]. This would include all emails, notes, recordings, mailed documents and any and all other correspondence between the two. [Requester #1] is entitled to any copies of the correspondence as [second above-identified individual] was also involved in [Requester #1's] affairs.
6. All documented correspondence between [named TCHC employee] and [Requester #1's brother]. This would include all emails, notes, recordings, mailed documents and any and all other correspondence between the two. [Requester #1] is entitled to any copies of the correspondence as his [brother] was acting on his behalf as Power of Attorney.
7. All documented correspondence between [above-named TCHC employee] and [first identified individual]. This would include all emails, notes, recordings, mailed documents and any and all other correspondence between the two. [Requester #1] is entitled to any copies of the correspondence as [first identified individual] in collaboration with [Requester #1's brother] dealt with [Requester #1's] affairs.

8. Anything else that pertains to our tenant file that hasn't already been disclosed.

...

The TCHC located the responsive records and issued a decision advising that partial access had been granted to certain records, and that the personal privacy exemptions in sections 14(1) and 38(b) of the *Act* had been applied to the withheld portions of the records.

With respect to the first item of the request, the TCHC advised that no lease signed by both individuals could be located. Access, however, was granted to the lease dated November 30, 1993, which was signed by Requester #1 only.

With respect to the second item of the request, no copies of those documents could be located.

The THCH went on to advise that with respect to the third, fourth, and fifth items of the request that: "this correspondence is found on pages 1-14 of the released information".

With respect to the sixth and seventh items of the request, the TCHC further advised that the named TCHC employee "could not find any record of correspondence between herself and the two named individuals".

The requesters (now the appellants) appealed the TCHC's decision.

During mediation Requester #1's brother consented to the disclosure of his personal information. After having received Requester #1's brother signed consent, the TCHC issued a revised decision granting access to additional information in the records. The TCHC further advised that access continues to be denied to portions of page 3, pursuant to sections 14(1) and 38(b) of the *Act*.

In turn, the appellants indicated that the severed portions of this record continue to be at issue in this appeal.

With respect to the first part of the request, the appellants believed that a lease signed by Requester #1 and the named co-tenant ought to exist, based on some forms containing the name of this individual. In response, the TCHC advised that it does not dispute that this individual's name could appear on some of its documents, however, no lease signed by both this individual and Requester #1 exists. Therefore, the reasonableness of the search for the record responsive to the first part of the request remains at issue in this appeal.

No further mediation was possible and the file was transferred to adjudication. I sent a Notice of Inquiry, setting out the facts and issues in this appeal, to the TCHC initially. I was unable to seek the representations of the second identified individual whose personal information may be contained in the record at issue as this individual did not want to participate in the inquiry when asked to do so by this office. I received representations from the TCHC, which I sent to the appellants along with a Notice of Inquiry. Portions of the TCHC's representations were withheld

due to confidentiality concerns. I received representations from the appellants. I sent a copy of the appellants' representations to the TCHC and received representations in reply.

RECORD:

The record that remains at issue consists of the undisclosed portions of an email on page 3 of the records sent by the second identified individual.

DISCUSSION:

PERSONAL INFORMATION

I will first determine whether the record contains "personal information". That term is in section 2(1) 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;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

Sections 2(2), (2.1) and (2.2) also relate to the definition of personal information. These sections state:

(2) Personal information does not include information about an individual who has been dead for more than thirty years.

(2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(2.2) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225 and MO-2344].

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

The TCHC decided not to defend its position that the record at issue, an email, contains personal information. The individual who wrote the email declined to participate in the Inquiry. At issue is the body of the email, the information about the sender and recipients has already been disclosed to the appellants. Based upon my review of the email at issue, I find that it does not contain personal information, but contains information related to the second identified individual in a business capacity. This information does not reveal something of a personal nature about the individual. As a result the personal privacy exemption cannot apply. Therefore, I will order the undisclosed information in this email disclosed.

SEARCH FOR RESPONSIVE RECORDS

I will now determine whether the THCH conducted a reasonable search for a lease signed by Requester #1 and the named co-tenant

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 and 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 [Orders P-624 and PO-2559]. To be responsive, a record must be "reasonably related" to the request [Order PO-2554].

A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request [Orders M-909, PO-2469, PO-2592].

A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control [Order MO-2185].

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 [Order MO-2246].

A requester's lack of diligence in pursuing a request by not responding to requests from the institution for clarification may result in a finding that all steps taken by the institution to respond to the request were reasonable [Order MO-2213].

The TCHC was required to provide a written summary of all steps taken in response to the request. In particular, it was asked:

1. Did the institution contact the requester for additional clarification of the request? If so, please provide details including a summary of any further information the requester provided.
2. If the institution did not contact the requester to clarify the request, did it:
 - (a) choose to respond literally to the request?

- (b) choose to define the scope of the request unilaterally? If so, did the institution outline the limits of the scope of the request to the requester? If yes, for what reasons was the scope of the request defined this way? When and how did the institution inform the requester of this decision? Did the institution explain to the requester why it was narrowing the scope of the request?
3. Please provide details of any searches carried out including: by whom were they conducted, what places were searched, who was contacted in the course of the search, what types of files were searched and finally, what were the results of the searches? Please include details of any searches carried out to respond to the request.
4. Is it possible that such records existed but no longer exist? If so please provide details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.

The Freedom of Information Co-ordinator (FOIC) of the TCHC provided representations on behalf of the TCHC. In the representations, she states that she directed the search and did most of the actual searching herself, as the tenant file and all ancillary records pertaining to the apartment unit in question had been in her possession at one time or another over the course of the last two years. She submits that the TCHC:

...has always maintained that there was no lease signed by these two tenants and the [TCHC]. [Requester #1] signed a lease in November 1993, when he first became a tenant with a predecessor company to Toronto Community Housing, the City of Toronto Non-Profit Housing Corporation (Cityhome). In May 1995, [he] sent a note to staff at [address] requesting that [the named co-tenant] be added to the lease. Toronto Community Housing at no time disputes that [the named co-tenant] lived in unit [#]; however there is no evidence to prove that a new lease was ever signed.

I am advised by staff that it is not common procedure for tenants to sign new leases if another individual moves into the unit. Tenants who are receiving a rent subsidy (RGI) must inform Toronto Community Housing when individuals move in or out of the unit, as each person's income may affect the amount of rent the unit pays per month. Market rent: tenants, such as [Requester #1], and later [the named co-tenant], are under no such onus, and may have, within reason, other individuals living with the leaseholder without informing the administration, or affecting the amount of rent paid. The leaseholder will usually inform the staff at the building about new individuals in the unit, as this new person may need parking privileges or might have contact with staff on maintenance issues. If this is the case, the staff will enter the new occupant's name into the internal

administration database, the Housing Management System (HMS). The inclusion of [the named co-tenant's] name in this database, as the co-appellant [Requester #1] was, does not mean that a new lease has been signed.

I imagine that the misapprehension that another lease existed may have arisen from the testimony of the former Operating Unit Manager, [name] at a Landlord and Tenant Board hearing. ...She notes that she recalls that there were documents in the tenant file signed by both [Requester #1] and [the named co-tenant], but that as she did not have the file with her, could not perfectly recall the nature of the documents. After a careful examination of the file, I discovered there were Annual Review forms, which have been released to [Requester #1] in a previous [access request] that may be the source of [her] misunderstanding. Annual Review forms are not a lease, simply a confirmation of the family composition of the unit (who is living there) and a verification of income... [The named co-tenant's] name has been added to the HMS screen for unit occupants...

Sometime after [the named co-tenant's] co-occupancy of unit [#], his name was removed from the family composition of the unit...

The FOIC also provided a detailed affidavit in which she provided further details of the numerous searches undertaken in various locations for the lease between Requester #1 and the named co-tenant. These searches included both manual and electronic searches through TCHC databases.

In her affidavit, the FOIC included specific information she received from the Area Manager of the building that Requester #1 had lived in with the named co-tenant. This area manager advised her that, during the relevant time period, a new lease would not normally have been signed if another person moved into a unit with the leaseholder.

Requester #2 provided representations on behalf of himself and the other appellant. He submits that after Requester #1 wrote a letter requesting that the named co-tenant be added to the lease, he, along with this individual, attended at the office to sign a new lease agreement. In addition, he never received any communication from the TCHC that his request to add the named co-tenant to the lease was not granted.

He claims that there is documentation to substantiate the existence of the lease, including documents that clearly refer to the named co-tenant as a co-tenant. These legal documents consist of a Notice of Early Termination form, two Notices of Rent Increase forms, a computer generated annual report from TCHC's internal data system and an internal office computer generated document that displays the date that the tenancy was terminated. He submits that if had not been a lease with the named co-tenant then these documents would never have been issued. He submits that as the relevant tenant file had exchanged hands several times, documents may have been removed.

He also submits that he spoke with other staff members in the TCHC office and asked if it is possible to sign a new lease if there is an additional tenant to be added. He states that they acknowledged that new leases are signed all the time and that they strongly suggest to do so if the new tenant is to share responsibilities for the apartment unit. He also submits that the former Operating Unit Manager testified at a previous Landlord and Tenant Board hearing that the responsive lease did exist.

The appellants submitted a copy of a letter dated May 1995 addressed to "To Whom It May Concern" requesting that the named co-tenant be added to the lease, a Notice of Early Termination for Non-Payment of Rent, two copies of Notice of Rent Increase forms, a computer printout from the TCHC listing the named co-tenant as a co-tenant and another computer printout from the same system removing the named co-tenant as a co-tenant.

In reply, the TCHC submits that it does not dispute that Requester #1 provided a hand-written request to add the named co-tenant to the lease and also that this individual was added to the HMS database as another occupant of the unit. The FOIC submits that:

...if new occupants arrive or change, [TCHC] would be informed and document who the new occupant is. From a practical standpoint, the corporation likes to know who occupies the unit aside from the tenant. Reasons for this include:

- if staff see the occupant around, staff know that he/she is there with the tenant's permission, not trespassing.
- in the past, only tenants and occupants had access to parking the occupant might want to make payments, maintenance requests or communicate problems to the landlord on behalf of the household.

Even if the landlord is aware of the occupant and accepts communications or payments from him/her, or sends out communications with the occupant's name on them, it doesn't necessarily cause that person to become a tenant. ...Also, the landlord wouldn't accept decisions about the tenancy from the occupant (the occupant couldn't terminate the tenancy, ask for lock change, sign a new lease, etc.) without the tenant consenting. That is why [the co-tenant is] documented on the file [as an occupant]...

[The term co-tenant] doesn't exist in the [*Residential Tenancies Act*] or in previous versions of the legislation. Toronto Community Housing does not use it on any forms it might send out. It is the title of a field in the Housing Management System (HMS) database where staff can add an additional adult member to the file. The only available fields for entering these names are termed tenant, co-tenant, dependant, etc. There is no field for occupant, however the term co-tenant in the HMS, would be the equivalent. The field titled 'co-tenant' has been in the HMS since its inception, years ago. ...HMS is not a 'legal' document, it is a system used mainly to track rental payments for tenants.

...All Toronto Community Housing operating unit staff are instructed not to remove items from the tenant files....

The appellants must realize that the 'tenant' file is also not the only repository of information pertaining to a tenancy. There is the HMS database, the EasyTrac database (which is a contact management database used primarily for maintenance and tenancy questions tracking), or there may be emails. There also may be short notations about a unit in the Superintendants log, which may indicate the unit numbers of apartments the Superintendent visited to check the radiators. Every single communication, every single notation of a unit does not end up in the tenant file. A lease however would be in the tenant file, and this is where if any such lease between [Requester #1 and the named co-tenant] existed, it would reside...

Analysis/Findings

I accept the TCHC's evidence that although the named co-tenant was a co-tenant or a co-occupant with Requester #1 of an apartment unit managed by the TCHC, that at the time of this tenancy or occupation there was no requirement for the named co-tenant to enter into a lease with the TCHC as there was already a valid lease for that apartment in existence with Requester #1.

I do not accept the appellants' arguments that the TCHC has deliberately destroyed or withheld the responsive lease from disclosure. I accept the TCHC's evidence that at the relevant time in question, which was between 1995 and 1999, that only a lease between the TCHC and Requester #1 existed.

I find that the TCHC has provided sufficient evidence to show that it has made a reasonable effort to identify and locate a copy of any lease between it and the named co-tenant and Requester #1 [Order P-624]. The TCHC has provided a comprehensive description of the steps it undertook to locate this information sought by the appellants. I find that the appellants have not provided me with a reasonable basis for concluding that the responsive lease exists.

Accordingly, I am upholding the TCHC's search for the lease responsive to Part 1 of the appellants' request.

ORDER:

1. I uphold the TCHC's search for the responsive lease.
2. I order the email at page 3 of the records to be disclosed to the appellants **by March 15, 2010.**

3. In order to verify compliance with provision 2 of this order, I reserve the right to require the TCHC to provide me with a copy of the record disclosed to the appellants.

Original Signed by: _____
Diane Smith
Adjudicator

_____ February 22, 2010