



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

ORDER MO-2501-F

Appeal MA08-278

City of Vaughan



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

NATURE OF THE APPEAL:

This Order disposes of the remaining issues arising from my interim decision in Order MO-2460-I.

This appeal arises from a request the City of Vaughan (the City) received under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for three lists containing specific information relating to the amount of compensation paid to former employees or non-active employees during a specified period of time. In response to the request, the City issued a decision letter to the requester which states that the “request is for a number of lists that do not exist”.

Mediation did not resolve the appeal and the appeal was transferred to the adjudication stage of the appeal process. The sole issue in the appeal is whether the City conducted a reasonable search.

After obtaining representations from the parties, I issued Interim Order MO-2460-I. In that decision, I ordered the City to conduct a further search for responsive records as follows:

1. I order the City to conduct a search for records responsive to the appellant’s request for information which identifies the number, position and amount of compensation paid to former or non-active employees for 2005, 2006 and 2007.
2. I order the City to provide me with an affidavit from the individual(s) who conducted the search, confirming the nature and extent of the search conducted for responsive records within 30 days of this interim order. At a minimum the affidavit should include information relating to the following:
 - (a) information about the employee(s) swearing the affidavit describing his or her qualifications and responsibilities;
 - (b) the date(s) the person conducted the search and the names and positions of any individuals who were consulted;
 - (c) information about the type of files searched, the search terms used, the nature and location of the search and the steps taken in conducting the search; and,
 - (d) the results of the search.
3. The affidavit referred to above should be sent to my attention, c/o Information and Privacy Commissioner/Ontario, 2 Bloor Street East, Suite 1400, Toronto, Ontario, M4W 1A8. The affidavit provided to me may be shared with the appellant, unless there is an overriding confidentiality

concern. The procedure for the submitting and sharing of representations is set out in IPC Practice Direction 7.

4. If, as a result of the further search, the City identifies any additional records responsive to the request, I order the City to provide a decision letter to the appellant regarding access to these records in accordance with the provisions of the *Act*, considering the date of this Order as the date of the request.
5. I remain seized of this appeal in order to deal with any outstanding issues arising from this appeal.

Subsequent to the issuance of Interim Order MO-2460-I, the City conducted a further search for responsive records and provided this office with an affidavit from its Records Management Supervisor.

The City also provided this office with a copy of its fee estimate letter to the appellant. The City's fee estimate letter requested a deposit from the appellant to locate related personnel records and create a new record. As the City's fee estimate does not relate to the records responsive in this appeal, appeal file MA08-278-2 was opened to address the issues as to whether the City's fee is reasonable and in the alternative, whether the appellant is entitled to a fee waiver. Appeal file MA08-278-2 is presently at the mediation stage of the appeals process.

Upon my receipt of the City's affidavit, I wrote to the appellant and invited her to submit representations. The appellant did not provide representations in reply.

DISCUSSION:

Was the City's further search for responsive records reasonable?

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.

As I was not satisfied that the City's initial search for responsive records was reasonable, I ordered the City to conduct further searches in Interim Order MO-2460-I. As noted above, one of the order provisions in Interim Order MO-2460-I required the City to provide an affidavit describing the nature and extent of the searches conducted. Most of the information contained in the City's affidavit relates to its decision to create a new record which is the subject of the appeal presently at mediation. The relevant portions of the City's affidavit for the purposes of this appeal state:

Records Management staff reviewed the City of Vaughan's corporate classification plan and records retention by-law to determine which City

Departments (business units) would have responsive records. Staff determined that the Human Resources Department is the custodian of the records responsive to this access request. The Human Resources Department maintains the official copy of City records related to employment matters. A copy of an employment related record in another City Department is considered to be for administrative purposes only. Therefore, staff determined that there is no need to search in other City Departments for responsive records.

...

City records, to indicate the paid leave and unpaid leave total compensation cost for each employee in 2005, 2006 and 2007, do not exist.

The appellant was asked to comment on this excerpt of the City's affidavit and advise me whether she accepts the City's position that it does not maintain records which compile the type of information which she is seeking. However, the appellant did not provide representations in response.

Decision and Analysis

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].

In Interim Order MO-2460-I, I ordered the City to conduct a further search. I must now determine whether the affidavit evidence provided by the City sufficiently demonstrates that the City has made a reasonable effort to identify and locate responsive records.

I have carefully considered the City's affidavit evidence and accept the City's evidence that "records, to indicate the paid leave and unpaid leave total compensation cost for each employee in 2005, 2006 and 2007, do not exist". In making my decision, I took into consideration the fact that the appellant did not provide me with evidence explaining why she believed that this information is compiled in a paper record that already exists.

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]. In my view, the appellant has failed to establish a

reasonable basis for concluding that the information she requested is compiled in a paper record, whether it be a list or some other document, such as a memorandum, letter or e-mail that already exists.

Having regard to the above, I am satisfied that the City has now provided 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:

I find that the City has complied with order provision 1 of Interim Order MO-2460-I and dismiss this appeal.

Original Signed By: _____

Jennifer James
Adjudicator

_____ March 8, 2010