



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

ORDER MO-2569

Appeal MA09-253

City of Vaughan



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NATURE OF THE APPEAL:

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

A “Detailed Transaction Business Report” for the years 2002-2008 for various law firms paid by the City of Vaughan directly and or indirectly for wrongful dismissal lawsuits, negotiations, settlements or any other purpose of litigation, negotiation, settlement fees (*not limited*) related to any of the City of Vaughan’s past to current date costs, including all past terminations or resignations of any City of Vaughan Employee (to be clear not OMB [Ontario Municipal Board] Land acquisition fees or real estate lawsuits or lawsuits related to the Elections or Compliance audits) including monies paid for law firms paid directly and or indirectly by the City’s of Vaughan’s insurer within the various years, including the City’s most recent insurer [name], this shall include law firms retained to represent not only the City but other Staff, Mayor and Members of council being sued or mentioned on account of these types of claims, a few examples of the various law firms can include firms such as

[first named law firm] (various lawyers)

[second named law firm] (various lawyers)

Including the total cost for these (time estimated for running print outs from PeopleSoft software and copies related therein cost) [requester’s emphasis].

The City located responsive records and granted partial access to them. Access was denied to severed parts of the records pursuant to sections 12 (solicitor-client privilege) and 14(1) (personal privacy) of the *Act* and because responsive records for specified years do not exist. In its decision letter, the City provided an Index of Records which listed the years for which responsive records did not exist because no transaction took place in those years. The City also advised the requester that the legal fees paid to the first named law firm had been provided in a different format from that provided for the other law firms. With respect to payments to the second named law firm in 2002, the City advised that the responsive record does not exist because “...it is not possible to segregate the sums attributable to wrongful dismissal matters from general legal fees at this time”.

The requester (now the appellant) appealed the decision to deny access to the severed portions of the records and took the position that more responsive records ought to exist.

In her letter of appeal, the appellant stated that she was appealing the following matters: (a) access to the second named law firm’s yearly figures; (b) that she does not accept the format that the legal expenses were provided to her for payments made to the first named law firm; (c) access to yearly figures with respect to reimbursements by the City’s insurer for legal fees; and, (d) that there are no legal fees paid to a third named law firm in 2006.

During mediation, the appellant was provided with a spreadsheet prepared by the City's legal department which sets out the legal fees paid by the City to the first named law firm on a case by case basis for the years 2003, 2004, 2005, 2006, 2007 and 2008. The City explained that the volume of business with this law firm is so great that it is not possible to extract the fees paid for the few responsive lawsuits from the Detailed Business Transaction Report and that the lawyers had to do a manual search for responsive records, i.e. identify the cases and obtain the invoices. For this reason, the information is in a different format.

The appellant believes that the City should be able to retrieve information in order to produce a Detailed Business Transaction Report for both the first and second named law firms and, also with respect to the yearly reimbursements it receives from its insurers. Therefore, the reasonableness of the City's search for responsive records is an issue in this appeal.

During mediation, the City disclosed the total amounts reimbursed by its insurer for the years 2003 to 2008 and indicated the amounts covered three lawsuits. The City also advised that the names of individuals in Record 10 are not responsive to the request. In the alternative, the City claimed that the names of these individuals were exempt by reason of section 14(1). The City also withheld other information in Record 10 pursuant to section 12 of the *Act*.

The appellant advised that she is appealing the denial of access to the information in Record 10. As a result, whether the names in that record are outside the scope of the request is an issue in the appeal.

During mediation, the City reconsidered the application of section 12 to the undisclosed portions of Records 1 to 5 and 7 to 8 and issued a supplementary decision letter granting access to the severed portions of these records. Accordingly, these records were no longer at issue.

As it was not possible to resolve all of the issues in the appeal by mediation, it was transferred to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry. I sent a Notice of Inquiry, setting out the facts and issues in this appeal, to the City, seeking its representations. I received representations from the City, a complete copy of which was sent to the appellant, except for the information under the remarks column in Attachments 1, 2 and 6. I also sent the appellant a Notice of Inquiry and received representations from her.

In its representations, the City withdrew its reliance on section 12 and instead asserts that this information in Record 10 is non-responsive. Therefore, as section 12 was only claimed for Record 10, this section is no longer at issue. In her representations, the appellant withdrew her request for the names of the individuals in Record 10; therefore, section 14(1) is no longer at issue.

I then sent the non-confidential portions of the appellant's representations to the City and sought and received reply representations. In reply to the appellant's representations, the City relied on its initial representations.

RECORDS:

One record is at issue, Record 10, which contains the details of the reimbursements made by the City's insurer to it for the years 2003 to 2008. Severed from this record is information that the City claims is outside the scope of the appellant's request.

DISCUSSION:

SCOPE OF THE REQUEST/RESPONSIVENESS OF RECORDS

I will first determine whether the information severed from Record 10, which was previously severed pursuant to section 12, is responsive to the request.

Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;
 - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;
 - ...
- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour [Orders P-134 and P-880].

To be considered responsive to the request, records must "reasonably relate" to the request [Orders P-880 and PO-2661].

The City referred in detail to the wording of the appellant's request outlined above and stated that:

The appellant never refers to the status (whether ongoing or completed) of legal actions in her request.

The appellant does not indicate that she is seeking information about specific lawsuits or their status. Rather, she has asked for costs related to some types of legal actions...

The appellant did not respond directly to this issue.

Analysis/Findings

The information in Record 10 that the City claims is non-responsive to the appellant's request is the information concerning whether three specific lawsuits are ongoing or completed. Based upon my review of the appellant's request as set out above, as well as my review of Record 10 and the parties' representations, I find that information concerning the status of three lawsuits is not responsive to the appellant's request. The appellant only sought information about "monies paid for law firms paid directly and or indirectly by the City of Vaughan's insurer..." She did not seek information about the status of lawsuits that the City was involved in. Therefore, the information severed from Record 10 concerning the status of lawsuits is not responsive to the appellant's request.

SEARCH FOR RESPONSIVE RECORDS

I will now determine whether the City conducted a reasonable search for records. If I find that the City has not conducted a reasonable search for responsive records, I will then decide whether the City is required to create a responsive record to respond to the appellant's request.

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 City was required to provide a written summary of all steps taken in response to the request. In the Notice of Inquiry, I asked the City the following specific questions:

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 City provided the following information concerning the searches it undertook for responsive records:

Access and Privacy staff reviewed the City's operating budget and identified budget ledgers to which legal fees responsive to the appellant's request might reasonably be allocated.

Printouts of the transactions in each ledger for 2002-2008 were produced.

From the printouts, a list of 27 legal firms was compiled.

Printouts of transactions between the City and each of the 27 legal firms from 2002-2008 were produced.

Legal Services Department (Legal) staff reviewed the printouts of the 27 legal firms and identified which transactions were responsive to the access request. The responsive transactions were provided to the appellant as per the City's June 5, 2009 access decision.

The exception to the above search methodology was transactions between the City and the law firm [first named law firm]

Since 2003, [this law firm] has provided employment-related legal services for the City.

Not all services provided by [this law firm] were responsive to the access request.

In order to provide the appellant with responsive records related to [this law firm's] transactions, the Commissioner of Legal and Administrative Services (Commissioner) compiled a Microsoft Excel spreadsheet. The spreadsheet [was identified in the] June 5, 2009 access decision.

In response to the Notice of Inquiry (NOI) issued by your Office, the City undertook an additional search for records in February 2010.

Access and Privacy staff conferred with staff from Legal and determined that no additional law firms provided services that would result in transactions responsive to the appellant's request from 2002 to 2008.

Access and Privacy staff, in consultation with Legal staff did, however, identify additional transactions between the firms already identified in the June 5, 2009 access decision and the City.

The additional information was located as a result of the Director of Legal Services' (Director) report to City Council regarding external legal costs...

Records showing the additional transactions have been made available as per the City's third access decision dated February 12, 2010...

Access and Privacy staff also conferred with staff from the Human Resources Department (HR) regarding transactions between the City and [second law firm].

HR staff have confirmed that [this law firm] provided legal services for matters responsive to the access request in 2002.

[Both law firms] provided the City with services that are not responsive to the request.

Finally, Access and Privacy staff conferred with HR and City Clerk's Department (Clerk's) staff regarding reimbursements for legal expenses provided by the City's insurer, [name].

Like [the two named law firms, the City's insurer's] transactions with the City encompass more than the matters responsive to the appellant's request.

In response to the Notice of Inquiry of February 25, 2010, the appellant initially provided a nine page set of representations with attachments on May 31, 2010. She then emailed a clarification and another attachment to these representations on June 1, 2010, indicating that it was her final submission. On June 9, 2010, she sent another set of nine pages of representations with attachments also dated May 31, 2010. On June 10, 2010, I wrote the appellant as follows:

I am writing in response to your representations dated May 31, 2010. I note that in this letter you have not responded directly to the issues outlined in the Notice of Inquiry nor have you responded directly to the City's representations.

You have stated in your May 31, 2010 letter that Detailed Reports are no longer an issue for the appellant. Therefore, the only issues from the Notice of Inquiry that remain outstanding in Appeal MA09-253 concern whether the names of individuals in Record 10 are responsive to the request, and, if responsive, whether these names consist of personal information that is exempt by reason of the personal privacy exemption. An order will be issued on these issues in due course.

Your representations analyze the attachments to the City's representations and make suggestions about other records the City may have in its custody or control. Any such information should be sought directly from the City, as the terms of this inquiry are focused on the facts and issues that remained following mediation as outlined in the Notice of Inquiry.

In your letter, you also state that you are interested in receiving the information that has been severed from the explanation column of the attachments to the City's representations. If you require this severed information from the attachments, you will have to seek it directly from the City. The City will then be in a position to render a decision letter on this information.

On June 20, 2010, the appellant emailed this office and provided a three page response to this letter indicating that it was a direct response to the issues outlined in the Notice of Inquiry and the City's representations. I then had a staff member contact the appellant to inquire whether these representations were intended to replace those submitted previously. The appellant responded that it was an addition to the previous sets of representations and offered to combine all of the representations into one set. The appellant was advised to consolidate her representations into one set that responded to the Notice of Inquiry and the City's representations. In addition, the appellant was told to ensure that her representations do not include any extraneous information that is not related to the issues outlined in the Notice of Inquiry and that

any concerns that are unrelated to the issues set out in the Notice of Inquiry should be directed to the City, as set out in my letter to the appellant of June 10, 2010. The appellant was told to refer to that letter when preparing her representations.

On July 12, 2010, the appellant provided representations indicating that I am to refer to the May 31, 2010 representations again in order to have a complete set of representations. The appellant was then advised that this inquiry only concerned the issues outlined in the Notice of Inquiry which was based on the revised mediator's report of November 13, 2009 and that I required one complete set of representations.

On July 16, 2010, the appellant provided her final representations, which are the representations that are relied upon in this order. In these representations, despite being asked to provide representations that respond directly to the issues and questions set out in the Notice of Inquiry and the City's representations, the appellant provided representations that did not directly address either the issues identified in the Notice of Inquiry or the City's representations. In my view, these representations contain primarily extraneous information and include numerous charts and other data analyzing in-depth various unrelated financial matters in a manner I find to be incomprehensible.

Although the appellant provided a detailed analysis of the records and other documents provided to her by the City, she did not provide direct information in her representations describing what additional responsive records she believes exist. Concerning the search issue, the appellant submits that:

[The City] did not carry out a reasonable search. A Detailed Transaction Business Report is provided by the institution's Finance Department using the institution's accounting systems. Information provided by the Legal Department and Risk Management was manually collected following a review of the information which would have included a certain amount of scrutiny ensuring only limited information was released. In the case of the Risk Management Department, the institution would have access to reports, yet failed to provide such reports or reasonably explain why these records, which are available to both Departments, including legal invoices paid by the institution and submitted to the insurer, most likely with a cover letter and summary identifying files that require reimbursement could not be detailed to include the Legal Firms.

The appellant's request is extremely detailed. It begins by asking for Detailed Transaction Business Reports for the years 2002-2008 for various law firms paid by the City. The appellant does not set out what she means by a Detailed Transaction Business Report in her request; nor is it apparent to me what information would be contained in such a report. It is not apparent to me from a reading of the appellant's request what records would be responsive. Nor is it apparent to me from a reading of the appellant's representations whether any responsive records exist that have not already been provided to the appellant.

The City states that it has already provided the appellant with information responsive to her request. In particular, it provided the appellant with what it describes as “Detailed Business Transactions” for the second named law firm for the period covering January 1, 2004 to December 31, 2008. It also provided these reports for the third named law firm for the period January 1, 2007 to December 31, 2008, as well as this report for a fourth named law firm for 2007.

The City provided the appellant with a spreadsheet encompassing the responsive information for the first named law firm, as it was unable to produce a detailed transaction report for this law firm. This spreadsheet was compiled by the City’s legal department and indicates the first named law firm’s charges responsive to the request broken down by lawsuit and by time. This information was compiled by the City by reviewing the first named law firm’s invoices and extracting the responsive information.

The City also provided the appellant with an account from its insurers on the reimbursements made to the City for legal fees paid between January 1, 2003 and December 31, 2008.

The City advised the appellant that no responsive transactions were undertaken for the first named law firm in 2002, the second named law firm in 2002 and 2003, the third named law firm from 2002 to 2006, the fourth named law firm from 2002 to 2006 and 2008 and with its insurers in 2002, thereby accounting for all of the years for which responsive records were not located.

In her letter of appeal, the appellant stated that she was appealing the following matters:

- (a) access to the second named law firm’s yearly figures;
- (b) that she does not accept the format that the legal expenses were provided to her for payments made to the first named law firm;
- (c) access to yearly figures with respect to reimbursements by the City’s insurer for legal fees; and,
- (d) that there are no legal fees paid to a third named law firm in 2006.

From my review of the records, the request and the City’s representations, I find that in response to these concerns of the appellant that:

- (a) the appellant did not request access to the second named law firm’s yearly figures. In any event the figures provided were broken down by date;
- (b) the responsive information for the first named law firm was provided to the appellant. The format of this information, in the circumstances of this appeal, is irrelevant;

- (c) the appellant did not request access to the City's insurer's yearly figures; and,
- (d) there are no legal fees paid to a third named law firm in 2006.

The appellant appears to be seeking additional information in her representations that goes beyond what was included in her request, including legal invoices, cover letters and summaries. The appellant's request was only for information about the amounts paid by the City (or its insurers) to various law firms regarding specific matters. I find that legal invoices, cover letters and summaries consist of information that is outside the scope of the appellant's request.

With respect to the information that is within the scope of the appellant's request, I find that the City has provided sufficient evidence to demonstrate that it made a reasonable effort to identify and locate all of the responsive records within its custody or control [Order MO-2185]. The appellant has not provided a reasonable basis for concluding that additional responsive records exist [Order MO-2246]. Therefore, I uphold the City's search for responsive records. As I have found that the City has conducted a reasonable search for responsive records, there is no need for me to consider whether the City is required to create additional records to respond to the appellant's request.

ORDER:

I uphold the City's decision and dismiss the appeal.

Original Signed by: _____
Diane Smith
Adjudicator

November 18, 2010