

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER MO-2655

Appeal MA09-255

City of Vaughan

September 28, 2011

Summary: The appellant submitted a multi-part request to the City of Vaughan for financial records. The City located responsive records and issued a decision disclosing some records and explaining that some records did not exist. The City also charged the appellant for searching and photocopying records. During mediation, the City issued three more decisions, which included the identification and disclosure of additional records and fees. The appellant was not satisfied with the search conducted by the City. She also appealed one of the search fees charged by the City. The search was found to be reasonable and the additional fee charged for searching for records during mediation was upheld.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 17, 45(1)(a).

OVERVIEW:

[1] The appellant submitted a 10-part request to the City of Vaughan (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), for the following records:

1. A copy of any and all invoices/correspondence provided to various companies from the city's Economic Department "Umbrella" in respect of the \$35,000.00 collected as revenue for Account Number **020002.3614** in 2006 including copies of rec'd cheques and cancelled cheques, together with a copy of the

Detailed Revenue General Ledger for this account (showing money coming in and when it's going out).

2. From the information gathered above, being "the companies" which contributed to the \$35K please provide a detailed General Ledger Detailed Vendor **Revenue** Summary for each of these companies for the Years 2004 to 2006.
3. A copy of any and all invoices including back-up used to process with/from the \$35,000 revenue in Account Number **020002.3614** from the operating budget for Account code **020002** (can be limited to the Advertising GL or other GL?) including a copy of the ads placed in the various Newspapers usually attached to the paperwork and maintained in the Corporate Communications Department by [a named individual].
4. A copy of the Detailed General Ledger Vendor Accounts for the following List for the years 2003 2008 [for five named newspapers]
5. A copy of any and all invoices paid from the \$37,020 Rev from Recover Expenses for Account Number **020002.2574** in (2004 to 2006) including a copy of the rec'd cheques and cancelled cheques together with a Detailed Revenue General Ledger for this account (showing money coming in and when it's going out).
6. A copy of Detailed General Ledgers for 7135 and 7695 – Account Number 020002 – Account (for the years 2004-2007)
7. Information on how frequently the city Pages were placed in each of these papers from July 1 2006 to December 31, 2006?
8. What was the cost/rate that was being provided in each newspaper for the city Page?
9. How many city page advertisements were placed in each of the papers for 2006 (papers noted above and/or others not mentioned)
10. In respect of Number 5, 6 and 7 above all the research was compiled by [a named individual] and a copy of this information should be obtained directly from her or [another named individual]. This report was initiated in relation to all of the above matters (1-6 too) as it was related to the budget costs and future costs of budgets respecting advertising for the city – re: City Page. *Cost for 7-10, notes to be copied or report provided to various SMT to be copied.

[2] Before issuing an access decision, the city wrote to the appellant seeking clarification of the request. The appellant provided clarification and the city issued an access decision indicating that it had located responsive records and was granting access to them. The city also provided explanations for the non-existence of certain records. The city provided the appellant with a fee of \$79.40, which was based on 120 minutes of "search and ledger printout preparation time" at \$7.50/15 minutes and 97 pages of photocopies at \$0.20 per page.

[3] After receiving this decision, the appellant contacted the city and provided further clarification regarding her request, and the city issued a second decision in which it provided additional explanations to the appellant, and referred the appellant back to its original decision.

[4] The appellant paid the fee, and then appealed the city's decision on the basis that more records exist. The appellant has retained a representative to represent her interests in this appeal. In this order, I will refer to all actions taken by the representative as those of the appellant.

[5] This appeal underwent considerable mediation, including a teleconference with the city and the appellant and the receipt by this office of a number of e-mails from the appellant outlining the information that appeared to be missing.

[6] Following the teleconference, the city conducted a further search for responsive records and issued a third decision, in which the city indicated that it had located two additional records (records 44 and 45). The city granted full access to record 45 and partial access to record 44. In particular, the city denied access to the signature on a company cheque pursuant to section 14 of the *Act*, and to the account numbers at the bottom of a Company's cheque pursuant to sections 10 and 11 of the *Act*. In addition, a fee of \$90.40 was charged. The fee was broken down as follows: 180 minutes of search time at \$7.50/15 minutes and photocopying charges of \$0.20 per page for two pages. As an attachment to this decision, the city provided a more detailed breakdown of the time spent searching for responsive records.

[7] When the appellant received the city's third decision, she sent the mediator an e-mail advising that she was not satisfied with the results of the further search or with the amount of the fee at \$90.40.

[8] Following additional mediation relating to the city's third decision, the city decided to withdraw its reliance on the exemption at section 11. Section 11 is therefore not at issue in the appeal. The appellant indicated that she is not interested in obtaining access to the signature and the account numbers on record 44. As a result, record 44 and sections 10 and 14 of the *Act* are also not at issue in the appeal. The fee of \$90.40 remains at issue.

[9] As the issues in this appeal could not be resolved in mediation, the appeal was forwarded to the adjudication stage. The issues on appeal are whether the city conducted a reasonable search for responsive records and whether the fee of \$90.40 was properly charged to the appellant.

[10] I sought representations from the city, initially and sent it a Notice of Inquiry setting out the facts and issues on appeal. The city submitted representations in response and consented to sharing them with the appellant, in their entirety. I then sought representations from the appellant and provided her with a copy of the city's submissions. The appellant submitted representations in response. After reviewing them, I decided that they raised issues regarding the city's search for responsive records to which the city should be given an opportunity to reply. The city was not required to provide any additional submissions regarding the fees associated with the appellant's request. I then provided the city with a copy of the non-confidential representations submitted by the appellant. The city provided brief submissions in reply.

[11] At this juncture I note that the appellant's representations are quite confusing and she appears to combine her submissions on the issues of search fee and reasonableness of search in such a way that it is difficult to decipher some of her arguments. Accordingly, I will set out below under each heading, the essence of her arguments as I understand them.

ISSUES:

- A. Was the city's search for records reasonable?
- B. Should the fee charged by the city be upheld?

DISCUSSION:

A: WAS THE CITY'S SEARCH FOR RECORDS REASONABLE?

[12] 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.

[13] 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].

[14] 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.

[15] Before I am able to determine whether the city's search for responsive records was reasonable, I must first identify what records the appellant believes should exist and which part or parts of her request these records relate to.

What records is the appellant seeking?

Search for responsive records during mediation

[16] In her letter of appeal, the appellant stated that more records must exist. In particular, the appellant stated that she is still missing the correspondence, receipts and invoices issued, for a named company and another named group of companies. She asked how the companies would know how much money to donate. She claims that the city sent a letter to these companies and such records must exist.

[17] The appellant also stated that she is seeking all notes/memos/e-mails in respect of the request from the former Mayor's Office. She stated as well that she is seeking all records/notes/memos/e-mails invoices regarding "Marketing, Promotion, Sponsorships" showing (a) invoices for tax purposes and (b) special arrangements with the publishers. She further stated she is seeking the General Ledger for the account to which the monies were transferred.

[18] The appellant also sent an e-mail to this office providing further clarification of the records being sought on appeal. Both the letter of appeal and the e-mail were forwarded to the city as a basis for the above-noted teleconference with the appellant, her representative, the city's FOI Coordinator and his Assistant. The purpose of the teleconference was to discuss the search conducted to locate records responsive to parts 1, 3 and 10 of the request.

[19] After the teleconference, the city conducted a further search, and located two additional responsive records. As I noted above, the city issued a third decision describing the results of its search, granting access in full and in part to two records, and indicating that some records do not exist.

[20] After the teleconference, and before the city concluded its further search for responsive records, the appellant sent the mediator an e-mail advising that she was not satisfied with the searches conducted by the city, including its search for records responsive to part 2 of the request. However, the appellant stated that the e-mail was not to be shared with the city during mediation but only at the Adjudication stage of the appeals process.

[21] As I noted above, when the appellant received the city's third decision, she sent the mediator an e-mail advising that she was not satisfied with the results of the further search. Again, the appellant stated that the e-mail was not to be shared with the city during mediation but only at the Adjudication stage of the appeals process.

[22] Since the appeal could not be resolved by mediation, the mediator issued a Mediator's Report advising that the appeal was proceeding to the adjudication stage of the appeals process.

[23] Before the appeal was transferred to the adjudication stage, the appellant agreed to provide the city with a severed copy of her two most recent e-mails, in which the appellant's views regarding the existence of additional records were discussed.

[24] The city issued a fourth decision in which it responded to the appellant's comments in the two e-mails that were forwarded to it. The appellant continued to be dissatisfied with the city's response and sent the mediator an e-mail providing further comments. The mediator relayed these comments to the city. The city took the position that all responsive information has been provided and that extensive explanations have also been provided where records do not exist.

Representations

[25] The city has provided lengthy and detailed representations on this issue, including a review of the steps taken to clarify the appellant's request and the searches conducted for each item set out above. Regarding the issue of clarification, the city notes that the appellant appears to have "an above average level of knowledge of city records and processes." The city notes further that the need for extensive clarification of her request "stemmed largely from the request's appearance of specificity and accuracy." The city points out, however, that "the information requested by the appellant was inaccurately or erroneously described," that she referred to the locations in which she believed records exist in different ways during her various communications with the city and/or referred to specific locations that did not exist within the city.

[26] The city describes the efforts it made to clarify with the appellant, which resulted in:

- Her acceptance of some records as being sufficient;
- Her attempts to expand the scope of the request;
- Her misidentification of certain types of records, for example, she requested "any and all invoices" and when asked to clarify, included cheque requisitions, "including the AD kept on file for back-up for this charge/note/memo/e-mail/receipt."

[27] The city takes the position that the appellant's clarifications did not assist it in conducting a search for the records she was seeking. The city has provided information on the search that was conducted for each item of the appellant's multi-part request.

[28] The appellant's representations refer only to those records she believes are still outstanding. In order to focus the issues in this order, I will first outline the appellant's submissions on the records she believes are still missing, which she made after reviewing the city's representations on search.

[29] The appellant states clearly at the beginning of her submissions that she "is seeking vendor/client print-outs as they relate to [two named companies] as it relates to all revenues received by the [city]." However, further in her representations, she states that she is also still seeking an invoice and a cheque for one of the named companies.

[30] With respect to the printouts, the appellant indicates that she has, on several occasions, clarified the type of detailed print-outs that she is seeking. She believes that the printouts that she is seeking "would have been able to identify key information that could have assisted in the city's search for the cheques/invoices in question and would have indicated where they were deposited initially."

[31] Regarding the cheques and invoices, the appellant indicates that she is seeking cheques and invoices totalling \$35,000.00. She notes that she has received the cheque and invoice for one of the named companies, but has yet to receive them for the other company. The appellant identifies two named individuals who had signed the invoices for the first named company. She believes that these two individuals should have known where a copy of the invoice for the second company was located. The appellant states:

The city has not been able to locate one single copy of the cheque provided by [the second named company] to date, including an invoice that would have accompanied the cheque. This in itself is against general accounting principles and concerning for any auditor, especially since the cheque was in the amount of \$10K.

[32] The appellant refers to the invoice provided to her relating to the first named company, which she indicates allocates the money to the ex-Mayor's individual operating budget. She notes that the cheque refers to the Mayor's Gala. The appellant believes that the city should be able to explain why money is allocated in a particular manner. She suggests that if this were the case, it would assist in locating the other information that she requested. The appellant provides her insight into the way in which operating budgets should operate. She states:

It is odd, that an amount in an operating budget which is not to report any revenues, can receive monies. Further, it seems based on the reports provided; it was back tracked later on, as many Councillors were looking for some answers on why there were monies paid for newspaper costs in the 2006 budget years that could not have been continued in 2007.

[33] The appellant refers to two documents that were provided to her as being not responsive to her request as they provide no information on the existence of or location of the missing information. The appellant indicates that they do not respond to part 5 of her request.

[34] In support of her position that the records she refers to in her representations should exist, the appellant has attached a letter from a former Commissioner of Economic and Information and Technology Management (the former Commissioner) for the city, who indicates that he has "first hand knowledge of this situation." Much of the information provided by the former Commissioner is not relevant to whether or not a record should exist, but to larger issues involving the city. However, he does provide evidence, based on his involvement in the transactions, which confirms that invoices were created. In particular, he describes the events that happened at the city at the time the transactions were being made in 2006 and 2007, from his perspective. He asserts that copies were maintained in the Economic Development files and Finance Department. He states further that these records should have been retained in accordance with the city's retention by-laws.

Findings

[35] Based on the discussions held during mediation, referred to above, and the appellant's representations, I find that the focus of her dissatisfaction regarding search concerns records relating to one named company. I will therefore, review the searches that the city conducted for records responsive to items 1, 2, 3, 5 and 10 of the request.

Search for records responsive to items 1, 2, 3, 5 and 10 of the request

The City's representations

[36] The city indicates that it began its search by locating printouts, using software called "PeopleSoft". The searches were conducted as follows:

Item 1

- The city's Records and Information Analyst (analyst) produced a printout for the named account which showed two deposits relating to the two named companies, and referenced an additional record;

- Using the city's management software "Versatile Enterprise", the analyst searched for the additional record, and subsequently ordered the box containing this record from the city's off-site records storage provider. After reviewing this record, the analyst deemed that it was responsive;
- A reference to "cashiers deposit" on the additional record led the analyst to search for and obtain from storage the box of records containing cashier's receipts for the time period during which deposits were made. These receipts were also deemed to be responsive;
- The analyst and the Records Management Supervisor (supervisor) also met with the Director and Manager of Communications (manager) to determine whether any additional deposits existed. The manager confirmed that the city's Corporate Communications Department did not have any responsive records because it was not responsible for "Marketing & Promotion Sponsorship".
- The manager explained that marketing and promotion sponsorship was a project of the Mayor and the former Commissioner of Economic Development, neither of whom were with the city any longer.

Item 2

- Although the city assigns supplier numbers to every individual or company that it makes payments to, those who made payments to the city in 2006 did not receive these unique identifier numbers.
- The city could produce printouts of transactions attributed to specific supplier numbers, but could not produce comprehensive lists of payments made **by** the suppliers to the city.
- Accordingly, the city could only produce related records for financial transactions between the suppliers and the city – the appellant requested these related printouts and they were produced for her.

Item 3

- Recognizing that Item 3 overlaps item 1, the appellant clarified that she sought records related to how the \$35,000 deposited into the account referenced in item 1 was spent.
- The manager advised her that the money was spent on advertizing and such costs are contained in another account, and identified in item 6 of the appellant's request.
- The city provided the appellant with printouts of the account referenced in item 6.

Item 5

- The analyst produced a printout of the named account which showed only one transaction, but which referred to an additional record.

- Similar to item 1 above, the analyst obtained the box containing the additional record from storage, reviewed the record and determined that it was responsive to the request.
- No invoices or cheques for this transaction could be located.

Item 10

- The appellant clarified this item to mean "everything to do with back-up put together for that report."
- The manager and co-authors of the identified report confirmed that they did not have "back-up" for the report, noting that the brief report (two-pages) was written without any additional notes or supporting documents.

Other searches conducted during mediation

[37] The city notes that this appeal underwent extensive mediation and that the appellant continued to communicate with it and with the mediator, much of which has been outlined above. Additional searches and communications with city staff were conducted in the Records Centre and the Communications, Finance and Economic Development departments. The city notes that it has made extensive efforts to locate the records that the appellant is seeking and that it has provided explanations to her of why records do not exist.

[38] The appellant's representations regarding the search issue are referred to above under the preceding discussion.

Findings

[39] This file has undergone extensive mediation in attempts to clarify and to understand what the appellant is seeking and in attempts to satisfy her. As I noted above, the city is not required to prove with absolute certainty that further records do not exist. Rather, it must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records. Although the evidence provided by the appellant suggests that the records she seeks should exist, I am satisfied that the city has searched in locations that the records could reasonably be expected to be found, and that the search was conducted by knowledgeable individuals. I am further satisfied that the city has attempted to work with the appellant, to understand what she is seeking and to explain why records could not be located.

[40] In the circumstances, I find that the city's search for responsive records was reasonable, and this part of the appeal is dismissed.

B: SHOULD THE FEE CHARGED BY THE CITY BE UPHELD?

[41] The appellant has appealed only the fee of \$90.40 that was charged in the city's third decision.

General principles

[42] An institution must advise the requester of the applicable fee where the fee is \$25 or less.

[43] Where the fee exceeds \$25, an institution must provide the requester with a fee estimate [Section 45(3)].

[44] 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 and MO-1699].

[45] 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].

[46] In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated [Orders P-81 and MO-1614].

[47] 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.

[48] 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.

[49] More specific provisions regarding fees are found in sections 6, 6.1, 7 and 9 of Regulation 823. The sections relevant to this appeal 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 records provided on CD-ROMs, \$10 for each CD-ROM.
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.

9. If a person is required to pay a fee for access to a record, the head may require the person to do so before giving the person access to the record.

Calculation of fee

[50] The appellant did not specifically address this issue in her representations, other than to indicate that she believes that the search fee was unreasonable since she believes the records requested should have been located in a particular department thereby making an extensive search unnecessary.

[51] Based on the appellant's representations, I will only address the search component of the city's fee calculation. The city has charged the appellant \$90 to search for records responsive to her request.

Search – Section 45(1)(a)

[52] The city indicates that both the freedom of information analyst and supervisor used its records management software to search for and identify the boxes that might contain the requested records. According to the city, this search was undertaken using keyword, department and date, as follows:

- Keyword searches included a number of search terms, such as “mayor”, “sponsorship”, “marketing” and other keywords relevant to the specifics of the request. Although Boolean operators were used to attempt to isolate likely matches, it was necessary to review numerous irrelevant matches.
- Department searches required a review of the descriptions of boxes of records within the three areas that would be expected to hold responsive records: Economic Development, Communications and records relating to the former Mayor.

[53] In addition to the search conducted via its records management system, additional steps were taken to ensure that records located at the city’s off-site storage location were also included in the search.

[54] The city indicates that the Analyst and Supervisor spent a total of 30 minutes conducting the above search.

[55] In addition to the above search, the city indicates that it took 15 minutes to locate the boxes stored on-site in its Records Centre and then the Analyst spent an additional 90 minutes manually searching through the files, and where included, file folders contained within 12 boxes of records. The city notes that a manual search of each page of correspondence in the box containing the former Mayor’s correspondence records was conducted.

[56] The city indicates that the Director and Manager of Communications spent 30 minutes searching their department for responsive records and the Senior Manager of Economic Development spent 15 minutes searching for responsive records in that department.

[57] The appellant notes that she is seeking printouts and suggests that a search for such records would only take minutes as the records would “self-generate from the city’s peoplesoft accounting software.” She indicates that she is also seeking cheques and invoices and has identified the individuals who issued or received them. She submits that since these individuals were involved in the records they should know immediately where the records could be located. The appellant suggests certain ways of searching for the requested information apparently based on her own understanding of internal city administrative processes.

Analysis and findings

[58] The appellant's request was lengthy, detailed and covered a span of time between 2003 and 2006. Adequacy of search has also been raised as an issue in this appeal. In the circumstances, it is not unreasonable for the city to search for records in the locations identified above. Nor is it unreasonable for the city to take the steps as described. Despite the appellant's apparent understanding of city administration, or her beliefs regarding the location of records and the memories of city staff, I am satisfied that the city did not take extraneous or unreasonable steps to search for the requested records. Rather, I find that the city took an organized and well co-ordinated approach in responding to the appellant's request. Accordingly, I find that the city is entitled to charge the appellant \$90.00 to search for records that respond to her request.

ORDER:

1. The city's search for responsive records was reasonable and this part of the appeal is dismissed.
2. I uphold the fee charged by the city.

Original signed by: _____
Laurel Cropley
Adjudicator

_____ September 28, 2011