

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2723

Appeal MA11-428

Toronto Community Housing Corporation

April 27, 2012

Summary: The appellant requested records relating to her. The Toronto Community Housing Corporation (TCHC) located some records and disclosed them to the appellant, with certain information being withheld as exempt under the *Act*. The appellant claimed that other records ought to exist. The order finds that the TCHC's search for responsive records was reasonable, and dismisses the appeal.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 17.

BACKGROUND:

[1] This appeal arises from a request to the Toronto Community Housing Corporation (TCHC) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act* or *MFIPPA*) for access to records relating to the appellant. The initial request (now the subject of another inquiry in Appeal MA11-277) indicated that the appellant sought access to copies of two specified files. In addition, the appellant inquired why one of these files was closed. The initial request indicated that the appellant was concerned that this file may have been closed as a result of identity theft.

[2] During the mediation of Appeal MA11-277, TCHC issued a revised decision letter addressing inquiries by the appellant with respect to:

- the reasonableness of TCHC's search for certain records the appellant viewed as being responsive to the request (at issue in appeal MA11-277),
- her status on a waiting list at the time when she submitted her application to Housing Connections in 2008, and
- her current status on a waiting list.

[3] After the receipt of the revised decision letter and while still at the mediation stage of the initial request, the appellant asked TCHC to conduct a further search for records relating to matters pertaining to her status on the current waiting list. In particular, the appellant sought access to records containing information demonstrating that she had been offered ten apartment units by TCHC. In turn, TCHC took the position that this was outside the scope of her initial request. In response, the appellant filed a further access request for this information, which is the subject of this appeal.

THE REQUEST AT ISSUE IN THIS APPEAL:

[4] The request at issue in this appeal sets out that the appellant seeks access to:

... all records that relate to me, that were not in TCHC and Housing Connections files, including my original application to Housing Connections in [specified date], list of offers, notice to me requesting Legal Immigration Records and cancellation records of my original application due to not providing Housing Connections as requested in notice, which I never received. I am requesting all handwritten notes, emails about the ten offers which were allegedly offered to me, and everything else that is about me in the files.

[5] TCHC identified additional responsive records and issued a decision letter granting access to them.

[6] The appellant appealed the decision, asserting that "more records exist".

[7] Mediation did not resolve the appeal and it was moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*.

[8] I invited representations from TCHC and the appellant. I received their representations and shared them in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.¹

¹ I did not share the ministry's reply submissions with the appellant.

TCHC's representations

[9] TCHC takes the position that it conducted a reasonable search for responsive records.

[10] In support of its position, TCHC relies on an affidavit of one of its law clerks setting out in detail the steps taken in conducting her search, which included consulting with the Director of Community Housing Seniors and Single Family, as well as staff from Housing Connections and from TCHC's Operating Unit. Her search included Housing Connections and TCHC's electronic records systems. In the course of the electronic records search, eight additional pages of records were located. These were disclosed to the appellant, pursuant to TCHC's decision letter.

[11] Furthermore, the law clerk explains in her affidavit that when it was discovered that the records disclosed pursuant to the appellant's initial request (at issue in Appeal PA11-277) did not include records relating to her general wait list application, all responsive waiting list and additional Housing Connections records were disclosed to her in accordance with the decision letter at issue in this appeal.

The appellant's representations

[12] The appellant maintains her position that TCHC did not conduct a reasonable search for responsive records.

[13] In support of her position she submits that she delivered a complete application to Housing Connections with accompanying documentation and that this was not disclosed to her. She takes the position that this demonstrates that TCHC did not locate and disclose all the responsive information in its electronic record system. She also asserts that TCHC did not provide information demonstrating that she had been offered ten apartment units by TCHC.

[14] She included copies of correspondence with her representations which she believed supported her position that TCHC's search was inadequate.

TCHC's reply representations

[15] In reply, TCHC explains that Housing Connections does not retain the original paper applications but creates an electronic file containing the information provided. TCHC explains that the appellant received a complete copy of the printout of this electronic file. TCHC does not dispute that the appellant did not receive the original application form, but submits that this original form cannot be found. TCHC's reply representations also contain a chart indicating the page numbers of the disclosed records where information demonstrating that the appellant had been offered ten apartment units can be found.

Analysis and Finding

[16] 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 17.² 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.

[17] 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.³

[18] To be responsive, a record must be "reasonably related" to the request.⁴

[19] 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.⁵

[20] The appellant alleges that TCHC did not conduct a reasonable search because she is certain that other responsive records exist that are within TCHC's custody and control.

[21] In my opinion, TCHC's searches were extensive and wide-ranging. Furthermore, in my view, the appellant has failed to provide sufficient evidence to establish a reasonable basis for her belief that there are responsive records in addition to those that were located and disclosed to her. I find that, based on the searches it conducted, TCHC has made a reasonable effort to locate responsive records.

[22] In all the circumstances, I find that TCHC has provided sufficient evidence to establish that it has conducted a reasonable search for responsive records and I dismiss the appeal.

² Orders P-85, P-221 and PO-1954-I.

³ Orders P-624 and PO-2559.

⁴ Order PO-2554.

⁵ Order MO-2246.

ORDER:

I uphold the reasonableness of TCHC's search for responsive records and dismiss the appeal.

Original Signed by: _____

Steven Faughnan
Adjudicator

_____ April 27, 2012 _____