

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2722

Appeal MA11-277

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 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 requester. The request indicated that the requester sought access to copies of two specified files. In addition, the requester inquired why one of those files was closed. The request indicated that the requester was concerned that this file may have been closed as a result of identity theft.

[2] TCHC identified records responsive to the request and in its first decision letter granted partial access to them. TCHC relied on the exemptions in sections 7(1) (advice or recommendations) and 14(1) (invasion of privacy) of the *Act* to deny access to the

portion of the records it withheld. TCHC quoted a photocopying fee of \$62.80 for the copies of the records, or portions thereof, that it decided to disclose.

[3] The requester (now the appellant) paid the fee, received the records, or portions thereof that the TCHC had agreed to disclose, then appealed the decision. In the Appeal Form, amongst other things, she asserted that she had "concerns about missing pages."

[4] During mediation, the appellant took issue with the amount of the photocopying fee that she had paid. In response TCHC waived the fee and stated that it will reimburse the appellant for the amount she paid. As a result, the photocopying fee is no longer at issue in the appeal. The appellant also took the position that additional records ought to exist. TCHC conducted an additional search and issued a second decision letter in which it disclosed additional information to the appellant that it had previously decided to withhold under section 7(1) of the *Act*. Accordingly, that information and the application of section 7(1) of the *Act* is no longer at issue in this appeal. The appellant also advised that she was no longer seeking access to certain information that TCHC withheld under section 14(1) of the *Act*. Accordingly, that information and the application of section 14(1) of the *Act* is also no longer at issue in this appeal.

[5] TCHC's second decision letter also addressed 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,
- 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.

[6] After the receipt of the second decision letter and while still at mediation, the appellant then requested that TCHC 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 the request at issue in this appeal. In response, the appellant filed a further access request. That request is the subject of Appeal MA11-428, which is proceeding through the inquiry process.

[7] At the close of mediation, the only issue that remained to be addressed in this appeal is the reasonableness of TCHC's search for responsive records.

[8] 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*.

[9] 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

The TCHC's representations

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

[11] 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 initial search, which included consulting with TCHC employees including staff from Housing Connections and from TCHC's Operating Unit. This resulted in the first decision letter to the appellant.

[12] The affidavit also recounts the steps taken by the law clerk to search for certain records relating to her inquiries pertaining to her past and current status on waiting lists, notwithstanding that the appellant only raised this matter during the course of mediation. The TCHC reported the results of this search in the second decision letter.

The appellant's representations

[13] The appellant maintains her position that TCHC's search for responsive records was inadequate. She asserts that her original application with Housing Connections should exist. She further asserts that the problem has arisen because records are "inconsistent". Finally, in her representations she sets out a specific request for a copy of her application for "Special Priority Transfer".

TCHC's reply representations

[14] In reply, TCHC submits that the appellant's request for her original application with Housing Connections is addressed in Appeal MA11-428.² TCHC also states that a copy of her application for "Special Priority Transfer" was disclosed to her pursuant to the TCHC's initial decision letter.³

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

² In the TCHC's law clerk's affidavit provided in Appeal MA11-428, the law clerk explains that when it was discovered that the records disclosed pursuant to the appellant's initial request did not include records relating to her general wait list application, the law clerk arranged for all the responsive waiting list and additional Housing Connections records to be disclosed to the appellant.

³ TCHC indicates that this information was located at 120 to 124 of the Housing Application disclosed to the appellant pursuant to the first decision letter.

[15] The appellant's request for her original application with Housing Connections is the subject of Appeal MA11-428. I agree that a copy of her application for "Special Priority Transfer" was previously disclosed to her. Accordingly, I will not address these items any further in this appeal.

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 17.⁴ 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.⁵

[18] To be responsive, a record must be "reasonably related" to the request.⁶

[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.⁷

[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.

⁴ Orders P-85, P-221 and PO-1954-I.

⁵ Orders P-624 and PO-2559.

⁶ Order PO-2554.

⁷ 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 _____