Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-2843

Appeal MA11-232-2

Toronto Community Housing Corporation

February 8, 2013

Summary: The TCHC received a multi-part request from one of its tenants for records relating to numerous matters. This order determines that the Performance Management Plans for a named employee are excluded from the scope of the *Act* on the basis of section 52(3)3 (employment-related matters). It also determines that certain material provided to the Toronto Ombudsman is captured by the confidentiality provision in section 173(1) of the *City of Toronto Act, 2006*, which is a confidentiality provision that prevails over the *Act*. This order also finds that the searches conducted for responsive records were reasonable.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 17, 52(3)3 and 53(1); *City of Toronto Act, 2006*, S.O. 2006, c. 11, schedule A, section 173.

Orders and Investigation Reports Considered: MO-2439.

OVERVIEW:

[1] The Toronto Community Housing Corporation (the TCHC) received a 39-part request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from one of its tenants, for records relating to various matters including a decision about rent, an assessment, complaints, correspondence and other matters.

[2] In subsequent emails to the TCHC, the appellant asked that a number of additional identified items be added to her request.

[3] The TCHC responded to the request by issuing a decision letter to the appellant. In the decision, the TCHC catalogued the appellant's requests into 51 separate items, and provided responses to each of them. The responses ranged from granting access to responsive records, denying access on the basis of identified exemptions, indicating that the request was similar to an earlier request made by her that was being addressed in a previous appeal (and referring the appellant to that appeal), or indicating that no responsive records exist.

[4] The TCHC later issued a supplementary decision, which provided access in full to an additional 11 pages of records responding to one of the items in the appellant's request.

[5] The appellant appealed the TCHC's decision.

[6] During mediation, the TCHC issued a further decision letter in which it confirmed its position regarding a number of the items in the request, clarified its response on some items, and also clarified its understanding of what the appellant was appealing. In response, the appellant identified the items she wished to pursue in her appeal. Specifically, the appellant indicated that she was appealing the decision on the following basis:

- that responsive records or additional responsive records relating to items B6.2.1, B6.2.2, B6.2.3, C5, C6, D1.1, D1.2, D2 and D3 ought to exist;

- that the records responsive to item C2 of the request are not exempt under section 14(1) and/or 38(b) of the *Act* (personal privacy); and

- that the records responsive to item C7 of the request do not fall outside the scope of the *Act* on the basis of section 173(3) of the *City of Toronto Act, 2006*.

[7] Mediation did not resolve the remaining issues, and this file was transferred to the inquiry stage of the process, where an adjudicator conducts an inquiry under the *Act*. I decided to send a Notice of Inquiry identifying the facts and issues in this appeal to the TCHC, initially. In addition, I noted that request C2 relates to three performance evaluations of an identified employee, and included the possible application of the exclusionary provision in section 52(3) of the *Act* as an issue in this appeal.

[8] The TCHC provided representations in response to the Notice of Inquiry. I then sent the Notice of Inquiry, along with a copy of the complete representations of the TCHC, to the appellant. I did not receive representations from the appellant.

RECORDS:

[9] The records remaining at issue in this appeal are the performance evaluations for an identified named employee of the TCHC (item C2), and certain correspondence forwarded to the Office of the Ombudsman, City of Toronto, regarding a complaint (item C7).

ISSUES:

A. Are the records responsive to item C2 excluded from the scope of the *Act* based on section 52(3)3?

B. Is the record responsive to item C7 subject to the confidentiality provision contained in section 173(1) of the *City of Toronto Act, 2006*?

C. Did the TCHC conduct a reasonable search for records responsive to items B6.2.1, B6.2.2, B6.2.3, C5, C6, D1.1, D1.2, D2 and D3?

DISCUSSION:

Issue A. Are the records responsive to item C2 excluded from the scope of the *Act* based on section 52(3)3?

[10] The TCHC identifies that the records responsive to item C2 are the Performance Management Plans (PMPs) for a named employee, and takes the position they are excluded from the scope of the *Act* on the basis of section 52(3)3, which reads:

> Subject to subsection (4), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:
>
> > Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest.

[11] If section 52(3)3 applies to the record, and none of the exceptions found in section 52(4) apply, the record is excluded from the scope of the *Act*.

[12] The term "in relation to" in section 52(3) means "for the purpose of, as a result of, or substantially connected to."[1]

[1] Order P-1223.

[13] The term "labour relations" refers to the collective bargaining relationship between an institution and its employees, as governed by collective bargaining legislation, or to analogous relationships. The meaning of "labour relations" is not restricted to employer-employee relationships.[2]

[14] The term "employment of a person" refers to the relationship between an employer and an employee. The term "employment-related matters" refers to human resources or staff relations issues arising from the relationship between an employer and employees that do not arise out of a collective bargaining relationship.[3]

[15] If section 52(3)3 applied at the time the record was collected, prepared, maintained or used, it does not cease to apply at a later date.[4]

[16] The type of records excluded from the *Act* by section 52(3) are documents related to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue. Employment-related matters are separate and distinct from matters related to employees' actions.[5]

Nature of the records

[17] As indicated above, the TCHC identifies that the records are the Performance Management Plans (PMPs) for a named employee. It states that the PMP is "a cyclical, ongoing process to assess and develop employees to ensure effective contribution to organizational objectives." It then identifies that the PMP process:

a) Allows the employee and manager to set out specific employment objectives and outcomes;
b) Allows for the employee to work with their manager to identify and pursue development opportunities; and
c) Allows the TCHC to assess how the employee is performing.

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[2] *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.). See also Order PO-2157.
[3] Order PO-2157.
[4] *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 507].
[5] *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.).

Section 52(3)3: matters in which the institution has an interest

Introduction

[18] For section 52(3)3 to apply, the institution must establish that:

1. the records were collected, prepared, maintained or used by an institution or on its behalf;

2. this collection, preparation, maintenance or usage was in relation to meetings, consultations, discussions or communications; and

3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest.

Requirement 1: Were the records collected, prepared, maintained or used by the TCHC or on its behalf?

[19] The TCHC states that the PMPs meet this part of the test. It states:

> The records were collected, prepared, maintained, and used by TCHC …. As stated above, the purpose of these records are to ensure that the employee makes an effective contribution to organizational objectives, which cannot be done if these documents were not made on behalf of TCHC.

[20] Based on my review of the PMPs, I am satisfied that they were collected, prepared maintained and used by the TCHC.

Requirement 2: Were the records collected, prepared, maintained and/or used in relation to meetings, consultations, discussions or communications?

[21] The TCHC states:

> The records are also collected, prepared, maintained, and used in relations to meetings, consultations, discussions and communications. The PMP process involves many meetings and discussions between the employee and their manager in both the initial stages of setting the objectives and outcomes; and in the assessment stage. Neither phase can be done without these two-way communications.

[22] In the circumstances, I am satisfied that the PMP(s) were collected, prepared, maintained and/or used in relation to communications or meetings. The records themselves consist of the performance plans, and include observations, objectives and appraisals of the individual. Accordingly, I find that the records relate to the communications or meetings between the individuals who participated in the employee's performance appraisal.

Part 3: Were the meetings, consultations, discussions or communications about labour relations or employment-related matters in which the TCHC has an interest?

[23] The type of records excluded from the *Act* by section 52(3) are documents related to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue. Employment-related matters are separate and distinct from matters related to employees' actions in the context of the institution's possible vicarious liability in relation to those actions, as opposed to the employment context.[6]

[24] The phrase "labour relations or employment-related matters" has been found to apply in the context of:

- a job competition[7]
- an employee's dismissal[8]
- a grievance under a collective agreement[9]
- disciplinary proceedings under the *Police Services Act*[10]
- a "voluntary exit program"[11]
- a review of "workload and working relationships"[12]
- the work of an advisory committee regarding the relationship between the government and physicians represented under the *Health Care Accessibility Act*.[13]

[25] The phrase "labour relations or employment-related matters" has been found *not* to apply in the context of:

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[6] (See, *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 Div. Ct.).
[7] Orders M-830, PO-2123.
[8] Order MO-1654-I.
[9] Orders M-832, PO-1769.
[10] Order MO-1433-F.
[11] Order M-1074.
[12] Order PO-2057.
[13] *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.).

- an organizational or operational review[14]
- litigation in which the institution may be found vicariously liable for the actions of its employee[15]

[26] The phrase "in which the institution has an interest" means more than a "mere curiosity or concern," and refers to matters involving the institution's own workforce.[16]

[27] With respect to the scope of the exclusionary provision, Swinton J. for a unanimous Court, wrote in *Ontario (Ministry of Correctional Services) v. Goodis*[17] that:

> In *Reynolds v. Ontario (Information and Privacy Commissioner*, [2006] O.J. No. 4356, this Court applied [section 52(3)] to documents compiled by the Honourable Coulter Osborne while inquiring into the conduct of the City of Toronto in selecting a proposal to develop Union Station. The records he compiled in interviewing Ms. Reynolds, a former employee, were excluded from the *Act*, as Mr. Osborne was carrying out a kind of performance review, which was an employment-related exercise that led to her dismissal (at para. 66). At para. 60, Lane J. stated,
>
> > It seems probable that the intention of the amendment was to protect the interests of institutions by removing public rights of access to certain records relating to their relations with their own workforce.

[28] Cautioning that there is no general proposition that all records pertaining to employee conduct are excluded from the *Act*, even if they are in files pertaining to civil litigation or complaints by a third party, Swinton J. also pointed out that "(w)hether or not a particular record is 'employment related' will turn on an examination of the particular document."

[29] I agree with and adopt the analysis set out above for the purpose of making my determinations in this appeal.

[30] In this appeal, the records at issue consist of the PMPs for a named individual. The TCHC states:

> The meetings, consultations, discussions, and communications are about employment-related matters in which TCHC has an interest. The PMP process is directly related to employment as the results of the PMP process is used for employee development and employee performance

[14] Orders M-941, P-1369.
[15] Orders PO-1722, PO-1905.
[16] *Solicitor General* (cited above).
[17] Cited above.

> evaluations, which impact the employee's wage increases and promotions. Furthermore, TCHC has an interest in this process to ensure that the employee is working towards meeting TCHC objectives and outcomes.

[31] Based on the TCHC's representations and on my review of the records, I am satisfied that these records were prepared and maintained by the municipality with regard to consultations and communications concerning the appraisal of the performance of one of its employees. In my view, the PMPs are directly related to the TCHC's relations with its own workforce (one of its employees). I find that the PMPs are about employment-related matters for the purpose of section 52(3)3. In addition, I am satisfied that the TCHC clearly has an interest in these records, as they relate to matters involving its own workforce. In these circumstances, I find that the exclusionary wording in section 52(3)3 applies to the records, and they fall outside the scope of the *Act*.

[32] I have also considered whether the exception to section 52(3) found in section 52(4) may apply to the records. Based on my review of these records, I am not satisfied that they fit within the exception found in section 52(4), as they are not the type of agreements or records referenced in that section. As a result, I find that the records responsive to item C2, which are the identified PMPs, are excluded from the scope of the *Act*.

Issue B: Is the record responsive to item C7 subject to the confidentiality provision contained in section 173(1) of the *City of Toronto Act, 2006*?

[33] The request in item C7 is for:

> All correspondence (messages and documents) forwarded to Toronto Ombudsman [regarding an identified complaint to the Ombudsman].

[34] The TCHC responded by stating:

> Under section 173(3) of the *City of Toronto Act, 2006*, the *Act* does not apply to matters related to the Ombudsman. Therefore your request for documentation sent to the Ombudsman's office has been denied.

[35] Section 173 of the *City of Toronto Act, 2006* (*COTA*) reads:

> (1) Subject to subsection (2), the Ombudsman and every person acting under the instructions of the Ombudsman shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part.

> (2) The Ombudsman may disclose in any report made by him or her under this Part such matters as in the Ombudsman's opinion ought to be disclosed in order to establish grounds for his or her conclusions and recommendations.
>
> (3) This section prevails over the *Municipal Freedom of Information and Protection of Privacy Act*.

[36] Section 53(1) of the *Act* may also be relevant to this issue. It states:

> This Act prevails over a confidentiality provision in any other Act unless the other Act or this Act specifically provides otherwise.

[37] If the record responsive to item C7 is subject to the confidentiality provision contained in section 173(1) of the *COTA*, then section 53(1) of the *Act*, in conjunction with section 173(3) of the *COTA*, acts to bar the information from the application of the *Act*.

[38] In the Notice of Inquiry sent to the parties, I invited the parties to address the impact of section 53(1) of the *Act* and section 173 of the *COTA* on the records requested in item C7.

[39] The TCHC provided representations in response, in which it stated:

> If [the TCHC] were to provide the requested documents to the appellant, the TCHC would be in violation of section 173(1) of [the *COTA*] as the documents [the TCHC] provided to the Ombudsman's office were under the instructions of the Ombudsman's office.
>
> Section 53(1) of [the *Act*] provides that [the *Act*] prevails over the confidentiality provisions of any other Act unless [the *Act*] or the other Act specifically provides otherwise.
>
> In this case, section 173(3) of [the *COTA*] specifically provides that it prevails over [the *Act*]. The legislation is clear …

[40] The appellant did not provide representations to me.

Analysis and findings

[41] The TCHC takes the position that, because of the wording of sections 53(1) of the *Act* and 173 of the *COTA*, the *Act* does not apply to records responsive to item C7 of the request. The TCHC has also provided me with a copy of the record responsive to

item C7. This record is correspondence sent from the TCHC to the Toronto Ombudsman, and includes attachments.

[42] The TCHC takes the position that section 173(1) of the *COTA* applies to this record because, in forwarding the material to the Ombudsman, the TCHC staff person was acting under the *instructions* of the Ombudsman for the purpose of section 173(1).

[43] I note that section 173 of the *COTA* is contained in Part V of that Act. Part V is entitled "Transparency and Accountability" and contains, among other things, provisions pertaining to the city's Integrity Commissioner, the Toronto Ombudsman, and the Auditor General. Separate portions of this part of the *COTA* deal with the functions, duties and responsibilities of each of these three "Accountability Officers" for the city.

[44] I also note that, in Order MO-2439,[18] Senior Adjudicator John Higgins examined in considerable detail the specific wording of section 181 of the *COTA*, which deals with the duty of confidentiality by the Auditor General for the city. The wording of section 181(1) of the *COTA*, which applies to the Auditor General, is quite similar to the wording of section 173(1) at issue in this appeal,[19] which applies to the Toronto Ombudsman. As a result, I will rely on Senior Adjudicator Higgins' analysis found in Order MO-2439 in reviewing section 173(1) of the *COTA*.

[45] After addressing a number of issues relating to the legislative purposes of both the *COTA* and the *Act*, and reviewing a number of issues raised in that appeal, Senior Adjudicator Higgins in Order MO-2439 reviewed the specific wording of section 181(1) of the *COTA*. He addressed in particular the meaning of the words "matters," "instructions," and "in the course of duties under [this part]," in section 181(1) of the *COTA*, which are also contained in section 173(1). In reviewing the meaning of the phrase "in the course of duties under this part," the adjudicator stated:

> The requirement that a "matter" must have come to the knowledge of the Auditor General or the person acting under his or her instruction "in the course of his or her duties under" Part V of the *COTA* provides a further limitation on the reach of this section.
>
> As already discussed, information provided pursuant to section 179(1), above, is subject to the confidentiality requirement in section 181(1) where this information is in the hands of the Auditor General or a person acting under his or her "instructions." But this is to be distinguished, in my view, from information in the hands of a staff member of the City that

[18] Reconsidered on other grounds in MO-2629-R.

[19] Section 181(1) of *COTA* reads: The Auditor General and every person acting under the instructions of the Auditor General shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part.

> such a person receives in the course of his or her normal duties, which later becomes the subject of a request for information by the Auditor General. In my view, such information (as opposed to knowledge of the "matter" of the investigation or complaint) would *not* be caught by section 181(1) because it did not come to the staff member's knowledge "in the course of duties under" Part V of the *COTA* as the section requires.
>
> Moreover, imposing the non-disclosure obligation on original information in the hands of such staff members would, in many instances, render them unable to perform their day-to-day functions to which the original information relates. Where applicable, this analysis would also apply to staff of another institution under the *Act* that is compelled to provide information to the Auditor General under section 179(1), such as a local board or city-owned corporation.
>
> Accordingly, I conclude that, in the hands of City staff (or staff of another institution under the *Act* compelled to provide information to the Auditor General under section 179(1), such as a local board or city-owned corporation), and who are not staff of the Auditor General, original information that remains in the hands of the staff member for the purposes of his or her ordinary tasks would not be subject to section 181(1), even if a copy has been given to the Auditor General. Only information about the complaint or investigation being conducted by the Auditor General would be caught.
>
> With respect to the nature of "duties" under Part V, I conclude that providing information when "instructed" to do so by the Auditor General would be a duty under Part V, but as already noted, if the information came to the knowledge of the staff member as part of his or her everyday work, and not in connection with Part V of the *COTA*, the information itself would not be caught by section 181(1) in the hands of the staff member. *Only information about the Auditor General's investigation that was acquired by the staff member as a consequence of being instructed or asked to provide information to the Auditor General would be covered*. [emphasis added]

[46] I adopt the approach taken to the interpretation of section 181(1) of the *COTA*, and apply it, with the necessary modifications, to section 173(1) at issue in this appeal.

[47] Accordingly, based on my review of the record responsive to request item C7, I find that this record, which consists of correspondence sent from the TCHC to the Toronto Ombudsman (including attachments), is a record which falls within the ambit of the confidentiality provision in section 173(1) of the *COTA*. I am satisfied that, although the TCHC staff member who sent the correspondence to the Toronto

Ombudsman was not staff of the Ombudsman, this individual was compelled to provide the information to the Ombudsman[20] and, in doing so, was acting under the instructions of the Ombudsman. I am also satisfied that the information in the record (and its attachments) is about the complaint or investigation being conducted by the Ombudsman, and that providing the information when "instructed" to do so by the Ombudsman constituted a duty under Part V of the *COTA*.

[48] Accordingly, I am satisfied that the record responsive to item C7, which is a letter and attachments sent to the Ombudsman, is captured by the wording of section 173(1). Because it is captured by that section, and due to the application of section 53(1) of the *Act*, I am satisfied that the confidentiality provision in section 173(1) of the *COTA* prevails over the access rights provided to the appellant under the *Act*.

[49] I note, however, that my finding extends only to the correspondence (and attachments) sent to the Ombudsman, and does not extend to information in the hands of a TCHC staff member that such a person received in the course of his or her normal duties. The TCHC in this appeal has not claimed that this provision applies to any other records in its record-holdings. In fact, the TCHC in responding to the appellant's numerous requests, has issued access decisions on all of the responsive original records in its record-holdings, and has provided access to most of those records, claiming certain exemptions under the *Act* for only small portions of some records.

[50] As a result, I am satisfied that the record responsive to item C7 is covered by section 173(1) of the *COTA*, which is a confidentiality provision that prevails over the access rights provided to the appellant under the *Act*.

Issue C: Did the TCHC conduct a reasonable search for records responsive to items B6.2.1, B6.2.2, B6.2.3, C5, C6, D1.1, D1.2, D2 and D3?

Introduction

[51] In appeals involving a claim that additional responsive records exist, as is the case in this appeal, the issue to be decided is whether the TCHC has conducted a reasonable search for the records as required by section 17 of the *Act*. If I am satisfied that the search carried out was reasonable in the circumstances, the TCHC's decision will be upheld. If I am not satisfied, further searches may be ordered.

[20] Section 172 of the *COTA* and section 19 of the *Ombudsman Act* provide the Ombudsman with the power to require individuals to provide information or produce documents, similar to section 179(1) of the *COTA* as it applies to the Auditor General.

[52] A number of previous orders have identified the requirements in reasonable search appeals.[21] In Order PO-1744, Acting-Adjudicator Mumtaz Jiwan made the following statement with respect to the requirements of reasonable search appeals:

> … the *Act* does not require the Ministry to prove with absolute certainty that records do not exist. The Ministry must, however, provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records. A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request (Order M-909).

[53] I agree with Acting-Adjudicator Jiwan's statement.

[54] Where a requester provides sufficient detail about the records that he/she is seeking and the institution indicates that records or further records do not exist, it is my responsibility to ensure that the institution has made a reasonable search to identify any records that are responsive to the request. The *Act* does not require the institution to prove with absolute certainty that records or further records do not exist. However, in my view, in order to properly discharge its obligations under the *Act*, the institution must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request.

[55] Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response, the appellant must, nevertheless, provide a reasonable basis for concluding that such records exist.

Background and representations

[56] As identified above, the appellant took the position that records or additional records responsive to items B6.2.1, B6.2.2, B6.2.3, C5, C6, D1.1, D1.2, D2 (also referred to as MR-1) and D3 ought to exist, and this raised the issue of whether the searches for records responsive to these items were reasonable.

[57] The TCHC provides representations in support of its position that all reasonable efforts were made to locate the "considerable number of documents" requested by the appellant. It states:

> For each of the requested records, TCHC assigned [a named paralegal] to coordinate the search efforts. [The named paralegal] is experienced with the appellant's request and claims, having handled all of the appellant's previous [requests under the *Act*]. She is also knowledgeable about TCHC's responsibilities under [the *Act*] and is responsible for a number of

[21] See Orders M-282, P-458, P-535, M-909, PO-1744 and PO-1920.

> [files and duties under the *Act*]. As such, she is cognizant of the duty to conduct a reasonable search for records. …

[58] The TCHC then reviews in some detail the steps taken by the named paralegal in conducting the searches for responsive records. It states:

> In response to the appellant's request, [the named paralegal] contacted all relevant staff to request all documents related to the appellant. She went through these documents, as well as the appellant's tenant file to respond to the appellant's request.
>
> A testament to [the named paralegal's] considerable efforts is the hundreds of pages of records that have been provided to the appellant as part of this and other … requests.

[59] The TCHC then reviews the searches conducted for the specifically identified items at issue. With respect to items B6.2.1, B6.2.2 and B6.2.3, the TCHC states:

> With respect to the records relating to correspondence with various named individuals [responsive to items B6.2.1, B6.2.2 and B6.2.3], [the named paralegal] contacted both [TCHC] staff and [a named third-party] staff and reviewed both the tenant file and electronic email folders of certain employees. Beyond the documents produced to the appellant, [the named paralegal] was not able to find any other documents.
>
> The individuals that [the named paralegal] contacted would have had knowledge of the records requested and staff are expected to keep all the records related to the appellant in the tenant's file. Therefore, [the named paralegal] conducted a reasonable search by: 1) requesting the documents from the relevant individuals, 2) checking the tenant file, and 3) checking the electronic files.

[60] Regarding items C5 and C6 of the request, the TCHC states:

> With respect to the records related to the lease expiration lists (C5 and C6), [the named paralegal] checked the tenant's file and contacted the individuals familiar with the annual review packages. [The named paralegal] was told that the documents are automatic lists that get generated at a certain time of year, and had not been generated at the time of the appellant's request.
>
> In October, 2011, the requested documents were generated and the appellant was provided the documents. Since the documents have been

> provided to the appellant, we respectfully submit that the issue has been resolved.

[61] Addressing the remaining items, the TCHC states:

> With respect to the documents related to rent review and market rent calculations [D1.1, D1.2 and D2], [the named paralegal] searched for the requested documents in [TCHC's] internal website's policy section and did not find any responsive records.
>
> It is not surprising that there are no responsive records as the requested records relate to internal and external regulations/legislation that regulate [the TCHC]. Since there are external regulations/legislation for rent reviews, [the TCHC] has not found a need to create duplicate internal procedures and processes.
>
> The appellant has been provided with the website addresses where the requested documents can be found ….

[62] The TCHC then states:

> … the appellant's main argument is that certain records should exist, but [she] has not provided a reasonable basis for concluding that the records do exist. The onus is on the appellant to provide a reasonable basis for concluding that the records do exist, and we … submit that the appellant has not provided the requisite proof to show that there is a reasonable basis to conclude the records exist.

[63] The TCHC also provides a detailed affidavit, sworn by the named paralegal, in which she reviews the specific requests and provides additional information about the searches that were conducted, the names of the individuals contacted in conducting those searches, and the results of those searches.

[64] The appellant did not provide representations in this file.

[65] As set out above, in order to properly discharge its obligations under the *Act*, the TCHC must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request. A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request, and it is not necessary that every individual involved in the matter provide statements.[22]

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[22] See Orders M-909, MO-2143-F.

[66] In the circumstances, I find that the searches conducted by the TCHC for records responsive to the multi-part request were reasonable. I make this finding based on the detailed representations received from the TCHC on the search issue, and in the absence of representations from the appellant on this issue.

ORDER:

I uphold the decision of the TCHC, and dismiss this appeal.

Original Signed By: February 8, 2013
Frank DeVries
Adjudicator