

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2926

Appeal MA10-436

City of Ottawa

July 30, 2013

Summary: The City of Ottawa received an access request for information relating to the appellant's participation in a program during the summer of 2003. The city granted access in full to some records and partial access to three records. In denying access, the city relied on the exemptions in sections 14(1) (personal privacy) and 11(c) and (d) (economic interests). The appellant appealed the city's access decision. The appellant subsequently narrowed the scope of her request to one record, a participant list, and to the portion of it that contains the names of the other participants, which had been denied under section 14(1). The application of section 38(b), read with section 14(1), was subsequently added as an issue since the portions of the participant list at issue contain information relating to the appellant. As the appellant was no longer interested in information denied under sections 11(c) and (d), the application of those exemptions was removed from the appeal. The appellant also suggested that additional records should exist and the reasonableness of the city's search for responsive records was added as an issue. This order upholds the city's application of section 38(b) to the information at issue and finds that its search for responsive records was reasonable.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of "personal information"), 14(1), 17 and 38(b).

Orders and Investigation Reports Considered: M-909, PO-1744.

OVERVIEW:

[1] The appellant submitted an access request to the City of Ottawa (the city) in August 2010, pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), for information relating to her participation in the Junior Leadership Training Program (Session 2: July 28 - August 21, 2003) (the program) for the Silver Duke of Edinburgh Award. The request was detailed and included the names of all program participants, the names and titles of all city employees involved in the program, the names of all volunteers involved with the program, the "expedition report" (including the dates, times, duration and distances for various activities), the route map, the menu chart, travel logs, training and preparation for the program, and the program leaders' notes used for teaching and training.

[2] The city issued an access decision, granting access in full to some records and partial access to three records. The three severed records consisted of a class list and two invoices. With respect to the class list, the City severed out the names of the individuals listed on it and the corresponding bar code numbers and dollar amounts paid by each individual to participate in the program, pursuant to the mandatory exemption in section 14(1) (personal privacy). Only the information belonging to the appellant was disclosed. With respect to the invoices, the City severed out dollar amounts, pursuant to sections 11(c) and (d) (economic interests).

[3] The appellant appealed the city's access decision.

[4] During the mediation stage of the appeal process, the appellant confirmed that she wished to pursue access to the names on the class list. She also confirmed that she was not interested in the other information severed from the class list or the invoices.

[5] Also during mediation, the appellant indicated that she requires detailed information in order to qualify for the Silver Duke of Edinburgh Award and she contended that further records should exist that are responsive to her request. Accordingly, the reasonableness of the city's search for responsive records was added as an issue. The appellant provided the following exhaustive list of records that she believes should exist:

2003/2004 CD

- 2003 souvenir CD of the expedition
- 2004 promotion video, if it contains information of the 2003 expedition
- photographs taken

Logs

- logs about practice journey and qualifying journey

Map

- a more detailed map indicating:
 - distance covered for practice and qualifying journey
 - time covered for practice and qualifying journey and type of terrain covered for practice and qualifying journey
 - transportation used for practice and qualifying journey
 - alternate emergency routes planned
 - emergency plan and detailed route card
 - environment chosen

Schedule of Activities

- activities for practice journey and qualifying journey
- hours per day
- dates, times, duration, and distances
- practice journey (purpose, duration, description)
- qualifying camping trip (purpose, hours, location)

Training and Preparation for Journey

- leaders' notes for teaching and training - both before and after the event
- challenges, difficult areas of expedition learning
- information on planning, journeying, navigating and route finding, setting up and striking camp

Menu

- food and menu chart with dates
- what was eaten for each meal
- which meals were cooked
- which meals were prepared by the participants
- which meals the participants did the dishes

Submission by City for the Duke of Edinburgh Award

- approval from the Provincial Divisional Director of the Duke of Edinburgh Award before as well as after the event – both information submitted by the City and responses/suggestions made by the Duke of Edinburgh's Award
- copies of any slide/tape presentations made to Award Standards Committee or other Duke of Edinburgh's Award personnel... in written or other format(s) including but not limited to discs/CDs
- post trip reports/feedback given or made by supervisors/leaders to other participants or to the provincial divisional office of the Duke of Edinburgh's Award
- any post-trip feedback given to participants or to the City of Ottawa [named] Community Centre employees or affiliated persons by the Provincial/Divisional office of the Duke of Edinburgh's Award
- any correspondence or related communication between these parties

Equipment

- first aid and safety equipment, mass/weight of equipment

Other

- information about weather, morale, fitness
- results of any surveys filled out by participants, partners, or leaders
- any feedback given by participants and/or their families – especially in writing
- name of the house where participants slept for both nights at the camp in Quebec
- overnight at [named] Community Centre (Friday-Saturday) August 8-9, 2003 and the trip itself August 18-20, 2003 at [named camp]- scout camp near Low, Quebec owned by the francophone scouts of Ottawa
- confirmation that the appellant participated in both the practice and qualifying journeys at both locations

Names

- first and last names of the participants
- first and last names of the City and/or [named] Community Centre employees as well as the job titles/positions each person held
- qualifications and experience of head leaders at the time of the expedition
- first and last names as well as position or job titles of the volunteers and employees involved with the camp during the mentioned dates

[6] During mediation, the city indicated that it had provided all responsive records to the appellant and does not have any additional records.

[7] The parties were unable to resolve the appeal during the mediation stage of the appeal process and the file was moved to the adjudication stage for a written inquiry, in which an adjudicator invites the parties to make written submissions in response to a Notice of Inquiry and then issues a written decision.

[8] As the assigned adjudicator, I commenced my inquiry by issuing a Notice of Inquiry and seeking representations from the city.

[9] As noted above, the mediator identified reasonable search and the application of section 14(1) to the withheld information as the issues to be adjudicated. However, after my review of the record remaining at issue, I noted that it contains information relating to the appellant. Although this information has been disclosed to the appellant, the presence of information about the appellant in the record raises the application of the personal privacy exemption in section 38(b). Accordingly, I am required to examine

the application of section 38(b), read in conjunction with section 14(1), to the information at issue in the record.¹

[10] I commenced my inquiry by issuing a Notice of Inquiry and seeking representations from the city on its search efforts and the application of section 38(b) to the information at issue. The City provided representations and agreed to share them in their entirety with the appellant.

[11] I then sought representations from the appellant and enclosed with a Notice of Inquiry a complete copy of the City's representations.

[12] The appellant responded with representations, which I then shared with the city in their entirety. The city replied with reply representations, which I shared in their entirety with the appellant. The appellant responded with sur-reply representations.

[13] For the reasons discussed below, I find that the city properly applied the discretionary exemption in section 38(b) to the information at issue and that the city's search for additional responsive records was reasonable.

RECORDS:

[14] There is one record remaining at issue, the severed portions of a one-page class list.

ISSUES:

- A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the discretionary exemption under section 38(b) apply to the record?
- C. Did the city properly exercise its discretion under section 38(b)?
- D. Did the city conduct a reasonable search for responsive records pursuant to section 17?

¹ See Order M-352, which requires an institution to take a record-by-record approach, and to consider each record either under Part I of the *Act* (for records that do not contain the requester's personal information) or under Part II of the *Act* (for those that do contain the requester's personal information).

DISCUSSION:

PERSONAL INFORMATION

A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[15] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and

- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[16] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

[17] Sections 2(2.1) and (2.2) also relate to the definition of personal information. These sections state:

(2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[18] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.²

[19] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.³

[20] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁴

[21] The city submits that the information at issue in the record qualifies as personal information under section 2(1)(h) since the record reveals the names of individuals who participated in the program at the time in question.

[22] The appellant suggests that the program participants were volunteers or working in an "official capacity" with the city and that, accordingly, their names do not comprise their personal information. The city disagrees with the appellant's characterization of

² Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

³ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁴ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

the participants in the program. The city states that the program was a "summer course" and that the individuals registered were "participating as students rather than acting in an official role on behalf of the city." The city adds that participants at the junior leader level spent ten days in a recreation setting practicing skills learned in the classroom. Some students were able to use these hours to complete the 30 hour community credit required by the Ontario Secondary School curriculum.

[23] I am satisfied that the individuals listed in the record at issue were participating as students in a summer program, and were not participating in the program in a business, professional or official capacity. In my view, their names do not identify these individuals in an official capacity within the meaning of section 2(2.1). Rather the individuals' names appear in a personal capacity, in relation to their participation as students in the program. Accordingly, I am satisfied that the record at issue contains the personal information of the individuals named in it, within the meaning of section 2(1)(h) of the definition of "personal information."

B. Does the discretionary exemption under section 38(b) apply to the record?

General principles

[24] Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

[25] Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would constitute an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester.

[26] If the information falls within the scope of section 38(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the requester's right of access to his or her own personal information against the other individual's right to protection of their privacy. Sections 14(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold is met.

[27] I find that none of the exceptions in sections 14(1)(a) to (e) apply in the circumstances. There is no evidence that the city sought the consent of the individuals listed in the record under section 14(1)(a) and the city is under no obligation to seek the consent of those listed in the record. In my view, the section 14(1)(a) exception has no application in the present appeal and I have not been provided with evidence that establishes the application of any of the other exceptions in sections 14(1)(a) to

(e). In addition, I find that the exceptions in section 14(4) have no application in this case.

[28] I must therefore turn to the presumptions in section 14(3) and the factors in section 14(2) to determine whether disclosure of the information at issue would constitute an unjustified invasion of personal privacy.

Sections 14(2)(f) and (h) and 14(3)(h)

[29] In its representations, the city raises the presumption in section 14(3)(h) and the factors in section 14(2)(f) and (h). These sections read:

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(f) the personal information is highly sensitive;

...

(h) the personal information has been supplied by the individual to whom the information relates in confidence; and

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

(d) relates to employment or educational history;

[30] The city does not provide any insight into the application of the presumption in section 14(3)(d), stating simply that the names, and the context in which they appear, relate to the educational history of the program participants since the program qualified as a summer course for which those enrolled could receive credit towards the 30 hour community credit required by the Ontario Secondary School curriculum. The appellant states that the information at issue does not relate to the participants' educational history but she does not otherwise comment on the application of this or any other presumption under section 14(3).

[31] With respect to the factors in sections 14(2)(f) and (h), the city states that at the time the participants registered for admission to the program they would have had a "considerable expectation" that the city would hold the class lists in confidence and that the "identification of a young adult as having taken a particular course [...] in the past could constitute highly sensitive information."

[32] The appellant does not comment on the city's raising of the factors in sections 14(2)(f) and (h) and she does not raise any other factors under section 14(2) in support of disclosure. The appellant suggests that every participant, but herself, had been enrolled in the program the previous summer (2002) and that each of these participants would have had the other participants' names. The appellant states: "the other participants and employees had [her] full name; I should have theirs."

[33] Turning to my analysis, although the appellant is of the view that the names of the participants would have been known by others participating in the program, she has not provided any independent evidence to support a finding that the first and last names of the participants are known. As a result, I find that this is not a factor favoring disclosure of the names of the participants, particularly as a number of years have passed since the program was run. As well, I note that the appellant has not presented any other factors weighing in favour of disclosure of the names.

[34] In the absence of any factors favouring disclosure, I find that the disclosure of the information contained in the record would constitute an unjustified invasion of the personal privacy of the individuals whose names are listed in the record, under section 38(b), subject to my discussion of the exercise of discretion, below. Having reached this conclusion I need not consider the application of the presumption in section 14(3)(d).

Exercise of discretion

[35] The section 38(b) exemption is discretionary and permits the city to disclose information, despite the fact that it could be withheld. On appeal, this office may review the city's decision in order to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so.⁵

[36] In its representations, the city acknowledges that the record contains both the personal information of the appellant and the other participants in the program. The city states that it disclosed the appellant's personal information to her while withholding the personal information of the other participants due to privacy concerns. The city emphasizes that it took this approach in good faith and for no improper purpose. The city states that the severances made were consistent with section 4(2) of the *Act*, as it disclosed as much of the record as it could without disclosing exempt information.

[37] The appellant does not provide specific representations on the city's exercise of discretion. However, it is clear that the appellant does not agree with the city's exercise of discretion and that she takes the position that the participants' names should be disclosed to her.

⁵ Orders PO-2129-F and MO-1629.

[38] I have reviewed the circumstances of this appeal and the records at issue. As stated above, the city provided certain portions of the record to the appellant, comprised of her personal information. With respect to the remaining information, I have found that disclosure of this information would constitute an unjustified invasion of the personal information of the other program participants, and that it qualifies for exemption under section 38(b). Based on the nature of the information remaining at issue, and on the city's representations, I am satisfied that the city has not erred in exercising its discretion not to disclose to the appellant the remaining information contained in the record.

D. Did the city conduct a reasonable search for responsive records pursuant to section 17?

[39] 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 city has conducted a reasonable search for the records requested, as required by section 17 of the *Act*. If I am satisfied that the search carried out was reasonable in the circumstances, the city's decision will be upheld. If I am not satisfied, further searches may be ordered.

[40] A number of previous orders have identified the requirements in reasonable search appeals.⁶ 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).

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

[42] 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 conducted 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.

⁶ See Orders M-282, P-458, P-535, M-909, PO-1744 and PO-1920.

[43] 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.

Representations

[44] The city provided detailed representations, which included an affidavit sworn by an individual employed for 15 years with the city's Parks, Recreation and Cultural Services Department as a "Recreation Supervisor 2" (the recreation supervisor) at the community centre where the program took place.

[45] The city submits that the scope of the appellant's request was clear. City staff understood that the appellant sought detailed information relating to the program that took place during the summer of 2003 and related information about qualification for the Silver Duke of Edinburgh Award.

[46] The city states that it made a reasonable effort to identify and locate records responsive to the appellant's request. The city submits that the recreation supervisor and city staff conducted the search for responsive records. The city states that the recreation supervisor was the appropriate person to lead the search based on her years of employment with the community centre, and her duties which included compiling and maintaining records at the centre. The city submits that the recreation supervisor was well acquainted with the "recreation course record-keeping system and knew all possible physical locations of responsive records."

[47] In her affidavit, the recreation supervisor provides a detailed account of the steps she took in the fall of 2010 to process the appellant's request and search for records responsive to it. She states that after reviewing the entire request, she determined that all responsive records would not be stored off-site but would be located at the community centre at which the program took place. She submits that she is familiar with the records requested because she developed the program curriculum and compiled and maintained these records through her work with the community centre. She goes on to state that together with staff she searched throughout the community centre storage rooms for any files related to "Leadership Training Programs" that occurred in or about 2003. She adds that together with staff she also searched for any electronic files, including electronic documents stored in her office and the program coordinator's office.

[48] The recreation supervisor states that as a result of her search efforts and those of staff, two bankers boxes full of files were collected that contained potentially responsive records. She states that she reviewed the contents of the records in the two boxes page by page to determine whether they were responsive to the appellant's request. She states that she set aside a CD-ROM and approximately 50 pages of records that she determined to be responsive to the appellant's request.

[49] The recreation supervisor acknowledges that despite her search efforts she did not locate many of the records sought by the appellant. She explains that many of the items requested, including food and menu charts, were not the types of records collected or maintained by the city. She also understood that individual participants in the program were responsible for maintaining a log book to record details of their leadership camp experience, including any achievements which they could highlight in an application for the Silver Duke of Edinburgh Award.

[50] The recreation supervisor states that on or about January 14, 2011 she received an email from an analyst with the city's Access to Information and Privacy Office seeking confirmation about whether the following preliminary list of records exist:

- CD Souvenir 2003 and/or 2004 promotional CD
- More detailed map of the area than the one provided
- Written menu for all meals
- Schedule of activities
- Names of all participants
- List of all camp staff
- Names of all camp volunteers
- List of all city employees affiliated with the program/camp

[51] The recreation supervisor states that she forwarded this email to a named individual employed by the city as an instructor at the community centre (the instructor). The recreation supervisor advises that the instructor was the staff person who had assisted with the initial search in the fall of 2010. She advises that she directed the instructor to review all of the records contained in the two bankers' boxes and to verify whether there were any remaining records related to the request. She states that on or about January 26, 2011 she received a copy of an email sent by the instructor to the analyst reporting on his further search. The instructor reported that he had not located any further responsive records.

[52] The city concludes that "it is possible that in the summer of 2003 certain documents that could have been responsive were only transitory and were never kept in the custody or control of the city as official business records." The city acknowledges that "while it is reasonable to assume the city would maintain class lists and general information about the program, there are no facts that suggest that the city would collect or maintain records that are transitory in nature such as detailed menu plans." The city affirms the position taken by the recreation supervisor that many of the records sought by the appellant would not have been collected or maintained by the city, and that if a participant in the program wished to retain them for safekeeping or to document their activities in support of an application for the Silver Duke of Edinburgh Award, it would be up to that individual to retain this information.

[53] In response, the appellant believes that the city has only provided a small fraction of the records that are responsive to her request. She believes that further records should exist since the city's own literature on the program indicates that the maximum age to complete the Silver Duke of Edinburgh Award is 25. Therefore, in the appellant's view, participants who were 15 years of age in the summer of 2003 would be 25 in the summer of 2013. Accordingly, based on the appellant's analysis, responsive records should still exist for those enrolled in the program in the summer of 2003.

[54] The appellant also takes issue with the role that other staff (in addition to the recreational supervisor) played in the search process, particularly in the search of the program coordinator's office. She seeks the names of the individuals involved in the search, their job titles and their knowledge and experience in searching electronic records. She also seeks the name of the program coordinator both in 2003 and at the time that office was searched in fall of 2010.

[55] The appellant states that the CD-ROM referenced in the recreation supervisor's office is for the year 2005 and is not responsive to her request for information pertaining to the program in 2003. She states that she is "amenable to receiving the 2004 promotional documents based upon summer 2003 or the 2003 souvenir audiovisual materials in alternate format (for example, VHS, DVD, audio cassette, etc.)."

[56] The appellant also commented on the nature of the map, itinerary and calendar of events she seeks. She also takes issue with the amount of search time expended by the city to locate responsive records, despite the fact that this had not been identified as an issue in this appeal.

[57] In reply, the city does not dispute its responsibility to maintain records for the program. The city restates the recreation supervisor's view that course registration information is stored in a central data base but that other information about the course is not routinely kept after the course has been completed. The city reiterates that the "vast majority of the records sought by the [appellant] were not routinely maintained by the city." The city reaffirms that the recreation supervisor and the instructor were the two individuals who conducted the searches for responsive records since they were the city staff with the greatest direct knowledge and experience with the program, the layout of the community centre and the areas in the centre where records could be stored. With regard to the search of the program coordinator's office, the recreation supervisor states that she would have consulted the "acting program coordinator" in the fall of 2010 about whether she had "kept any records that would be relevant to the request." The recreation supervisor states that she was advised by the acting program coordinator that she "had not kept any such records."

[58] The city concludes that the recreational supervisor, with the assistance of the instructor, conducted a reasonable search for records responsive to the appellant's request on three occasions over a total of seven hours and, in doing so, "exhausted all avenues to recover the information requested [...]."

Analysis and findings

[59] As set out above, in appeals involving a claim that responsive records exist, the issue for me to decide is whether the institution has taken reasonable steps to search for records responsive to an access request as required by section 17 of the *Act*.⁷ A reasonable search is one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request.⁸ The key is, therefore, *reasonableness*. The *Act* does not require an institution to prove with absolute certainty that records do not exist. An institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request.⁹

[60] In addition, in Order M-909, Adjudicator Laurel Cropley made the following finding with respect to the obligation of an institution to conduct a reasonable search for records. She stated:

In my view, an institution has met its obligations under the *Act* by providing experienced employees who expend a reasonable effort to conduct the search, in areas where the responsive records are likely to be located. In the final analysis, the identification of responsive records must rely on the experience and judgment of the individual conducting the search.

[61] As stated above, if I am satisfied that the city's search for responsive records was reasonable in the circumstances, the city's decision will be upheld. If I am not satisfied, I may order further searches.

[62] I adopt the approach taken in the above orders for the purposes of the present appeal.

[63] The appellant in this case made a comprehensive request for records relating to a program that she participated in during the summer of 2003. In framing the request, the appellant has sought detailed information about the program including promotional materials, participant logs, maps, itineraries and schedules of activities, training and preparation notes prepared by program leaders, food and menu plans and selections,

⁷ Orders P-85, P-221, PO-1954-I.

⁸ Order M-909.

⁹ Orders P-624, PO-1744.

particulars regarding the Silver Duke of Edinburgh Award application process, first aid and safety equipment specifications, and participant feedback about the program.

[64] In light of the significant level of detail sought and the comparatively small amount of responsive information located, the appellant is clearly dissatisfied with the results of the city's search efforts. While I acknowledge the appellant's disappointment, the sole issue for me to decide is whether the city has conducted a reasonable search for records responsive to the appellant's request. I am satisfied that the searches conducted by the city for responsive records were reasonable.

[65] The city has provided detailed representations outlining its search efforts. These representations are supplemented by an affidavit sworn by the recreation supervisor who coordinated and led the city's search efforts. The recreation supervisor's affidavit describes in some detail the nature of the searches conducted, the results of the searches, and accounts for why many of the records sought by the appellant were not found.

[66] The recreation supervisor has been employed by the city for over 15 years. In her words, she is familiar with the records requested because she developed the program curriculum and compiled and maintained the program records through her work with the community centre at which the program was run. In my view, the recreation supervisor was sufficiently experienced and qualified to lead the search on behalf of the city. I am also satisfied that the recreation supervisor approached the search in a professional, thoughtful and diligent manner.

[67] I see no basis for questioning the recreation supervisor's conclusion that any responsive records would be housed on-site at the community centre where the program was conducted. It is clear through her affidavit that she evaluated the physical space at the community centre, determined where records might be stored and enlisted appropriate assistance to complete a search of the various storage facilities at the community centre. I am also satisfied that the recreation supervisor took appropriate steps to search for any electronic files, including electronic documents stored in her office and the acting program coordinator's office.

[68] The recreation supervisor has reported that through her search efforts and those of the instructor, two bankers boxes of records were located in the fall of 2010 that contained potentially responsive records. The recreation supervisor has stated that she reviewed the contents of the records in the two boxes page by page to determine whether they were responsive to the appellant's request. She states that she set aside a CD-ROM and approximately 50 pages of records that she determined to be responsive to the appellant's request. The recreation supervisor submits that the contents of the bankers boxes were again searched by the instructor in January 2011, but that no further responsive records were found. In my view, the recreation supervisor

conducted a thorough and systematic search for records responsive to the appellant's request.

[69] I acknowledge the appellant's desire for further information regarding the city's search efforts, including the names of the program coordinator both in 2003 and at the time the searches were completed, an accounting of the time expended by city staff who conducted the searches, the details of food provided during the program (including meal menu plans), and better and more detailed back-up documentation (including maps and itinerary information). However, I am satisfied that the city has taken reasonable steps to identify and provide all available information responsive to the appellant's access to information request made in 2010.

[70] The appellant's request was made in August of 2010, a full seven years after the completion of the 2003 summer program. I find the city's explanation credible that many of the records sought by the appellant were either not in its custody or control or not maintained by the city after the conclusion of the program due to their "transitory" nature. Records in this category would appear to include menu plans, itineraries and detailed maps. I accept, based on the nature of the program and the evidence presented, that much of this information was simply not retained by the city and that if a participant wished to retain it for safekeeping or to document their activities in the program, it would be up to that individual to do so.

[71] With regard to consultations with the program coordinator, the recreation supervisor has advised that she consulted with the acting program coordinator at the time the city's search for responsive records was undertaken. I find this is reasonable in the circumstances of this appeal. The city is not required to conduct an exhaustive search to meet its obligations under section 17 of the *Act*.

[72] While I would commend the city to pay closer attention to its records retention practices in the future so that it is clear to staff and the public what records it should retain from a program of this kind and for how long, I find the evidence provided by the city credible and transparent with regard to its efforts to identify records responsive to the appellant's request.

[73] To conclude, I am satisfied that the city has conducted a reasonable search for records responsive to the appellant's request.

ORDER:

1. I uphold the city's application of the discretionary exemption in section 38(b) to the record at issue.
2. I uphold the city's search for additional responsive records under section 17.

Original signed by: _____
Bernard Morrow
Adjudicator

_____ July 30, 2013