

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3254

Appeal MA14-82-2

Toronto Hydro Corporation

October 22, 2015

Summary: The appellant made an access request to Toronto Hydro for dispatch records compiled by postal code and communication records relating to the Ice Storm in 2013. Toronto Hydro issued a final decision to the appellant that there were no responsive records relating to the dispatch portion of the appellant's request, but provided the appellant with severed communication records. The appellant appealed Toronto Hydro's decision on the basis that it had interpreted the scope of his request too narrowly and that additional responsive communication records should exist. In this order, the adjudicator upholds Toronto Hydro's decision that there are no responsive dispatch records and dismisses the appeal of Toronto Hydro's search for communication records.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 2(1) (definition of "record"), 24.

Cases Considered: *Toronto Police Services Board v. (Ontario) Information and Privacy Commissioner*, 2009 ONCA 20.

OVERVIEW:

[1] The appellant made a request to Toronto Hydro Corporation (Toronto Hydro) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following records related to Toronto Hydro's response to the December 2013 ice storm:

1. Dispatch records for postal code area beginning with M1E for the period of December 21, 2013 to December 27, 2013 inclusive.
2. Dispatch records for postal code area beginning with M6G for the period of December 21, 2013 to December 27, 2013 inclusive.
3. Dispatch records for postal code area beginning with M5R for the period of December 21, 2013 to December 27, 2013 inclusive.
4. All communications between Toronto Hydro Management and their staff members and City Councillor [named] and his staff members for the period of December 21, 2013 to December 27, 2013 inclusive.
5. All communications between Toronto Hydro Management and their staff members and City Councillor [named] and her staff members for the period of December 21, 2013 to December 27, 2013 inclusive.

[2] Toronto Hydro issued an interim decision to the appellant, advising that no records responsive to parts 1, 2 and 3 of his request are kept because it does not maintain dispatch records based on postal codes or political borders. Regarding parts 4 and 5, Toronto Hydro indicated that it had searched for, and located, 356¹ pages that are responsive to those parts of the request. Toronto Hydro provided a fee estimate of \$269.20 and noted that some information may be severed pursuant to the personal privacy exemption

[3] Toronto Hydro issued a final decision, confirming its previous position that no records exist in relation to the first three parts of the request, that 354 pages responsive to parts 4 and 5 had been identified and that some information in these records was severed pursuant to section 14 of the *Act*. Toronto Hydro advised that no fees would be charged for the search to locate the records, but the fee for severing, photocopying and shipping is \$335.20, with copies of the records to be provided upon receipt of the fee.

[4] The appellant appealed this decision and during mediation, the institution and the appellant agreed to a fee of \$167.60. Toronto Hydro then sent a copy of the records to the appellant, along with an explanation regarding how dispatch is done.

[5] The appellant was not satisfied with the records provided or Toronto Hydro's explanation about dispatch records and continues to believe that records should exist responsive to parts 1, 2 and 3 of his request. He also believes that additional responsive records should exist for parts 4 and 5 of his request. The appellant does not object to

¹ The number of pages given in the March 10, 2014 interim decision is 356, while the March 19, 2014 decision letter mentions 354 pages. It appears that the 350 pages was ultimately provided to the appellant.

the severances made pursuant to section 14(1) or those made on the basis of non-responsiveness. Accordingly, the application of the exemption and the information claimed to be not responsive are not within the scope of the appeal.

[6] The adjudicator sought and received representations from Toronto Hydro and the appellant. Representations were shared in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*. The file was then assigned to me to dispose of the issues in the appeal.

[7] In this order, I uphold Toronto Hydro's decision that there are no responsive dispatch records by postal code and I dismiss the appeal of its search for communication records.

ISSUES:

- A. What is the scope of the appellant's request? What records are responsive?
- B. Did Toronto Hydro conduct a reasonable search for records?

DISCUSSION:

Issue A: What is the scope of the appellant's request? What records are responsive?

[8] Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;
 - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;

. . .

- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[9] Regarding section 24(2), in particular, institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*.

Generally, ambiguity in the request should be resolved in the requester's favour.²

[10] To be considered responsive to the request, records must "reasonably relate" to the request.³

[11] During the inquiry, the adjudicator also asked the parties to consider whether Toronto Hydro has information in its record holdings that could be used to produce "dispatch records" that would be responsive to the appellant's request.

[12] Toronto Hydro submits that the appellant sought dispatch records based on postal codes in the context of the ice storm. Based on the ordinary meaning of the term "dispatch" in this context, staff interpreted the appellant's request to mean records relating to directions given to repair crews to attend an affected area of the city during the ice storm. Toronto Hydro submits that no such records by postal codes exist. Moreover, Toronto Hydro further submits that the requested information also cannot be produced. Toronto Hydro provided an affidavit as evidence of such from the Executive Vice-President, Chief Regulatory Officer and General Counsel for its organization.

[13] Toronto Hydro explains that during the ice storm dispatch of repair crews was made through oral communications from control room staff who:

...receive prioritization information from Toronto Hydro's Outage Management System ("OMS"), a complex computer system that receives outage data from various sources and prioritizes repairs based on multiple factors involving greatest need. Dispatch staff reviews the OMS prioritization, facts on the ground such as safety hazards or access issues, and then assign repair works to attend at specific transformers or lines or other locations to conduct repairs. As the evidence indicates, postal codes are not considered when dispatch of repair crews is made; rather, prioritization based on need and algorithmic factors as determined by OMS is the basis for dispatch.

[14] Toronto Hydro submits that the OMS is "primarily reflective of incoming communications about outages, including system generated information or information provided by customers or Hydro staff on ground." It gives the example of customer emails about experiencing a service outage received during the ice storm which were identified as responsive records to the request. While this information was inputted into OMS for review and prioritization, Toronto Hydro submits that it cannot be characterized as "dispatch records".

[15] In response to Toronto Hydro's representations, the appellant explains that his "original request" was based on Toronto Hydro's website which lists outages by postal

² Orders P-134 and P-880.

³ Orders P-880 and PO-2661.

code. The appellant submits that he expected that since Toronto Hydro provides power outage information by postal code they could provide dispatch information in the same manner. The appellant submits, however, that "dispatch records" should exist because, "It is necessary for any company to keep track of its employees, for workplace safety, accountability, liability and for insurance reasons." The appellant submits that he has asked the IPC numerous times for an order requiring Toronto Hydro to release dispatch records for the whole city for the requested time period. The appellant goes on to state:

I, therefore, submit, that in response to my request for records, the [IPC] order Toronto Hydro to produce and supply to me dispatch records for their work crews, including time of dispatch, duration on site, number in each crew and location of each site. This should be an easy matter to extract from their records.

[16] The appellant then repeats his request at the end of his representations for, "Specifically, I am asking for the times of each dispatch, the number of members in each of these crews, the locations to which they were dispatched and the time on site."

[17] In response to the appellant's representations, Toronto Hydro submits that his request was unambiguous on its face. Toronto Hydro disputes the appellant's assertion that his request was for access to dispatch records for the whole city for the requested time period. Toronto Hydro states:

[The appellant's] request clearly seeks records relating to specific postal codes in relation to an [sic] attempt to prove these postal codes received different treatment during the storm. Toronto Hydro properly interpreted the request as relating to specific areas of the city, identified by postal codes, as that is what the request states.

[18] Toronto Hydro further submits that the appellant's request was not ambiguous and thus it did not seek clarification. It also maintains that if it had mistakenly narrowed the scope of the appellant's request, he had ample opportunity to clarify the request with the institution prior to his appeal. Toronto Hydro argues that the appellant is now attempting to expand the scope of his request and states:

At no time prior to the receipt of his representations in this appeal, received December 11, 2014, did the Appellant indicate Toronto Hydro had improperly interpreted the request. He did not modify or clarify the request during mediation. Instead, he maintained his appeal in relation to records specifically related to three postal code areas.

[19] Toronto Hydro submits that its online Outage map allows for its customers to enter the first three digits of a postal code in order to find out whether their area is experiencing a power outage. However, Toronto Hydro notes:

No logs are kept of the online Outage Map. The Outage Map does not list dispatch status or permit a customer to review prior outages. The map is not used by Toronto Hydro's dispatch or repair staff and they do not have access to logs or outage history from the map. The map is accurate but utterly irrelevant to the current request.

[20] The appellant submits that he asked during mediation for Toronto Hydro to provide dispatch records for the whole city and that he would "volunteer my own time to sift through the data to find the information I was seeking." Finally, the appellant asserts:

In summary, though I believe that Toronto Hydro must have records of their employees' whereabouts at all times, it is puzzling that they continue to refuse access to when, where and for how long their repair crews were sent during the few days in question.

[21] Based on my review of the parties' representations, I find that Toronto Hydro properly identified the records responsive to the part of the appellant's request relating to dispatch records. The appellant's submission that his request was for the location of dispatch crews including when, where and for how long they were sent out is, I find, an attempt to expand the scope of his request. Furthermore, his characterization of this information as "employee information" is also, outside of the scope of his request.

[22] I find that the appellant's request was unambiguous and sufficiently detailed to enable Toronto Hydro to locate responsive records. I find that Toronto Hydro did not unilaterally narrow the scope of the request. Further, I find its description of the request to be a reasonable one.

[23] Moreover, I have reviewed the extensive representations and affidavit evidence provided by Toronto Hydro about whether it could produce a responsive record with information in its record holdings relating to "dispatch" records by postal code. I note that the appellant did not address this issue directly, except to say, that this information should exist as "employee information". I accept Toronto Hydro's submission that there are no "dispatch records" by postal code in its record holdings and that that any records it has in its system would not reasonably relate to "dispatch records" as requested by the appellant. I will address this issue further in my discussion below.

[24] In summary, I find that Toronto Hydro properly defined the scope of the appellant's request relating to dispatch records and identified information that reasonably relates to that part of his request. I find the appellant's interpretation of his request, set out in his representations, is an attempt to broaden the scope of his request and I dismiss the appeal of this issue. My finding does not preclude the appellant from making a new request to Toronto Hydro for the information he is now seeking, specifically information relating to the assignment of repair crews during the ice storm.

Issue B: Did Toronto Hydro conduct a reasonable search for records?

[25] 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.

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

[27] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.⁷

[28] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.⁸

[29] 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.⁹

[30] The appellant claims that responsive records should exist for parts 1 – 3 of his request and that additional records should exist for parts 4 and 5 of his request. The basis for the appellant's belief that responsive records should exist for parts 1 – 3 is that "it is necessary for any company to keep track of its employees, for workplace safety, accountability, liability and insurance reasons." The appellant does not provide the reasons for his belief that additional records should exist for parts 4 and 5 of his request.

[31] As stated above, the appellant submits that the "dispatch records" that are compiled by postal code should be in Toronto Hydro's record holdings or should be able to be created or assimilated from data in its record holdings. Toronto Hydro submits that the dispatch records requested do not exist, are incapable of being produced and moreover, that production or creation of records would unreasonably interfere with its operations.

⁴ Orders P-85, P-221 and PO-1954-I.

⁵ Orders P-624 and PO-2559.

⁶ Order PO-2554.

⁷ Orders M-909, PO-2469 and PO-2592.

⁸ Order MO-2185.

⁹ Order MO-2246.

[32] Toronto Hydro's representations regarding the production of a record was in response to the issue of whether it could produce a record from machine readable records pursuant to the definition of "record" in section 2(1) of the *Act* and section 2 of Regulation 460. Section 2(1) of the *Act* specifically defines a "record" as follows:

"record" means any record of information however record, whether in printed form, on film, by electronic means or otherwise, and includes,

(a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and

(b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution;

[33] Section 2 of Regulation 460 states:

A record capable of being produced from machine readable records is not included in the definition of "record" for the purposes of the *Act* if the process of producing it would unreasonably interfere with the operations of an institution.

[34] Toronto Hydro submits that it may, with some difficulty, produce from OMS, an excel spreadsheet regarding the locations where "events" were responded to by repair crews. Toronto Hydro states:

These are not "dispatch" records per se, but they are the results of dispatch. However, these locations do not have postal codes. They may be hospitals, transformers, water treatment facilities, parks, intersections as well as street addresses – but the locations do not have postal codes associated with them.

[35] Toronto Hydro goes on to explain that its OMS system receives outage information from several sources including its internal grid system, Toronto Hydro employees and members of the public. It then analyzes that information on the basis of multiple factors including public safety, public order and the number of customers affected by any given outage. Toronto Hydro states:

Prioritization is done to ensure that issues of Public Safety and Public Order, such as hospital, police and fire services, are resolved first. The system then analyzes where outages are occurring to determine which

feeders, laterals, transformers and individual power lines are affected. Prioritization is given to feeders and laterals that cause system-wide issues and outages for the most customers. By prioritizing system-wide issues first and then progressing toward smaller individual lines, OMS is able to ensure that most customers receive working electricity as soon as possible.

At no point during its prioritization analysis does OMS receive input relating to postal codes or prioritize repairs based on such information. The information is not contained within the OMS system.

Further, once prioritization has been made the information is reviewed by Toronto Hydro's dispatch staff. As noted above, staff then communicate with repair workers through dynamic oral communication and direct repair efforts. Those efforts are done according to the OMS priorities: Public Safety and Public Order first followed by the repairs that assist the greatest number of customers in the shortest time.

[36] Toronto Hydro emphasizes that its dispatch staff also does not review, consider or record postal code information when communicating with repair workers.

[37] Toronto Hydro also distinguishes the circumstances in the present appeal from that of the Toronto Police Services Board in *Toronto Police Services Board v. (Ontario) Information and Privacy Commissioner*, 2009 ONCA 20. Toronto Hydro explains that in that case, the requester wished to receive information on arrests from a police database. However, the requester wanted the identifying information in the database deleted and replaced by randomly generated numbers. The Court examined that what information, software and hardware, and technical expertise were available to the Toronto Police Services Board and concluded the information could be extracted in the form requested using the Board's normal technical expertise. Toronto Hydro submits:

In the present case, the evidence is that there are no dispatch records per se by postal codes. However, the evidence is that records of responses to events by repair crews could be generated from the OMS through a process, but such would not contain postal code dispatch. Unlike in the decision of the Court of Appeal, there is no database of dispatch by postal code and there is no electronic record from which such could be produced.

[38] Toronto Hydro submits that it would have to produce or create a record for there to be a record responsive to the appellant's request for "dispatch records" by postal codes. Toronto Hydro further argues that the *Act* does not require the creation of a record and states:

The evidence is that there were some 17,000 entries made regarding responses to "events" during the Ice Storm. Each entry may [have] multiple pieces of information regarding multiple customer, feeder, lateral and other outages. Toronto Hydro does not have the expertise, nor would it have any reason to do such a conversion even if it were possible to do so. It has no equipment to do so and if such was required, it would invariably require the creation of information well beyond anything required or mandated under the *Act*.

[39] The appellant's representations on this issue relate to the institution's interpretation of the scope of his request.

[40] Based on my review of Toronto Hydro's representations as well as its affidavit evidence, I find that Toronto Hydro does not have records responsive to parts 1 – 3 of the request based on its explanation of how Toronto Hydro dispatches repair crews. Toronto Hydro's representations and evidence clearly establish that the "dispatch" of repair crews is done by the communication centre at Toronto Hydro using the prioritization information provided by OMS and real time information of the crews on the scene. I accept Toronto Hydro's submissions that postal code information is not inputted in the OMS or used by its communication centre when directing repair crews.

[41] As stated above, I find that Toronto Hydro reasonably interpreted the appellant's request and did not unilaterally narrow it. Further, I find that Toronto Hydro is not required to create records responsive to the appellant's request. Accordingly, I do not allow the appeal of Toronto Hydro's search for records relating to parts 1 – 3 of the request.

[42] Turning to parts 4 and 5 of the request, the appellant submits that additional responsive records should exist. Toronto Hydro provided representations and an affidavit in support of its search for the communication records that were the subject of parts 4 and 4 of the appellant's request. Toronto Hydro submits that all city councillors' communications go through the Office of the President and the CEO of Toronto Hydro. Toronto Hydro states:

The search of the Office of the President and CEO's communications were conducted by two experienced Toronto Hydro employees, including one manager, with firsthand knowledge of both the Ice Storm and Toronto Hydro's communications. The employees reviewed the communications searching for any between the corporation and the councillors named in the request during the dates in question.

The employees reviewed all potentially responsive records. Given their direct experience with the matters at issue, the employees were duly qualified to review the communications and determine which met the criteria. The 354 produced pages represent the entirety of their search.

[43] I have reviewed the affidavit provided by Executive Vice-President referred to above. The affiant affirms the above and swears the search was complete because "The responsive pages included all communications sent to the councillors even when the councillors did not specifically request the communication or provide a response."

[44] The appellant's representations focused on Toronto Hydro's response to parts 1 – 3 of his request and he does not indicate the reasons for his belief that additional responsive records to parts 4 and 5 exist. I have reviewed Toronto Hydro's representations including its affidavit evidence and a copy of the records that were provided to the appellant. As stated above, the institution does not have to prove with absolute certainty that further records do not exist. In the present case, I find that Toronto Hydro has established that its search for responsive records to parts 4 and 5 of the appellant's request was reasonable and I dismiss the appeal.

ORDER:

I uphold Toronto Hydro's decision that there are no responsive records relating to parts 1 – 3 of the appellant's request and dismiss the appeal of its search relating to parts 4 and 5 of the request.

Original Signed by: _____
Stephanie Haly
Adjudicator

_____ October 22, 2015