

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-3348

Appeal MA15-52

Toronto Hydro Corporation

August 16, 2016

**Summary:** Toronto Hydro received a request for records relating to the disconnection of hydro service to a named company's billboard. Toronto Hydro located one responsive record and granted access to it. The requester appealed Toronto Hydro's decision and the sole issue to be decided was whether Toronto Hydro conducted a reasonable search for records responsive to the request. In this order, the adjudicator upholds Toronto Hydro's search and dismisses the appeal.

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

### OVERVIEW:

[1] The Toronto Hydro Corporation (Toronto Hydro) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following:

...the date to which [named individual] of a [specified company] or any other personnel at [specified company] requested its direct connection hydro service to its billboard atop the roof of [identified address] be disconnected, and the date that Hydro accommodated [the disconnection].

[2] Toronto Hydro located one record that was responsive to the request and, pursuant to section 21 of the *Act*, notified the individual named in the request (the

affected party). After receiving consent, Toronto Hydro disclosed the record, in its entirety, to the requester.

[3] The requester subsequently wrote to Toronto Hydro to request further information regarding the subject matter of the original request. Toronto Hydro conducted an additional search and provided further information to the requester.

[4] The requester, now the appellant, filed an appeal of Toronto Hydro's decision.

[5] During mediation, the appellant confirmed that he is appealing on the basis that he believes that additional records responsive to his request exist. Specifically, he states that email correspondence requesting the disconnection and records detailing the date that the service request was accommodated should have been located.

[6] Toronto Hydro conducted an additional search for records containing the information sought by the appellant. Following the completion of that search, Toronto Hydro prepared an affidavit that was provided to the appellant and this office, setting out the steps that it had taken to address his concerns and to search for records responsive to his request. Toronto Hydro advised that no additional records were located. The appellant advised that he continues to believe that additional records exist.

[7] As a mediated resolution could not be reached, the file was transferred to the adjudication stage of the appeal process for an adjudicator to conduct an inquiry under the *Act*. Representations were sought and received from both parties and shared in accordance with this office's *Practice Direction 7* and section 7 of its *Code of Procedure*.

[8] For the reasons that follow, I uphold Toronto Hydro's search for responsive records and find that its efforts to locate records containing the information sought by the appellant were reasonable. As a result, I dismiss the appeal.

## **DISCUSSION:**

[9] The sole issue to be decided is whether Toronto Hydro has conducted a reasonable search for records responsive to the appellant's request.

[10] 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.<sup>1</sup> 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. 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.<sup>2</sup> To be responsive, a record

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<sup>1</sup> Orders P-85, P-221 and PO-1954-I.

<sup>2</sup> Orders P-624 and PO-2559.

must be “reasonably related” to the request.<sup>3</sup>

[11] 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.<sup>4</sup> 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.<sup>5</sup>

[12] 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.<sup>6</sup>

### ***Representations***

[13] As set out above, during mediation Toronto Hydro conducted an additional search for records responsive to the appellant’s request and prepared an affidavit detailing the steps taken during each of its searches for records responsive. The affidavit was sworn by the Customer Care Supervisor in Toronto Hydro’s Customer Management Services Department. The Customer Care Supervisor states that he broke down the appellant’s request into two components. The first being the date on which the specified company requested that its direct connection hydro service to its billboard atop the identified address be disconnected. The second being the date on which Toronto Hydro accommodated the disconnection.

[14] The Customer Care Supervisor states that in order to appropriately respond to the request he made comprehensive inquiries of five departments at Toronto Hydro. Specifically, he states that he himself conducted a comprehensive search of the systems used by the Customer Management Services Department, which is responsible for handling escalated customer complaints. He states that his search for responsive records in his own department included a review of Toronto Hydro’s paper filing system categorized by customer address, its “electronic Banner system” which stores customer call logs and field activity notes from prior to June 2011, and its electronic customer care and billing system which stores call logs and field activity notes for the period after June 2011. He states that no additional responsive records were located.

[15] The Customer Care Supervisor states that he then contacted the Secondary Distribution Service Department which is responsible for connections and disconnections. He states that as he was advised by the appellant that a specific employee had knowledge of the subject matter of the request he contacted that employee by email to inquire as to whether he had records relating to the billboard identified in the request. He states that the employee responded, by email, advising that he recalled that the billboard was disconnected “sometime in 2011 or 2012” and

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<sup>3</sup> Order PO-2554.

<sup>4</sup> Orders M-909, PO-2469 and PO-2592.

<sup>5</sup> Order MO-2185.

<sup>6</sup> Order MO-2246.

that he recalled receiving "a direction from [the specified company] to have the sign disconnected." He states that the employee referred him to another employee who might be able to locate responsive records, the Supervisor, Office Administrator in the Operations Support Office in the Program Delivery Group Department.

[16] The Customer Care Supervisor explains that the Operations Support Office, which is a subset of the Program Delivery Group Department, is responsible for administering various customer-related projects such as service upgrades; and that he contacted the Supervisor, Office Administrator to inquire as to whether she could assist him in locating information relating to the request. He submits that she advised that she could not assist in locating responsive records and recommended that he contact a billing specialist.

[17] The Customer Care Supervisor states that he then contacted a Customer and Power Systems Logistics Dispatcher in the Power System Event Management Department which is responsible for dispatching crews to respond to customer calls. He submits that that individual conducted a search of three difference databases (Web Calls, System Response Reporting, and Work Management Application) and advised that he could not locate any information with respect to the billboard.

[18] The Customer Care Supervisor subsequently contacted a General Service Billing Specialist in the Accounts Receivable Department which is responsible for administering the billing for metered and unmetered services. He states that she provided him with a copy of a service order maintenance record relating to the request. He explains that that record states that the request for disconnection was made on January 15, 2010.

[19] The Customer Care Supervisor states that a decision letter enclosing the responsive record was sent to the appellant, who subsequently responded with a revised request advising that he seeks:

1. confirmation of the date that the specified company requested the direct connection to their billboard;
2. a copy of a purported email from a named individual from the specified company requesting the connection of hydro to the billboard;
3. confirmation that the billing and payment of the usage of the billboard was paid by the specified company;
4. confirmation that the billboard was not metered to the address identified in his original request.

[20] The Customer Care Supervisor states that Toronto Hydro provided the appellant with the following information in response to his revised request:

1. the billboard was not connected to the appellant's hydro account, nor was it metered to his property at the address specified in his original request;

2. the responsive record, previously disclosed to him, confirmed that the request for disconnection was made on January 15, 2010;
3. Toronto Hydro was unable to confirm the date that it accommodated the request for disconnection to the billboard; and
4. Toronto Hydro is not able to locate any emails from any personnel from the specified company with respect to requesting a direct connection to the billboard.

[21] The Customer Care Supervisor states that the appellant was not satisfied with Toronto Hydro's response and subsequently appealed its decision to this office. He states that as a result of the appeal, Toronto Hydro took further steps to locate responsive records or additional information with respect to the information sought by the requester. He states that he again contacted the five business departments he had contacted previously to confirm whether any additional responsive records could be located and also contacted, for the first time, the Asset Records Department and the IT Department. He states that none of the departments that he contacted could locate any responsive records relating to the billboard. He states that the IT Department was specifically requested to conduct a search to locate any emails that may have been sent or received relating to hydro service to the billboard but that no such emails were located.

[22] The Customer Care Supervisor concludes his affidavit by stating that Toronto Hydro made comprehensive efforts to locate records or information responsive to the appellant's request by making appropriate inquiries. He states that Toronto Hydro has provided the appellant with a copy of the only responsive records that it was able to locate.

[23] Following his review of the affidavit the appellant advised that he continues to believe that additional records exist and the appeal was moved to adjudication. As in situations where an appellant contests the reasonableness of an institution's search they must still provide a reasonable basis for concluding such records exist,<sup>7</sup> I sought representations from the appellant initially.

[24] The appellant confirmed in his representations that he seeks to obtain the date that a specified company requested that its direct hydro connection service to the billboard at the address identified in the request be disconnected. He submits that it is known that the individual named in the request from the specified company made a written request to Toronto Hydro to disconnect service to its billboard and that a named employee at Toronto Hydro has specific knowledge of this request. The appellant also submits that two named individuals at the specified company have confirmed that an email outlining such request did exist.

[25] In its representations in response, Toronto Hydro states that it provided the appellant with a copy of the service order maintenance record, the only record it was

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<sup>7</sup> Order MO-2246.

able to locate, which states that the specified company made the request to disconnect the billboard on January 15, 2010. It submits that, as a result, it is of the view that the request was satisfactorily addressed. In support of its position that it conducted a reasonable search, Toronto Hydro refers to the affidavit detailing its search for records responsive to the appellant's request that was provided to both the appellant and this office during mediation and summarised above.

[26] With respect to the written request to disconnect hydro service to the billboard that the appellant refers to in his representations, Toronto Hydro provided a second sworn affidavit, this by the employee named by the appellant in his representations as having knowledge of this request outlining his knowledge of the matter. That affidavit, sworn by an Electrical Service Inspector, details that he spoke to the appellant on "a few occasions with respect" to the disconnecting of hydro to the billboard and that he "recall[s] that a written request was made by [specified company] requesting a disconnection of the [billboard]." He states that he does not recall whether that request was made by one of the individuals from the specified company identified by the appellant in his representations. He also states that he does not recall the date that Toronto Hydro accommodated the request to disconnect the billboard although he has "no reason to doubt that it was on or around January 15, 2010, as stated in the Service Order." The Electrical Service Inspector states that he did not locate any records, including emails from any personnel from the specified company requesting disconnection of hydro service to the billboard and has no further memory with respect to the disconnection.

[27] Finally, in its representations, Toronto Hydro states that it cannot comment on whether the two individuals at the specified company identified in the appellant's representations have any knowledge of a written request to disconnect hydro from the billboard.

[28] In reply, the appellant reiterates that he is not satisfied with the affidavit detailing Toronto Hydro's search for responsive records. He also states that he is not satisfied with the affidavit sworn by the Electrical Service Inspector as he is of the view that the Electrical Service Inspector "is very well aware that [named individual at specified company] sent an email." He submits: "There is no way in the world that [Toronto] Hydro does not have this information in file."

[29] The appellant further submits that the service order maintenance record does not respond to his request and he is "not satisfied with Toronto Hydro's responses with respect to the two individuals from [specified company]."

### ***Analysis and finding***

[30] Having carefully reviewed the evidence that is before me, including the record that was located by Toronto Hydro during its searches, the affidavits that it provided detailing those searches and the representations of both parties, I am satisfied that the search conducted by Toronto Hydro for records responsive to the appellant's request was reasonable and is in compliance with its obligations under the *Act*.

[31] As previously explained, 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 that are reasonably related to the request. In the circumstances of this appeal, I find that Toronto Hydro has provided sufficient evidence to demonstrate that it made a reasonable effort to identify and to locate responsive records within its custody and control. Toronto Hydro conducted a number of searches in a number of different departments. I accept that these searches were conducted by experienced employees who were knowledgeable in the subject matter and that they expended a reasonable effort to locate any responsive records.

[32] As set out above, although a requester will rarely be in a position to indicate precisely which records an institution has not identified, he must still provide a reasonable basis for concluding that such records exist. I acknowledge that the appellant believes that additional records ought to exist, in particular, an email detailing the company's request for the disconnection of hydro services to its billboard. However, also as set out above, the *Act* does not require Toronto Hydro to prove with absolute certainty that additional records do not exist, but only to provide sufficient evidence to establish that it made a reasonable effort to locate any responsive records.

[33] In the circumstances of this appeal, Toronto Hydro conducted a number of searches for records and information responsive to the appellant's initial request which located a responsive record that provided the answer to the specific information the appellant sought in the first part of that request. Toronto Hydro also conducted additional searches in an attempt to locate responsive records that would provide further information sought by the appellant in a subsequent, more detailed request. Although I recognize that it is possible that an email detailing the company's request to disconnect hydro services from its billboard existed at one point, it was not located despite considerable search efforts on the part of Toronto Hydro. I accept that Toronto Hydro has discharged its onus and has conducted a reasonable search for records responsive to the appellant's request in compliance with their obligations under the *Act*.

[34] Accordingly, I find that Toronto Hydro's search for responsive records was reasonable and dismiss the appeal.

**ORDER:**

I uphold Toronto Hydro's search for responsive records and dismiss the appeal.

Original Signed By: \_\_\_\_\_  
Catherine Corban  
Adjudicator

August 16, 2016 \_\_\_\_\_