

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3417

Appeal MA15-477

Toronto Community Housing Corporation

March 10, 2017

Summary: The Toronto Community Housing Corporation (the TCHC) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for access to records relating to the appellant. The TCHC granted the appellant partial access to responsive records, relying on sections 14(1) and 38(b) (personal privacy) to deny access to the portion it withheld. At mediation, the appellant took issue with the reasonableness of the TCHC's search for responsive records. In this order the adjudicator upholds the reasonableness of the TCHC's search for responsive records, and based on his findings in Order MO-3415, orders the TCHC to disclose to the appellant certain withheld information, which the adjudicator finds to be about a property and not about an identifiable individual.

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

Order Considered: MO-3415.

OVERVIEW:

[1] The Toronto Community Housing Corporation (the TCHC) received a request under the *Municipal Freedom of Information and Protection of Privacy Act*, (the *Act* or *MFIPPA*) for access to all records relating to the requester for the time period from January 1, 2007 to June 30, 2015. Accompanying the request was a consent form signed by the requester's husband consenting to the release to the requester of any information pertaining to him that is found in the records. The requester's husband also

submitted a separate request to the TCHC for information relating to him for the same time period, which was accompanied by a consent form signed by the requester consenting to the release to him of any information pertaining to her that is found in the records. This other request was the subject of Appeal MA15-476 and resulted in Order MO-3415.

[2] The request at issue in the appeal before me was subsequently clarified to be for access to all records relating to the requester, except the following records that she no longer required:

1. Correspondence between TCHC and the requester with regard to the rent calculation e.g. letters and forms that the requester submitted to the TCHC;
2. Notices based on rent calculations sent to the requester by the TCHC in connection with two addresses.

[3] The TCHC then issued a decision letter in which it identified various categories of records and granted the requester partial access to them. The TCHC relied on sections 14(1) and 38(b) (personal privacy) to deny access to the portion it withheld.

[4] The requester, now the appellant, appealed the TCHC's decision. Her husband acted as her representative in the appeal.

[5] At mediation, the appellant maintained her request for access to the withheld information and asserted that additional records ought to exist. Accordingly, the reasonableness of the TCHC's search for responsive records was added as an issue in the appeal.

[6] At the close of mediation only two issues remained:

- Access to the withheld information from 3 EasyTrac Request and Work Order History Reports (which was the same information at issue in Appeal MA15-476).
- The reasonableness of the TCHC's search for responsive records.

[7] Mediation did not resolve the appeal and it was moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*.

[8] I commenced my inquiry by sending the TCHC a Notice of Inquiry setting out the facts and issues in the appeal. The TCHC provided responding representations. I then sent the appellant a Notice of Inquiry along with a copy of the TCHC's representations. The appellant provided responding representations by way of an affidavit.

[9] In this order, I uphold the reasonableness of the TCHC's search for responsive records, but order the TCHC to disclose to the appellant the withheld information on pages B-4, B-8 and B-24, which I find to be about a property and not about an

identifiable individual.

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1) of the *Act* and, if so, to whom does it relate?
- B. Did the institution conduct a reasonable search for records?

DISCUSSION:

Issue A: Do the records contain "personal information" as defined in section 2(1) of the *Act* and, if so, to whom does it relate?

[10] As set out above, the same records and information remaining at issue in this appeal was at issue in Appeal MA15-476, which arose out of a separate request by the requester's husband. That appeal was resolved by Order MO-3415 where I ordered the TCHC to disclose the withheld information on pages B-4, B-8 and B-24 of the 3 EasyTrac Request and Work Order History Reports.

[11] In this order, I adopt the analysis and findings in Order MO-3415. As I did in Order MO-3415, and for the same reasons, with the modification that it is the appellant and not her husband who made the request at issue in this appeal, I find that all the information remaining at issue in those pages has no personal dimension to it and is about a property and not about an identifiable individual. In my view, the withheld information in the records does not reveal something of a personal nature about an identifiable individual. As a result, I find that the withheld information does not qualify as personal information in accordance with the definition at section 2(1) of the *Act*, and therefore cannot qualify for exemption under the personal privacy exemptions in section 14(1) and/or 38(b).

[12] Accordingly, I will order that the withheld information be disclosed to the appellant in this appeal.

Issue B: Did the institution conduct a reasonable search for records?

[13] The reasonableness of the TCHC's search for responsive records pertaining to the appellant's husband was also an issue in Appeal MA15-476. In Order MO-3415, I upheld the reasonableness of the TCHC's search for responsive records.

[14] In this appeal, the appellant takes issue with the reasonableness of the TCHC's search for records pertaining to her.

[15] 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 17.¹ 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.

[16] 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.² To be responsive, a record must be "reasonably related" to the request.³

[17] 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.⁴

[18] 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.⁵

[19] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.⁶

TCHC's representations

[20] The TCHC provided representations on the reasonableness of its search for responsive records as well as an accompanying affidavit of its Information Specialist responsible for the processing of all Freedom of Information Requests (Information Specialist).

[21] The TCHC submits that with respect to the appellant's electronic records kept with TCHC, its Information Specialist conducted a search of its tenant database stored in TCHC's Housing Management System ("HMS"), EasyTrac Production System ("EasyTrac") and its Community Safety Online Application System ("CORA"), for the period from January 1, 2007 to June 30, 2015.

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Order PO-2554.

⁴ Orders M-909, PO-2469 and PO-2592.

⁵ Order MO-2185.

⁶ Order MO-2246.

[22] It submits that:

The search results revealed that the appellant's name was shown as the spouse of the husband and that the appellant's records are the same electronic records kept under the same account number ... and the name of the husband being the head of the household.

As such, the appellant's electronic records stored in HMS, CORA and EasyTrac are the same records as the husband's. Therefore, [the Information Specialist] made a photocopy of the said electronic records that she previously printed for the husband's clarified request as part of the responsive records for the appellant's clarified request.

[23] With respect to the appellant's physical records the TCHC submits:

... both the appellant and her husband are the leaseholders of the same leases(s) respecting the same address/addresses for the same time period and therefore, the tenancy records for both the appellant and her husband (tenant file records) are the same records kept in the same locations for [two identified addresses].

With respect to the search for records that pertain to the appellant's litigation matters, [the Information Specialist] made appropriate inquiries and consultations with staff but found that no responsive records exist, notwithstanding the fact that there were litigation records that relate to her husband.

Except for the litigation records that pertain to her husband, [the Information Specialist] photocopied and duplicated the records that were identified as responsive to her husband's clarified request, as the responsive records to the appellant's clarified request.

[24] In conclusion, the TCHC submits that:

With respect to the appellant's request for everything in her file relating to herself, TCHC has responded to the appellant's request for information by providing her with access to copies of documents related to her files. To the best of our knowledge no additional documents exist that relate to her file.

[25] In her affidavit, the Information Specialist confirms the above and details the searches that she conducted of TCHC's databases and physical records in order to locate records that were responsive to the appellant's request. She states:

... To the best of my knowledge, TCHC has responded to the appellant's clarified request by expending extensive hours to complete all diligent and exhaustive searches in providing her with access to copies of the records.

No additional documents exist that relate to the appellant with TCHC. TCHC has taken all reasonable steps to respond to the appellant's clarified request by completing diligent and exhaustive searches in providing the appellant with access to copies of all documents in response to her clarified request. To the best of our knowledge, no additional documents exist other than the said records that were provided to the appellant.

The appellant's representations

[26] The appellant, through her representative, provided wide-ranging representations in support of her position that additional records exist. She states that she is certain that additional records exist with respect to the "investigation pertaining to the appellant's residence/address" as well as matters involving her. In support of her position, amongst other things, she relies on a statement contained in a letter her husband received from another institution indicating that in response to a request he made to that institution "... it has been determined that the records requested are in the custody and control of [the TCHC]" and her assertion that a deponent of an affidavit in an identified proceeding stated that her name was referred to "different places such as the City of Toronto and/or Toronto Police Services and Toronto Community Housing".

Analysis and finding

[27] As set out above, the *Act* does not require the institution to prove with absolute certainty that further records do not exist. In order to satisfy its obligations under the *Act*, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records within its custody and control. I find that, based on the searches it conducted, the TCHC has made a reasonable effort to locate records responsive to the request. In that regard, I find that the statement in the letter referred to by the appellant is simply a determination by another institution that the TCHC would have custody or control of the types of records that the appellant requested of it.

[28] Accordingly, I find that the TCHC has conducted a reasonable search for records responsive to the appellant's request at issue in this appeal.

ORDER:

1. I order the TCHC to disclose to the appellant the withheld information on pages B-4, B-8 and B-24 by sending it to her by **April 18, 2017** but not before **April 10, 2017**.

2. I uphold the reasonableness of the TCHC's search for responsive records.
3. In order to ensure compliance with paragraph 1, I reserve the right to require TCHC to sent me a copy of the records as disclosed to the appellant.

Original Signed by: _____
Steven Faughnan
Adjudicator

_____ March 10, 2017