

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3435

Appeal MA15-402-2

City of Hamilton

May 8, 2017

Summary: The appellant made a request to the City of Hamilton (the city) pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for listings of accounts receivable and accounts payable related to police services. The city transferred the request to the police pursuant to section 18(3) of the *Act*, and the police responded to the request with an access and fee decision. The appellant appealed the city's decision to transfer the request. In this order, the adjudicator upholds the city's transfer of the request under section 18(3).

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 18(2), 18(3), and 18(4).

BACKGROUND:

[1] The City of Hamilton (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

- 2013 Year end listing of Accounts receivable and Accounts payable related to Police Services with account charged
- 2014 Year end listing of Accounts receivable and Accounts payable related to Police Services with account charged

- 2015 Year end listing of Accounts receivable and Accounts payable related to Police Services the period ending Oct 31/15 including account charged

[2] The city issued the following decision in response to the request:

The details of your request were forwarded to the Financial Services division of the City's Corporate Services department. Division staff reviewed the request and on behalf of the Hamilton Police Service, produced a "Detailed General Ledger Transaction" report for each of the respective years; these reports are believed to be responsive to your request. It is also noted that the staff in the Hamilton Police Service have the ability to produce the same records.

Upon review of the record contents and discussion with division staff and the Hamilton Police Service Freedom of Information Co-ordinator, it is determined that the Hamilton Police Service, which is a separate institution under the provisions of the *Act*, have a greater interest in the records. Therefore, in accordance with section 18(3) of the *Act*, the records and the request are transferred to the Hamilton Police Services.

[3] The requester, now the appellant, appealed the city's decision to transfer the request to the Hamilton Police Services Board (the police).

[4] During mediation, the appellant stated his position that since the city has possession of the records, the city is the institution that should respond to his request. He also stated:

This has been my point of view all along, that all accounting records are monitored and all accounting records go through City books. As such, it is the responsibility of the City of Hamilton to provide those "accounting records". Also the Municipality is the sole source of funding to the Police.

[5] The city maintained its position that the police have a greater interest in the records than the city. The city also noted that the police have issued an access decision to the appellant. The appellant disagreed that the police have a greater interest in the records and asked that the appeal be forwarded to the next stage of the appeal process. Accordingly, the file was moved to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*.

[6] I began my inquiry by inviting and receiving representations and supplementary representations from the city, followed by representations from the appellant. I then invited and received representations from the police as an affected party, and invited the appellant to respond to the police's representations, which he did.

[7] In this order, I uphold the decision of the city to transfer the request to the police pursuant to section 18(3) of the *Act*.

DISCUSSION:

[8] The sole issue in this appeal is whether the city's decision to transfer the appellant's access request to the police pursuant to section 18(3) of the *Act* should be upheld.

[9] Section 18 of the *Act* provides as follows:

(1) In this section,

“institution” includes an institution as defined in section 2 of the *Freedom of Information and Protection of Privacy Act*.

(2) The head of an institution that receives a request for access to a record that the institution does not have in its custody or under its control shall make reasonable inquiries to determine whether another institution has custody or control of the record, and, if the head determines that another institution has custody or control of the record, the head shall within fifteen days after the request is received,

(a) forward the request to the other institution; and

(b) give written notice to the person who made the request that it has been forwarded to the other institution.

(3) If an institution receives a request for access to a record and the head considers that another institution has a greater interest in the record, the head may transfer the request and, if necessary, the record to the other institution, within fifteen days after the request is received, in which case the head transferring the request shall give written notice of the transfer to the person who made the request.

(4) For the purpose of subsection (3), another institution has a greater interest in a record than the institution that receives the request for access if,

(a) the record was originally produced in or for the other institution; or

(b) in the case of a record not originally produced in or for an institution, the other institution was the first institution to receive the record or a copy of it.

(5) Where a request is forwarded or transferred under subsection (2) or (3), the request shall be deemed to have been made to the institution to

which it is forwarded or transferred on the day the institution to which the request was originally made received it.

[10] Under section 18(3), an institution that receives an access request may transfer the request to another institution that has a greater interest in the record. This is true regardless of whether the institution that received the request has custody or control of the record.¹

[11] Which of the two institutions has the "greater interest" in a particular record depends on the circumstances of its creation and dissemination, having regard to the criteria in sections 18(4)(a) and (b).²

[12] The purpose of section 18(3) is to give the head of an institution some latitude to decline to respond to a request for a record that the institution does, in fact, have in its custody or control, if another institution is better able to respond to the request.

Representations

City's representations

[13] The city submits that the records relate solely to the police service and contain confidential information. The city submits that the police have a significantly greater interest in the processing and disclosure of the records than does the city. Further, the police have access to the same financial software as the city and have the ability to produce the records themselves.

[14] The city submits that it reviewed the records and decided that it did not have sufficient knowledge of the police's operations to identify sensitive information that pertained to matters such as undercover operations and personnel matters. The city and the police agreed that the police had a greater interest in the records and were better able to respond to the request. The city notes that the police issued an access decision to the appellant shortly after the request was transferred to them.

[15] The city submits, further, that the police approve their own expenditures and provide the city's financial staff with the billing information and the particular police service account to be charge or credited. City financial staff input the data into the software system on the police's behalf. The city ran the unedited and unsorted reports as a courtesy to the police, who can produce the records themselves.

Police's representations

[16] The police agree with the city that the police have a greater interest in the

¹ Orders P-279, P-902 and P-1428.

² Order MO-1494.

records than the city. They submit that they made an access decision shortly after the appellant's request was transferred to them, that the appellant refused to pay the fee stipulated by the police,³ and that the file was subsequently marked by the police as abandoned. The appellant has submitted similar and identical requests directly to the police.

[17] The police submit that the records at issue relate solely to the operation of the police service and that the police, therefore, have the greater interest in them. The police submit that the records contain highly sensitive intelligence and employment related information which they heavily redacted pursuant to the exemptions at sections 8(1)(c), (e), (g) (law enforcement) and the exclusion at section 52(3)3 (employment records) of the *Act*.

Appellant's representations

[18] The appellant filed representations and supplementary representations including several attachments to each. While I will not refer to the attachments in detail in this order, the appellant can be assured that I have read them and taken them into consideration.

[19] The appellant submits that the city finances the police's operations and approves the police's overall budget. He submits that all accounting records and transactions go through city books. He submits that taxpayers finance the city and therefore have the right to know how the funds have been spent, and that with the increased cost of policing, more transparency is needed.

[20] The attachments to the appellant's representations include emails, city council and police services board meeting agendas and minutes, and financial reports, among other items. With the inclusion of these attachments, the appellant appears to be making the points that 1) the city is responsible for the police's finances;⁴ and 2) police expenses have been increasing. The appellant argues that the police do not have their

³ Section 45 of the *Act* provides that institutions shall require requesters to pay fees in the amounts prescribed in the regulations.

⁴ Section 39 of the *Police Services Act*, R.S.O. 1990, c.P.15 provides in part as follows:

39. (1) The board shall submit operating and capital estimates to the municipal council that will show, separately, the amounts that will be required,

(a) to maintain the police force and provide it with equipment and facilities; and

(b) to pay the expenses of the board's operation other than the remuneration of board members.

(2) The format of the estimates, the period that they cover and the timetable for their submission shall be as determined by the council.

(3) Upon reviewing the estimates, the council shall establish an overall budget for the board for the purposes described in clauses (1) (a) and (b) and, in doing so, the council is not bound to adopt the estimates submitted by the board.

(4) In establishing an overall budget for the board, the council does not have the authority to approve or disapprove specific items in the estimates.

own bank account and are not a separate entity from the city.

Analysis and findings

[21] I begin by referring back to sections 18(3) and (4) of the *Act*, which state

(3) If an institution receives a request for access to a record and the head considers that another institution has a greater interest in the record, the head may transfer the request and, if necessary, the record to the other institution, within fifteen days after the request is received, in which case the head transferring the request shall give written notice of the transfer to the person who made the request.

(4) For the purpose of subsection (3), another institution has a greater interest in a record than the institution that receives the request for access if,

(a) the record was originally produced in or for the other institution; or

(b) in the case of a record not originally produced in or for an institution, the other institution was the first institution to receive the record or a copy of it.

[22] Having regard to section 18(4) and the creation and dissemination of the records, I am satisfied that the police have a greater interest in them than does the city.

[23] Although the city approves the overall budget of the police, the police approve their own expenditures and, as explained by the city, provide the city's financial staff with the billing information and the particular police service account to be charged or credited. City financial staff input the data into the software system on the police's behalf. The city ran the unedited and unsorted reports as a courtesy to the police, who have the ability to produce the records themselves.

[24] Section 18(4) provides two circumstances under which another institution has a greater interest in a record than the institution that receives the request for access, for the purposes of section 18(3).

[25] Beginning with section 18(4)(b), it would appear that both the city and the police received the records at the same time, as they became available to both institutions once the information had been inputted by the city. Therefore, the police cannot be said to have been the first institution to receive the records.

[26] As for section 18(4)(a), although the information about expenditures originated with the police, the records were, arguably, created by the city (by inputting the

expenditures into the applicable software) and, therefore, originally produced "in" the city, not the police.

[27] Neither the city nor the police made representations specifically addressing the issue of for whom the records were produced. In my view, the records were produced "for" both the city and the police. The overall budget for the police comes from the city, while the police clearly have an interest in managing their expenditures within that budget. Both the city and the police have the software capability of producing the record from the relevant software.

[28] Moreover, I do not read section 18(4) as containing an exhaustive list of circumstances under which another institution is considered to have a greater interest in a record. In my view, other circumstances can be relevant, including the circumstances of the record's creation and dissemination. As noted above, the information in the records originated with the police and consists of a detailed, itemized list of police expenses. This is readily apparent from my review of the information which, as noted by the police, includes employment information about police staff, and information that the police argue relates to undercover operations. While the information was inputted into the relevant software by city financial staff, the city explained that this was done on the police's behalf. Having reviewed the records, I agree with the city and the police that they relate solely to the operation of the police service, and that this is a matter in which the police have a greater interest than the city.

[29] The appellant has raised concerns about transparency. However, the decision of the city to transfer the appellant's request to the police does not render the information in the record less accessible. The city's decision did not deny the appellant access to the record; it transferred the request to the police, who responded in a timely manner with an access and fee decision. The appellant did not pursue access from the police.

[30] I conclude that the city was entitled to transfer the appellant's request to the police under section 18(3). I am also satisfied that the city appropriately exercised its discretion in doing so. The city considered that it did not have sufficient knowledge of police operations to respond properly to the access request under the *Act*. In my view, this was a legitimate factor for the city to consider.

ORDER:

I uphold the city's decision to transfer the appellant's request to the police pursuant to section 18(3) of the *Act*.

Original Signed by: _____
Gillian Shaw
Adjudicator

_____ May 8, 2017

