Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3444

Appeal MA16-36

City of Ottawa

May 23, 2017

Summary: The City of Ottawa (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA*) for all documents in the requester's Ontario Works file. The city denied access to the records in part citing the discretionary exemptions in section 38(a) (discretion to refuse requester's own information) in conjunction with section 7(1) (advice or recommendations). Certain information was also withheld by the city as being not responsive to the request.

This order upholds the city's decision to withhold information under sections 38(a) with 7(1) in part and orders some of the information to be disclosed. It also upholds the city's decision concerning the non-responsiveness of certain information. This order further upholds the city's decision to not correct the appellant's information under section 36(2)(a) and its search for responsive records.

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"), 38(a), 7(1), 36(2)(a), and 17.

OVERVIEW:

[1] The City of Ottawa (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for all documents in the requester's Ontario Works (OW) file, including her own letters and all notes written by OW's staff.

[2] The city issued a decision granting partial access to the responsive records, severing portions of the records pursuant to the mandatory personal privacy exemption in section 14(1) and the discretionary personal privacy exemption in section 38(b), as well as claiming the application of section 38(a) (discretion to refuse requester's own information).

[3] The city also provided the requester with an explanation about the search conducted by city officials and the nature of the records the city's Community and Social Services Department "required to be placed on a client's" OW file.

[4] The requester, now the appellant, appealed the decision.

[5] During mediation, the appellant provided the mediator with a letter attaching documents she articulated are missing in the copy of her Ontario Works file she had received from the city. The appellant explained that she wants a "complete and accurate copy" of the file. In a letter to the mediator, received subsequent to the issuance of the Mediator's Report, the appellant clarified that she believes some documents were missing, severed, or appeared to be altered.

[6] The mediator communicated the appellant's concerns and in response, the city conducted a secondary search and provided a supplemental decision letter to the appellant. In that letter dated April 28, 2016, the city advised that after an extensive search and in consultation with specified staff, they were "unable to find any of the requested documents." The city also noted in the letter that, as part of the mediation process, they would be adding 11 pages of requested responsive records to the appellant's Ontario Works file.

[7] The appellant subsequently sent the city a correction request, asking that certain "errors and omissions" be addressed by the city, or if the city denies the correction request that a statement of disagreement be attached to the records, pursuant to section 36(2) of the *Act*. The city, in response to this request, denied the appellant's correction request and asked the appellant to provide a "written description of the correction notice to be added" to her file. The appellant advised the mediator that she wishes to appeal the city's correction decision. As such, correction has been added as an issue in this appeal.

[8] As further mediation was not possible, this matter proceeded to the adjudication stage of the appeal process where an adjudicator conducts an inquiry. The city then indicated that it was relying on the discretionary advice or recommendations exemption in section 7(1), in conjunction with section 38(a), for pages 249 and 304, and the section 7(1) exemption and the late raising of this exemption were added as issues in this appeal.

[9] I also added the issue of the application of section 54(c) (right of access on behalf of an individual less than 16 years of age) to this appeal, as some of the

information at issue may relate to the appellant's child.

[10] As well, I added the issue of the responsiveness of certain information in the records, as the information at issue in pages 15 and 158 may be not related to the request.

[11] I sought and received the representations of the city initially, which referred to a supplementary decision letter of September 21, 2016 in which it disclosed page 115 in full. Therefore, this page and the issue of whether the appellant can exercise a right of access on behalf of an individual less than sixteen years of age under section 54(c) are no longer at issue.

[12] As well, the city confirmed in the supplementary decision letter that a Statement of Disagreement under section 36(2)(b) had been added to the appellant's file.

[13] I then sent a copy of the city's representations to the appellant and sought and received the appellant's representations.

[14] In this order, I allow the city to raise the discretionary exemption in section 7(1) late and I uphold the city's decision to withhold information under sections 38(a) with 7(1) in part. I also find certain information non-responsiveness. I also uphold the city's decision to not correct the appellant's information under section 36(2)(a) and its search for responsive records.

RECORDS:

[15] Portions of the following pages of records are at issue:

Page #	Description	Exemptions claimed by city
15	Email chain	14(1), 38(b), responsiveness
158	Email chain	14(1), responsiveness
249	Note Detail (page 1)	38(a), 7(1)
304	Note Detail (page 2)	38(a), 7(1)

ISSUES:

A. Is the information at issue in pages 15 and 158 responsive to the request?

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

C. Should the city be allowed to raise the discretionary exemption in section 7(1) late to the information at issue on pages 249 and 304 of the records?

D. Does the discretionary exemption at section 38(a) (right of access to one's own personal information), in conjunction with the section 7(1) advice or recommendations exemption, apply to the information at issue in pages 249 and 304 of the records?

E. Did the institution exercise its discretion under sections 38(a) and 7(1)? If so, should this office uphold the exercise of discretion?

F. Should the institution correct personal information under section 36(2)?

G. Did the institution conduct a reasonable search for records?

DISCUSSION:

A. Is the information at issue in pages 15 and 158 responsive to the request?

[16] Section 17 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).

[17] 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.[1]

---

[1] Orders P-134 and P-880.

[18] The city states that it exempted information at page 15 under sections 14(1) and 38(b) and information at page 158 under section 14(1) as both passages relate to the employment history for employee(s) and not the appellant. It states that although the city applied the personal information exemption, it is also possible to claim the exempted passages are non-responsive to the appellant's request despite the fact that the subject line of the email is in respect of the client's Ontario Works File. It submits that this information is non-responsive as:

- the passages do not actually contain the appellant's personal information; or
- the passages do not contain information that is in respect of the administration of the appellant's benefits (i.e. determining eligibility), whereas the non-exempt portions of the email do contain such information.

[19] The appellant states that the information at issue relates to staff discussing her request and were the basis for the decisions taken by city staff in her file.

Analysis/Findings

[20] To be considered responsive to the request, records must "reasonably relate" to the request.[2]

[21] There is one severance on page 15 and two on page 158. They both relate to city employees' vacations or personal time away from the office and are not responsive to the appellant's request, as set out above.

[22] Contrary to the appellant's submission, the information at issue has nothing to do with staff discussing her request and were not the basis for the decisions taken by city staff in the appellant's file.

[23] As the only information at issue on pages 15 and 158 is information that I have found to be non-responsive, this information and these pages are no longer at issue in this order. Therefore, there is no need for me to determine whether this information is also exempt under the personal privacy exemptions in sections 38(b) or 14(1).

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

[24] 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:

---

[2] Orders P-880 and PO-2661.

"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 if 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;

[25] 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.[3]

[26] 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.[4]

[27] As well, to qualify as personal information, it must be reasonable to expect that

---

[3] Order 11.
[4] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

an individual may be identified if the information is disclosed.[5]

[28] The city states that the two remaining exempted entries on pages 249 and 304 contain personal information that pertains to the appellant.

[29] The appellant did not directly address this issue.

Analysis/Findings

[30] I agree with the city that the information at issue in pages 249 and 304 contains the personal information of the appellant in her personal capacity as it contains the views or opinions of city staff about the appellant and the appellant's name which appears with other personal information relating to her in accordance with paragraphs (g) and (h) of the definition of personal information in section 2(1).

C. Should the city be allowed to raise the discretionary exemption in section 7(1) late to the information at issue on pages 249 and 304 of the records?

[31] The *Code of Procedure* (the *Code*) provides basic procedural guidelines for parties involved in appeals before this office. Section 11 of the *Code* addresses circumstances where institutions seek to raise new discretionary exemption claims during an appeal. Section 11.01 states:

> In an appeal from an access decision an institution may make a new discretionary exemption claim within 35 days after the institution is notified of the appeal. A new discretionary exemption claim made within this period shall be contained in a new written decision sent to the parties and the IPC. If the appeal proceeds to the Adjudication stage, the Adjudicator may decide not to consider a new discretionary exemption claim made after the 35-day period.

[32] The purpose of the policy is to provide a window of opportunity for institutions to raise new discretionary exemptions without compromising the integrity of the appeal process. Where the institution had notice of the 35-day rule, no denial of natural justice was found in excluding a discretionary exemption claimed outside the 35-day period.[6]

[33] In determining whether to allow an institution to claim a new discretionary exemption outside the 35-day period, the adjudicator must also balance the relative

---

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

[6] *Ontario (Ministry of Consumer and Commercial Relations v. Fineberg)*, Toronto Doc. 220/95 (Div. Ct.), leave to appeal dismissed [1996] O.J. No. 1838 (C.A.). See also *Ontario Hydro v. Ontario (Information and Privacy Commissioner)* [1996] O.J. No. 1669 (Div. Ct.), leave to appeal dismissed [1996] O.J. No. 3114 (C.A.).

prejudice to the institution and to the appellant.[7] The specific circumstances of each appeal must be considered individually in determining whether discretionary exemptions can be raised after the 35-day period.[8]

[34] The parties were asked to consider the following:

1. Whether the appellant has been prejudiced in any way by the late raising of a discretionary exemption or exemptions. If so, how? If not, why not?

2. Whether the institution would be prejudiced in any way by not allowing it to apply an additional discretionary exemption or exemptions in the circumstances of this appeal. If so, how? If not, why not?

3. By allowing the institution to claim an additional discretionary exemption or exemptions, would the integrity of the appeals process be compromised in any way? If so, how? If not, why not?

[35] The city states that in its decision letter dated December 11, 2015, it claimed section 38(a) of the *Act* to portions of two records that were disclosed in part to the appellant, but failed to specify whether section(s) 6, 7, 8, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 applied in conjunction with the disclosure. It states that the portions of the records at issue were severed in the city computer system as exempt under section 38(a) only and the automatically generated index of records reflects this.

[36] The city states that during the adjudication of this appeal, the sole application of section 38(a) was brought to its attention, after which the city confirmed in writing that it was claiming section 7(1) for portions of pages 249 and 304. The city submits that in claiming that it was only severing the information under section 38(a) in the December 11, 2015 decision letter, it made an administrative error and that the intention at the time of issuing the decision letter dated December 11, 2015 was to exempt the passages under section 38(a) together with section 7(1).

[37] The city submits that the integrity of the process will not be compromised and that the interests of the appellant are not prejudiced if it was to continue to rely on section 7(1) of the *Act* together with section 38(a). It notes it raised the application of section 7(1) when the Notice of Inquiry was at the initial stages and the appellant still had ample opportunity to provide representations in respect of this appeal.

[38] The appellant did not provide representations in response directly addressing this issue. Instead, she provided representations on the section 7(1) exemption.

---

[7] Order PO-1832.

[8] Orders PO-2113 and PO-2331.

Analysis/Findings

[39] The appellant has had an opportunity to make submissions in respect of the application of section 7(1) and was aware from the city's decision letter that the city had claimed that the information was exempt under section 38(a) of the *Act*.

[40] I find that the appellant has not been prejudiced in any way by the late raising of the section 7(1) discretionary exemption and that the city would be prejudiced if I did not permit it to claim this discretionary exemption for the information it has already claimed to be exempt under section 38(a).

[41] I further find that by allowing the institution to claim an additional discretionary exemption that the integrity of the appeals process will not be compromised in any way, as the appellant was aware of the claimed severances and was able to address the section 7(1) exemption in her representations. Accordingly, I am allowing the city to raise the application of section 7(1) late.

D. Does the discretionary exemption at section 38(a) (right of access to one's own personal information), in conjunction with the section 7(1) advice or recommendations exemption, apply to the information at issue in pages 249 and 304 of the records?

[42] Section 36(1) 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.

[43] Section 38(a) reads:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > if section 6, **7**, 8, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information.

[44] Section 38(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information.[9]

[45] Where access is denied under section 38(a), the institution must demonstrate that, in exercising its discretion, it considered whether a record should be released to the requester because the record contains his or her personal information.

[46] In this case, the city relies on section 38(a) in conjunction with section 7(1),

[9] Order M-352.

which reads:

> A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

[47] The city describes the records at issue as staff notes in respect of the appellant's Ontario Works file.

[48] The city states that the note at page 249 was made by an employee of another municipal office that delivered Ontario Works and that as the system is province-wide, the city had access to those notes. The city submits that the entry at issue on page 249 is different than most other notes in the system in that it does not document a specific transaction with the appellant, contain a request from her, or is related to her eligibility for Ontario Works.

[49] The city describes the exempted portion on page 249 as summary advice/recommendations in respect of administration of the file in the context that the appellant's file was being transferred to the city. It states that:

> …the City of Ottawa was not familiar with the appellant at the time and considers that it received the exempted portions as considerations/suggestions to City of Ottawa staff in the context of administration of her benefits in Ottawa.

[50] The city describes the exempted portions of the entry on page 304 as advice/recommendations of city staff in the context of interactions with the appellant "that are documented in the preceding 05/03/2013 entry that is on page 303".[10]

[51] The city submits that the exempted information is not factual, but rather is an analysis of facts that incorporates recommendations including possible actions that staff may consider. The city states that none of the portions exempted under section 7(1) of the *Act* fall into any of the categories enumerated under section 7(2) of the *Act*.

[52] The appellant states that the exempted information will allow her to determine the reasons for the decisions taken by Ontario Works staff.

Analysis/Findings

[53] The purpose of section 7(1) is to preserve an effective and neutral public service by ensuring that people employed or retained by institutions are able to freely and frankly advise and make recommendations within the deliberative process of

---

[10] The remainder of that entry has been disclosed to the appellant on pages 303 and 304.

government decision-making and policy-making.[11]

[54] "Advice" and "recommendations" have distinct meanings. "Recommendations" refers to material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised, and can be express or inferred.

[55] "Advice" has a broader meaning than "recommendations". It includes "policy options", which are lists of alternative courses of action to be accepted or rejected in relation to a decision that is to be made, and the public servant's identification and consideration of alternative decisions that could be made. "Advice" includes the views or opinions of a public servant as to the range of policy options to be considered by the decision maker even if they do not include a specific recommendation on which option to take. [12]

[56] "Advice" involves an evaluative analysis of information. Neither of the terms "advice" or "recommendations" extends to "objective information" or factual material.

[57] Advice or recommendations may be revealed in two ways:

- the information itself consists of advice or recommendations
- the information, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations.[13]

[58] The application of section 7(1) is assessed as of the time the public servant or consultant prepared the advice or recommendations. Section 7(1) does not require the institution to prove that the advice or recommendation was subsequently communicated. Evidence of an intention to communicate is also not required for section 7(1) to apply as that intention is inherent to the job of policy development, whether by a public servant or consultant.[14]

[59] Examples of the types of information that have been found *not* to qualify as advice or recommendations include:

- factual or background information[15]
- a supervisor's direction to staff on how to conduct an investigation[16]

---

[11] *John Doe v. Ontario (Finance)*, 2014 SCC 36, at para. 43.
[12] See above at paras. 26 and 47.
[13] Order P-1054.
[14] *John Doe v. Ontario (Finance)*, cited above, at para. 51.
[15] Order PO-3315.
[16] Order P-363, upheld on judicial review in *Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner)* (March 25, 1994), Toronto Doc. 721/92 (Ont. Div. Ct.).

- information prepared for public dissemination.[17]

[60] At issue is one severance on each of pages 294 and 304.

[61] I find that only a small portion of each severance is advice or recommendations within the meaning of section 7(1). This portion includes specific recommendations of a public servant within the deliberation process. The remainder of this information is either observations of the appellant or information derived directly from the appellant and does not reveal advice or recommendation. The information I have found not to be subject to section 7(1) is subject to the exception in section 7(2)(a), which reads:

> Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains, factual material.

[62] The exception in section 7(2)(a) is an example of objective information. It does not contain a public servant's opinion pertaining to a decision that is to be made but rather provides information on matters that are largely factual in nature.

[63] Factual material refers to a coherent body of facts separate and distinct from the advice and recommendations contained in the record.[18] Where the factual information is inextricably intertwined with the advice or recommendations, section 7(2)(a) may not apply.[19]

[64] The factual information in pages 249 and 304 is not inextricably intertwined with the advice or recommendations. The information I have found to be subject to section 7(2)(a) is a coherent body of fact separate and distinct from the advice or recommendations.

[65] Accordingly, I find that the information at issue in pages 294 and 304 is not subject to section 38(a) in conjunction with section 7(1), other than a small portion of the severance on each page. I will order the information I have found not subject to section 38(a) in conjunction with section 7(1) to be disclosed, as no other discretionary exemptions have been claimed for the information and no mandatory exemptions apply.

[66] I will consider whether the city exercised its discretion in a proper manner for the information I have found subject to section 38(a) in conjunction with section 7(1).

E. Did the institution exercise its discretion under section 38(a) and 7(1)? If so, should this office uphold the exercise of discretion?

[67] The sections 38(a) and 7(1) exemptions are discretionary and permit an institution to disclose information, despite the fact that it could withhold it. An

---

[17] Order PO-2677.
[18] Order 24.
[19] Order PO-2097.

institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[68] In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

[69] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[20] This office may not, however, substitute its own discretion for that of the institution.[21]

[70] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:[22]

- the purposes of the *Act*, including the principles that
    - information should be available to the public
    - individuals should have a right of access to their own personal information
    - exemptions from the right of access should be limited and specific
    - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution

---

[20] Order MO-1573.
[21] Section 43(2).
[22] Orders P-344 and MO-1573.

- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information.

[71] The city states that its application of section 38(a) in conjunction with section 7(1) was consistent with the purpose of allowing staff to receive frank suggestions about the matter. As a result, it submits it has only exempted from disclosure under section 7(1) of the *Act* passages that actually constitute advice/recommendations that were internal and not actually records of decisions or actions taken in respect of the information in the appellant's Ontario Works file.

[72] The appellant states that the city failed to take into account that disclosure will increase public confidence in the operation of the institution. She states that the city also failed to take into account the extent to which the information is significant to her, as disclosure would allow her to pursue her rights concerning the denial of benefits to her under the Ontario Works program.

Analysis/Findings

[73] I find that in denying access to the portions of pages 249 and 304 the city exercised its discretion under section 38(a) in conjunction with section 7(1) in a proper manner taking into account relevant considerations and not taking into account irrelevant considerations. I agree with the city that, concerning the information I have found subject to the section 7(1) exemption, it has exempted from disclosure information that actually constitute advice/recommendations that were internal and not actually records of decisions or actions taken in respect of the information in the appellant's Ontario Works file.

[74] The information that I have found subject to section 7(1) is not information which would allow the appellant to pursue her rights concerning the denial of benefits under the Ontario Works program.

[75] Accordingly, I am upholding the city's decision under section 38(a) in conjunction with section 7(1) concerning the two severances I have found contain advice or recommendations on pages 249 and 304.

F. Should the institution correct personal information under section 36(2)?

[76] Section 36(1) gives an individual a general right of access to his or her own personal information held by an institution. Section 36(2) gives the individual a right to ask the institution to correct the personal information. If the institution denies the correction request, the individual may require the institution to attach a statement of

disagreement to the information. Sections 36(2)(a) and (b) state:

> Every individual who is given access under subsection (1) to personal information is entitled to,
>
> > (a) request correction of the personal information where the individual believes there is an error or omission therein;
> >
> > (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made.

[77] Where the institution corrects the information or attaches a statement of disagreement, under section 36(2)(c), the appellant may require the institution to give notice of the correction or statement of disagreement to any person or body to whom the personal information has been disclosed within the year before the time the correction is requested or the statement of disagreement is required.

[78] This office has previously established that in order for an institution to grant a request for correction, all three of the following requirements must be met:

1. the information at issue must be personal and private information; and
2. the information must be inexact, incomplete or ambiguous; and
3. the correction cannot be a substitution of opinion.[23]

[79] In each case, the appropriate method for correcting personal information should be determined by taking into account the nature of the record, the method indicated by the requester, if any, and the most practical and reasonable method in the circumstances.[24]

[80] The right of correction may apply only to personal information of the appellant. The term "personal information" is defined in section 2(1). 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.[25]

[81] The city states that it denied the appellant's request for correction and added the statement of disagreement as specifically directed by the appellant in accordance with section 36(2) of the *Act*.

[82] The city submits that although the appellant submitted her three-page request

---

[23] Orders P-186 and P-382.
[24] Orders P-448, MO-2250 and PO-2549.
[25] Order P-11.

as a request for correction under the *Act*, in substance the request for a correction is in fact a re-statement of her earlier position that certain records were missing from her file and that the city's search is not reasonable. The following is the city's interpretation of the six enumerated items in appellant's correction request:

> 1. Email dated March 26, 2015
>
> The appellant requested complete disclosure of this email, which is page 15 of the responsive records. Requesting complete disclosure of a document that the city has severed in accordance with the Act is not an error or omission that is subject to request for correction under the Act…
>
> 2. Note details from 26/03/2013 to 13/08/2013
>
> … The appellant claims that records have an inconsistent date of creation and asks the city to explain… The city's understanding that these dates are generated through the functionality of the computer system and are not an error that requires correction in this context.
>
> 3. Letter from appellant dated April 18, 2013
>
> … The appellant asks for another copy of her file to verify that the record has been added to her file, despite the city having previously confirmed in writing that it has been added. In an email dated June 24, 2016 the Analyst had informed the appellant that she may arrange with Ontario Works Office to review her file…
>
> 4. Letter dated May 6, 2013
>
> …The appellant asks for another copy of her file to verify inclusion of the letter and asks the city to explain why it was not in her Ontario Works file. The city is not required under the Act to explain why it retains some documents and does not retain others, but in the email dated October 14, 2015 it did offer an explanation of record keeping practices.
>
> 5. Email chain
>
> …As revealed through previous searches, emails during this period if required were kept in hard copy in the Ontario Works file while the emails kept electronically have since been purged. As the appellant requests that the city search for the record, … this is a reasonable search issue, not a request for correction.
>
> 6. Added documents to appellant's Ontario Works File

> The appellant repeats her request for a copy of her file to verify the inclusion of the documents and asks for an "updated/corrected/complete/exact/unsevered and unambiguous copy of my file" The city submits that, as with the paragraphs above, the appellant is requesting explanations to which she has already been provided, and questioning the reasonableness of the city's search and questioning the application of exemptions under the Act.

[83] In summary, the city submits that the appellant's request for correction did not identify any errors or omissions that the city is obligated to make to records containing her personal information. In so much as the "missing records" may constitute an omission, the city confirmed that the 14 pages of additional records had been added to the appellant's Ontario Works file as a statement of disagreement, as requested by the appellant.

[84] The appellant states that her request for correction must be granted so that the records reflect the inconsistencies and mishandling of her case. She refers to the city's automatic purging of emails from the 2013-2015 period from the employees' in-boxes and the city's not retaining certain correspondence as actions that alter her records, thereby denying her the right to have them corrected.

Analysis/Findings

[85] For section 36(2)(a) to apply to allow correction of personal information in a record, the information must be "inexact, incomplete or ambiguous". This section will not apply if the information consists of an opinion.[26]

[86] Section 36(2)(a) gives the institution discretion to accept or reject a correction request.[27] Even if the information is "inexact, incomplete or ambiguous", this office may uphold the institution's exercise of discretion if it is reasonable in the circumstances.[28]

[87] Records of an investigatory nature cannot be said to be "incorrect" or "in error" or "incomplete" if they simply reflect the views of the individuals whose impressions are being set out. In other words, it is not the truth of the recorded information that is determinative of whether a correction request should be granted, but rather whether or not what is recorded accurately reflects the author's observations and impressions at the time the record was created.[29]

[88] Based on my review of the appellant's correction request, I find that the appellant is concerned about missing documents or information, which is a search

---

[26] Orders P-186, PO-2079 and PO-2549.
[27] Order PO-2079.
[28] Order PO-2258.
[29] Orders M-777, MO-1438 and PO-2549.

issue, not information that requires correction.

[89] The appellant has not sought correction of any specific personal information that is contained in the records disclosed to her. Therefore, I find that the city's decision to refuse to correct information under section 36(2)(a) reasonable and I uphold the city's decision under this section. I also note that as required by section 36(2), in accordance with section 36(2)(b), the city has attached a Statement of Disagreement to the appellant's file and has given her notice of this.

G. Did the institution conduct a reasonable search for records?

[90] Concerning the search issue, the city was asked in the Notice of Inquiry to provide a written summary of all steps taken in response to the request. In particular, it was asked:

> 1. Did the institution contact the requester for additional clarification of the request? If so, please provide details including a summary of any further information the requester provided.
>
> 2. If the institution did not contact the requester to clarify the request, did it:
>
> > (a) choose to respond literally to the request?
> >
> > (b) choose to define the scope of the request unilaterally? If so, did the institution outline the limits of the scope of the request to the requester? If yes, for what reasons was the scope of the request defined this way? When and how did the institution inform the requester of this decision? Did the institution explain to the requester why it was narrowing the scope of the request?
>
> 3. Please provide details of any searches carried out including: by whom were they conducted, what places were searched, who was contacted in the course of the search, what types of files were searched and finally, what were the results of the searches? Please include details of any searches carried out to respond to the request.
>
> 4. Is it possible that such records existed but no longer exist? If so, please provide details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.
>
> 5. Do responsive records exist which are not in the institution's possession? Did the institution search for those records? Please explain.

[91] The city submits that it conducted a reasonable search by correctly interpreting

the scope of the request as being for the appellant's entire Ontario Works file, including emails and computer system notes. It states that the city's Access to Information and Privacy (ATIP) Analyst relied on knowledgeable staff in the Community and Social Services Department, including in particular staff familiar with the appellant's file, to retrieve the records and conduct subsequent searches for the specific documents that the appellant claimed were missing.

[92] The city explained its record retention policy as follows:

> The retention of information by staff is driven by verification of eligibility as reflected in the City of Ottawa Ontario Works Verification Standards Policy... The content of the standards, that are subject to change, demonstrate that city staff do not retain each and every document but instead focus on documentation that is required to move the file forward, including in particular information about eligibility and factors relevant to the level of benefits.

[93] The city states that although the ATIP Analyst conducted the additional search for the emails and supposed missing notes, any emails from the 2013-2015 period would have been automatically purged from the employee's inbox. It states that if staff determined that the particular record was important to retain, the staff member would either reference it in a note made in the computer system or retain a hard-copy of the email, in which case it would be found in the appellant's Ontario Works file.

[94] The city submits that the initial search together with subsequent steps the city took to attempt to identify records meet the reasonable search standard. The city provided a detailed explanation of the steps it took to search for responsive records.

[95] Concerning the search issue, the appellant states:

> The city does not explain how records that were sent with the copy of my file I had requested were later purged.

Analysis/Findings

[96] 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.[30] 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.

[97] 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

---

[30] Orders P-85, P-221 and PO-1954-I.

show that it has made a reasonable effort to identify and locate responsive records.[31] To be responsive, a record must be "reasonably related" to the request.[32]

[98] 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.[33]

[99] 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.[34]

[100] I find that the city provided sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records. It also provided detailed evidence regarding its record retention schedule. In particular, it provided a copy of its email to the appellant, which reads:

> … not all documents are required to be placed on a client's file. A verification process is used to determine if an applicant is eligible for assistance, only the records that support the verification process are required to be added to the file. These types of records include: [list of records].
>
> The records attached to your email included copies of your Participation Agreement (PA) with questions related to the notes and the dates of entry. I have been informed that when there is a new activity on the PA, on occasion staff remove the old information, this could explain why the activity listed on your March 2013 PA does not appear on the one for June 2013. Also, the city no longer uses Service Delivery Model Technology (SDMT) so staff are not able to confirm why the dates were changed, it appears that part of the PA was closed on the system perhaps without an effective date of change and the dates reverted to October, 2012.

[101] 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.[35]

[102] The appellant has not identified any responsive records that she does not already have copies of. As such, I find that she has not provided a reasonable basis for me to conclude that additional responsive records exist.

---

[31] Orders P-624 and PO-2559.
[32] Order PO-2554.
[33] Orders M-909, PO-2469 and PO-2592.
[34] Order MO-2185.
[35] Order MO-2246.

[103] Accordingly, I uphold the city's search for responsive records as reasonable.

ORDER:

1. I uphold the city's decision to deny access to the information at issue on pages 15 and 158 of the records.

2. I order the city to disclose to the appellant by **June 13, 2017** the information in pages 249 and 304, except for the information I have determined to be exempt. For ease of reference, I am providing the city with a copy of these two pages, highlighting the information to be withheld.

3. I uphold city's decision not to correct information under section 36(2)(a).

4. I uphold the city's search for records.

Original Signed by: May 23, 2017
Diane Smith
Adjudicator