

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3606

Appeal MA16-634

City of Toronto

May 15, 2018

Summary: The appellant requested records relating to a housing application she made. The City of Toronto (city) disclosed all the responsive records it located to the appellant. The appellant claimed other records responsive to her request ought to exist. This order upholds the reasonableness of the city's search for responsive records.

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

Orders and Investigation Reports Considered: MO-2723.

OVERVIEW:

[1] The appellant made a request to the City of Toronto (the city) for access to records relating to a housing application. The appellant made the housing application to an entity called Housing Connections (HC). The city advises that Housing Connections was a subsidiary of the Toronto Community Housing Corporation (TCHC) before the city purchased a collection of HC's assets, including the records at issue in this appeal, from TCHC in 2015.

[2] The city disclosed to the appellant all HC records it identified as responsive to the appellant's request.

[3] The appellant appealed the city's decision because she believed additional

records responsive to her request should exist.

[4] After receiving the mediator's report regarding the appeal, the city sought further clarification of what documents the appellant believed were missing. The appellant made clear that she was seeking a complete copy of her original HC application, and did not believe the city had disclosed all of the documents supporting that application. After receiving this information, the city conducted a further search but did not locate any additional records. The city reaffirmed its view that it had disclosed all responsive records to the appellant.

[5] The appellant maintained that additional records existed, so the appeal proceeded to the adjudication stage, where an inquiry is conducted. I began the inquiry by inviting representations from the appellant on the issues set out in a Notice of Inquiry. I then invited the city to provide representations responding to the appellant's representations and the issues set out in a Notice of Inquiry. Finally, I shared the city's representations with the appellant and invited her to provide reply representations, which she did.

[6] This order finds that the city has conducted a reasonable search for records.

DISCUSSION:

[7] Where a requester claims that additional records exist beyond those identified by the institution, the issue is whether the institution has met its obligations under section 17 to conduct a reasonable search for records.¹ If I am satisfied that the search was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[8] 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.²

[9] 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.³

[10] 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.⁴

¹ Orders P-85, P-221 and PO-1954-I.

² Orders M-909, PO-2469 and PO-2592.

³ Order MO-2246.

⁴ Orders P-624 and PO-2559.

[11] I can order a further search 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

Analysis

[12] I am satisfied that the city conducted a reasonable search for responsive records.

[13] The appellant is seeking copies of records she submitted as part of her original HC application. At the heart of the appellant's request and subsequent appeal is her view that her HC application was not correctly processed and her housing placement was therefore affected.

[14] The appellant sought the same HC application records at issue in this appeal in an earlier appeal that resulted in Order MO-2723. At the time of that request, TCHC had custody and control of HC records. The following excerpt from Order MO-2723 shows that the appellant made the same arguments about her original HC application as she raises in this appeal:

The appellant's representations

The appellant maintains her position that TCHC did not conduct a reasonable search for responsive records.

In support of her position she submits that she delivered a complete application to Housing Connections with accompanying documentation and that this was not disclosed to her. She takes the position that this demonstrates that TCHC did not locate and disclose all the responsive information in its electronic record system...

She included copies of correspondence with her representations which she believed supported her position that TCHC's search was inadequate.

TCHC's reply representations

In reply, TCHC explains that Housing Connections does not retain the original paper applications but creates an electronic file containing the information provided. TCHC explains that the appellant received a complete copy of the printout of this electronic file. TCHC does not dispute that the appellant did not receive the original application form, but submits that this original form cannot be found.

[15] The adjudicator in Order MO-2723 upheld the reasonableness of TCHC's search

⁵ Order MO-2185.

for records and dismissed the appeal:

The appellant alleges that TCHC did not conduct a reasonable search because she is certain that other responsive records exist that are within TCHC's custody and control.

In my opinion, TCHC's searches were extensive and wide-ranging. Furthermore, in my view, the appellant has failed to provide sufficient evidence to establish a reasonable basis for her belief that there are responsive records in addition to those that were located and disclosed to her. I find that, based on the searches it conducted, TCHC has made a reasonable effort to locate responsive records.

[16] As noted above, the city now has custody and control of HC records. The appellant alleges that the city did not conduct a reasonable search because she is certain that other HC application records exist that are within the city's custody and control.

[17] I have considered the city's response to the appellant's request. I reach the same conclusion as Order MO-2723 for essentially the same reasons.

[18] Most importantly, the city has made a reasonable effort to locate responsive records, having suitably knowledgeable staff conduct two searches for the requested records. The city says its project manager, Access to Housing, in the Shelter, Support and Housing Administration Division, led its searches. The project manager provided an affidavit outlining the extent of those searches. As noted above, the city sought information from the appellant about what specific documents she believed were missing and searched for those records.

[19] The appellant has not provided evidence to establish a reasonable basis for her belief that additional undisclosed responsive records exist. I note also that the city inherited the records responsive to the appellant's request from TCHC. No new records could exist at the city beyond those at issue in Order MO-2723 because of the historic nature of the records requested.

[20] Considering all the circumstances, I find that the city conducted a reasonable search for responsive records.

ORDER:

I find that the city conducted a reasonable search for the records the appellant requested.

Original Signed by: _____
Hamish Flanagan

_____ May 15, 2018

Adjudicator