

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4022

Appeals PA15-113 and PA15-199

Human Rights Tribunal of Ontario

January 10, 2020

Summary: The Human Rights Tribunal of Ontario received two access requests from the appellant seeking certain records from her application file. The tribunal provided the appellant with full access to the responsive records it located. The appellant appealed the tribunal's decisions based on her belief that additional responsive records should exist. In this order, the adjudicator finds that the tribunal's searches were reasonable and dismisses the appeals.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F31, section 24.

OVERVIEW:

[1] The appellant filed a human rights complaint with the Human Rights Tribunal of Ontario (tribunal or HRTO) which was resolved by a settlement in 2009. The appellant filed a subsequent complaint with the tribunal alleging that the opposing party had breached the terms of the settlement. That complaint was resolved by an order and the appellant filed a request to the tribunal to reconsider the order, which was also resolved by another order. The appellant then filed a complaint with the Registrar of the HRTO, who decided to take no further action. The documents relating to the appellant's human rights matter were filed in a hard copy application file. The tribunal also maintained an electronic file on its system comprising of scanned copies of hard copy documents.

[2] The appellant subsequently filed several requests under the *Freedom of Information and Protection of Privacy Act (Act or FIPPA)* to the tribunal for records relating to her human rights matter. As a result of those requests, the appellant was granted full access to records identified as responsive to those requests. In addition, the appellant attended the tribunal's office to view her application file on several occasions. However, the appellant

believed that additional records should exist and filed subsequent access requests to the tribunal in an effort to identify records she thought should be in the application file. This order addresses two of the appellant's access requests filed on January 22, 2015 and February 10, 2015 (the present requests).

[3] The first request¹ sought access to records which would verify when the application file was misplaced and subsequently located. The second request² sought access to records related to the release and reprisals issue (release) which arose in the appellant's human rights matter.

[4] In response, the tribunal conducted searches for responsive records and issued two decisions³ to the appellant. The tribunal granted the appellant full access to the records it located.

[5] The appellant subsequently appealed both decisions to this office claiming that additional records should exist. The two appeals were joined and a mediator was assigned to explore settlement with the parties. For the remainder of this order, I will refer to the joint appeal as the "appeal". Mediation did not resolve the appeal and the file was transferred to the adjudication stage of the appeals process in which an adjudicator conducts an inquiry under the *Act*.

[6] During the inquiry, the written representations of the parties were exchanged in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[7] In this order, I find that the tribunal conducted a reasonable search for responsive records and dismiss the appeal.

PRELIMINARY ISSUE:

Scope of this order

[8] The Notice of Inquiry sent to the appellant invited her representations on whether she believed the tribunal conducted a reasonable search for records responsive to the requests filed on January 22, 2015 and February 10, 2015. However, the representations the appellant provided in response to the notice were scant and do not appear to address issues relating to the tribunal's search for these specific requests.

[9] Accordingly, I reviewed the materials contained in the appeal file the appellant provided to the mediator. For the remainder of this order, I will refer to these materials as the appellant's submissions. For the reasons that follow, I find that the appellant's submissions address matters which do not fall within the scope of this appeal.

[10] At the outset of the mediation stage of the appeal, the tribunal advised the mediator

¹ Submitted January 22, 2015.

² Submitted February 10, 2015.

³ The tribunal's decision, dated February 20, 2015, was in response to the appellant's January 22, 2015 access request. The tribunal's decision, dated March 31, 2015, was in response to the appellant's February 10, 2015 access.

that it was in the process of copying the entire application file which would be delivered to the appellant. The tribunal advised that the application file consisted of two banker boxes and that it would waive the photocopy charges. Following her review of the contents of the banker boxes, the appellant advised that she continued to believe that additional records should exist. In support of her position, the appellant sent an email to the mediator which was sent (with her consent) to the tribunal. In her email, the appellant advised that a Decision Distribution Sheet (distribution sheet) had not been included in the records disclosed to her. Although the appellant's original request for this record was filed after the present requests,⁴ the tribunal conducted a further search and subsequently located this record along with the related cover letter, email and fax confirmation sheet.⁵

[11] However, the appellant continued to have questions about the reasonableness of the tribunal's efforts to locate responsive records. The appellant provided the mediator with a letter, dated October 27, 2015, enclosing a number of documents. The appellant's letter described the enclosed documents as "a partial list of documents being sought".

[12] The tribunal responded to the appellant's concerns in four letters, all dated February 10, 2016, which I address below.

Appellant's request for correspondence exchanged between the tribunal and named law firm

[13] Throughout the appeal, the appellant takes the position that the tribunal failed to locate records it exchanged with the party the appellant filed a human rights complaint against (the opposing party). In the first letter, the tribunal advised that it had already conducted "several searches" for records exchanged between the tribunal and the opposing party's law firm, which had already resulted in records being located and disclosed to the appellant.⁶

Appellant's request for an additional copy of the application file

[14] In its second letter, the tribunal responded to the appellant's request for an additional copy of the application file. In that letter, the tribunal stated:

Since the HRTO has already provided a copy of the file ... I will not provide you with an additional copy of the file in response to this request. However, as set out to you in my correspondence of October 21, 2015 (regarding your appeals of my previous decisions), the hard copy of [the file] had been travelling between the HRTO's offices, [my office (so I could review it for the

⁴ The appellant's request for this information was made on August 6, 2015, after the filing of the present requests.

⁵ The tribunal explained that the records was located by contacting the staff member who created the record as it had not been filed in hard copy of the file which was being stored at a different office than the office where the staff member who created the record was located. I note that the appellant's access request, dated August 6, 2015, requested a copy of this record along with records relating to her request to the tribunal to reconsider its decision (which resulted in an order).

⁶ I note that one of the documents the appellant provided the mediator is a copy of an access request, dated August 6, 2015 seeking "all communications" between the opposing party's lawyer or law firm and a named Assistant Registrar and the Vice-Chair, but not limited to these individuals, for the period of December 2009 to the date of the request. This request was submitted after the filing of the present requests.

various *FIPPA* requests) and the hearing centre] so that you could view it. As [a] result, I requested the HRTO to conduct an additional search to locate documents that may not have been placed in the two boxes.

[15] The tribunal went on to advise that it located additional records related to the appellant's HRTO reconsideration decision that were not included in the hard copy file sent to her. The tribunal disclosed copies of these records in full to the appellant with its letter. The tribunal also disclosed two other records to the appellant, a letter the appellant sent to the tribunal and the tribunal's acknowledgement of its receipt, with the explanation that "they were also not initially included in the two boxes ... I believe they were not included because they relate to a time period when the two boxes were not at [the HRTO's offices]."

Appellant's request for updated file materials

[16] In its third letter, the tribunal advised that it considered the appellant's request for records relating to the tribunal's decision not to take any further action in response to her complaint to the Registrar as being outside the scope of this appeal. Nonetheless, the tribunal advised that it conducted another search for these records and located a number of records, dated from February 27, 2015 to November 18, 2015, which it disclosed to the appellant.

Appellant's request for Records of Contact

[17] In its fourth letter, the tribunal responded to the appellant's questions about the lack of communication records contained in the file. The tribunal referred to these types of records as "Records of Contact" and explained that they are "created by HRTO staff responsible for processing an application to record telephone conversations they have had with parties to an application." The tribunal advised that the copy of the file it provided to the appellant contains various documents that show communications between the appellant or her lawyer and a named staff member. In addition, the tribunal advised that the file contains records which document communications between the parties to the application and the Assistant Registrar. However, the tribunal acknowledged that the communication records "are located in various places within a very large file, making it difficult to determine whether any of these Records of Contact had not already been provided to [the appellant]." With its letter to the appellant, the tribunal enclosed copies of all the Records of Contract located in its electronic file.

Appellant's response and further request for attachments

[18] The appellant sent a response to the mediator regarding the tribunal's letters of February 10, 2016. The appellant's response addressed to the mediator, dated March 10, 2016, included a highlighted copy of her original October 27, 2015 letter to the mediator.⁷ The appellant stated that "many of the request[s] remain unanswered" and advised that the highlighted portions of her letter represent the unanswered questions. In support of her position, the appellant referred to an April 23, 2011 email and April 26, 2011 letter which, she advised, the tribunal had disclosed to her without the attachment or enclosure

⁷ The appeal file before me also contains a handwritten letter, dated March 9, 2016, from the appellant. It is not clear who was the intended recipient of the letter. However, it reiterates the same points made in the appellant's letter to the tribunal on March 10, 2016.

referenced in the correspondence.

[19] The appellant also wrote to the tribunal directly on March 10, 2016 and stated that "for the most part I am looking for attachments to communications." The appellant also advised the tribunal that its search failed to locate a May 30, 2014 email from the Vice-Chair to a named staff member. The appellant also advised that the fact that she could not locate this record in the application file suggest "a need to search the computers for other documents."

Decision and analysis

[20] I have reviewed the highlighted package the appellant provided to the mediator and find that her concerns do not relate to the requests that are before me in this appeal. Instead, the appellant identifies records which she believes would help address her concerns about how the tribunal handled her human rights matter, including her complaint to the Registrar. The appellant questions the credibility of the evidence of the opposing party's witness and wants to verify what documents the Vice-Chair had before him during the hearing. Finally, she raises questions about the tribunal's decision to not consider her reconsideration request given the circumstances of her complaint, including that it appears that the application file was misplaced during her hearing.

[21] The appellant asks that I order the tribunal to conduct a search to locate records containing the following information:

- the names of everyone the Registrar sent her complaint letter along with the dates her complaint letter was discussed or forwarded to other staff members;
- various attachments to emails and letters regarding the will-say statement of the opposing party's witness at the hearing;
- a document filed in the civil courts;
- any communication, electronic or physical, exchanged between the tribunal and the opposing party's lawyer;
- any communication, electronic or physical, exchanged between the tribunal and Vice-Chair, including any discussion about pulling a document from her materials filed with the tribunal;
- any notes prepared by the Vice-Chair;⁸ and
- case law the appellant's lawyer provided to the tribunal in support of the appellant's reconsideration request.

[22] However, the documents listed above were not sought by the appellant in the present requests. The appellant, in her letter to the mediator, advises that some of the above-noted requests were the subject of other access requests under the *Act* or came about as the result of verbal discussions she had with the tribunal's Freedom of Information

⁸ The appellant's request for this information was addressed by me in Orders PO-3699 and PO-3994-R.

and Protection of Privacy Co-ordinator (the coordinator).

[23] Though it appears that the tribunal has on occasion expanded the scope of the appellant's requests to conduct a search for other documents during the mediation of this appeal, there was no requirement that the tribunal do so. Further, it does not appear that these records reasonably relate to the requests before me. In my view, the tribunal could rightly have directed the appellant to file a new request under the *Act* for similar or updated records. And it appears that in some instances, the appellant did file subsequent requests under the *Act*.

[24] Despite the tribunal's willingness to conduct searches for related records during the mediation process, the sole issue before me is whether the tribunal, in processing the appellant's January 22, 2015 and February 10, 2015 requests, made a reasonable effort to identify and locate responsive records created up to the date of those requests.

[25] In the circumstances of the appeal before me here, my jurisdiction is limited to deciding the issue of reasonable search in relation to these two requests. I do not have the authority to comment on the tribunal's processing of requests that were not appealed to this office or assigned to me for adjudication. Similarly, I cannot comment on the tribunal's efforts to respond to any of the appellant's concerns that she may have discussed with the HRTO coordinator or IPC mediator.

[26] I appreciate that this finding may frustrate the appellant, but I can only adjudicate matters that are properly before me. If the appellant filed a request, received an access decision, but did not appeal that decision, I do not have the requisite authority to conduct a review of the tribunal's decision in that matter.

[27] Having regard to the above, I find that the outstanding matters the appellant highlighted in her letter to the mediator do not reasonably relate to the scope of this appeal and, as a result, they will not be addressed in this order.

[28] Finally, it is worth mentioning that since the appellant filed the present requests, the process for requesting documents related to a tribunal application has recently changed with an Ontario Superior Court decision. In *Toronto Star v AG Ontario*⁹, the court declared the application of the personal privacy exemption under section 21(1) of the *Act* to the adjudicative records of certain tribunals, including the tribunal, to be unconstitutional and of no force or effect. As a result, the tribunal now has a new policy regarding requests for adjudicative records that takes into account the "open courts principle" and the court's declaration of invalidity of section 21(1) of the *Act*. As a result of the new policy, the tribunal now provides copies of adjudicative records to individuals outside of the freedom of information scheme contemplated under the *Act*.

DISCUSSION:

[29] As noted above, the sole issue I must determine is whether the tribunal's searches for records which would respond to the appellant's request for records relating to the

⁹ (2018) ONSC 2586.

missing file and release were reasonable.

[30] 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 24.¹⁰ 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.

[31] 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.¹¹ To be responsive, a record must be "reasonably related" to the request.¹²

[32] 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.¹³

[33] 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.¹⁴

[34] 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.¹⁵

[35] The appellant's representations did not address the tribunal's submissions about its search for records relating to the missing file or release. Instead, the appellant's representations focussed on her concern regarding the tribunal's search for communications exchanged between itself and the opposing party's lawyer. In support of this position, the appellant stated the following in her representations:

Notwithstanding [the coordinator's] statement in her Affidavit, I have at least one example of direct communication between the HRTO and [opposing party's law firm] that was not copied to me, or my representative, as required by the HRTO rules. [The coordinator's] particular statement that she has made a thorough search of the file and has been unable to obtain any such communication is, therefore, incorrect. I would require that the [IPC] instruct [the tribunal] to provide all of the documents that passed between the HRTO and the [opposing party's law firm].

[36] Upon my receipt of the appellant's representations, the appellant was asked whether she could provide further particulars about why she believes that additional records of this nature exist. In response, the appellant provided copies of emails she located as the result

¹⁰ Orders P-85, P-221 and PO-1954-I.

¹¹ Orders P-624 and PO-2559.

¹² Order PO-2554.

¹³ Orders M-909, PO-2469 and PO-2592.

¹⁴ Order MO-2185.

¹⁵ Order MO-2246.

of her review of the application file during one of her visits to the tribunal's office.

[37] I have reviewed the emails provided by the appellant and note that they are emails exchanged between the opposing party's lawyer and the HRTO's Assistant Registrar. The time period of the emails are from December 2009 to January 2010. The subject matter of the emails relates to a request for an extension of time. None of the emails appeared to be copied to the appellant or her counsel at the time the emails were exchanged. Based on the wording and scope of the present requests, I find that the subject matter of the emails provided by the appellant does not "reasonably relate" to the present requests.

[38] Furthermore, the appellant appears to suggest in her submissions that the tribunal's rules of procedure dictate that her lawyer should have received a copy of these emails given her status as a party to the proceeding. However, I will not comment on whether the tribunal followed its own rules of procedure as my jurisdiction is limited to whether the tribunal conducted a reasonable search for records responsive to the present requests.

Missing application file

[39] The appellant says that a physical file relating to her human rights complaint to the tribunal was lost. The appellant's first request sought access to records which would verify when this misplaced application file was located. With her request, the appellant included an email chain exchanged between tribunal staff that refers to the lost file. The appellant advised that she discovered the email during one of her visits to view the file. In her request, the appellant stated:

At this time it has come to my attention that the physical file bearing the [specified number] was lost.

Enclosed is an e-mail chain verifying [that] the file was lost. Could I please have the documents verifying when the physical file was found and to who [and] when it was distributed.

[40] The tribunal does not dispute that the physical file in question was lost and subsequently located. In its decision letter to the appellant, the tribunal stated:

In your request, you enclosed a series of emails sent January 17, 2011 between HRTO staff that were included in the application file for your [file]. These emails set out that, as of January 17, 2011, HRTO staff were unable to locate the hard copy of the file for [specified file number]. You have asked that I provide documents that verify when the file was found and to whom and when it was distributed.

In response to your request, I sent an email to the staff named in the emails you attached [three named staff members]. I also included HRTO Assistant Registrars [three different staff members] and the HRTO Case Processing Officer [another named staff member], who was assigned to [the file]. I asked these individuals to search for any documentation that followed the January 17 emails (setting out that the file had been lost) that provided any further information about the search for the file, and that provided any information about when and how the file was found.

I have received confirmation from the HRTO that none of the individuals included in the email located any further documentation related to the search for the missing file and how and when it was located.

The tribunal's representations

[41] The tribunal submits that before the appellant made a request for records relating to the lost file, she had viewed the file on several occasions. During one of these occasions, she came across a January 17, 2011 email which indicated that the hard copy file had at some point been misplaced. The appellant subsequently filed a request under the *Act* for copies of documents that would verify when the hard copy was located and by whom and when it was distributed.

[42] The tribunal submits that it conducted a reasonable search for these records. In support of its position, it provided an affidavit from its the coordinator which stated that:

- upon her receipt of the appellant's request, the coordinator sent an email¹⁶ to the five staff members involved in processing the file.
- the coordinator asked the recipients of her email to conduct a search for any documentation created after the January 17, 2011 email regarding the tribunal's search for the hard copy file, including when it was found; and
- none of the individuals contacted by the coordinator located any records which "set out [the] circumstances related to finding the misplaced file."

[43] In her affidavit, the coordinator also advised that during the mediation of this matter with the IPC, she coordinated another search in response to another request not subject to this appeal, and sent an email to the Registrar and Assistant Registrar to search for additional records related to [file 2010-04463-S]. That search located a May 30, 2014 email from the Vice-Chair which made an indirect reference to the file being misplaced. However, it does not appear that the Vice-Chair was involved in recovering the lost file. In any event, the tribunal subsequently disclosed a copy of this email in full to the appellant.

[44] Finally, the coordinator stated in her affidavit that:

... HRTO staff told [her] that it was possible that they discussed the file "face-to-face" and that this discussion would have initiated a search for the missing file. HRTO staff indicated that it was possible that an email may have been sent to various HRTO staff asking for assistance locating the missing file. However, this type of email would not normally be [either] placed in the file or saved.

Missing documents related to the release

[45] The appellant's second request was accompanied with a letter from her lawyer which she believes should have been located by the tribunal. In that request, the appellant stated:

¹⁶ The tribunal provided a copy of this email, dated February 4, 2015, with its affidavit.

There are many missing documents in [the previous disclosure]. One example is enclosed. It is a letter dated April 13, 2011 [from my lawyer] in response to a letter written April 12, 2011 by the [opposing party's] lawyer. Please consider this as an appeal for another search of the records to find as many of the missing documents as possible. Generally speaking all the communications from April 1, 2011 – May 2013 & June 2013 [that] are related to the release and reprisals.

[46] In response, the tribunal issued a decision letter granting the appellant full access to the responsive records located by its search. In its decision letter to the appellant, the tribunal stated:

[In your request] you confirmed that you believed that I did not locate and provide all documents related to the release in my January 16, 2015 response. In your letter, you clarified that you believe *all* communications between April 2011 and June 2013 are related to the release and reprisals. As a result, I have conducted an additional search of the six accordion folders that make up [the specified file] to find all submissions/communications made by either the applicant or the [opposing party] between April 2011 and June 2013. I also compared the documents I located to the [electronic documents] scanned to the HRTO's system to ensure I did not miss anything.

[47] The tribunal provided the appellant with an index of records entitled "appendix 1" along with copies of the records responding to the appellant's request for communications between the appellant's and opposing party's lawyer from April 2011 to June 2013.

The tribunal's representations

[48] The tribunal advised that the appellant had indicated that she believed that there were many additional documents specifically related to the release that had not been located during its processing of the access requests that predated the present requests. The tribunal submitted that the appellant revived this portion of her request in 2015 when she filed a subsequent request under the *Act* for "all communications from April 1, 2011 – May 2013 & June 2013 [that] are related to the release and reprisals." The tribunal advises that, during the request stage, the appellant clarified that she considered any communication exchanged between her and the opposing party's counsel during the period of April 2011 to June 2013 as responsive. The tribunal states that the appellant's request also appeared to revive her interest in access to a package of meeting minutes.

[49] The tribunal takes the position that it conducted a reasonable search for records relating to the release, including the package of the meeting minutes. In its supporting affidavit, the tribunal's co-ordinator advises that when she emailed the Assistant Registrar to initiate an additional search, she provided a detailed description of the package of meeting minutes based on her communications with the appellant. In addition, the appellant's email identified the possibility that records could have been misplaced and asked the Assistant Registrar whether the record could be located in the Vice-Chair's office.

[50] The tribunal submits that its further search did not locate the meeting minutes requested by the appellant. In its supporting affidavit, the coordinator states:

Despite extensive searches, the HRTO was unable to locate an additional package of minutes that met the description the appellant provided. [The file] contained other packages of minutes (including packages date stamped as having been received [on the date of the hearing], but the appellant indicated that these packages were not the package allegedly given by her counsel to the [Vice-Chair] at the [same hearing]. I am unable to speculate whether the package described [by] the appellant was in fact given to [the Vice-Chair at the hearing], and if so, what happened to it.

[51] However, this search located an additional accordion file of records that had not been filed in the banker boxes containing the hard copy file. The coordinator says in her affidavit that at the time of her search for the meeting minutes, "there continued to be an ongoing legal proceeding ... so many of the responsive records were part of a tribunal file not only in active use [for the appeals process at the IPC] but also subject to supplementation by the parties as part of the ongoing [human rights tribunal] proceeding." The coordinator submits that this led to the discovery of an additional accordion file that had not been previously included with the rest of the hard copy file. The coordinator states "[t]his additional accordion file did not include a package of minutes that matched the description given by the appellant, but from that point on it was included with the other documents that comprises the hard copy of the file." The coordinator advises that the appellant was provided with copies of additional records contained in the additional accordion folder.

[52] With respect to its search for documents relating to the release, the tribunal submits that it conducted a reasonable search for "all communications" related to the appellant or opposing party between April 2011 and June 2013. The tribunal's supporting affidavit indicates that upon the coordinator's receipt of the appellant's present request for these documents, she reviewed the entire file, including the newly located additional accordion file and compared the documents in the hard copy file with the documents scanned to the electronic file, but did not locate additional records.

[53] The tribunal submits that no additional records relating to the release were located as a result of its further searches.¹⁷ In the tribunal's supporting affidavit, its coordinator states:

Although the [application file] contains a number of documents that were originally part of the civil suit, it is possible that there are additional documents from the civil suit related to the release that were never submitted in [the application file]. This may explain why the appellant believes that the [application file] should contain additional documents released to the release.

Decision and analysis

[54] The circumstances of this appeal are unique. The appellant's hard copy file moved between offices during various stages of her human rights complaint, hearing and

¹⁷ Though the tribunal did not locate additional records, the tribunal provided the appellant with copies of all the documents it located as a result of its further search with its March 31, 2015 letter. Also enclosed with this letter,

reconsideration request. The application file also travelled back and forth to the coordinator's office. There is no dispute between the parties that the hard copy file was lost at some point and later recovered. In addition, the tribunal, having agreed to conduct further searches, has located additional records. For instance, the tribunal's search for the meeting minutes requested by the appellant did not result in these records being located but the tribunal did locate an additional folder of documents that should have been placed in the hard copy file.

[55] However, the fact that the tribunal located additional records after processing the present requests does not mean that its searches for records that would respond to the two requests before me were not reasonable. Rather, I am satisfied that the tribunal's searches for responsive records were reasonable, and decline to order any further searches. As noted above, the *Act* does not require the tribunal to prove with absolute certainty that further records do not exist. Instead, the tribunal was required to provide sufficient evidence to show that it made a reasonable effort to identify and locate responsive records.

[56] Having regard to the submissions of the parties, I am satisfied that the tribunal provided sufficient evidence demonstrating that it made a reasonable effort to identify and locate responsive records. I am also satisfied that the individual coordinating the tribunal's search was an experienced employee knowledgeable about the subject matter of the request.

[57] In making my decision, I considered that the appellant has had several opportunities during the request, and then during the mediation stage of her appeals, to attend the tribunal's offices to view the hard copy file. This is in addition to the times the appellant viewed the file before filing the present requests. In addition to the disclosures the tribunal made to the appellant in its access decisions, the tribunal copied the entire file and provided it to the appellant. The tribunal also provided the appellant with a copy of the additional folder of records subsequently located. The tribunal also made photocopies of any file contents requested by the appellant during her several attendances at its office.

[58] I also note that the tribunal expanded the scope of request and conducted additional searches during the mediation stage of this appeal to include items, such as meeting minutes, a distribution sheet, Records of Contact and communications exchanged between the appellant's and opposing party's lawyers. These were not records identified in the present requests.

Missing documents related to the release

[59] As noted above, the appellant did not specifically address the tribunal's evidence regarding its search for records relating to the release in her submissions.

[60] I am satisfied that the tribunal has adequately explained the steps it took to locate records that would respond to this part of the appellant's request. In particular, the tribunal provided evidence of its search when it first received the request, in addition to the further search it conducted during mediation. The tribunal's further search was expanded to include a search for meeting minutes that the appellant says her lawyer provided the Vice-Chair.

[61] Having regard to the above, I am satisfied that the steps the tribunal took to

compare the hard copy file with the electronic file, in addition to coordinating further searches in an effort to identify additional records responsive to this part of the appellant's request, was reasonable in the circumstances. I am also satisfied with the tribunal's explanation that there may exist records originally part of the civil suit that did not end up being filed in the application file.

The missing application file

[62] The appellant's submissions did not specifically address this issue. I find that the tribunal provided a satisfactory explanation regarding the steps it took to locate records relating to the lost application file. The tribunal advised that upon receipt of the appellant's request, it coordinated a search with five staff members who had been involved in processing the file, but that no records were located. It was a search conducted in response to another request that located a record from the Vice-Chair which made an indirect reference about the file being lost. However, it does not appear that the Vice-Chair was involved in recovering the lost file. In any event, the tribunal provided the appellant with a copy of this email.

[63] Finally, I am satisfied with the tribunal's explanation that staff members involved in locating the file likely would have discussed the issue face to face and any emails coordinating their efforts, if created, would not be placed in the application file or otherwise saved.

[64] Having regard to the above, I am satisfied that the tribunal's evidence demonstrates that it expended a reasonable effort to locate records that would be responsive to this part of the appellant's request.

ORDER:

I find that the tribunal's searches for records responsive to the appellant's requests dated January 22, 2015 and February 10, 2015 were reasonable, and I dismiss Appeals PA15-113 and PA15-199.

Original Signed By: _____
Jennifer James
Adjudicator

January 10, 2020