

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3928

Appeal MA18-505

City of Greater Sudbury

June 12, 2020

Summary: The appellant made a request to the City of Greater Sudbury (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of his Ontario Works file. The city located responsive records and provided partial access to the records. The appellant appealed the city's decision. After mediation, the remaining issue is whether the city conducted a reasonable search for the appellant's Ontario Disability Support Program (ODSP) records. In this order, the adjudicator finds the ODSP records are responsive to the appellant's request. She upholds the city's search for responsive records as reasonable and dismisses the appeal.

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

OVERVIEW:

[1] The City of Greater Sudbury (the city) received a request made under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of the requester's Ontario Works file.

[2] The city located responsive records and provided partial access to the records. Portions of the records were withheld in accordance with the mandatory personal privacy exemption at section 14(1) of the *Act*.

[3] The requester, now the appellant, appealed the city's decision to the Office of the Information and Privacy Commissioner of Ontario (the IPC, or this office).

[4] During the mediation process, the appellant advised that he was appealing on the basis that additional records ought to exist, and the redactions made on the basis of the section 14(1) personal privacy exemption (which he later removed from the scope of the appeal). The city confirmed its position that no additional records exist. Based on my review of the Mediator's Report prepared at the conclusion of mediation, it appears that the appellant believed that the city should have located his Ontario Disability Support Program (ODSP) records as well, including forms and electronic file notes relating to him. Therefore, the issue of reasonable search was added to the scope of the appeal.

[5] The appellant asked that the file proceed to the next stage of the appeals process. The appeal then moved to the adjudication stage, where an adjudicator may conduct a written inquiry under the *Act*.

[6] As the adjudicator of this appeal, I began my inquiry under the *Act* by sending a Notice of Inquiry, setting out the facts and issues on appeal, to the city. I asked the city for written representations in response to the Notice of Inquiry. The city provided representations, which it agreed to share with the appellant. I then invited the appellant to provide written representations in response to a Notice of Inquiry and a full copy of the city's representations. The appellant did not provide representations in response.

[7] For the reasons that follow, I uphold the reasonableness of the city's search and dismiss the appeal.

DISCUSSION:

Preliminary issue: The appellant's ODSP records

[8] The appellant requested that the file move to adjudication on the basis of reasonable search. It appears that the appellant's reasonable basis that additional records should exist is the fact that he was not provided with his ODSP file.

[9] During the inquiry, the city also provided an explanation about the OW and ODSP social assistance programs, and why the ODSP records are unavailable in the city. The city stated that the OW program is administered by the city following the directives of the Ministry of Community and Social Services (the ministry), whereas the ODSP is a separate program administered by the ministry's Ontario Disability Support Program, Income and Employment Supports Offices (ODSP offices). When the appellant's OW file was transferred to the ODSP office, his complete OW file was collected by an ODSP office staff member, and was not digitized or otherwise copied by the city in accordance with the city's general business practice. In the city's experience, its OW office can no longer access a file, or a copy of a file, once it is transferred from the city to the ODSP office. I accept the city's explanation of why it would not have the appellant's ODSP file and I will not be considering this issue further. I note that nothing precludes the appellant from making a new request to the ministry for his ODSP file.

Did the city conduct a reasonable search?

[10] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.¹ If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[11] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.² To be responsive, a record must be "reasonably related" to the request.³

[12] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.⁴

[13] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.⁵

[14] The city provided a written summary of all steps taken in response to the request. This summary was prepared by the city's legislative Compliance Coordinator who assisted the appellant with formulating his request. The city also provided an affidavit from the city's Program Manager of the Income Support Unit of the city's Ontario Works program. The program manager performed part of the search for responsive records and reviewed all of the responsive records located by other employees. For the reasons that I will explain below, I find that the city provided sufficient evidence that its search was reasonable in the circumstances.

No clarification needed

[15] Based on the evidence before me, I am satisfied that no clarification was needed in order for the city to conduct a search for records responsive to the appellant.

[16] The request submitted to the city was worded as follows:

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Order PO-2554.

⁴ Orders M-909, PO-2469 and PO-2592.

⁵ Order MO-2185.

"Please provide entire Ontario Works file for [specified first and last name] (D.O.B. [specified date of birth])."

[17] The city submits that the request was clear, with a sufficient number of clearly identifiable criteria for an experienced employee to identify responsive records, and as a result, no clarification from the appellant was needed. The city also states that it fairly frequently receives requests for Ontario Works client files, and that staff are knowledgeable about the type of information required to conduct a search for these files. In light of this, and the wording of the request itself, I am satisfied that no clarification was needed to identify records responsive to the request.

Experienced employees asked to search

[18] The city explained its general process of forwarding requests to employees in order to search for records responsive to requests made under the *Act*. The city's Clerk's Services Department maintains a list of contacts for each city department. These contacts are described as knowledgeable staff members who are responsible for conducting or coordinating searches for their respective departments. Every department manager or director is responsible for designating contacts relating to requests made under the *Act*, and determining their role in processing requests. The city further explained that typically, senior staff members or records clerks are assigned to process requests, and the Executive Leadership Team member of each department, as well as the Legal Department and Risk Office, also receive copies of requests.

[19] In this case, the wording of the request was emailed to the city's Director of Social Services, and copied to their administrative assistant and the aforementioned program manager of the city's Ontario Works Income Support Unit, for processing. Copies of the request were also sent to other specified city personnel, including a law clerk and the city's Coordinator of Insurance Risk Management, neither of whom located responsive records.

[20] The program manager provided an affidavit about her search efforts. She attests to having been in her managerial position since 2018, and having a total of twenty years experience with the city's Ontario Works Office. I am satisfied that she was an experienced employee knowledgeable in the subject matter of the request for the appellant's OW file.

[21] Upon receiving the request, the program manager attests that she emailed three units in the Ontario Works department, requesting that a search be completed and any responsive records be provided her. The three units were: the Eligibility Review Unit, the Finance Unit, and the Family Support Unit. Given the nature of the request and the experience of the program manager, I accept that it was reasonable for her to involve these three units in a search for responsive records.

Search locations and results

[22] The Finance Unit provided copies of two forms, but the Eligibility Review Unit and the Family Support Unit reported that they did not have any responsive records.

[23] The program manager also attests to performing searches in several databases, with the assistance of another city employee, a specified case aide. They searched the Income Support Units records as well as the SAMS and SALI computer databases. As a result of these search efforts, the program manager attests that she found responsive records in form of notes and payment lists. I accept that these locations were reasonable for the program manager to search, especially given her years of experience working with the city's OW records.

[24] The program manager searched both active and inactive files in the Income Support Unit. I find that this step would reasonably result in finding more responsive records, not fewer ones. The program manager attests that after this search of active and inactive files, the Income Support Unit determined that there was no longer a hard copy of the appellant's file with the OW office it had been transferred on a specified date to the Ontario Disability Office, in accordance with the standard business practice in Sudbury. The program manager attests that no copies of the appellant's hardcopy file were made and that the hardcopy file was not digitized before it was transferred.

[25] The program manager also attests to having reviewed all the responsive records, and ensuring that copies were provided to the city Clerk's Services department. She attests that to the best of her knowledge, the city does not have any additional records belonging to the appellant's Ontario Works file.

No representations from the appellant

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

[27] In this case, the appellant did not provide representations in response to the evidence provided by the city, and the only matter he raised during mediation was the ODSP records, which I have already addressed. Therefore, he has not provided a reasonable basis for concluding that the city has additional records responsive to his request.

Conclusion

[28] Based on the evidence before me, I find that the city has conducted a

⁶ Order MO-2246.

reasonable search for responsive records, having engaged experienced employees in relevant city departments to look for the appellant's OW file in locations where responsive records could reasonably be expected to be found. Accordingly, I will not order the city to conduct a further search.

[29] It is important to note that my conclusion about the reasonableness of the city's search does not prevent the appellant from making a new request to the ministry and/or the Sudbury ODSP office for his ODSP records.

ORDER:

I uphold the reasonableness of the city's search and dismiss the appeal.

Original Signed by: _____
Marian Sami
Adjudicator

_____ June 12, 2020