

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER MO-4151-R

Appeal MA19-00588

Order MO-3939

Kingston Economic Development Corporation

January 20, 2022

Summary: The appellant sought reconsideration of the search order provision in Order MO-3939 that required the Kingston Economic Development Corporation (KEDCO) to search for certain financial records under the *Municipal Freedom of Information and Protection of Privacy Act*. The appellant argues that KEDCO should have searched for additional records relating to expense approvals.

In this order, the adjudicator denies the appellant's reconsideration request.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 17; the IPC's *Code of Procedure*, sections 18.01(a) and (c), and 18.02.

Orders and Investigation Reports Considered: Orders MO-3658-R, MO-3727, and MO-3939.

OVERVIEW:

[1] The appellant, a not-for-profit corporation created by concerned members of the Kingston community to lobby for political transparency and accountability in municipal

politics, made a broad 13-item access request¹ to the Kingston Economic Development Corporation (KEDCO)² under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA or the Act)* for financial information about KEDCO from 2010 to 2015.

[2] This request, KEDCO's access decision, and the resulting IPC appeal ultimately led to the issuance of Order MO-3727 and subsequently, Order MO-3939.

[3] The appellant requested a reconsideration of a provision of Order MO-3939 that ordered KEDCO to search for specific expense approval and reimbursement records. This reconsideration order determines that the appellant's reconsideration request should be denied.

[4] There is a lengthy history behind Order MO-3939 and between the two parties in this appeal. I will set out only the background most relevant to the reconsideration request. Although I made orders about both fees and search in Order MO-3939, the appellant has asked for reconsideration only in respect of the provisions respecting search. The background below includes the history of the fee issue, for context.

¹ In the 13-item request initially submitted, the requester sought access to the following information:

1. Detailed records in support of expenditures listed in the audited financial statements of KEDCO, for the years 2010 to 2015;
2. Information pertaining to vendors retained by KEDCO in the years 2010 to 2015, including the name of the vendor, the service provided and the amount spent, along with all supporting documentation;
3. Information pertaining to consultants (including third-party professionals) retained by KEDCO in the years 2010 to 2015, including the name of the consultant, the service provided and amount spent along with all supporting documentation;
4. Information pertaining to the process used to select both vendors and consultants, in the years 2010 to 2015, along with all supporting documentation;
5. Business expense amounts claimed by employee job title, for the years 2010 to 2015, along with all supporting documentation;
6. Action plans for business travel of KEDCO employees outside of Kingston for the years 2010-2015;
7. Amounts paid directly by the City in support of KEDCO activities or employee-related costs, for the years 2010 to 2015;
8. Records pertaining to the procurement and hiring of a KEDCO Review Committee consultant, including the terms of any contract;
9. All corporate credit card statements for the years 2010 to 2015;
10. Any by-law or resolution pertaining to the creation of KEDCO;
11. Information pertaining to compensation paid to, or expense reimbursement for, members of City Council acting as Directors of KEDCO, for the years 2010 to 2015;
12. The monthly reports of financial transactions that were reviewed by KEDCO's Finance and Audit Committee, for the years 2010 to 2015; and
13. Records pertaining to the eligibility of KEDCO employees to participate in OMERS, including all agreements, contracts and correspondence among KEDCO, OMERS and the City of Kingston with respect to this issue.

² KEDCO is a corporation incorporated by the City of Kingston for the sole purpose of promoting economic activity in the greater Kingston area.

Appeal MA16-637 and Order MO-3727

[5] In response to the appellant's 13-item request, KEDCO issued an interim access decision and fee estimate in the amount of \$42,063 stating that a number of exemptions in the *Act* likely apply to the responsive records. KEDCO added that some information may also be withheld as non-responsive to the request. KEDCO also denied the appellant's request for a fee waiver.

[6] The appellant appealed KEDCO's decision to the Information and Privacy Commissioner of Ontario (the IPC). Appeal MA16-637 was opened and a mediator was appointed to explore resolution.

[7] During the mediation stage of Appeal MA16-637, the appellant narrowed the scope of its request to six of the original 13 items, clarifying the six items as follows (using the original numbering):

1. A print-out of the General Ledger (all transactions) for the years 2010 to 2015, without detailed/supporting documentation;
2. & 3. A list of all third-party contractors that provided services to KEDCO for the years 2010 to 2015, identifying the name of the contractor, the nature of the service provided, and payment amount, without supporting documentation;
5. A list of reimbursements for business expenses claimed by KEDCO employees for the years 2010 to 2015, including dates and amounts, without supporting documentation;
9. All corporate credit card statements for the years 2010 to 2015; and
12. A copy of the reports presented to KEDCO's Finance Committee for the years 2010 to 2015.

[8] A mediated resolution was not possible and Appeal MA16-637 moved to the adjudication stage, where I conducted an inquiry and issued Order MO-3727.

[9] It was the revised fee estimate respecting the narrowed six-part request that I reviewed in Order MO-3727. I found that a fee estimate of \$14,681.10 was reasonable for the six items at issue and I reduced the fee estimate to this amount. I also upheld KEDCO's denial of a fee waiver. I granted KEDCO a time extension of five months from the time of payment of the 50% deposit of the \$14,681.10 fee estimate to issue a final access and fee decision on all of the records responsive to the narrowed request. Finally, I accepted KEDCO's position that there was no settlement at mediation providing for access to two of the six categories of records upon payment of a 50% fee deposit.

Appeal MA19-00588 and Order MO-3939

[10] Following the issuance of Order MO-3727, KEDCO issued a final access decision granting full access to the records responsive to the request. In its decision, KEDCO waived the outstanding fee balance, as it did not charge the appellant for any amounts over the \$7,340.55 it had already paid to KEDCO.

[11] The appellant then appealed KEDCO's final fee of \$7,340.55 to the IPC and this appeal, Appeal MA19-00588, was opened to address it. During the mediation of the appeal, the appellant raised the issue of reasonable search and it was added to the issues on appeal. Mediation did not resolve this appeal and this appeal proceeded to the adjudication stage, where I conducted an inquiry.

[12] In Order MO-3939, I ordered as follows:

I order KEDCO to conduct a search, without recourse to charging fees, for records detailing approvals for reimbursements made to KEDCO staff and third party vendors for expenses not submitted to KEDCO's Finance Committee. This search is to include a search for any documents that contain approvals of expenses on KEDCO corporate credit cards, treating the date of this order as the date of the request.

[13] I upheld the remainder of KEDCO's search for records in response to the appellant's request as set out in Order MO-3727 as reasonable. I also reduced KEDCO's fee to \$7,033.60 and ordered KEDCO to refund the amount of \$306.95 to the appellant. As noted above, my fee decision in Order MO-3939 is not the subject of this reconsideration request.

Events following Order MO-3939, including the appellant's reconsideration request

[14] KEDCO complied with the fee portion of Order MO-3939 and refunded the amount ordered to be refunded to the appellant. Concerning the search aspect of Order MO-3939, KEDCO wrote to me asking for clarification of the following bolded portion in the search order provision, which reads:

I order KEDCO to conduct a search, without recourse to charging fees, for records detailing approvals for reimbursements made to KEDCO staff and third party vendors for **expenses not submitted to KEDCO's Finance Committee**. This search is to include a search for any documents that contain approvals of expenses on KEDCO corporate credit cards, treating the date of this order as the date of the request. [Emphasis by KEDCO].

[15] KEDCO advised that no approvals for reimbursements made to KEDCO staff and third-party vendors for expenses that were not submitted to KEDCO's Finance Committee existed in the General Ledger. It stated:

All expenses were recorded on the General Ledger. All staff reimbursements and all payments to third-party vendors were recorded on the General Ledger and submitted to the Finance Committee for review. Payments made on KEDCO corporate credit cards were also recorded on the General ledger and submitted to the Finance Committee for review. The records for which the Order requires us to search, as we understand what is being asked of us, do not exist as there are no expenses that did not appear on the General Ledger.

[16] The appellant's position in response to KEDCO's request for clarification of the order provision was that Order MO-3939 should have expressly included a requirement that KEDCO search for records (dated from 2010 to 2015) of all signed approvals for staff reimbursements and third-party vendor expenses and non-KEDCO credit card receipts, without limiting the provision to expenses not submitted to KEDCO's Finance Committee.

[17] Upon review of the parties' positions, I opened a reconsideration file respecting Order MO-3939. I then sought and received representations from the parties on whether any of the grounds for a reconsideration of Order MO-3939 in section 18.01 of the IPC's *Code of Procedure* had been met by the appellant's request, and whether the order and its search provision ought to be varied. These representations were exchanged between the parties.

[18] Based on the representations provided by the parties, it is clear that only the appellant is seeking a reconsideration of Order MO-3939, not KEDCO.

[19] In this reconsideration order, I deny the appellant's reconsideration request.

DISCUSSION:

Are any of the grounds for reconsideration in section 18.01 of the *IPC Code of Procedure* (the *Code*) met regarding the search order provision in Order MO-3939?

[20] A reconsideration request must meet one of the grounds for reconsideration set out in section 18.01 of the *Code*, which reads:

The IPC may reconsider an order or other decision where it is established that there is:

- (a) a fundamental defect in the adjudication process;
- (b) some other jurisdictional defect in the decision; or

(c) a clerical error, accidental error or omission or other similar error in the decision.

[21] In order to fit within section 18.01(a) of the *Code*, the party requesting reconsideration must establish that there has been a fundamental defect in the adjudication process. A fundamental defect would be a breach of procedural fairness, such as a party not being given notice of an appeal or not being given an opportunity to provide submissions during the inquiry.³

[22] A jurisdictional defect in the decision under section 18.01(b) of the Code goes to whether the adjudicator had jurisdiction to make the decision under the Act. It is not about a disagreement with the assessment of the evidence in the decision.⁴

[23] Section 18.01(c) of the *Code* contemplates "clerical or accidental error, omission or other similar error in the decision," Such errors under section 18.01(c) may include:

- a misidentification of the "head",⁵
- a mistake that does not reflect the adjudicator's intent in the decision,⁶ such as, for example, an order provision containing inconsistent severance terms with respect to the records,⁷
- information that is subsequently discovered to be incorrect,⁸ and
- an omission to include a reference to and instructions for the institution's right to charge a fee.⁹

[24] Section 18.02 of the *Code* is relevant in my determination as to whether to grant a reconsideration request. It provides that:

The IPC will not reconsider a decision simply on the basis that new evidence is provided, whether or not that evidence was available at the time of the decision.

[25] The reconsideration process set out in the IPC's *Code of Procedure* is not intended to provide parties with a forum to re-argue their cases. In Order PO-2538-R, Adjudicator John Higgins reviewed the case law regarding an administrative tribunal's power of reconsideration, including the Supreme Court of Canada's decision in *Chandler*

³ For an example, see Order PO-3960-R.

⁴ Reconsideration Order MO-3917-R.

⁵ Orders P-1636 and R-990001.

⁶ Order M-938.

⁷ See, for example, Order PO-2405, corrected in Order PO-2538-R.

⁸ Orders M-938 and MO-1200-R.

⁹ MO-2835-R.

v. Alberta Assn. of Architects.¹⁰ With respect to the reconsideration request before him, he concluded:

[T]he parties requesting reconsideration ... argue that my interpretation of the facts, and the resulting legal conclusions, are incorrect ... In my view, these arguments do not fit within any of the criteria enunciated in section 18.01 of the *Code of Procedure*, which are based on the common law set out in *Chandler* and other leading cases as *Grier v. Metro Toronto Trucks Ltd.*¹¹

On the contrary, I conclude that these grounds for reconsideration amount to no more than a disagreement with my decision, and an attempt to re-litigate these issues to obtain a decision more agreeable to the LCBO and the affected party ... As Justice Sopinka comments in *Chandler*, "there is a sound policy basis for recognizing the finality of proceedings before administrative tribunals." I have concluded that this rationale applies here.

[26] Adjudicator Higgins' approach has been adopted and applied in subsequent IPC orders.¹² In Order PO-3062-R, for example, Adjudicator Daphne Loukidelis was asked to reconsider her finding that the discretionary exemption in section 18 of the *Freedom of Information and Protection of Privacy Act* did not apply to the information in the records at issue in that appeal. She determined that the institution's request for reconsideration did not fit within any of the grounds for reconsideration set out in section 18.01 of the *Code*, stating as follows:

It ought to be stated up front that the reconsideration process established by this office is not intended to provide a forum for re-arguing or substantiating arguments made (or not) during the inquiry into the appeal.

[27] I agree with these statements. Past IPC reconsideration orders and section 18.02 of the *Code* make clear that a reconsideration request is not a forum to re-argue a case or to present new evidence, whether or not that evidence was available at the time of the initial inquiry.

KEDCO's representations

[28] KEDCO states that prior to the issuance of Order MO-3939, among the records produced by KEDCO to the appellant were the following:

¹⁰ (1989), 1989 CanLII 41 (SCC), 62 D.L.R. (4th) 577 (S.C.C.).

¹¹ 1996 CanLII 11795 (ON SC), 28 O.R. (3d) 67 (Div. Ct.).

¹² See, for example, Orders PO-3062-R and PO-3558-R.

- a. Monthly credit card statements for all corporate credit cards issued to KEDCO employees from 2010 to 2015; and
- b. Finance Committee reports and associated documents, including:
 - Proposals for expenses;
 - Budget review documents;
 - Requests for funds from reserves or special requests for expenditures;
 - Draft audited reports;
 - Vendor lists;
 - Cheque register (point-in-time General Ledger reports);
 - Annual budgets; and,
 - Proposals from third parties for various services.

[29] KEDCO states that it also assembled all of the information pertaining to employee reimbursements and third-party vendor expenses that was included in the General Ledger in two spreadsheets summarizing this information for the appellant. These spreadsheets consisted of 21 pages (for staff reimbursements) and 667 pages (for third-party vendor expenses).

[30] KEDCO submits that it listed the items the appellant requested and compared them to the records produced. It believes that the information it provided fully satisfied the request made by the appellant for expense reimbursements made to KEDCO staff and third-party vendors.

[31] KEDCO refers to my findings in Order MO-3939 that credit card receipts are outside the scope of the request and that employees with corporate credit cards would not require reimbursement of expenses they placed on corporate credit cards.¹³

[32] KEDCO states that it is content to comply with Order MO-3939 as written and does not believe that there is any jurisdiction for me to reconsider the decision. It states:

Order MO-3939 contains a reasonable interpretation of the parties' submissions regarding the alleged gap between [the appellant's] request for information and KEDCO's production of records. The Order that then resulted addressed [the appellant's] concern that certain records were not

¹³ Paragraphs 42 and 43 of Order MO-3939.

produced. The fact that KEDCO has no records responsive to the Order has no bearing on the validity of the Order itself.

[33] KEDCO states that in the event of reconsideration, however, it asks that the IPC not require KEDCO to produce records that are not described by the 13-item list of requested items as set out in the footnote 1 of this order.

[34] KEDCO states that the appellant's access request does not seek documentation pertaining to approvals of expenses, records detailing approvals for reimbursements or approvals of expenses on KEDCO corporate credit cards. KEDCO states:

[The appellant] did not request reimbursement forms, receipts, original invoices, sales slips, vouchers, proof of purchases, etc. What was requested was simply records of expenditures, expenses amounts, and records in support of expenditures.

[35] KEDCO submits that although the appellant's original 13-item request sought "supporting documentation," this phrase has never been clarified, and it was never understood to mean the records the appellant is now seeking access to. It submits that it is much too late, and unfair, to be attributing this meaning now.

The appellant's representations

[36] The appellant's position is that the test for reconsideration is met in two ways:

1. [KEDCO's] withholding of the specific category of responsive documents [which the appellant describes in its submissions as all signed approvals for staff reimbursements and third-party vendor expenses and non-KEDCO credit card receipts (dated from 2010 to 2015)], identified only after the initial Order [MO-3727] was issued, amounts to a fundamental defect in the adjudication process; and/or
2. The inclusion of the language "not submitted to the KEDCO Finance Committee" [in order provision 1 of Order MO-3939] is a clerical error or omission in the Order.

1. Fundamental Defect in the Adjudication Process

[37] The appellant submits that a fundamental defect resulted because of the timing of the disclosure and explanation by KEDCO of the precise process of approval and the nature of the records in question. The appellant states that:

Any confusion arising from the Order [MO-3939] and the request by [the appellant] is a direct result of the failure of KEDCO to ever adequately identify the specific records prior to its letter seeking clarification after [Order MO-3939].

... In the absence of disclosure of the specific set of records by KEDCO it was not possible for [the appellant] to make submissions on those documents nor to specifically refer to them, nor for the IPC to make any determination on whether they should be produced. This fundamental unfairness goes to the root of the adjudicative process and is a sufficient basis to reconsider its Order.

In cases where new information only comes to light after the Order has been made, reconsideration requests have been granted.¹⁴ Excluding an entire category of responsive documents, because the specific information was not available, amounts to a fundamental defect in the process.¹⁵

[38] The appellant asks that I reconsider my decision in Order MO-3939 and order KEDCO to search for and disclose records of all signed approvals for staff reimbursements and third-party vendor expenses and non-KEDCO credit card receipts (dated from 2010 to 2015), not just those not submitted to the Finance Committee.¹⁶

2. Error or Omission in Order MO-3939

[39] The appellant submits that it is clear from my analysis and the reasons set out in paragraphs 44 and 45 of Order MO-3939 that the intention was not to limit the search required by order provision 1 to a search only for records not submitted to the Finance Committee. It states that this language only appears in the final sentence of paragraph 45, and the analysis leading up to that statement clearly contemplates a broader set of documents, including all reimbursement approvals. Accordingly, the appellant submits that Order MO-3939 should be varied to order KEDCO to search for all signed approvals for staff reimbursements and third-party vendor expenses and non-KEDCO credit card receipts (dated from 2010 to 2015), in order to express the true intention behind the decision as reflected in the reasons.

Analysis/Findings

[40] In Order MO-3939, I ordered KEDCO to

... conduct a search, without recourse to charging fees, for records detailing approvals for reimbursements made to KEDCO staff and third party vendors for expenses not submitted to KEDCO's Finance Committee. This search is to include a search for any documents that contain approvals of expenses on KEDCO corporate credit cards...

[41] The appellant appears to rely on two grounds set out in section 18.01 of the Code in support of its reconsideration request, namely:

¹⁴ The appellant relies on Order MO-3658-R.

¹⁵ The appellant relies on Order PO-2772.

¹⁶ Other than KEDCO credit card receipts which were not at issue in the reconsideration request.

1. a fundamental defect in the adjudication process under section 18.01(a) of the *Code*, and
2. an error or omission in Order MO-3939 under section 18.01(c) of the *Code*.

[42] I will consider each ground separately.

1. Fundamental Defect in the Adjudication Process

[43] The appellant seeks a reconsideration of Order MO-3939, on the basis that I should have ordered KEDCO to search for all signed approvals for staff reimbursements and third-party vendor expenses and non-KEDCO credit card receipts (dated from 2010 to 2015), the existence of which records it found out about after the issuance of Order MO-3939.

[44] The appellant relies on Order MO-3658-R as a basis for its submission that even if they did not know about these particular reimbursement records before Order MO-3939 to be able to specifically request them, I can now order KEDCO to search for these records.

[45] In Order MO-3658-R, the Municipality of Mississippi Mills had not addressed in its representations the appellant's allegation that a specific property had been sold and the adjudicator based his findings on the evidence before him. In that order, this missed evidence turned out to be a crucial fact that, if the adjudicator had known it, would have changed his finding. In allowing the municipality's reconsideration request, the adjudicator stated that:

Generally, a party cannot rely on its failure to adduce sufficient evidence during the inquiry as a basis for a reconsideration request. A reconsideration is not a forum to re-argue an appeal or provide new evidence on an issue.

In this case, however, I am satisfied that the municipality's failure to adduce evidence on this point was inadvertent and resulted in part from some confusion on its part about the significance of the fact the property had not been sold.

[46] This order concerns the request for reconsideration of my decision in Order MO-3939 requested by the appellant, in which the six-item request at issue read as follows:

1. A print-out of the General Ledger (all transactions) for the years 2010 to 2015, without detailed/supporting documentation;
2. & 3. A list of all third-party contractors that provided services to KEDCO for the years 2010 to 2015, identifying the name of the contractor, the

nature of the service provided, and payment amount, without supporting documentation;

5. A list of reimbursements for business expenses claimed by KEDCO employees for the years 2010 to 2015, including dates and amounts, without supporting documentation;

9. All corporate credit card statements for the years 2010 to 2015; and

12. A copy of the reports presented to KEDCO's Finance Committee for the years 2010 to 2015.

[47] In this appeal, I did not adjudicate the search issue in respect of all signed approvals for staff reimbursements and third-party vendor expenses and non-KEDCO credit card receipts (dated from 2010 to 2015) in Order MO-3939 because it was not before me. This is confirmed by the wording of the appellant's six-item request, above, and the parties' representations, including the appellant's statement that it did not know that such types of records existed until after the issuance of Order MO-3939, when KEDCO wrote me to seek clarification of the order provisions.

[48] The items in the appellant's six-item access request related to reimbursement records are items 1, 2, 3, and 5 of its request, which seek:

1. **A print-out of** the General Ledger (**all transactions**) for the years 2010 to 2015, without detailed/supporting documentation;

2. & 3. **A list of all third-party contractors** that provided services to KEDCO for the years 2010 to 2015, identifying the name of the contractor, the nature of the service provided, and **payment amount**, without supporting documentation;

5. A **list of reimbursements** for business expenses claimed by KEDCO employees for the years 2010 to 2015, including dates and amounts, **without supporting documentation**. [Emphasis added by me].

[49] The appellant is now seeking access to all signed approvals for staff reimbursements and third-party vendor expenses and non-KEDCO credit card receipts (dated from 2010 to 2015) by way of its reconsideration request. I do not agree with the appellant that a fundamental defect in the adjudication process resulted from it being unaware of the existence of signed approvals for staff reimbursements and third-party vendor expenses and non-KEDCO credit card receipts (dated from 2010 to 2015) before the issuance of Order MO-3939. In this order, I am only considering whether Order MO-3939 should be reconsidered. As such, I am only considering the six-item request that I adjudicated upon in that order.

[50] I find that the types of records the appellant now seeks are new records that are

not within the scope of the six-item request that I adjudicated upon in Order MO-3939. The appellant submits that the signed approvals for staff reimbursements and third-party vendor expenses and non-KEDCO credit card receipts (dated from 2010 to 2015) it now seeks are records encompassed by the words "supporting documentation." However, the six-item request that I adjudicated upon in Order MO-3939 did not include a request for supporting documentation. In fact, it explicitly excluded supporting documentation, as evidenced by the words "without supporting documentation" in items 1, 2, 3, and 5 of the six item request. The remaining two items, items 9 and 12, seek reports and statements, which have been provided to the appellant.

[51] I find that the appellant's failure to provide representations on KEDCO's search for all signed approvals for staff reimbursements and third-party vendor expenses and non-KEDCO credit card receipts (dated from 2010 to 2015), as well as my not adjudicating upon the reasonableness of KEDCO's search for those types of records, does not amount to a breach of natural justice. As stated, these types of records - all signed approvals for staff reimbursements and third-party vendor expenses and non-KEDCO credit card receipts (dated from 2010 to 2015) - were not at issue in Order MO-3939.

[52] I find that the appellant is seeking to expand the scope of its access request and to rely on new evidence in support of this expanded scope. As set out above, by section 18.02 of the Code, the IPC will not reconsider a decision simply on the basis that new evidence is provided, whether or not that evidence was available at the time of the decision. While this new evidence may prompt the appellant to make a new access request to KEDCO for all signed approvals for staff reimbursements and third-party vendor expenses and non-KEDCO credit card receipts (dated from 2010 to 2015), it does not support a finding that there was a defect in the adjudication process at the IPC.

[53] Accordingly, I find that there was no fundamental defect in the adjudication process under section 18.01(a) of the *Code*.

2. Error or Omission in Order MO-3939

[54] The appellant also wants me to reconsider my decision in Order MO-3939 and order KEDCO to search for all signed approvals for staff reimbursements and third-party vendor expenses and non-KEDCO credit card receipts (dated from 2010 to 2015) on the basis of an error or omission in that order. The appellant argues that the order provision should not have been limited to expenses not submitted to the Finance Committee.

[55] In support of its position that the order should be so amended, the appellant relies on paragraphs 44 and 45 of Order MO-3939, which read:

[44] With respect to the non-credit card expenses, in Order MO-3727, one of the categories of records I reviewed was Reimbursement Records from 2010 to 2015 (Category 4), which KEDCO had estimated as containing 21,000 pages of records. KEDCO stated in its representations in support of Order MO-3727 that the Category 4 - Reimbursement Records contain employee names, receipts and other records of expenses incurred, in addition to records of reimbursement.

[45] I find that KEDCO has not conducted a reasonable search to try to identify or locate the reimbursement records that do not relate to the credit card expenses incurred by its staff on the corporate credit cards. Nor has KEDCO satisfied me that it has searched for records that would demonstrate approval of the credit card expenses on corporate credit cards. As well, KEDCO has not shown that it searched for records of approval of expenses listed in the General Ledger but not passed through the Finance Committee.

[56] As set out above, the appellant's request, as reviewed in Order MO-3939, consisted of six items. Only one item mentioned reimbursements, as follows:

5. A list of reimbursements for business expenses claimed by KEDCO employees for the years 2010 to 2015, including dates and amounts, without supporting documentation; [Emphasis added by me].

[57] In paragraph 45 of Order MO-3939, I found that KEDCO had not conducted a reasonable search for:

1. aits staff on the corporate credit cards,
2. records that would demonstrate approval of the credit card expenses on corporate credit cards, and
3. records of approval of expenses listed in the General Ledger but not passed through the Finance Committee.

[58] In order provision 1 of Order MO-3939, I ordered KEDCO to search for:

...records detailing approvals for reimbursements made to KEDCO staff and third party vendors for expenses not submitted to KEDCO's Finance Committee. This search is to include a search for any documents that contain approvals of expenses on KEDCO corporate credit cards... [Emphasis added by me].

[59] Therefore, in Order MO-3939, KEDCO was required to search for:

2. records containing approvals of credit card expenses, and

3. records detailing approval of expenses (listed in the General Ledger) not passed through the Finance Committee.

[60] However, I did not specifically order KEDCO to search for:

1. reimbursement records that do not relate to the credit card expenses incurred by its staff on the corporate credit cards.

[61] As stated above, the appellant claims that there was an error or omission in Order MO-3939, given that I failed to order KEDCO to search for all reimbursement records, including those submitted to KEDCO's Finance Committee.

[62] The appellant has already received records pertaining to staff reimbursements and third-party vendor expenses that was included in the General Ledger in two spreadsheets summarizing this information for the appellant. These spreadsheets consisted of 21 pages (for staff reimbursements) and 667 pages (for third-party vendor expenses). These expenses were recorded on the General Ledger and submitted to the Finance Committee for review.

[63] The appellant asks that Order MO-3939 be amended to expressly include a requirement that KEDCO search for records (dated from 2010 to 2015) of all signed approvals for staff reimbursements and third-party vendor expenses and non-KEDCO credit card receipts.

[64] In any event, after the issuance of Order MO-3939, when seeking clarification of this order, KEDCO advised that the category of records numbered as 3 above - records detailing approval of expenses listed in the General Ledger not passed through the Finance Committee - do not exist. It stated:

All expenses were recorded on the General Ledger. All staff reimbursements and all payments to third-party vendors were recorded on the General Ledger and submitted to the Finance Committee for review. Payments made on KEDCO corporate credit cards were also recorded on the General Ledger and submitted to the Finance Committee for review. The records for which the Order requires us to search, as we understand what is being asked of us, do not exist as there are no expenses that did not appear on the General Ledger. [Emphasis added by me].

[65] In response to Order MO-3727 (the first order), KEDCO provided the appellant with a copy of the General Ledger from 2010 to 2015 in its entirety and also created two spreadsheets listing only employee reimbursements and third-party vendor expenses from the General Ledger, in order to make this specific information more easily accessible to the appellant. These spreadsheets consisted of 21 pages (for staff reimbursements) and 667 pages (for third-party vendor expenses).

[66] I accept KEDCO's evidence that there are no list of expense reimbursement

records outside the General Ledger records. Therefore, the appellant, by receiving a copy of the General Ledger, has received the list of KEDCO's expense reimbursement records.

[67] As for the appellant's request for "signed approvals for staff reimbursements and third-party vendor expenses and non-KEDCO credit card receipts (dated from 2010 to 2015)," signed approvals and non-KEDCO credit card receipts were not within the scope of the appellant's six-item request and I did not order any searches for these records, as discussed above under "Fundamental Defect in the Adjudication Process." Therefore, I find that there was not an error or omission under section 18.01(c) of the *Code*.

[68] Even if there was an error or omission under section 18.01(c) of the Code with respect to Order MO-3939, in that order not specifically containing a provision ordering KEDCO to search for records submitted to the Finance Committee, there would be no useful purpose to allow the reconsideration request and to order a further search. This is because KEDCO, following the issuance of Order MO-3727, provided the appellant with the requested details of all of the expenses submitted to the Finance Committee in response to the six-item request at issue.

ORDER:

I deny the appellant's reconsideration request.

Original Signed by: _____
Diane Smith
Adjudicator

January 20, 2022