



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER M-334**

**Appeal M-9300564**

**The Corporation of the City of York**



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# ORDER

## NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The appellant submitted a nine-part request for his own personal information and other records from the Corporation of the City of York (the City), relating to specific job competitions held in 1989, 1991 and 1993. The appellant is a former employee of the City and occupied various senior positions within the Human Resource Department.

The City relies on the following exemption to deny access to the set of written test questions used for a job competition:

- examination questions - section 11(h)

Access was also denied to the appellant's interview results, selection criteria, candidate assessment forms and questions asked of external candidates for the three job competitions (parts 4(a), (c), (d), (e), 5(b), 6 and 7(b) of the request) on the basis that these records do not exist.

A notice of inquiry was sent to the appellant and the City. Representations were received from both parties.

## DISCUSSION:

### EXAMINATION QUESTIONS

Section 11(h) of the Act provides:

A head may refuse to disclose a record that contains,

questions that are to be used in an examination or test for an educational purpose;

In his representations, the appellant submits that the questions in the record were used in a competition for employment with the City and were not used for an educational purpose.

The City's representations contain no submissions or evidence regarding the discretionary exemption it has claimed under section 11(h) of the Act. No other discretionary exemptions have been claimed by the City to exempt the record from disclosure.

I have reviewed the information in the record and I find that no mandatory exemptions apply to the record. Since the City has failed to show how the discretionary exemption applies to the information in the record and I have found that no mandatory exemptions apply, the record should be disclosed to the appellant.

## REASONABLENESS OF SEARCH

Based upon his personal experience and knowledge of the City, the appellant maintains that more records exist.

In its representations, the City has included sworn affidavits from the City's Commissioner of Human Resource Services and the Director for Employee and Labour Relations. In his affidavit, the Commissioner of Human Resource Services for the City states that in response to mediation, he conducted a further search of all the files in his possession for records relating to the job competition for the position of Director of Employment Services and that no records were found. He further states that he does not use prepared questions when interviewing candidates for senior positions and that any notes made are destroyed after consultation with his panel members.

The second affidavit, by the Director of Employee and Labour Relations for the City, states that in response to information provided by the appellant, a further search for the records was conducted in the offices of the Commissioner of Human Resources, the Senior City Commissioner, the former Commissioner of Human Resources and the City Archives. The affidavit states that as a result of this search two records were located. These records are responsive to parts 5(b) and 6 of the request. The affidavit further states that a total of three searches were conducted and that no other additional records were found.

When a requester provides sufficient details about the records which he or she is seeking and the City indicates that additional records do not exist, it is my responsibility to ensure that the City has made a reasonable search to identify any records which are responsive to the request. While the Act does not require the City to prove with absolute certainty that the requested records do not exist, the search which the City undertakes must be conducted by knowledgeable staff in locations where the records in question might reasonably be located.

The City has also provided a copy of its record retention by-law which indicates that the minimum retention period for records similar to those at issue is one year. After expiration of this period and upon consultation with the City Archives, the records may be destroyed. The City did not indicate in its decision letter nor in its representations that any of the requested records had been destroyed.

Section 5 of R.R.O. 1990, Reg. 823 made under the Act does require institutions to retain personal information used by it for the shorter of one year or the period set out in its record retention by-law or resolution. I note that the request dated October 15, 1993 includes access to personal information records relating to a job competition held in January, 1993 which the City maintains do not exist.

I have carefully reviewed the representations of the parties and the affidavits provided by the City. The City has conducted three searches for responsive records including the locations identified by the appellant. In the circumstances of this appeal, I am prepared to accept that the City has conducted a reasonable search for records responsive to the request.

The City has claimed no discretionary exemptions in respect of the two records it located as a result of its further search. I have reviewed the records consisting of a one-page job specification for the position of

Co-ordinator, Employment Services and one page listing the questions asked of candidates for the position of Director, Employee Relations. In my view, no mandatory exemptions apply to these two records and accordingly, they should be disclosed to the appellant.

**ORDER:**

1. I uphold the decision of the City regarding the existence of additional records.
2. I order the City to disclose the written test questions, responsive to part 4(b) of the request, to the appellant within fifteen (15) days after the date of this order.
3. I order the City to disclose the additional two records responsive to parts 5(b) and 6 of the request, to the appellant within fifteen (15) days after the date of this order.
4. In order to verify compliance with the provisions of this order, I reserve the right to require the City to provide me with a copy of the records which are disclosed to the appellant pursuant to Provisions 2 and 3.

**POSTSCRIPT:**

In this order, I have concluded that the search conducted by the City was reasonable in the circumstances of this appeal. In the course of issuing this order, I have learned that the City may have failed to retain a number of records which contain personal information for the minimum one year period specified in section 5 of R.R.O. 1990, Reg. 823 made under the Act. In my view, it is important that the personal information provided by candidates (both internal and external candidates) in the course of their job applications and interviews is collected, used, disclosed and retained in accordance with the privacy provisions of the Act.

With this objective in mind, I have requested that an official from the Compliance Branch of the Commissioner's office meet with an official of the City and the City's Freedom of Information and Privacy Co-ordinator to review the privacy protection framework contained in the Act.

Original signed by: \_\_\_\_\_  
Mumtaz Jiwan  
Inquiry Officer

\_\_\_\_\_ June 16, 1994