



**Information and Privacy
Commissioner/Ontario**
**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER P-1226

Appeal P-9600175

Ministry of Municipal Affairs and Housing



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NATURE OF THE APPEAL:

The appellant submitted a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of Municipal Affairs and Housing (the Ministry) for access to “all evaluation documents” pertaining to two tender requests by the Ministry (PQT 9/95 and PQT 7/95).

The Ministry responded to the request by providing the appellant with a two-page “Tender Evaluation” table and the three pages of handwritten evaluation scores for Tender PQT 7/95. The Ministry granted partial access to these records. Certain portions were withheld on the basis of the exemptions contained in sections 17(1) (third party information) and 21 (personal information) of the Act. In addition, the Ministry advised the appellant that no such records exist with respect to Tender PQT 7/95. The appellant appealed this decision claiming that further responsive records should exist; specifically, all “forms, prices and vendors’ names submitted pertaining to” Tenders PQT 7/95 and PQT 9/95.

During mediation, the appellant clarified that the records identified by the Ministry as responsive to the request and the Ministry’s decision that no similar records exist with regard to Tender PQT 7/95 were not at issue in this appeal, but that the tender documents submitted by the other bidders (i.e. forms, prices and vendors’ names) under both tenders are responsive to his original request. However, the Ministry maintained that it had initially provided the appellant with all of the information which was responsive to his request and was of the view that, if the appellant wished to obtain access to any of the additional records he had identified in his appeal, he should submit a new request under the Act. The appellant maintained that the additional records were responsive to his original request. Therefore, the sole issue to be decided in this appeal is whether the appellant and the Ministry fulfilled their respective obligations under sections 24(1) and (2) of the Act.

A Notice of Inquiry was provided to the Ministry and the appellant. Representations were received from both parties.

DISCUSSION:

OBLIGATIONS OF THE MINISTRY AND THE APPELLANT

Both a requester and an institution have certain obligations with respect to access requests under the Act. With respect to general access requests, such as the one at issue, section 24 of the Act states, in part:

- (1) A person seeking access to a record shall make a request therefor in writing to the institution that the person believes has custody or control of the record and shall provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record.
- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer

assistance in reformulating the request so as to comply with subsection (1).

...

The Ministry submits that the request was sufficiently detailed because of the way in which the subject matter was specified by the appellant (i.e. evaluation documents) and, therefore, the Ministry chose to respond to the request in its literal form. Accordingly, the Ministry submits that there was no need to seek clarification as the request sufficiently described the records being sought and enabled an experienced employee of the Ministry to correctly identify the responsive records.

The Ministry submits that the records identified by the appellant in his appeal are beyond the scope of the original request. It states that the appellant failed to fulfill his obligations under section 24(1) in that he did not provide the Ministry with sufficient detail regarding his request to enable the Ministry to identify records in addition to those which it disclosed to him. Conversely, the Ministry maintains that it has fulfilled its obligations under section 24(2) to clarify the request with the appellant, as at no time did he indicate he wished to broaden the scope of the request.

The appellant, on the other hand, submits that his request clearly indicated "all evaluation documents" relating to the two tenders and, therefore, includes as follows:

- (a) All forms, prices and vendors' names submitted pertaining to Tender PQT 7/95
- (b) All forms, prices and vendors' names submitted pertaining to Tender PQT 9/95

As the wording of the request is germane to my determination of the issues under section 24, I will reproduce it here:

I would request you kindly arrange to provide us with copies of all evaluation documents pertaining to the above tenders ...

The Ministry's position is that this information defined the scope of the request and did not include the actual tender documents. I have reviewed the records identified by the Ministry and one record is entitled "Tender Evaluation" and the other lists the scores awarded by each of the Ministry's evaluators to each of the tenders submitted.

It appears that both parties believe they fulfilled their obligations under the Act. The appellant believes that his request was sufficiently clear to enable the Ministry to identify the responsive records and that the additional documents are responsive to his request. The Ministry believes that it was under no obligation to assist the appellant in clarifying the request as it sufficiently described the records sought.

Based on the information before me, I conclude that the Ministry satisfied its obligations under section 24(2) of the Act. The appellant's request did not indicate that he was seeking access to the actual tender documents. In these circumstances, I find that the Ministry's interpretation of the request was reasonable and it was under no obligation to seek clarification of the request from the appellant.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ July 16, 1996