



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1618

Appeal MA-020147-2

The Corporation of the City of London



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NATURE OF THE APPEAL:

The Corporation of the City of London (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act) for access to the following:

1. Any documents, including emails, to or from the former City Manager [a named individual] in June, July, August or September of 2001, that make reference to how managers would be compensated during the strike by outside workers, including, but not limited, to issues about overtime, vacation pay, vacation in lieu of pay and acting pay.
2. Any documents, including emails, to or from or within the Human Resources Department in June, July, August or September of 2001 that make reference to how managers would be compensated during the strike by outside workers, including, but not limited, to issues about overtime, vacation pay, vacation in lieu of pay and acting pay.
3. Any documents, including emails, to or from or within the Legal Department in June, July, August or September of 2001 that make reference to how managers would be compensated during the strike by outside workers, including, but not limited, to issues about overtime, vacation pay, vacation in lieu of pay and acting pay.
4. Any documents, including emails, to or from [the Mayor] in June, July, August or September of 2001 that make reference to how managers would be compensated during the strike by outside workers, including, but not limited, to issues about overtime, vacation pay, vacation in lieu of pay and acting pay.
5. Any documents, including emails, to or from the Board of Control and to the city council in June, July, August or September of 2001 that make reference to how managers would be compensated during the strike by outside workers, including, but not limited, to issues about overtime, vacation pay, vacation in lieu of pay and acting pay.
6. An accounting of vacation time in lieu of overtime given to managers for work done both during the 2001 strike and the year overall and a statement as to whether this vacation time is included in the accounting of city's expenses and savings during the strike that was given to city council and the public in September, 2001.

The City located two records which it considered to be responsive to the request and provided access to both documents, in their entirety. The appellant appealed the City's decision on the basis that additional records responsive to the request ought to exist. Mediation of the appeal was not successful and the matter was moved to the adjudication stage of the appeal process.

I provided the City with a Notice of Inquiry setting out the facts and issues in this appeal. The City provided a response to the Notice, which was then shared with the appellant, along with a

copy of the Notice. The appellant made submissions that were also shared with the City, which then made additional representations by way of reply.

In my view, the City has taken the position that it has provided access to the only records which are responsive to the request. Accordingly, the only remaining issue is whether its search for records was reasonable.

DISCUSSION:

WAS THE CITY'S SEARCH FOR RESPONSIVE RECORDS REASONABLE?

The Representations of the Parties

The City indicates that upon receipt of the request, its Freedom of Information and Protection of Privacy Co-ordinator contacted the City's Manager of Human Resources, the Commissioner of Legal Services, the City Solicitor, the Mayor and the City Clerk requesting that they conduct a search of their record-holdings for records responsive to the request. The Mayor, the City Solicitor and the Commissioner of Legal Services indicated that they did not have "information that dealt with this request."

The City Clerk identified a report to the City's Board of Control "which provided the financial overview of the Local 107 strike." This is one of the records which was disclosed to the appellant. In addition, the Human Resources Manager provided the Co-ordinator with a copy of "the letter that was forwarded to all Management employees regarding compensation for Overtime and Time-in-lieu during CUPE Local 107 Work Stoppage." Again, this record was provided to the appellant.

The appellant takes the position that the records provided to him are not the only records available which fall within the parameters of his request. He notes that his request included records which provide an "accounting of vacation time in lieu of overtime given to managers" and that the records provided to him do not contain the detailed information he is seeking. The appellant also submits that:

. . . every manager who received overtime filled out weekly attendance sheets. That fact is documented in an audit later conducted by [a named accounting firm]. While the City provides a copy of a sample sheet, it failed to identify or provide actual records. The *Act* requires the City to identify such records.

In its reply submissions, the City responds by re-iterating the details of the searches which were conducted for responsive records. It also states that the "overtime sheets for the individual managers" referred to in the appellant's representations did not form part of his original request.

Findings

As originally framed, the request did not include a specific reference to the “overtime sheets” completed by individual managers during the course of the strike. However, the existence of these records would have only become known to the appellant following his receipt of the records which were disclosed to him by the City, including the “sample” weekly attendance sheet referred to in his representations.

In my view, Part 6 of the appellant’s request was intentionally worded very broadly to include records which related to “[A]n accounting of vacation time in lieu of overtime given to managers for work done both during the 2001 strike and the year overall”. The question to be answered is whether the additional records described as “overtime sheets” or “weekly attendance sheets” are reasonably related to the request as originally framed.

The issue of the responsiveness of records was addressed and analysed by former Inquiry Officer Anita Fineberg in Order P-880. That order dealt with a re-determination of the issue of responsiveness following the decision of the Divisional Court in *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197.

In that case, the Divisional Court characterized the issue of the responsiveness of a record to a request as one of relevance. In Order P-880, Inquiry Officer Fineberg noted the court’s guidance and commented as follows:

In my view, the need for an institution to determine which documents are relevant to a request is a fundamental first step in responding to the request. It is an integral part of any decision by a head. The request itself sets out the boundaries of relevancy and circumscribes the records which will ultimately be identified as responsive to the request. I am of the view that, in the context of freedom of information legislation, “relevancy” must mean “responsiveness”. That is, by asking whether information is “relevant” to a request, one is really asking whether it is “responsive” to a request. While it is admittedly difficult to provide a precise definition of “relevancy” or “responsiveness”, I believe that the term describes anything that is **reasonably related to the request** [emphasis added].

I agree with Inquiry Officer Fineberg’s approach and adopt it for the purposes of this appeal.

I find that the source information sought by the appellant, specifically the weekly attendance sheets submitted by each manager, are indeed responsive to the request as they form part of the records relating to “an accounting of vacation time in lieu of overtime given to managers” as described in the original request. As such, the City ought to have included these records within the scope of the searches which it undertook and provided the appellant with a decision letter regarding its position on access to them. In my view, these records are “reasonably related to the request” as originally framed and should be included as part of the responsive records.

ORDER:

I order the City to provide the appellant with a decision letter in accordance with section 19 of the *Act* with respect to access to those records described as “weekly attendance sheets” or “overtime sheets”, treating the date of this order as the date of the request and without recourse to a time extension under section 20 of the *Act*.

Original Signed By: _____ February 27, 2003
Donald Hale
Adjudicator