



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1620

Appeal MA-020246-1

Corporation of the City of Kingston



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NATURE OF THE APPEAL:

The Corporation of the City of Kingston (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act) for a copy of all information in the requester's employment file and any other file, and any communications between the City and a named company relating to the requester.

The City issued a decision letter advising that it was not proceeding with the request, on the basis that the records fall within the exclusion provided by section 52(3) of the Act.

The requester (now the appellant) appealed this decision.

During mediation, the appellant confirmed that he had received a number of employment-related records in response to an earlier related request and appeal (Appeal MA-000284-1), and that he was not interested in being provided with access to those records again in this appeal. Accordingly, the appellant provided the City with a revised request, as follows:

I request a copy of any other records with the City of Kingston related to my termination with the City, including but not limited to, the notes taken by [a named individual] at the meeting held on June 21, 2000 and any correspondence between [a named individual], (Public Utilities Manager), [a named company] of Kingston, [a named company] of Brampton, and/or [a named individual] Human Resource Manager, City of Kingston.

Upon receipt, the City undertook a new search, and issued a revised decision letter stating:

Apart from the records already disclosed to you under your previous ... request, please be advised that there are no other records in the City's custody and control responsive to this request. We have searched for [a named individual's] notebook from that time period and it cannot be located.

The appellant was not satisfied with the City's revised decision, so the appeal was transferred to the adjudication stage. I sent a Notice of Inquiry to the City, initially, setting out the facts and issues in the appeal. The City submitted representations, which were shared with appellant. The appellant also submitted representations, which I then shared with the City. The City responded with reply representations.

DISCUSSION:

The only issue in this appeal is whether the City has conducted an adequate search for all records responsive to the appellant's request.

In appeals involving a claim that further responsive records exist, as is the case in this appeal, the issue to be decided is whether the City has conducted a reasonable search for the records as required by section 17 of the Act. If I am satisfied that the search carried out was reasonable in the circumstances, the City's decision will be upheld. If I am not satisfied, further searches may be ordered.

Where a requester provides sufficient detail about the records that he is seeking and the City indicates that these records do not exist, it is my responsibility to ensure that the City has made a reasonable search to identify any responsive records. The *Act* does not require the City to prove with absolute certainty that records do not exist. However, in my view, in order to properly discharge its obligations under the *Act*, the City must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate all responsive records.

The City points out that the appellant has already received a number of records contained in his employment file in the context of his previous appeal. The City explains that, at that time, a search was conducted for a notebook used by the Public Utilities Manager (the Manager), but it could not be located. This notebook, and any of its contents relating to the appellant and covered by the time frame of his request, is the subject of the present appeal.

In its representations, the City states that the Manager was the appellant's supervisor in June 2000. She is no longer employed by the City. The City attaches a copy of an e-mail chain from the Manager describing the notebook and various searches undertaken to locate it. She states:

... The purpose of this book is to carry daily to meetings so I may write down action items that require my follow-up; I also record phone calls for the same purpose. In addition, I do bring forward list so that times I did not accomplish on one given day may be captures as activities for the following day.

This book is kept on my desk or taken with me in my brief case (or carried by hand) when I attend meetings. When a meeting is done, this book goes back to my office. I frequently do my bring forward lists at home in the evening.

In my attempts to locate this book, I have checked my filing cabinets and desk drawers in my office ... as well as at my home. I have been unable to locate it.

The Manager also explains that her interaction with the companies identified in the appellant's request "occurred solely over the telephone in a couple of conversations", implying that they were not recorded in her notebook.

The City also states that it contacted the City's Director of Human Resources and the President and CEO of Utilities Kingston and asked them to search for responsive records, which they did. However, the City was advised that "there are no other records responsive to the appellant's request and that the missing notebook cannot be located".

The appellant takes issue with the City's position. He points out:

... it seems very unusual that the only reference activity book missing is the one in question. They the City of Kingston seem to have the reference activity books from before June 2000 and from September 2000 on! Also, it seems very odd that the only e-mail correspondence took place in January of 2001 and at no other time.

The appellant also identifies certain other individuals from Utilities Kingston and the City's Human Resources Department that may have created responsive records and do not appear to have been contacted by the City.

In reply, the City includes an e-mail message from the President and CEO of Utilities Kingston, who explains:

At the point in time that this happened, all personnel files would have been kept with the City HR group. For these types of issues with employees I would not involve my Admin Assistant. It would have been the manager ... and a leader where applicable (there is/was no leader in this department). I would also look to the manager to take notes and forward these to HR where applicable. I generally would not take notes and keep them myself, or with the Admin Assistant, unless the person being dealt with was a direct report to me, which he was not.

As far as the individuals in the City's Human Resources Department are concerned, the City reiterates that it has provided the appellant with all records relating to his employment with the City, and points out:

If [the appellant] had unsuccessfully applied to other job competitions with the City prior to June 28, 2002 (the date of receipt of his request) then his resume may indeed be on file elsewhere. However in order to locate those records [the appellant] will need to provide clarification as to which job competition he applied.

Based on the representations provided by the City, I find that it has made reasonable efforts to locate all records responsive to the appellant's request. The City indicates that it is prepared to provide the appellant with all records relating to his employment with the City, and has conducted searches in locations that would typically house these types of records. It has also provided reasonable explanations as to why individuals identified by the appellant do not have responsive records in their custody.

As far as the Manager's notebook is concerned, the City and the Manager both appear to acknowledge that this record did exist, but that they have not been able to locate it. As noted earlier, the *Act* does not require the City to prove with absolute certainty that records do not exist. Rather, in order to properly discharge its obligations, the City must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate all responsive records. It would appear, based on the City's representations, that the Manager's notebook, which should exist, has either been misplaced or destroyed. Nevertheless, in the circumstances of this appeal, I find that the City's searches for this record are adequate, and that it has complied with its statutory responsibilities in this regard.

ORDER:

I dismiss the appeal.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

February 28, 2003 _____