



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

ORDER PO-2216

Appeal PA-010203-4

Ontario Human Rights Commission



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NATURE OF THE APPEAL:

The requester submitted a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ontario Human Rights Commission (the OHRC) for access to:

copies of all documents, notes memorandums, etc. which are or have been in possession of the Ontario Human Rights Commission in relation to the Equity 2000 plan and recommendations, of the Ontario College of Art, also known as the Ontario College of Art and Design from its outset to present

Because the OHRC exceeded the time limit for issuing a decision, the requester filed a “deemed refusal” appeal and this office opened Appeal Number PA-010203-1. During the course of that appeal, the OHRC issued a decision letter advising the requester that following a search of its record-holdings, no records responsive to the request were found.

The requester, now the appellant, appealed the OHRC’s decision on the basis that records ought to exist and this office opened Appeal Number PA-010203-2. Acting Adjudicator Susan Ostapec addressed the issues in that appeal in Order PO-1968 on November 15, 2001. In that decision, she ordered the OHRC to conduct additional searches and to provide the appellant with the details and the results of its searches by December 15, 2001. In the event that records were located as a result of the additional searches, the OHRC was ordered to issue a final decision on access to such records by December 15, 2001.

The OHRC provided the appellant with two letters dated December 18, 2001, the first pertaining to the nature and extent of the searches that were conducted and the second a decision letter with respect to those records that were located as a result of those searches. The OHRC advised the appellant that access would be granted to 78 pages of records upon payment of a fee of \$15.60 and that it was prepared to conduct additional searches for the minutes of Commission meetings from the period of 1988 to 1992 upon payment of a fee estimated at \$1,099.80.

The appellant appealed the OHRC’s decision with respect to that fee estimate and also took issue with the OHRC’s response to the order provisions in Order PO-1968. As a result, this office opened Appeal Number PA-010203-3. I adjudicated upon the issues raised in the appeal and issued Order PO-2067 on November 13, 2002.

In Order PO-2067, I ordered the OHRC to conduct additional searches for the minutes of Commission Meetings held between November 1989 and June 1990 and to issue a final decision on access in the event that additional responsive records were located. I upheld the OHRC’s searches for other responsive records but did not uphold its decision to charge the fees described above.

In response to Order PO-2067, the OHRC issued a decision letter advising the appellant that it had located Commission Meeting Minutes for March 19-20, 1990 and April 18-19, 1990. The OHRC granted partial access to these records. Portions of these records were not disclosed as the OHRC claimed them to be exempt under the invasion of privacy exemption in section 21(1) of the *Act*. The appellant was also advised that a thorough search of all available records relating to Commission Meeting and Panel Meeting Minutes for the years 1987 to 1997 was conducted but that Commission Meeting Minutes for the June 1990 Commission Meeting were not located.

The OHRC also informed the appellant that Commission Meeting Minutes for November and December 1989 and January, February and May 1990 did not reveal any reference whatsoever to the Ontario College of Art's application for a special program.

In addition, the OHRC granted partial access to certain other records identified in its December 18, 2001 decision letter. Again, certain information in these records was withheld pursuant to the invasion of privacy exemption in section 21(1).

The appellant appealed the OHRC's decision made in response to the order provisions in Order PO-2067 and this office opened Appeal Number PA-010203-4.

During the course of mediation and after obtaining the appellant's consent, the mediator provided the OHRC with a copy of the appeal letter filed with this office by the appellant. The appellant clarified that he takes issue with the OHRC's decision in response to Order PO-2067 as he is of the view that the OHRC did not address all the responsive records. The appellant takes issue with the fact that the OHRC's decision in response to Order PO-2067 made no mention of Commission Minutes resulting from meetings held during the months of November and December 1989 and January and February 1990; nor is there any discussion of searches conducted for such records. As well, the appellant submits that searches for May 1990 Commission Meeting Minutes were not addressed in the OHRC's decision and searches of the Chief Commissioner's minutes were not undertaken. Specifically, the appellant is of the view that additional records exist with respect to Commission Meeting Minutes for the months of November and December 1989, as well as January, February, May and June 1990.

The appellant also advised the mediator that he is seeking access to the names and titles of the members of the Commission included in the March and April 1990 Commission Meeting Minutes. The appellant would also like to have the full names and positions of any other persons involved as Members or Staff at the meeting of March 20, 1990. The details of this aspect of his appeal are contained in a letter dated July 18, 2003 from the appellant to the OHRC.

Finally, the appellant advised the mediator that he takes issue with the severances made to the March and April 1990 Commission Meeting Minutes but not to those made to the records disclosed pursuant to the December 18, 2001 decision letter.

As further mediation was not possible, the appeal was moved to the adjudication stage of the process. I decided to seek the representations of the OHRC initially. The OHRC submitted representations, which were shared with the appellant, along with a copy of the Notice of Inquiry. The appellant also made representations, which were then shared with the OHRC. The OHRC provided me with additional representations by way of reply.

During the Inquiry stage of the appeal process, the OHRC provided the appellant with the names of the Commission members and staff who participated in the Commission meetings of March 19-20, 1990 and April 18-19, 1990. This information is, therefore, no longer at issue in the appeal and I need not address the possible application of section 21(1) to it.

DISCUSSION:

REASONABLE SEARCH

General principles

The issue to be decided in this appeal is whether the OHRC has conducted a reasonable search for the records as required by section 24 of the *Act*. If I am satisfied that the search carried out was reasonable in the circumstances, the decision of the OHRC will be upheld. If I am not satisfied, further searches may be ordered.

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

Although the appellant is not in a position to indicate precisely which records have not been identified in the OHRC's response to his request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records exist.

The sole issue remaining in the present appeal is whether the OHRC has conducted a reasonable search for Commission Meeting Minutes for meetings held in November and December 1989 and January, February, May and June of 1990.

Representations of the parties

In its initial representations responding to the Notice of Inquiry, the OHRC indicates that pursuant to Order PO-2067, it conducted a search of its record-holdings for Commission Meeting Minutes covering the entire period from November 1989 to June 1990. It states that it located minutes for all meetings held in that time period with the exception of those meetings held in June 1990. It submits that the Minutes for meetings held in March and April 1990 referred to the Ontario College of Art's application for a special program and have now been disclosed to the appellant, with the appropriate severances of the personal information of other individuals. The OHRC states that the Minutes for November and December 1989 and January, February and May 1990 did not contain any information relating to the Ontario College of Art's application.

The OHRC submits that:

Paper copies of the Commission Meeting Minutes and of the Commission Panel Meetings Minutes from 1987 to 1997 are filed in a banker's storage box and are retained in the file room of the Institution's Office of the Registrar. These

documents were originally being held at the Records Centre and were recalled by the Institution to conduct the search. The box is labelled Commission Panel Meeting and Commission Meeting Minutes from 1987 to 1997 and it contains all of the known records for those dates. There are no other copies of these Commission Meeting Minutes.

In January 2003, prior to the Institution sending the decision letter [in this appeal], the Institution's Compliance Officer conducted a manual search of all of the records in the banker's storage box relating to the Commission Meeting Minutes and Commission Panel Meeting Minutes from 1987 to 1997 but was unable to locate the Commission Meeting Minutes for the June 1990 Commission meeting.

Much of the appellant's representations focus on the deficiencies in the searches undertaken by the OHRC in response to Order PO-1968. The appellant also raises a number of questions relating to the continuity of possession of the responsive records and their travels between the OHRC's offices and its Records Centre. The appellant also raises the possibility that the Office of the Chief Commissioner, as well as the OHRC's Registrar, may maintain copies of these records.

In its reply representations, the OHRC attempted to respond to the questions raised in the appellant's representations. Specifically, the OHRC indicates that the banker's box containing the Commission Meeting Minutes for the period 1987 to 1997 never left the office of the Registrar and were not, in fact, forwarded to its Records Centre. The OHRC also indicates that there are no other copies of Commission Meeting Minutes in the office of the Chief Commissioner or in the other boxes of records compiled for shipment to the Records Centre. The transfer lists setting out the contents of various boxes of documents sent to the Records Centre do not include any reference to Commission Meeting Minutes, according to the OHRC.

Findings

As my recitation of the background of this appeal indicates, it has produced a litany of misunderstandings, errors and misinformation. The appellant's request was clear and unequivocal in its intent. Unfortunately, the record-keeping practices formerly in place at the OHRC made responding to the request in a coherent fashion impossible.

The appellant and the OHRC have now responded in three different appeal processes to address the same issue: whether or not the OHRC's search for responsive records was reasonable.

Based on my review of the submissions of the OHRC, particularly those received in reply to the appellant's representations, I am satisfied that the OHRC has conducted reasonable searches for the Commission Meeting Minutes for the period November 1989 to June 1990. The OHRC was able to locate Minutes for all of the Commission Meetings held during this period, with the exception of those for June 1990. The Minutes containing references to the Ontario College of Art's application for a special program from March and April 1990 have now been disclosed to

the appellant, with appropriate severances of the personal information of other identifiable individuals. Only the June 1990 Minutes were not found as a result of these searches. I must reiterate that the OHRC is not required to prove with absolute certainty that the June 1990 Minutes do not exist. Rather, it must satisfy me that the searches that were conducted for this particular record were reasonable in their extent and scope.

In my view, the OHRC has, at last, made a reasonable effort to locate the responsive Commission Meeting Minutes and I will, accordingly, dismiss this appeal.

ORDER:

I dismiss the appeal.

Original Signed By: _____
Donald Hale
Adjudicator

December 15, 2003 _____