



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-2045**

**Appeal MA-050335-2**

**Toronto Community Housing Corporation**



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## **BACKGROUND:**

The following background information is included in this order to provide relevant context about a previous request submitted by the appellant to the Toronto Community Housing Corporation (TCHC), and several related appeals.

The previous request was dated January 5, 2005 and submitted to the TCHC, under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act), for access to the following:

Complete tenancy file, to include all police reports, all complaints made against our family and all complaint letters we made against other tenants.

The TCHC wrote to the appellant on February 7, 2005 indicating as follows:

I note in your letter that you are requesting a complete copy of your tenant file. I noted that you have previously requested copies of your tenant file from TCHC's predecessor Toronto Housing Company. According to my record, this request was appealed to the Information and Privacy Commission, and was completed in March 2002. Please let me know if you wish to revise your request to reflect your tenant file since March of 2002. I look forward to your reply, either in writing or by phone. [emphasis in the original]

On February 23, 2005, the appellant responded to the TCHC stating that she was still seeking access to her complete tenancy file, from October 31, 1987, to the date of the request. She also stated that she is "interested in receiving a complete copy of [her] tenancy file since March 2002 that should include all complaint letters, police reports, legal reports, letters from [her] son ... and copies of all letters written by [TCHC] staff and the staff of Samuel Property Management".

The TCHC did not issue a decision within the requisite time frame and the appellant filed a "deemed refusal" appeal with this Office. Appeal MA-040373-2 was opened to deal with that matter. The TCHC subsequently issued a decision letter, dated April 7, 2005. In light of this, the "deemed refusal" appeal was closed.

In its decision letter, the TCHC advised the appellant that partial access had been granted to the appellant's tenancy file which is contained in 2 separate consignments, named "Batch A" and "Batch B". The TCHC explained that Batch A refers to the records relevant to the previous FOI request and Batch B includes the records filed since the finalization of the previous FOI request. The TCHC also advised that severances pursuant to sections 7, 12, 14 and 38 have been applied in part or fully to the responsive records. The TCHC further advised that a fee of \$133.80 was requested for photocopying 518 pages from Batch A and 151 pages from Batch B.

The appellant appealed this decision and Appeal MA-040373-3 was opened. I was assigned as the mediator to this appeal.

During the mediation stage of Appeal MA-040373-3, at the suggestion of the TCHC, the appellant agreed to submit a new request to THCH for records from its Legal Unit. In the Mediator's Report that was issued to both the appellant and the THCH at the conclusion of mediation, I stated the following in this regard:

With respect to part of the request relating to the legal records, the THCH explained that records within its Legal Unit were not accessible at the time of the request but may be available now. **The TCHC suggested that the appellant file another request for records from the Legal Unit. The appellant submitted a new request, on August 8, 2005 and confirmed that this issue is no longer at appeal.** [emphasis added]

The remaining issues in Appeal MA-040373-3 were subsequently disposed of at adjudication by Order MO-2028, dated March 8, 2006.

## **NATURE OF THE CURRENT APPEAL:**

On August 8, 2005, the appellant made the following access request to the TCHC under the *Act*, which was set out on an access Request Form as follows:

Copies of everything in my Legal File including police reports, legal reports, complaint letters from tenants, photographs, medical reports, non-responsive reports, complaint letters from anyone.

In a supplementary letter to the THCH dated the same date, the appellant indicated that she was seeking access to the following:

Could you please provide me with copies of all complaint letters against me including the ones from [individual A - apt. #], [individual B - apt #]. Also I would like copies of the letters that [individual C and individual D] wrote to support my eviction in 2003. ... There is a letter from the [individual E - apt #] that I would like also.

...

I also want copies of letters with advice and comments made about me by Toronto Housing personnel.

...

As the TCHC did not issue a decision letter within the statutory 30 day period, the requester filed a deemed refusal appeal (MA-050335-1) which resulted in Order MO-1979. In this order, the TCHC was ordered to issue a decision letter to the appellant regarding access to the records

requested in both the Request Form and the letter as described above, in accordance with the *Act* and without recourse to a time extension, no later than October 20, 2005.

On December 20, 2005, the TCHC issued a decision to the appellant which advised her as follows:

I note in your letter that you are requesting a **complete copy of your tenant file** [emphasis added]. As has been noted previously, you have requested copies of your tenant file from TCHC's predecessor Toronto Housing Company, and more recently, there is an appeal for the same information with the Information and Privacy Commission. According to my records, your initial request was appealed to the Information and Privacy Commission, and was completed in March 2002.

With respect to your request for information regarding your tenant file, I am declining to initiate a new Freedom of Information request for this information. This information has been sent to you during the 2002 Freedom of Information Request, and when the appeal with the IPC is finalized from your last request.

Therefore, I am returning the \$5.00 you enclosed in your letter.

The appellant subsequently appealed this decision and Appeal MA-050335-2 was opened. As the mediator assigned to this appeal, I made numerous attempts to contact the TCHC for the purposes of mediation. The TCHC failed to respond to any of my voice mail messages or written correspondence.

Since this Office determined that the sole issue in this appeal is the adequacy of the TCHC's decision of December 20, 2005, a revised Confirmation of Appeal (COA) was issued to the parties which summarized the procedures for processing adequacy of decision appeals. The COA indicated that I would attempt to settle the appeal but if a settlement was not reached, I would issue a Notice of Inquiry and ask the parties to make written representations on the matter. Once representations were received, I would, in my capacity as acting-Adjudicator, make an order disposing of the issue raised by the appeal.

I once again attempted to contact the TCHC for the purpose of mediation, however, the TCHC did not return any of my telephone calls. As mediation was not possible, the matter was moved to the adjudication stage of the process. I sent a Notice of Inquiry to the TCHC and the appellant, asking for their written representations on the sole issue of whether the TCHC issued an adequate decision in response to the appellant's requests of August 8, 2005, as outlined above. No representations were received from the parties.

## **DISCUSSION:**

As outlined above, the sole issue in this appeal is whether the TCHC issued an adequate decision in response to the appellant's requests of August 8, 2005.

Section 22(1)(b) of the *Act* states:

Notice of refusal to give access to a record or a part thereof under section 19 shall set out,

- (b) where there is such a record,
  - (i) the specific provision of this Act under which access is refused,
  - (ii) the reason the provision applies to the record,
  - (iii) the name and position of the person responsible for making the decision, and
  - (iv) that the person who made the request may appeal to the Commissioner for a review of the decision.

In the Notice of Inquiry, I stated that the TCHC's decision of December 5, 2005 appears to be inadequate because it does not:

- address the records requested in the August 8, 2005, requests (Request Form and letter);
- indicate whether or not responsive records exist;
- indicate whether or not access to the requested records or parts thereof will be granted;
- set out the specific provision of the *Act* under which access is refused;
- set out the reason the provision applies to the record;
- indicate the name and position of the person responsible for making the decision; and
- indicate that the appellant may appeal to the Commissioner for a review of the decision.

As indicated above, the TCHC chose not to submit any representations in response to the Notice of Inquiry.

In my view, the TCHC's decision is inadequate as it was not issued in accordance with the requirements of section 22(1)(b) of the *Act*.

To begin with, the TCHC's decision letter does not address the records requested in either of the two August 8, 2005 requests. The TCHC's decision letter begins by noting that the appellant is

requesting a complete copy of her “tenant file”. However, neither the Request Form nor letter mentions the appellant’s “tenant file”.

The Request Form specifically asks for copies of records in the appellant’s “Legal File”, including “police reports, legal reports, complaint letters from tenants, photographs, medical reports, non-responsive reports, complaint letters from anyone”. Based on the history of this matter, it is clear that this request was submitted by the appellant as the result of the mediation which took place in Appeal MA-040373-3, at the suggestion of the TCHC. As noted above, the TCHC had, in fact, advised that records from its legal unit may not have been previously accessible at the time of the earlier request but may be available now. The TCHC’s decision letter of December 20, 2005, however, does not reflect this fact and makes no mention of these records.

The appellant’s letter, on the other hand, asks for copies of all complaint letters against the appellant, including those from specific individuals, as well as “copies of letters with advice and comments made about [the appellant] by Toronto Housing personnel”. Again, the TCHC’s decision letter of December 20, 2005 does not specifically refer to any of these requested records, but rather, as indicated above, refers generally to the appellant’s “tenant file”.

I recognize that it is likely that at least some of the records being sought in the appellant’s letter may have formed part of her earlier requests to TCHC. However, even if this is the case, it is not clear from the TCHC’s decision letter which records have been previously addressed and whether the TCHC’s decision with respect to access to such records remains the same. It is also not clear whether there are any other responsive records which were not captured by the appellant’s previous requests. If the TCHC wished to take the position that it had previously provided access to any of the records, and to inquire whether the appellant wanted them again, it should have contacted the requester for clarification as contemplated in section 17(2) of the *Act*.

In my view, in response to both of the appellant’s requests, as set out in the Request Form and letter, the TCHC should have identified all responsive records and issued a proper decision on access to all of them. Specifically, in accordance with section 22(1)(b) of the *Act*, the decision should have: indicated whether or not responsive records exist; indicated whether or not access to the requested records or parts thereof will be granted; set out the specific provision of the *Act* under which access is refused; set out the reason the provision applies to the record; indicated the name and position of the person responsible for making the decision; and indicated that the appellant may appeal to the Commissioner for a review of the decision. Accordingly, I find that the TCHC’s decision of December 20, 2005 in response to the appellant’s requests is inadequate and I will order it to issue a new decision letter.

Aside from my findings above, I would also like to point out that it is very unfortunate that the TCHC chose not to participate in this appeal, particularly in the mediation stage. I feel that if the TCHC had partaken in mediation, there would have been an opportunity to clarify and resolve the issues at appeal informally between the parties. I also find it very unfortunate that, as of today’s date, the appellant does not even have an adequate decision letter in response to her

request for the legal records, which were originally requested back in January 2005. This delay significantly exceeds the time for responding to a request as established in sections 19 and 21 of the *Act* and is unacceptable.

**ORDER:**

1. I order the TCHC to issue a new decision letter to the appellant regarding access to the records requested in the Request Form and letter of August 8, 2005 as set out above, in accordance with the requirements of the *Act*, and without recourse to a time extension, no later than **May 1, 2006**.

The new decision letter should:

- address the records requested in the August 8, 2005 Request Form and letter;
- indicate whether or not responsive records exist;
- indicate whether or not access to the requested records or parts thereof will be granted;
- set out the specific provision of the *Act* under which access is refused;
- set out the reason the provision applies to the record;
- indicate the name and position of the person responsible for making the decision; and
- indicate that the appellant may appeal to the Commissioner for a review of the decision.

I have attached a copy of the *IPC Practices # 1*, entitled *Drafting a Letter Refusing Access to a Record* to assist in this process.

2. In order to verify compliance with Provision 1 of this Order, I order the TCHC to provide me with a copy of the decision letter, by **May 1, 2006**. This should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 2 Bloor Street East, Suite 1400, Toronto, Ontario, M4W 1A8.

Original signed by: \_\_\_\_\_  
Suzanne Tardif  
Acting Adjudicator

\_\_\_\_\_ April 24, 2006