



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-2184**

**Appeal MA-050116-1**

**City of Mississauga**



Tribunal Services Department  
2 Bloor Street East  
Suite 1400  
Toronto, Ontario  
Canada M4W 1A8

Services de tribunal administratif  
2, rue Bloor Est  
Bureau 1400  
Toronto (Ontario)  
Canada M4W 1A8

Tel: 416-326-3333  
1-800-387-0073  
Fax/Téloc: 416-325-9188  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

The appeal relates to a request submitted to the City of Mississauga (the City) under the *Municipal Freedom of Information Act* (the Act) for the following information:

1. Any and all information used to calculate the 40 taxicab plates issued upon the passage of the new Public Vehicle Bylaw. Including, but not limited to, all the background numbers used in the formula to arrive at the issuance of 40 taxicab plates. Any documents or notes or e-mails with respect to any changes in being formula from previous years. I would also like to request a copy of the videotape of the meeting of the General Committee held on May 19, 2004.
2. All information regarding resolution 0132-2004 of the Council approved on May 26, 2004. Including any public discussion regarding the nine special accessible taxi cab plus licences from the time that they were being considered for issuance as Special Accessible Taxicab Class "A" (inception) to the date that they were transferred a regular taxicab owner's licences. Any documentation of any form of any meetings, conversations, with any Council member or staff of the City of Mississauga with the recipients of the nine taxicab owners' licences as per the above resolution, directly or indirectly. Any and all documentation of any contributions, promises made, or any form of benefit any Council member received from the recipients of the nine taxicab owner's licences. Including the minutes and the videotape of the May 26, 2004 meeting of the Council, in particular the portion dealing with passage of this resolution.
3. Any and all information regarding the calculation of fees to be paid by taxicab driver's licence holders upon renewal.
4. Any and all information regarding the calculation of fees to be paid by holders of AMTV driver's licence holders upon renewal.
5. Any and all information regarding of gifts or any other benefit received by the Licence Manager in 2004 from any member of the transportation industry directly or indirectly. This includes any Christmas gifts in any form received by the Licence Manager.
6. Any and all information regarding the calculation broker's licence renewal fees.
7. All information and financial documents generated by the Public Vehicle Licensing dept. and licensing in general.
  - most recent year
  - revenues (total) – how much is allocated towards licensing.
  - print out or summary

The City granted partial access to information responsive to the request and applied the exemptions found in sections 12 (solicitor-client privilege) and 14(1) (personal privacy) of the *Act* to deny access to the withheld information. The City also provided the requester with an Index that set out a general description of the records and the exemptions claimed for each of them.

With respect to part 2 of the request for "...documentation of any contributions, promises made, or any form of benefit any Council member received from the recipients of the nine taxicab owners' licences", the City stated in its Index that it cannot grant access to responsive information as it does not have custody or control of personal papers of Council Members. The City referred the requester to the Election Co-ordinator for information relating to campaign contributions to Members of Council and other candidates.

In its Index the City also informed the requester that there are no records responsive to part 5 of his request.

In addition, the City revealed in its Index that some responsive records are publicly available and set out the applicable photocopying fees to be paid in order to receive copies of them. As well, the requester was referred to the City's Enforcement Division for access to other publicly available documents.

The requester (now the appellant) appealed the City's decision.

During the mediation stage of the appeal process, the mediator and the City separately conducted a series of discussions with the appellant. In addition, on a number of occasions during this period the appellant viewed the City's record-holdings relating to the subject matter of his request and made arrangements to receive copies of additional records.

Also during mediation, the appellant confirmed that he was no longer pursuing access to the information denied under sections 12 and 14. Accordingly, this information and the application of these exemptions to this information are no longer at issue.

After a conference call involving the City, the appellant and the mediator, the appellant confirmed that he was narrowing the scope of his appeal to include only the following issues:

1. Whether the City has custody or control of certain records that are responsive to the portion of part 2 of the appellant's request regarding "...contributions, promises made, or any form of benefit any Council member received from the recipients of the nine taxicab owners' licences", in accordance with section 4(1) of the *Act*.

2. Whether the City conducted a reasonable search for records responsive to part 5 of the request, pursuant to section 17(1) of the *Act*.

I commenced my inquiry by issuing a Notice of Inquiry, setting out the facts and issues in the appeal, and seeking representations from the City with regard to the remaining issues. The City submitted representations in response and agreed to share them, in their entirety, with the appellant. The City also indicated in its representations that it had located four additional records in the Mayor's office, which are in the City's custody or control and are responsive to part 2 of the appellant's narrowed request. The City included copies of these records with its representations. The City then issued a new decision letter in which it provided the appellant with full access to these four records.

I then sought representations from the appellant and enclosed with a Notice of Inquiry a complete copy of the City's representations. The appellant chose to not submit representations.

## **DISCUSSION:**

### **CUSTODY OR CONTROL**

Section 4(1) reads, in part:

Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless . . .

Under section 4(1), the *Act* applies only to records that are in the custody or under the control of an institution.

The courts and this office have applied a broad and liberal approach to the custody or control question [*Ontario (Criminal Code Review Board) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 4072 *Canada Post Corp. v. Canada (Minister of Public Works)* (1995), 30 Admin. L.R. (2d) 242 (Fed. C.A.), Order MO-1251].

### **Parties' positions**

As set out above, the appellant questions whether the City has custody or control of records that are responsive to the portion of part 2 of the appellant's request regarding "...contributions, promises made, or any form of benefit any Council member received from the recipients of the nine taxicab owners' licences."

Since raising this issue the City has located four additional records responsive to this portion of part 2 of the appellant's request. The appellant has not, however, submitted any representations regarding the existence of further records that he believes are in the City's custody or control.

The City states that it has responded to this issue and has provided the appellant with the records it has in its custody or control. The City states the Mayor maintains some records that relate to her mayoral duties and that these records form part of the City's records for the purposes of the *Act*. The City states that the Mayor's files are organized by subject and that its Freedom of Information Co-ordinator (the Co-ordinator) searched the relevant subject file in the Mayor's Office under the heading "Taxicab Licensing" for the years 2004 and 2005 for records related to the exchange of Special Accessible Taxicab Licences which occurred at the Council meeting of May 26, 2004. The City states that four additional records were found and disclosed to the appellant.

The City also acknowledges that from time to time the Mayor's Office "may receive presentations or gifts on behalf of the City from visiting dignitaries and officials." As indicated above, the City states that the Co-ordinator spoke to the Mayor's Executive Assistant and inquired as to whether a "listing of such gifts" was maintained by the Mayor's Office. The City indicates that the Mayor's Executive Assistant confirmed that the Mayor's Office "does not maintain a list of such gifts."

With regard to any information related to the Mayor's "campaign filings and contributions", the City states that it "does not maintain or have access to the Mayor's campaign records, with the exception of the legislatively-mandated campaign filings already disclosed to the [appellant]." The City submits that any other campaign records would fall into the category of "personal or constituency records". The City states that these records are not maintained by or accessible to City staff and are "not integrated in any way with the Mayor's subject files." The City submits that such records "are therefore not in the custody or control of the City [...]."

With regard to the record-holdings of City Councillors, the City states that its Elected Officials' Records Policy "distinguishes between official civic records and records which are the personal property of the Members of Council." The City states that the only records belonging to City Councillors that fall into the civic records category are "administrative records regarding office space, staffing, operating procedures and reports for inclusion in committee meetings." The City submits that records contained in "constituency and subject files and their own records on any committee or board are the Councillors' personal papers."

With respect to information related to the Councillor's campaign filings and contributions, the City states that it "does not have access to these campaign records, with the exception of the legislatively-mandated campaign filings already disclosed to the [appellant]." The City submits that such records would fall into the category of "personal records or constituency records for campaign election purposes", and are not in the custody or control of the City.

Turning to my analysis, the City has provided detailed representations outlining its record keeping practices in regard to the information being sought by the appellant. In doing so, the City has specifically addressed the appellant's belief that the City has custody or control of additional records pertaining to the portion of part 2 of the request dealing with contributions, promises made, or benefits received by a Council Member from the recipients of nine taxicab owners' licences. The appellant has chosen to not respond to the City's representations on this issue. Accordingly, based on the evidence before me, I am satisfied that the City does not have custody or control of any additional records that are responsive to this portion of part 2 of the appellant's request.

### **SEARCH FOR RESPONSIVE RECORDS**

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17 [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624].

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

In this case, the appellant has questioned whether the City conducted a reasonable search for records responsive to part 5 of his request. However, the appellant does not provide representations on this issue.

The City has provided two affidavits outlining the steps that were taken to respond to the appellant's request, one from the Coordinator and another from the Manager of Mobile Licensing Enforcement. Both affidavits refer to the City's Corporate Policy 01-03-02, which it states "sets out requirements for employee conduct, conflict of interest and the acceptance of gifts." The City's position is that the affidavits confirm that the City "does not maintain, nor does it require employees to maintain, a record of any gifts received in accordance with the policy."

Turning to my analysis, the City has provided detailed representations outlining its efforts to locate records responsive to part 5 of the appellant's request. In order to warrant an order for further searches the appellant must provide a reasonable basis for concluding that additional records exist. In this case, the appellant has not provided me with any representations.

On the strength of the submissions received from the City, I am satisfied that the searches carried out by the City in response to part 5 of the appellant's request were reasonable.

**ORDER:**

1. I reject the appellant's contention that the City has custody and control of additional records responsive to part 2 of his request and I dismiss that aspect of the appeal.
2. I find that the City's search for records responsive to part 5 of the appellant's request was reasonable and I also dismiss that aspect of the appeal.

Original signed by: \_\_\_\_\_  
Bernard Morrow  
Adjudicator

\_\_\_\_\_ April 20, 2007