



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2275

Appeal MA-060119-4

City of Toronto



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NATURE OF THE APPEAL:

This is an appeal under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

On January 3, 2006, the appellant submitted a request to the City of Toronto (the City) for access to records related to the purchase and servicing of Toronto's street lights and expressway lights by Toronto Hydro Street Lighting Inc.

In response to the request the City issued three decision letters and eventually granted partial access to approximately 271 pages of records identified as responsive to the request. Various exemptions were relied upon to deny access to other records. The appeal of these decision letters resulted in the opening of Appeal MA-060119-1, and has subsequently evolved into a series of complicated appeals with this office which included Appeal MA-060119-2.

On November 13, 2007, Adjudicator Daphne Loukidelis issued an Interim Order, in letter form, in Appeal MA-060119-2 in which she ordered the City to do the following:

1. I order the City to issue a decision letter to the appellant regarding access to the approximately 12,100 pages of records contained in the five boxes recently submitted to this office, with the exception of those pages numbered L182, L187 – L191a, and L229 – L264, in accordance with the *Act* including a fee decision no later than Friday, December 7, 2007.
2. I order the City to prepare an Index of Records to accompany the decision letter sent to the appellant pursuant to Provision 1, above. Specifically, the Index of Records should clearly describe each record, state whether access to each record or portion of a record is granted or denied, and for each record or portion of a record to which access is denied, identify the exemption (including the applicable subsection(s) where an exemption has more than one subsection) that is claimed for that record or portion of a record.

The City issued a decision on December 7, 2007, along with a voluminous index of records, that stated the following:

Access is granted in full to a number of records as described in the enclosed index of records. Due to the limited time provided by the IPC's Order to produce this index, it is not up to our usual standard, and we apologize.

...

Fees under section 45 apply to your request as follows:

Cost of photocopying 900+ pages @ \$0.20 per page \$180.00

Total Cost \$180.00

Upon receipt of a cheque for \$180.00 payable to the City of Toronto, the records will be mailed to you.

On December 12, 2007, the City wrote to the appellant indicating that it had enclosed the records that were responsive to his request and for which access was to be granted pursuant to its letter of December 7, 2007 and index of records.

By letter dated January 9, 2008, the appellant filed an appeal with this office regarding the City's decision in response to the Interim Order on a number of grounds, including the City's alleged failure to disclose some of the records listed in the index of records. The appellant also submitted a list of the records that he claims the City failed to disclose.

Appeal MA-060119-3 was opened to address most of the appeal issues, but Appeal MA-060119-4 was opened to deal with the failure to disclose issue and an Intake Analyst was assigned.

On January 25, 2008, this office sent a Notice of Inquiry to both the appellant and the City regarding the appellant's claim that the City had failed to disclose requested records even though it issued a decision indicating it would do so. The Notice of Inquiry also stated that if a settlement in this matter was not reached by February 8, 2008, this office would be in a position to issue an order requiring the City to disclose the records to the appellant.

On February 4, 2008, the Intake Analyst was informed by the City that the appellant's list of undisclosed records had been provided to the individual who prepared the index of records. The City advised that it was working to identify the missing records, but that this task was complicated by the deficiencies of the index of records.

In a letter dated February 7, 2008, the City advised the appellant of the following:

I am writing further to your January 30, 2008 letter to the Information and Privacy Commissioner asserting that you have not been provided with records that have already been paid for pursuant to our December 7, 2007 letter granting access to 900 + pages of records.

Upon further review, it has been determined that you were provided with access to 1,158 pages of records, while only being charged for 900 pages. In the interest of expediency, a decision was made to only charge for an approximate number of records, as it was not possible at the time to accurately determine the number of pages disclosed.

With regard to the list of records you have provided to the IPC that you claim you are entitled to, which contain entries such as "unnumbered records, rows 9-11..." the index of records did not contain a number for the records because it was not possible to determine which record the entry referred to. As explained to you in

our letter responding to your December 6, 2007 letter, “due to the limited time provided by the IPC’s Order to produce this index it is not up to our usual standard”. Given the fact that this office received a very large volume of records very late in the appeal process, we endeavoured to do everything possible to avoid further delay to your appeal. Thus, our priority was to provide categories of records to enable an informed decision.

All remaining records are subject to your appeal (06-0082 / MA-060119-3) currently before the IPC.

DISCUSSION:

HAS THE CITY COMPLIED WITH ITS OBLIGATIONS TO DISCLOSE THE REQUESTED RECORDS?

When an institution makes a decision to disclose records, or parts of records, in response to a request under the *Act*, section 19 sets out the time frames within which this disclosure is to take place. This section reads:

Where a person requests access to a record, the head of the institution to which the request is made or if a request is forwarded or transferred under section 18, the head of the institution to which it is forwarded or transferred, shall, subject to sections 20, 21 and 45, within thirty days after the request is received,

- (a) give written notice to the person who made the request as to whether or not access to the record or a part of it will be given; and
- (b) if access is to be given, give the person who made the request access to the record or part, and if necessary for the purpose cause the record to be produced.

In my view, section 19 of the *Act* requires the City to issue a decision and to disclose those records for which access is to be given within 30 days of receipt of the request. However, where an access fee is requested, the “30 day clock” stops pending payment and begins to run again upon receipt of payment (see Order 81).

The City was ordered to issue an access decision to the appellant by December 7, 2007. The City did issue an access decision, an index of records indicating whether access would be given and indicated the fee required to be paid, on December 7, 2007. The appellant paid the required fee pursuant to section 45 of the *Act* and some records were provided to him by the City in a letter dated December 12, 2007.

The appellant has identified a lengthy list of records that the City identified in the index of records that were to be disclosed to him, but were not disclosed. The list prepared by the appellant was provided to the City. On February 7, 2008, the City wrote to the appellant in response to his claim that it had failed to disclose the requested records. In the letter, the City simply reiterates the explanation initially offered in its December 7, 2007 decision letter, which is that the deficiencies in the index of records were caused by the requirement to prepare it in a short period of time. To date the City has not disclosed the missing records to the appellant nor has it provided any indication of when it intends to do so.

I find that the City did not comply with its obligations under section 19(b) of the *Act* to disclose all of the responsive records referred to in its December 7, 2007 decision letter and index of records within the time frame required by both sections 19 and 45 of the *Act*. Consequently, I will order the City to disclose to the appellant all remaining records that were to have been disclosed pursuant to the City's December 7, 2007 decision and index of records.

ORDER:

1. I order the City to disclose to the appellant all remaining records that were to have been disclosed pursuant to the City's December 7, 2007 decision and index of records, which the appellant has identified as missing, and without any additional fees, no later than **February 22, 2008**.
2. In order to verify compliance with Provision 1, I order the City to provide me with a copy of the cover letter sent to the appellant with the disclosed records pursuant to Provision 1, no later than **February 22, 2008**.

Original signed by: _____
Robert Binstock
Registrar

February 14, 2008
