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

ORDER MO-2480

Appeal MA09-185

The Corporation of the City of London

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NATURE OF THE APPEAL:

The Corporation of the City of London (the City) received a request dated April 15, 2009 for continuing access under section 17(3), of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to all agendas, minutes, handouts and any other documents (electronic or paper) handed out at meetings of an identified initiative/identified community working group until the dissolution of both the identified initiative and the identified community working group.

The City identified records that related to the next meeting of the identified community working group held on May 13, 2009 and granted complete access to them.

The requester (now the appellant) appealed the City's decision. He takes the position that he did not receive the "complete and final version of all documents requested" relating to the meeting on May 13, 2009 and challenged the adequacy of the City's search for responsive records. In particular, he asserts that there is another version of an agenda for the meeting on May 13, 2009 that reflects the addition of an agenda item of interest to the appellant.

At mediation, the City provided the Mediator with a sworn statement deposing that there was only one version of the agenda for the community working group meeting on May 13, 2009 and no other versions exist. The appellant took issue with the adequacy of the sworn statement and maintained his position that the City did not conduct a reasonable search for responsive records. He also filed another access request with the City for all records, of any nature, regarding a vote that took place at the community working group meeting on May 13, 2009. Accordingly, this office opened a separate appeal file, number MA09-257, relating to that new request. Ultimately, the appellant advised that a new appeal file should not have been opened and, in accordance with his request, correspondence relating to the new appeal was provided to the mediator in the appeal before me (MA09-185) and appeal file number MA09-257 was closed. The Mediator's Report identifies the reasonableness of the City's search for the agenda for the community working group meeting on May 13, 2009 as the sole issue to be determined in this appeal.

As mediation did not resolve the appeal before me, it was moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*.

I commenced my inquiry be sending a Notice of Inquiry setting out that facts and issues to the City, initially. In response, the City advised that it had nothing to add to the affidavit provided at mediation. I then sent a Notice of Inquiry to the appellant. The appellant provided representations in response.

I determined that the appellant's representations raised issues to which the City should be given an opportunity to reply. Accordingly, I sent a letter to the City inviting its submissions along with a copy of the complete representations of the appellant. The City provided reply representations.

DISCUSSION:

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 and 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 [Orders P-624 and PO-2559]. To be responsive, a record must be "reasonably related" to the request [Order PO-2554].

A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request [Orders M-909, PO-2469, PO-2592].

A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control [Order MO-2185].

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 [Order MO-2246].

Representations of the Appellant

The appellant takes the position that the City did not conduct a reasonable search for responsive records because he is convinced that a version of an agenda for the meeting on May 13, 2009 exists that is different than the one the City identified as a responsive record.

In his representations, he relies on a number of elements as the foundation for his belief that another version of the agenda exists, including:

- an email that he received from a lawyer hired by the City indicates that the City's General Manager, Community Services Department would place the item of interest to the appellant on the agenda for the community working group meeting on May 13, 2009;

- a letter from the General Manager, Community Services Department to a co-chair of the community working group holding the identified meeting, asking that the item of interest to the appellant be placed on the agenda for the community working group meeting on May 13, 2009;

- he was advised by representatives of the City that the item of interest to him was added to the agenda for the community working group meeting on May 13, 2009 and that a vote was taken on it;

- the manner in which the version of the agenda that he received was formatted.

The appellant further submits:

> … I have been told over and over that the item was left off the agenda sent to members and added at the last minute to an unknown number of people who showed up at the May 13th meeting. Even if this were to be the case, at least one of the co-chairs of the group would have had rough notes of the agenda with this item added in since they knew it was going to happen. They would have had to take notes before, during and after the vote for the official minutes as well. That rough agenda of the co-chair or the secretary of the May 13th meeting must still exist and it has to include the missing item of the agenda "added in". …
> **Any agenda which left off an item of this magnitude which was requested by the CAO of the City and a Senior Manager would be a very serious matter**.
> [Emphasis in original]

The appellant submits that while the item was added in and a vote taken, there should be a revised agenda, yet the City takes the position that none exists.

The Representations of the City

The City submits that it conducted a search with respect to records relating to the community working group meeting on May 13, 2009 and provided the appellant with all responsive records within its custody and control, including a copy of the meeting agenda.

The City explains that its Manager of Community Development in the Neighbourhood and Children's Services Division, who is a co-chair and secretary for the community working group, conducted two searches for a copy of the meeting agenda. Her affidavit describes in detail the extent of her search setting out that she conducted a search of electronic files; as well as hard copy files in various locations, including the offices of the City's Neighborhood and Children's Services Division, the meeting place of the working group, and her home office.

The City also points out that the community co-chair of the community working group provided a sworn statement during the mediation process confirming that the copy of the agenda provided in response to the original access request is the only version of the agenda and that no other versions exist.

The City submits that it conducted a reasonable search for responsive records and that there is no alternate version of the agenda sought by the appellant.

Analysis and Finding

The appellant's position is that based on his analysis, another version of the agenda for the community working group meeting on the identified date should exist.

When an appellant 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 and PO-1954-I].

The appellant alleges that the City did not conduct a reasonable search because he is certain that another version of the agenda exists and that this document is within the City's custody and control. As set out above, however, the *Act* does not require the institution to prove with absolute certainty that further records do not exist. In order to satisfy its obligations under the *Act*, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records within its custody and control [Orders P-624 and PO-2559]. In my opinion, the City's searches were extensive and wide-ranging. I find that, based on the multiple searches it conducted, the City has made a reasonable effort to locate records responsive to the request for the agenda for the community working group meeting on May 13, 2009.

In all the circumstances, I find that the City has provided sufficient evidence to establish that it has conducted a reasonable search for records responsive to the request for the agenda for the meeting on May 13, 2009.

ORDER:

I uphold the reasonableness of the City's search the agenda for the community working group meeting on May 13, 2009, and dismiss the appeal.

Original Signed By: November 27, 2009
Steven Faughnan
Adjudicator