

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

---

## ORDER MO-2829

Appeal MA12-202

City of Toronto

January 15, 2013

**Summary:** The city received a request for information relating to a cheque paid by the city to a specific law firm. The city granted the appellant with access to the records it decided were responsive to the request. The appellant sought access to further records. This order upholds the city's decision that it had provided the appellant with the records responsive to her request and does not require the city to create a record to respond to the request. The city's search for responsive records is also upheld as reasonable.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) definition of "record", 17(1).

### OVERVIEW:

[1] The City of Toronto (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA or the *Act*) for the following information:

... the financial banking information as it relates to all cheques made payable to [a named law firm] or any other financial transactions in association to the organization between the parties.

[2] The city issued a decision advising that while the *Act* does not apply to the requested records pursuant to section 52(3) of the *Act*, they were granting full access to them.

[3] The requester (now the appellant) appealed the city's decision to this office.

[4] During mediation, the city provided the mediator with a copy of four records which it argued were not responsive to the request. The appellant advised that she sought access to two of those records, namely the electronic journal entry relating to the cheque issued as a result of the appellant's grievance settlement and the Statement of Earnings, Benefits and Deductions, which the city had indicated were previously sent to the appellant.

[5] Also during the mediation process, the appellant took the position that additional records responsive to her request should exist. She advised that she is seeking access to all cheques made payable to the named law firm or any other information about financial transactions between the city and the law firm concerning all grievance settlements.

[6] In addition, the appellant indicated that she is also seeking the following:

... any documents whether proposals, legal contracts, minutes of meeting, bids, any written whether handwritten, typed, stating that the law firm had any dealings whatsoever with the City of Toronto, CUPE and other affiliates by third party prior to January 6th, 2005 as I retained the law firm and [name] to represent me in legal case against city which would constitute conflict of interest.

[7] The appellant also believes the following records should exist:

... the lawyer's (all) and Toronto ledgers, complete entries that include dates and times whether diarized appointments made for the lawyer complete dates and times with peoples full names.

[8] The city takes a position that the appellant submitted a request for her own personal information and that during mediation the appellant expanded her request beyond the scope of this original request. It is the city's position that it has responded fully to the appellant's request and that the appellant be required to submit a new request if she wishes to obtain any further records.

[9] The city also advised that "[t]he Pension, Payroll & Employee Benefits Division, who is responsible for this function (grievance settlements and payments), cannot produce a 'listing' of all cheques issued to that particular law firm. A record in that format does not exist."

[10] As a result, the scope of the request, the reasonableness of the city's search and whether the city is required to create a record to respond to the request are at issue in this appeal.

[11] The parties were unable to resolve the issues in dispute through the process of mediation. The file was transferred to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry. Representations were exchanged between the parties in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[12] During adjudication, the city disclosed the electronic journal entry relating to the cheque issued as a result of the appellant's grievance settlement and the Statement of Earnings, Benefits and Deductions to the appellant; therefore, these records are no longer at issue.

[13] In this order, I uphold the city's decision that the records sought by the appellant at mediation are not within the scope of her request. In addition, I do not require the city to create a record to respond to the appellant's request and I uphold the city's search for responsive records as reasonable.

## **ISSUES:**

- A. What is the scope of the request?
- B. Did the city conduct a reasonable search for records?
- C. Does the *Act* require the city to create a record to respond to the request?

## **DISCUSSION:**

### **A. What is the scope of the request?**

[14] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
  - (a) make a request in writing to the institution that the person believes has custody or control of the record;

- (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;

. . .

- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[15] The city states that:

During mediation the [appellant] expanded her original request and indicated she was now seeking access to the following records:

...any documents whether proposals, legal contracts, minutes of meeting, bids, any written whether handwritten, typed, stating that the law firm had any dealings whatsoever with the City of Toronto, CUPE and other affiliates by third party prior to January 6th, 2005 as I retained the law firm and [name] to represent me in legal case against city which would constitute conflict of interest.

And:

...the lawyer's (all) and Toronto ledgers, complete entries that include dates and times whether diarized appointments made for the lawyer complete dates and times with peoples full names.

It is the city's position that the above-noted records constitute an entirely new request. This cannot be considered a "clarification" of the original request. None of the records indicated above are "financial banking records" or records of a "financial transaction". This is an entirely new request for records not previously requested in any way. These records are not listed in any portion of the two letters sent by the [appellant] to the city.

[16] In response, the appellant submits that the mediator in her report fully set out the appellant's request.

### ***Analysis/Findings***

[17] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.<sup>1</sup>

[18] To be considered responsive to the request, records must "reasonably relate" to the request.<sup>2</sup>

[19] The appellant's request was for:

... the financial banking information as it relates to all cheques made payable to [a named law firm] or any other financial transactions in association to the organization between the parties.

[20] The parties referred to in the request include the appellant, the city and the named law firm.

[21] In response, in its decision letter, the city provided the appellant with full access to a memorandum from the city's Manager, Pension, Payroll and Benefits requisitioning a cheque to be issued to the law firm named in the request. The city also provided the appellant with access to the cheque requisition form for this cheque.

[22] One of the issues which I must decide in this appeal concerns the appellant's claim at mediation that further responsive records exist. According to the appellant, these documents include proposals, legal contracts, minutes of meeting, bids, information that the named law firm had any dealings with the city, CUPE and other affiliates and the lawyer's and Toronto ledgers.

[23] The appellant's request specifically identifies records related to any cheques issued to the named law firm concerning the legal case between the appellant and the city. I find that the records identified by the appellant at mediation do not reasonably relate to the appellant's request. In particular, these records identified at mediation are not reasonably related to any cheques issued by the city to the named law firm concerning the appellant's grievance settlement. The records sought by the appellant at mediation are properly the subject of a new request.

[24] Therefore, I find that the records identified by the appellant at mediation are not responsive to her request.

[25] I will now consider whether the city conducted a reasonable search for records responsive to the appellant's request.

---

<sup>1</sup> Orders P-134 and P-880.

<sup>2</sup> Orders P-880 and PO-2661.

**B. Did the city conduct a reasonable search for records?**

[26] 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.<sup>3</sup> 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.

[27] The city states that in response to the appellant's request, the Manager, Corporate Financial Reporting, Funds Management & Tax Compliance, Accounting Services Division, asked the management staff to search for responsive records. In response, the management staff advised that no vendor account existed for either the appellant or the named law firm. According to the city, this means that at no time was a payment made through Accounting Services to either of these parties that was documented in any of Accounting Services computer applications.

[28] The city also conducted a search of the Pension, Payroll & Employee Benefits Division. According to the city, the manager of that division determined that a responsive cheque requisition and payment had been processed to the named law firm related to the appellant's grievance settlement. These responsive records were disclosed to the appellant by the city.

[29] Concerning the city's search for records responsive to her request, the appellant states that the city did not provide information as to how long it took to search for the responsive records nor did it search tax or revenue documents.

***Analysis/Findings***

[30] 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.<sup>4</sup> To be responsive, a record must be "reasonably related" to the request.<sup>5</sup>

[31] 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.<sup>6</sup>

[32] 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.<sup>7</sup>

---

<sup>3</sup> Orders P-85, P-221 and PO-1954-I.

<sup>4</sup> Orders P-624 and PO-2559.

<sup>5</sup> Order PO-2554.

<sup>6</sup> Orders M-909, PO-2469, PO-2592.

[33] 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.<sup>8</sup>

[34] Based on my review of the parties' representations and the wording of the request, I find that the city has made a reasonable effort to identify and locate responsive records. Experienced employees knowledgeable in the subject matter of the request expended a reasonable effort to locate records which are reasonably related to this request.

[35] As the fee is not at issue in this appeal, the city was not required to indicate how long its searches took to perform.

[36] The records document a payment made to a named law firm which was related to the settlement of the appellant's claim against the city. From a reading of both the request and the appellant's representations, I can ascertain no reason why responsive records would be located in either the city's tax or revenue departments. The appellant has not provided a reasonable basis for concluding that additional responsive records exist in these or any other city departments.

[37] I find that the city's search for responsive records was reasonable. Accordingly, I uphold the city's search for records responsive to the appellant's request.

**C. Does the *Act* require the city to create a record to respond to the request?**

[38] The appellant is pursuing access to a listing of all cheques issued to the named law firm related to grievance settlements other than her own. The city takes the position that a record in that format does not exist. I will now determine whether the *Act* requires the city to create this record.

[39] Section 2 of the *Act* states:

"record" means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,

- (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and

---

<sup>7</sup> Order MO-2185.

<sup>8</sup> Order MO-2246.

(b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution;

[40] Section 1 of Regulation 823 under the *Act* states:

A record capable of being produced from machine readable records is not included in the definition of "record" for the purposes of the Act if the process of producing it would unreasonably interfere with the operations of an institution.

[41] The city states that the requested listing of cheques cannot be created from a machine readable record as this information does not reside in a machine readable record. It submits that:

Once Accounting Services receives a cheque requisition from the Pension, Payroll & Employee Benefits Division, some of that information is entered into the Cheque Register...

The payee of the cheque and the purpose for which the cheque was issued is specifically not entered for grievance settlements...

The handwritten cheque requisition ...is contained only in hard copy in the specific employee's payroll file. In order to "produce" a listing of all cheques issued to this particular law firm, a staff person would have to know exactly which employees had a grievance settlement and used that particular law firm to represent their interests. A "cheque list" simply does not exist in any format, electronic or otherwise, nor can one be created.

[42] The appellant did not provide representations in response as to whether the *Act* requires the city to create a listing of all cheques related to grievance settlements issued to the named law firm.

### ***Analysis/Findings***

[43] Based on my review of the city's representations, I find that it is not required to create a listing of all cheques issued by the city that are related to grievance settlements paid to the named law firm. Not only is this record not responsive to the appellant's request, this record is not capable of being produced from a machine readable record. The information requested is not contained in a machine readable record nor could it be produced from the machine readable record. Therefore, I find



that the city is not required to create a record listing all cheques related to grievance settlements issued to the named law firm.

**ORDER:**

I uphold the city's decision and dismiss the appeal.

Original signed by: \_\_\_\_\_  
Diane Smith  
Adjudicator

\_\_\_\_\_ January 15, 2013