

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3539

Appeal MA16-262-2

City of Toronto

December 14, 2017

Summary: The city received a request for the appellant's complete personal and health information from Streets-to-Home Centre, University Settlement Program and Fred Victor Centre located at specified addresses. The city conducted a search and disclosed all responsive records found to the appellant. The appellant claims that the city did not conduct a reasonable search. In this order, the adjudicator finds that the city conducted a reasonable search in response to the request.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 17.

BACKGROUND:

[1] The appellant made the following request to the City of Toronto (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

Request for disclosure of complete personal and health information at:

Streets to Homes Centre, at [specified address];

University Settlement Program with Out of Cold Program (OOC), at [specified address];

Fred Victor (Drop in Centre), at [specified addresses].

For the period from April 2015 to April 2016

[2] The city located responsive records and issued a decision indicating that access was granted in full.

[3] The requester (now the appellant) appealed the city's decision, taking the position that further responsive records should exist.

[4] During mediation, the appellant stated that the city's Shelter, Support & Housing Administration requested she sign a *Consent to Collect, Use and Disclose Personal Information*, which she signed on April 20, 2015. The appellant noted that the consent form was for the purpose of determining and verifying her eligibility for social housing. The appellant believes that as a result of signing this form, the city conducted an investigation into her eligibility and a file pertaining to this investigation should exist.

[5] The city indicated it had conducted several additional searches when this file was at the intake stage of our appeal process and was satisfied that it had conducted a reasonable search.

[6] As mediation did not resolve the dispute, this appeal was transferred to the adjudication stage, where an adjudicator conducts a written inquiry under the *Act*. Representations were sought from the parties and were shared in accordance with section 7 of IPC's *Code of Procedure* and Practice Direction 7.

[7] In this order, the adjudicator finds that the city's search was reasonable and dismisses the appeal.

DISCUSSION:

[8] As the appellant claims that additional records exist beyond those identified by the city, the sole issue for me to determine is whether the city conducted a reasonable search for records as required by section 17.¹ If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the city's search. If I am not satisfied, I may order further searches.

[9] The *Act* does not require the city to prove with absolute certainty that further records do not exist. However, the city must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.² To be responsive, a record must be "reasonably related" to the request.³ A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Order PO-2554.

request expends a reasonable effort to locate records which are reasonably related to the request.⁴ In Order M-909, Adjudicator Laurel Cropley made the following finding with respect to the obligation of an institution to conduct a reasonable search for records. She found that:

an institution has met its obligations under the *Act* by providing experienced employees who expend a reasonable effort to conduct the search, in areas where the responsive records are likely to be located. In the final analysis, the identification of responsive records must rely on the experience and judgment of the individual conducting the search.

[10] 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.⁵

[11] 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.⁶

[12] I adopt the approach taken in the above referenced orders.

[13] During mediation, the appellant stated that further records should exist concerning an investigation that was conducted by the city, as a result of the appellant signing a *Consent to Collect, Use and Disclose Personal Information* on April 20, 2015 (the Consent form).

Representations:

[14] In its representations, the city noted that it issued an access decision, granting access in full to the responsive records. It states that the appellant was advised that, under an operating agreement, the Shelter, Support and Housing Administration Division's (SSHA) Streets to Homes Program only has access to admission and discharge information for the purchase of service shelters, and no other documentation. The city noted that this would include Dixon Hall for the Out of the Cold program and Fred Victor for the shelter at a specified address. The city noted that it informed the appellant that she would have to request information directly from these shelters as they are not institutions covered by the *Act*.

[15] The city noted that during the intake of this appeal, the appellant referenced six records, which she had in her possession, that she believed were responsive to the request but were not provided by the city. The city noted that its SSHA staff conducted

⁴ Orders M-909, PO-2469 and PO-2592.

⁵ Order MO-2185.

⁶ Order MO-2246.

an additional search and located four of the six records. The city noted that of the six documents, the only missing records were:

1. the "Streets to Homes, Shelter, Support and Housing Administration" (SHARC) Consent form dated April 20, 2015 (the Consent form); and
2. SSHA Contract of Service dated September 2, 2015 addressed to the Requester from [the named], Program Supervisor, Streets to Homes Assessment & Referral Centre.

[16] The city noted that it conducted a third search at the Peter Street location and located item one listed above. The city confirmed that it should have a copy of the SSHA contract (item 2), however, it could not be located.

[17] The city states that after conducting three separate searches for records relating to this request, it has exhausted all avenues in its search for records. It notes that both the acting manager and supervisor of SSHA and the coordinator for programs, with a combined 40 years of experience, were involved in the searches.

[18] The city submits that initially the appellant sought personal and health records from various shelters across the City. This included records that she already had in her possession, including the purchase of service shelters not operated by the city. During mediation, the scope of the request was expanded to include a search for records regarding an investigation into her eligibility for social housing. The city believes the scope of the request surpassed the liberal and expansive interpretation of the original request, however, being sensitive to the appellant's housing issues, it conducted further searches for records on this newly expanded scope. The city notes that it did not locate any records with respect to an investigation regarding eligibility for housing and confirmed that the SSHA does not conduct such investigations.

[19] In her representations, the appellant refers to a situation that occurred with her housing situation after she was denied assistance in the Streets to Home Program. She notes that she was identified as a tenant at a specified address by a Toronto Property System report. In the course of the appellant's own investigation into this situation, she indicates that she signed the Consent form for the purpose of determining her eligibility for SHARC housing program. During the course of the appellant's dealing with SHARC, she was referred to a Community-Out-of-Cold program resulting in a Contract of Service dated September 2, 2015. The appellant notes that the Contract of Service was not located by the city.

[20] The appellant states that the city did not provide her with any written clarification of a reasonable search and argues that its focus was on eviction and arrears. She notes that the Consent form was signed on April 20, 2015 and remained in effect until February 2017, and was never updated in order to reflect its true purpose until 2017.

[21] The appellant notes that she has been legally disabled under CPP legislation since 1989. She states that all necessary personal health information was included in a Housing Connections application dated November 11, 2008 which went missing. Ever since this information went missing, the appellant notes that she has had to provide her medical records to various shelters since July 2014 as no one believes her disability.

Analysis

[22] As indicated, the issue in this appeal is whether the city has conducted a reasonable search for records responsive to the appellant's request.

[23] As set out above, in appeals involving a claim that further responsive records exist, the issue to be decided is whether the city conducted a reasonable search for records as required by section 17 the *Act*. As mentioned, if I am satisfied that the city's search for responsive records was reasonable in the circumstances, the city's search will be upheld. If I am not satisfied, I may order that further searches be conducted.

[24] In the circumstances of this appeal, after considering the representations of the parties, I find that the city has provided sufficient evidence to establish that a reasonable search was conducted for responsive records. I make this finding for a number of reasons.

[25] On my review of the appellant's representations and the mediator's report, it is clear that the appellant was of the view that certain documents exist which were not provided as a result of the city's initial search. The Consent form was one document that the appellant was aware existed but was not provided. As noted above, once the city was notified of this document, a further search was conducted and the Consent form was located but no other records were found. The appellant also advised of another document, the SSHA contract of service, and in its representations, the city acknowledges that it was unable to locate this document. The city takes the position that the SSHA Contract of Service is not at issue in this appeal, but notes, in any event, that the form could not be located. Since the city's subsequent search involved specifically looking for the document and it was unable to locate it, I find that ordering a further search would result in the same outcome. Therefore, the city has responded to the appellant's claim that specific documents exist as one was found in a subsequent search and the city indicated that the other document could not be located after its searches were concluded.

[26] As mentioned, the appellant was of the view that after she signed the Consent form an investigation into her housing situation would have commenced, resulting in further records which were not provided as a result of the city's search. However, in its representations, the city explained that even though the purpose on that form states, "the information will be used to determine housing eligibility for clients," the actual purpose of the form is to allow the client to give written permission to the Streets-to-Home staff to contact and gather information from client identified sources for the

purpose of obtaining information relating to the client's housing application or housing status. The city notes, however, that the Consent form does not indicate that a formal investigation will be conducted and asserts that the SSHA does not conduct such investigations.⁷ I accept the submissions of the city and find that as a result of signing the Consent form it is not an obvious assumption that further records should exist. Further, since no records relating to an investigation were found when the city was specifically looking for same, I find that it is unlikely the city would find any records relating to an investigation if it were ordered to conduct a further search.

[27] Finally, the city maintains that it conducted a reasonable search for responsive records. In fact, the city conducted a number of searches after its initial search. It conducted a further search after the appellant supplied more information (the six records she indicated should exist) which resulted in finding five more records. They also conducted a further search for records involving any potential investigation into the appellant's housing situation which found no records.

[28] I am satisfied that the city conducted a reasonable search for responsive records in this appeal. I accept the affidavit evidence provided by the city, that they have made reasonable efforts to identify and locate responsive records. I am satisfied that the search was conducted by experienced employees who expended a reasonable effort to locate records related to the request.

[29] Accordingly, I uphold the city's search for responsive records.

ORDER:

The appeal is dismissed.

Original Signed by: _____
Alec Fadel
Adjudicator

December 14, 2017 _____

⁷ The city notes that it is currently reviewing the Consent form with its Forms Management Program in order to address the purpose of this form and to correct and update the personal information collection statement, as a result of this appeal.