

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-3806

Appeal MA18-500

City of Toronto

July 16, 2019

**Summary:** The City of Toronto (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to communications the appellant had with an employment and social service worker. The city provided the appellant with access to portions of the responsive records. The appellant claimed that additional responsive records should exist. This order upholds the city's search for responsive records as reasonable and dismisses the appeal.

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

### OVERVIEW:

[1] The City of Toronto (the city) received a request for information under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records from a specific Employment and Social Services office. The request can be summarized as follows:

1. A copy of the documents the requester faxed to the city on April 6, 2018;
2. All records related to phone conversations between a named employee and the requester, including but not limited to the following topics:
  - The employee's requests, consents and/or promises and the reason that she did not fulfil her consents/promises; and

- The requester's requests, consents and promises and whether the requester fulfilled his consents/promises.

[2] After discussing the request with the requester, the city confirmed the requester was seeking records from April 1, 2018 to July 26, 2018 that related to the following:

1. Copies of a letter, property tax bill and lease the requester faxed to an Ontario Works Assistance caseworker regarding the rental of a unit at to a specific named individual (the Tenant); and
2. Records of telephone conversations between the requester and Ontario Works staff.

[3] The city located several responsive records and granted the requester partial access to them. It denied access to some of the information in the records pursuant to the mandatory exemption in section 14(1) (personal privacy) of the *Act*.

[4] The requester (now the appellant) appealed the city's decision. During mediation, the appellant told the mediator that he was appealing on the basis that additional records ought to exist. Specifically, he told the mediator he was seeking notes related to a discussion he had with the employee named in the request on a specific date as well as any communications between the employee and her supervisor.

[5] The appellant told the mediator that he had already received a complete copy of a record identified as "Notes History," which he said he obtained as part of a court proceeding. He also confirmed that he was not seeking access to the file number or information identifying others in the records. As such, the application of section 14(1) of the *Act* to the records is no longer an issue in this appeal.

[6] The mediator conveyed the appellant's concerns to the city regarding his belief that additional records should exist. The city confirmed its position that no additional records exist. No further mediation was possible and the file was transferred to the adjudication stage of the appeals process, where an adjudicator may conduct a written inquiry under the *Act*. The sole issue in this appeal is whether the city conducted a reasonable search for records responsive to the appellant's request.

[7] I commenced this inquiry by seeking representations from the city in response to the issues and questions set out in a Notice of Inquiry. I then provided a copy of the city's representations and a Notice of Inquiry to the appellant and sought his representations. The appellant did not provide any representations.

[8] In this order, I uphold the city's search as reasonable and I dismiss the appeal.

## **DISCUSSION:**

[9] 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>1</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.

[10] 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>2</sup> To be responsive, a record must be "reasonably related" to the request.<sup>3</sup>

[11] 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>4</sup>

[12] 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>5</sup>

[13] 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>6</sup>

[14] The city submits that it conducted a reasonable search. It also asserts that the appellant has not provided any basis to conclude that additional records exist that are responsive to his request.

[15] Specifically, the city says that upon receiving the request it conducted an initial search of its Social Assistance Management System (SAMS) computer database, which is used by all employment and social services staff to record notes relevant to cases. The city submits that its regular practice is to input case management notes directly into the database and that hand-written file notes are not kept.

[16] The city says it searched SAMS to determine whether the Tenant had a file on the database. The city also says it sent a request to the employment and social services office where the physical file was stored and responsive records were identified, including the property tax bill, a rental application/lease and a letter sent by the appellant to a city employee in regards to the Tenant.

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<sup>1</sup> Orders P-85, P-221 and PO-1954-I.

<sup>2</sup> Orders P-624 and PO-2559.

<sup>3</sup> Order PO-2554.

<sup>4</sup> Orders M-909, PO-2469 and PO-2592.

<sup>5</sup> Order MO-2185.

<sup>6</sup> Order MO-2246.

[17] The city says it located one entry in SAMS dated April 9, 2018 on the Tenant's file regarding interactions between the appellant and the employee named in his request. It says that an additional note indicates that another employee contacted the appellant on April 10, 2018 in regards to the Tenant.

[18] The city submits that it located an additional note from when the appellant contacted the second employee. The city says that there were no other responsive records. It also points out that it provided the appellant with the records related to his conversation with the second employee, even though it says they were not directly responsive to his request (which was for records related to his communications with the first employee).

[19] The city says it is not possible that additional records previously existed, but no longer exist. It submits that all case notes reside in SAMS and those notes are not deleted. It says that because the Tenant's file is still active, the retention period outlined in its Records Retention Schedule does not commence until the case file closed.

[20] In support of its representations, the city provided an affidavit from an Access and Privacy Officer. The Access and Privacy Officer attested that she conducted the search, as described in the city's representations, and confirms her belief that records referred to above are the only ones that exist relating to the appellant's request.

[21] She also specifies that, based on her knowledge as an Access and Privacy Officer, it is the practice of the city's employment and social services staff to input case management notes directly into computer databases and her belief is that that staff no longer keep hand-written file notes. She also says that it is her belief that SAMS notes are not deleted and that no further records exist.

[22] As noted above, the appellant was provided with a copy of the city's representations and a Notice of Inquiry and was asked to make representations. The appellant did not do so. This office followed up with the appellant to inquire whether he wished to submit representations but he did not respond. As a result, this inquiry proceeded on the basis of the city's representations alone.

### **Analysis and findings**

[23] As noted above, while 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 such records exist. Based on the representations of the city, and in the absence of representations from the appellant, I am not satisfied there is a reasonable basis to conclude that additional responsive records exist.

[24] The city explained the steps it took to locate responsive records in its representations and it provided an affidavit in support of those representations from the individual that conducted the search. Based on the information it has provided, and in

the absence of any evidence to the contrary, I am satisfied that the steps it took were reasonable and that the individual who conducted the search had the appropriate experience and was familiar with the city's record keeping practices. I accept that she identified the appropriate places to search for records and identified the responsive records.

[25] For these reasons, I find the city conducted a reasonable search for records in satisfaction of its obligations under the *Act*. I decline to order any additional searches and I dismiss the appeal.

**ORDER:**

I uphold the city's search as reasonable and I dismiss the appeal.

Original signed by \_\_\_\_\_  
Meganne Cameron  
Adjudicator

July 16, 2019 \_\_\_\_\_