

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-3943

Appeal MA19-00165

City of Kawartha Lakes

August 14, 2020

**Summary:** The City of Kawartha Lakes (the city) received a request for access to records related to donations to its fire department. The city conducted a search and located five responsive records that it disclosed to the appellant in part. The appellant appealed the city's decision based on his belief that additional records should exist. This order upholds the city's search for responsive records and dismisses the appeal.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 4(1) and 17.

### OVERVIEW:

[1] The City of Kawartha Lakes (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

Any record that confirms 3 donations of \$150.00 to the City of Kawartha Lakes Fire Department or Station 16 (Carden Fire Department) between the dates of October 25, 2018 to November 22, 2018.

- Records are limited to October 1, 2018 to Present

[2] The city located five responsive records and issued a decision granting partial access to those records. Two of the responsive records are emails that the city disclosed in full. The remaining three records are receipt stubs, from which the city withheld the names of the payors on the basis of the personal privacy exemptions at

section 14(1) and 38(b) of the Act.<sup>1</sup>

[3] The requester, now the appellant, appealed the city's decision to this office. The parties participated in mediation. During mediation, the appellant confirmed that he is not seeking access to any personal information that the city withheld from the receipt stubs, so that the personal privacy exemptions at section 14(1) and 38(b) are not an issue in this appeal.

[4] The appellant claimed, however, that the records disclosed by the city are incomplete and that additional receipts exist that the city has not disclosed. With no further mediation possible, the appeal moved to the adjudication stage of the appeal process, during which the parties participated in a written inquiry on the issue of the reasonableness of the city's search for responsive records.

[5] In this order, I find that the city's search was reasonable and dismiss the appeal.

## **DISCUSSION:**

[6] The only issue in this appeal is whether the city conducted a reasonable search for records that are responsive to the appellant's request.

[7] 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>2</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.

[8] 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 it has made a reasonable effort to identify and locate responsive records.<sup>3</sup> To be responsive, a record must be "reasonably related" to the request.<sup>4</sup>

[9] 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>5</sup>

[10] A further search will be ordered if the institution does not provide sufficient

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<sup>1</sup> The decision also included a fee estimate of \$11.20 for costs associated with the search.

<sup>2</sup> Orders P-85, P-221 and PO-1954-I.

<sup>3</sup> Orders P-624 and PO-2559.

<sup>4</sup> Order PO-2554.

<sup>5</sup> Orders M-909, PO-2649 and PO-2592.

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>6</sup>

### **Summary of the parties' representations**

[11] The appellant submits that two trees that he owns on a private road were damaged. The police laid charges against three individuals. He says that the Crown, without the appellant's knowledge, determined that an appropriate resolution would be to require the three individuals to participate in a diversion program.<sup>7</sup> The diversion program would see the individuals each make a \$150 charitable donation, totalling \$450, to an entity of their choice, plus restitution to the appellant. On completion of those conditions, the charges against them would be withdrawn. According to materials provided by the appellant, a third party, the John Howard Society (JHS), administered the diversion program.

[12] The three individuals made the \$450 in donations. However, although the donations were intended for the city's fire department, the payments were instead made to a local firefighters association, the Carden Firefighters Association (CFA). According to the appellant, in addition, the Crown withdrew the charges without restitution to the appellant having been made.

[13] The city submits that it had numerous dealings with the appellant in an effort to locate receipts before it received his written request for access to "any record" that would confirm the three donations. Once it received the written request, the city says that its treasurer forwarded the request to two staff members who previously dealt with the appellant in order to determine whether any additional records exist.

[14] The city says that it searched for records over five days in January and February of 2019, and that its search included inquiries of the clerk's office, the treasury department and the fire department.

[15] During the search, the city clerk also contacted the fire chief. It was then, the city says, that the fire chief informed the clerk that the \$450 in donations had not been paid to the fire department, but had instead been paid to the CFA. It was during its search, therefore, that this error associated with the diversion program was discovered, and which revealed that donations intended for the fire department were instead made to the CFA.

[16] Once this mistake was discovered, the CFA made a single payment of \$450 to the city. The city issued a receipt. The city says it then made additional disclosure to

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<sup>6</sup> Order MO-2185.

<sup>7</sup> A Direct Accountability Program that was in this case administered by the John Howard Society, an agency external to the city.

the appellant in the form of a copy of the cheque representing payment from the CFA to the city, together with a copy of the city-issued receipt for those funds.

[17] The city submits that because the appellant continued to insist that a second set of receipts exists but was being withheld from him, the city clerk's office confirmed with the fire department that no additional records exist. The city also says that the appellant contacted the deputy clerk to say that the records disclosed were insufficient because they were only receipt stubs and not copies of receipts. In response, the city says it asked the fire department to search again, and to ask the CFA if it might supply a new responsive record.

[18] The city says that it explained to the appellant in a supplementary decision that the stubs were "third party records" and "not records of the City of Kawartha Lakes." In any event, the city says it again contacted the CFA to ask about a second set of receipts. According to the city, the receipt book used by the CFA did not provide carbon copies, but was instead divided into two sections: receipt and stub. The city submits that the CFA clerical assistant who issued the receipts explained that she only issued one set, but she scanned a copy of the stubs to the city's fire chief. The city says that the CFA gave the receipts to the three individuals and provided the city with scanned copies of the stubs which have been provided to the appellant.

[19] The city submits that it told the appellant during mediation that the actual receipts had been provided to the individuals who made the payments (although the appellant believes that the receipts had been provided to the JHS, based on a letter from the JHS directing that the donations be made to the city's fire department).

[20] Finally, the city submits that it is outside the scope of the Act to require it to obtain records from third parties. The city says that it has no jurisdiction to obtain records created by the CFA (as opposed to the city's fire department) or that may currently be in the hands of an organization such as the JHS or the three private individuals who made the initial donations. The city says that it has responded to the request for "any records" confirming that three donations had been made and that, while the records may not have satisfied the appellant's perception of what the city has in its custody or control, the records it did locate are responsive to the request and that no other records exist.

[21] In his sur-reply representations, the appellant argues that the stubs disclosed to him are not evidence of payment to the CFA. He also submits that the additional records the city disclosed after the mistake was discovered and after the \$450 was remitted to the fire department are not evidence of a payment from the CFA because that payment was made by a personal cheque that did not identify or refer to the CFA but which bears the address of a city employee who the appellant argues was acting in a conflict of interest. He submits that there is no proof of any donations made during the period of time identified in his request, and that the only transaction that can be proved is the \$450 payment to the city that does not refer to the CFA.

[22] The appellant maintains that, according to the JHS, a second set of receipts exists. The appellant submits that the city should “obtain both copies of the receipts with proof of actual transaction of funds” and provide them to him. He submits that he was defrauded of his restitution when the charges were withdrawn before restitution was made. He submits that, if the receipts had not been issued by individuals in a conflict of interest he would not be forced to bear the cost and grief of a civil claim to seek restitution.

[23] The appellant’s representations focus on the errors associated with the payment of the donations, on the fact that the city and the fire department incorrectly referred to the donations as restitution, and on the fact that the restitution was apparently not made before charges against the three individuals were withdrawn. Although I reviewed the appellant’s representations and reply representations in their entirety, including his concerns about an alleged conflict of interest and about the correctness of the city’s initial decision, I have only considered those portions of the representations that are relevant to the issue of the reasonableness of the city’s search for records.

### **Analysis and findings**

[24] 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 such records exist.<sup>8</sup>

[25] In this case, the appellant believes that the JHS is in possession of additional receipts. His representations expressly state that the city should make “every effort” to obtain those receipts for him and that the records already disclosed to him do not prove what the appellant believes they should prove.

[26] However, the reasonableness of the city’s search is not determined based on the appellant’s belief that the city did not obtain records from a third party on the appellant’s behalf or on what the appellant wants to use the records to prove.

[27] With respect to the reasonableness of the city’s search, I find that the city has provided a reasonable explanation of the steps it took to locate responsive records for the period identified in the request. Considering the evidence before me, I am satisfied that the city’s search was carried out by employees who were knowledgeable in the subject matter of the request, including staff in the city clerk’s office, and the treasury and fire departments. I am not persuaded that any mistaken reference to the receipts as restitution detracted from the city’s search because the request was for “any records” that confirmed three donations during a specified time period, regardless of the reasons for those donations. I am satisfied that “any records” included receipt

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

stubs. Based on the city's representations, I am satisfied that the city's search was reasonable and that the city responded to the appellant's request in a way that satisfies its search obligations under section 17 of the *Act*.

[28] In conducting multiple searches and follow-up inquiries of individuals and departments that might have knowledge of the subject matter of the request, including the treasury and fire departments, I am satisfied that the city's efforts to locate responsive records were reasonable. Indeed, the city's search appears to have resulted in the discovery of the fact that the \$450 donation had been made to the CFA by mistake.

[29] I also find that the appellant has not provided a reasonable basis on which to conclude that additional records relating to the payments to the fire department may exist. On the contrary, as I have noted, the appellant's representations make clear that additional receipts may be in the possession of the JHS, an agency that is not part of the city. As I have already noted, the *Act* does not require the city to prove that additional records in its holdings do not exist. The city must simply provide sufficient evidence to establish that it has made a reasonable effort to identify and locate the records sought by the appellant (in this case, any records confirming three donations of \$150).<sup>9</sup> I am satisfied that the city has done so.

[30] I recognize that the appellant is frustrated with what he sees as the injustices associated with his not having received restitution before the criminal matter was closed, and I recognize that he has concerns that mistakes may have been made in the course of the administration of the diversion program. However, this office does not have the power to investigate those matters.

[31] For the reasons set out above, I find that the city's search for responsive records was reasonable and I dismiss this appeal.

**ORDER:**

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

Original signed by: \_\_\_\_\_  
Jessica Kowalski  
Adjudicator

\_\_\_\_\_ August 14, 2020

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<sup>9</sup> Orders P-624 and PO-2559.