June 22, 2005

Arguments

(I) First and foremost, our concern is that the city's process and conduct has led us to question whether:

- The city is acting in conformance with the spirit and intent of the legislation, and,
- Whether they have really made a bona fide effort to conduct a reasonable search

Here are the reasons that we are questioning the city's good faith and efforts in this process:

1) Under section 17(2) of the Act, by our reading, the institution with control of the record has an obligation to assist the applicant who does not provide adequate information in her/his request. *The institution's obligation is to actually help the applicant to reformulate the request,* so that the institution can in fact facilitate access to the information in question

While Ms Mason had many e-mail exchanges and conversations and even mediation meetings with city officials, and with the city manager of CAP, *on no occasion did any city official offer any assistance* to help her clarify or rephrase her request in an effort to ensure that there would be no undue delay.

2) In the letter dated April 28, 2005 from Corporate Access and Privacy denying request 04-2949, the city did not give us a clear or comprehensible explanation or description of their search. On the contrary they stated only :

"…No record exists in hard copy or electronic format that corresponds to your request…"

Based on this we were unable to learn anything at all about the city's search, exactly who it was what undertook the search, what records were considered during the search, and more generally whether there were reasonable grounds to appeal this refusal.

Our understanding of the law in this area is that the institution that is refusing an application has an obligation to ensure that they provide the applicant with enough information about the search that the applicant can make an informed assessment as to whether the search was reasonable.

Here, we refer to order #M-191: "Institutions are required to provide more than a bare statement that a record does not exist or could not be located to put the requestor in a reasonable position to decide whether to appeal the institution's decision or not.
Institutions are required to provide a full explanation to the requestor as to the nature of the search and to ensure the requestor that knowledgeable staff conducted the search.

3) In that same (April 28, 2005) letter the CAP office incorporated a quote taken from something called the "Annotation." The word Annotation was capitalized suggesting it was some sort of authoritative document and it was referred to as a publication of the "Access and Privacy Office of Management Board Secretariat.

We had a great deal of difficulty finding this annotation. The CAP office did not offer any citation for it and as lay people and non-FIPPA experts we were not all sure where to lay our hands on this annotation.

Once again the city gave us the bare bones, they made a couple of bald statements: that the records we are seeking do not exist and they referred us to a mystery annotation that suggested they had no obligations if no records exist and that seemed to be the end of the matter.

4) Looking back over this chronology there is very little to demonstrate any real spirit of co-operation or assistance.

Initial application made July 18/04
(After we received copy of internal city of To. e-mail directing city staff not to respond to any of our requests for information except through the formal city access application process)

- no response and we, being unfamiliar with the process, failed to appeal

Second application Nov 15/04

- January, 2005: The first response to the request is the answer that it will cost us about $13,000 to get an answer, and there were no suggestions forthcoming about how we might try to modify our request. No assistance was offered to refine or clarify the request.
- A mediator is appointed

Mar 08, 2005

- mediation by CC

Mar 10, 2005

- In the aftermath of this, Mason speaks to a municipal administrator and tries to refine request asking for code numbers of dufferin park and playground expenses. Again no assistance or guidance from CAP was forthcoming but an e-mail forwarding a complaint by another city official about Mason's request and Candy's question "are you changing your mind about what you want?"

Loss of the fee waiver application.

Jutta made a request on March 1st to CAP for a fee waiver. She advised John Candy of this on March 8th. The request is lost and Mr. Candy finally advises Jutta that no such request had ever been received. The request was received 6 weeks later on April 20.

April 28, 2005

- Jutta gets refusal on fee waiver
- She is told that no records exist
- She is told that there is no obligation on the part of the institution to create such a record

(II) We believe that the city did not conduct a reasonable search. It is our position that the city cannot have spent almost 5 million dollars, systematically repairing and replacing playground equipment, without both a work plan and financial accounting process in place. In our own correspondence and e-mails with the city over the last several years we have seen many references to a plan to undertake playground renewal and repair. We point out several references from Ms Mason's chronology:

City council approval of expenditures of 1.6 million to upgrade playgrounds in March 1999

We know that the city council received a report from its Economic Development committee asking for an additional monies to complete the plans for the repair and replacement of playground equipment by the end of 2003. The contact name on this report was Frank Kershaw, Director of Parks and Rec. Policy and Development.

We received an e-mail from M. Scheiner (dated October 21, 2003) again referring to the city's plans with respect to the repair of playground and the costs involved: " …the audits identified 50 locations that required replacement and a plan that will take 4 years to complete and require $5.6m. The plan has grown to $6.3 million due to inflation and the introduction of another CSA guideline."

We also refer to a letter addressed to "Play Toronto" from Brenda Libreczs, acting Manager of Parks and Rec." which refers to a program of playground and playspace repair and renewal(July 2004):

"Since 1999 the council has approved 5.9 million
Under the CSA playground program to replace and repair playground equipment:
1,048,410 has been spent on replacement of 49 structures
1,941,590 spent on replacements and additions

We ask why is it that city officials repeatedly refer to a plan or program to undertake and complete playground repair, however, their responses to our inquiries about the expenditures involved is to say there are no records. How can there be a plan, a huge expenditure of public monies and no records? It defies logic.

(III) Some additional points from our reading of several pertinent Orders under the IPC as well as a review of the Act:

1) We believe that the city must have some kind of record of how it has spent approximately 5 million dollars in its program of repairing and replacing city playgrounds. If in fact these records are not accessible because of poor record management we do not feel we should be denied access to this information.

Here, we refer you to Order P350:

"It is not acceptable for members of the public to be denied access to records that they would otherwise be entitled to receive solely because the institution record's management systems are inadequate."

2) We do not accept that if our request is not in the exact format of the records the city keeps they have no obligation to assist us. The annotation we were referred to in the April 28, 2005 denial letter appeared to suggest this. Our reading of the orders suggests other wise:

We refer here to Order MO-1726:

"The fact alone that the retrieval of information from "machine readable " records may require an institution to employ measures which are not part of its ordinary records retention and control procedures is not enough to exclude information from the Act. It is not difficult to imagine the potential breadth of such an exclusion from the Act andweam not convinced that such an interpretation is required.

3) Interim response – It appears that City/CAP made an interim response on Jan 5, 2005 and then subsequently came up with a separate and distinct reason to deny application in an April 28th letter. We do not see any provision in the Act enabling the city to make an interim response such as they did on January 5. Allowing the city to do so in order that they may prepare another response is to grant them a luxury which is very obviously not one that we enjoy, and certainly serves to exacerbate the apparent gross imbalance of power at play here.

(IV) Finally, we are concerned about remedies.

The absurd sequence of events outlined above shows at bare minimum that our efforts to gather information on playgrounds have been ongoing for years. We have trudged through this process by all means we could muster, through tenacity and by sheer will power in the face of precious little cooperation. We are obviously concerned, and with good reason, that the city has no real will to help us.

As a result, we are most concerned that unless there is a very clear message from the IPC to the CAP office, CAP will continue to play a shell game with us. This is entirely unfair. The city has all of the information and (comparatively) limitless resources at its fingertips, and we have only our energy and commitment as volunteers. We are looking for some help here today in leveling the playing field. We are seeking clear directions from you to the city to co-operate with us in a meaningful and substantial way. Without this sort of support from you, our efforts, and those of other citizens seeking information, can easily be flummoxed by a powerful institution without the will to co-operate.