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Toronto, Ontario
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June 15, 2005

Adjudicator
Information and Privacy Commission
2 Bloor Street East
Suite 1400
Toronto, Ontario
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RE: APPEAL MA-050045-1 - June 22, 2005

Below I have set out a brief history of information requests made by me or the Centre for Local Research into Public Space (CELOS) concerning playground repair and the City of Toronto's responses to these requests.

This information is provided in response to the Adjudicator's questions to me as to whether I provided sufficient identifying information to assist the City in its search. It is also provided to offer the Adjudicator details of which I am aware concerning records which have not been located, and other information I have which indicates to me that the search carried out by the City was not reasonable.

Please note that key documents or information from the City regarding playground repairs are set out in bold. Requests made by me or by the Centre for Local Research into Public Space are set out in bold and underlined below.

I hope that this will be helpful in response to the two questions to be addressed to me.

Yours truly,

Jutta Mason
Centre for Local Research into Public Space (CELOS)

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Chronology of requests for information and the City of Toronto's responses to these requests.

March 1998: *The Canadian Standards Association* [C.S.A.] published "Z6 14-98 Standard for Children's Playspaces and Equipment." Replacing their 1991 "Guidelines." The 1998 standard was harmonized with the *American Society for Testing and Materials Standard on Public Playspaces*. [C.S.A.: total membership: 1047. Canadian: 55%; foreign: 45%; Commercial members (manufacturers): 938; remaining 109 are government groups, trade associations, schools etc.] Up to now, these standards are not based in law. The C.S.A. made it clear that the new standards were not meant to be interpreted retroactively but only applied to new equipment as it is installed.

July 17, 1998: Mayor Mel Lastman moved at a meeting of the *Economic Development Culture and Tourism Committee* that the Commissioner would "**report on a phased replacement program for all City playgrounds** so that all playgrounds will eventually comply with the new C.S.A. standards..."

March 2,3,4 1999: **Council allocated \$60,000 for playground inspections and \$1.6 million for 1999 capital budget, to "upgrade playgrounds on a two playground per ward basis,"** starting with **replacements first** and then **following with repairs.**

January 4, 2000: **report to Council from EDCT committee, asking for \$4 million more to "bring into compliance all substandard City Playgrounds by the end of 2003," suggesting the need for haste.** Contact name on report: Frank Kershaw [*Director of Parks and Recreation Policy and Development*].

Spring 2000: **Dufferin Grove Park lost some playground equipment** which was not replaced; **alterations were made** that spoiled some existing playground equipment.

Summer 2003: C.S.A. again revised 1998 standards, partly because the 1998 standards contained errors in converting millimeters to inches and so some new equipment had to be removed again.

Summer-fall 2003: **I approached Parks and Recreation to find information about playground replacements/ repairs. I tried Parks and Recreation Technical Services manager Bob Crump, got no answer,** then I tried *Parks and Recreation* manager James Dann, who led me to *Technical Services* playground replacement crew supervisor Bill Gaudet, who directed me to *Policy and Development* planner Bob Duguid, who led me to *Policy and Development* Director Frank Kershaw, who referred me to Mike Schreiner (supervisor of *Landscape and Environment of the Policy and Development Capital Projects Section*).

E-mail, October 21 2003 from Mike Schreiner: "The audits identified 50 locations that required replacement and a plan that would take 4 years to complete and require \$5.6 Million dollars. The plan has grown to \$6.3 Million due to inflation and the introduction of yet another new 2002 [sic] C.S.A. Guideline and will be completed by the end of 2005.

To date we have completed 49 of the 50 identified replacements...We are approximately 80% completed in the "repairs only" category and this corresponds to the funding levels council has approved to date."

I had also asked Mike Schreiner whether there were one or two playground equipment companies that they used the most.:

He answered "I have been reviewing tender submissions since the beginning of the amalgamated city and I do not believe one or two companies have dominated the market place but rather six or seven firms all seems to have a good chance at submitting a successful bid."

March 2004: Maya Littman, of *Playground Lobby for Active Youth Toronto*, contacted me, to alert me to the selective removal of playground equipment and its replacement with equipment of lower value (or sometimes nothing at all), at her local park and at many other parks in Toronto. She explained the role of playground inspectors and the C.S.A.

May 9 and May 16, 2004: **I wrote to Frank Kershaw, asking for the City of Toronto playground inspection reports.**

No reply.

May 20 2004: *CELOS* (our park's small research group) filed an **access to information request with the City, asking for the playground inspection reports referred to in City Council minutes. Request #04-1319.**

May 31, 2004: Frank Kershaw sent me a copy of the 2000 Council minutes with the report asking for \$4 million. His personal note said: "as requested, enclosed herein are copies of reports regarding CSA Playground Upgrades as dealt with by Council."

June 7, 2004: **I e-mailed Mr.Kershaw saying it was the actual inspection reports I needed,** not just his report to Council, which I had seen already.

June 8, 2004: Mr.Kershaw referred me to the General Manager of Parks and Recreation because that's who the inspectors report to "as opposed to myself."

June 7, 2004: Maya Littman [*Playground Lobby for Active Youth*] forwarded me an e-mail from Deputy Mayor Joe Pantalone, in response to documentation she had sent him of the playground problems and a request for a moratorium, pending an investigation. From Mr.Pantalone: "Thank you for your e-mail regarding your concern about the City's Playgrounds. I am always happy to get feedback from constituents about issues that concern you. Sincerely, Joe." Ms.Littman informs us that there was no follow-up from the deputy mayor after this note.

June 15, 2004: **E-mail from John Searle, Senior Policy and Compliance Coordinator for Corporate Access and Privacy, sent to Julia Madden (assistant to P&R acting general manager) and forwarded to a number of people including P&R manager James Dann, and eventually to me: “Regarding our June 14, 2004 conversation about the request for City of Toronto documents by the ‘Friends of Dufferin Grove Park’ community group, all documents disclosed from the City of Toronto should be in response to an official access request by the group in question.”**

June 18, 2004: Request #04-1581 to C.A.P. City of Toronto: All contracts for new playground equipment from 1998 to 2004. Received July 20 on time. Results: list of playgrounds, company, date and individual prices. Total: \$1,048,410.96. It showed that almost 70% of the equipment was purchased from only two equipment companies, *Henderson* and *Belair*, both of whom have recently given generous financial support to the Canadian Parks and Recreation Association annual conference/trade show. [Note that Mike Schreiner, in charge of tenders for new equipment, had written on October 21 2003 that there were no companies that got the lion’s share of new equipment contracts.]

July 18, 2004: **Access Request #04-1587 to City of Toronto C.A.P., for information about all C.S.A.-related city park playground repairs over \$5000.**

Early July: Maya Littman and two members of her organization asked to meet with the Mayor about the playgrounds. They got a meeting with the mayor’s assistant Carmen Smith instead, and *Parks and Recreation* Acting General Manager Brenda Librecz and two *Policy and Development* staff.

July 22, 2004: **Brenda Librecz wrote to Maya Littman, in response to some written questions from *Playground Lobby for Active Youth*: “...Since 1999, Council has approved \$5,990,000 in funding under the CSA Playground Program to replace and repair playground and playspace equipment. \$1,048,410 has been spent on replacement of 49 structures and \$4,941,590 has been spent on additions or replacement of major equipment components like swings, slides, sand replacement labour and machinery.”**

October 18 2004. **I received a CD of all playground inspection reports.** (City of Toronto C.A.P. Access Request #04-1319, made on May 20 2004). **The reports gave a detailed list of all “non-compliant” structures, plus projected materials and labour costs per item to be removed or repaired, plus a 15% “contingency cost” for every individual playground in every City of Toronto park. The projected cost added up to \$3.1 million in total. It also had the inspectors’ photos of every playground before removal/ repair.** CELOS posted this information on our web pages on the Dufferin Grove park web site, to make it freely available for research by anyone interested.

Nov.2: **I wrote to Parks and Recreation Director Don Boyle to ask whether the \$13,190.50 allocated in the inspectors’ reports for Dufferin Grove Park playground was still available to make the changes called for in the report.**

Don replied that the money had been spent on other playgrounds.

I asked which ones

No reply.

Nov. 15, 2004: Our July 18 playground repair details request had had no response at all. The delay exceeded the appeal period, so we started over: **City of Toronto C.A.P. Access Request 04-2949**. This request was much more specific because it was guided by the projections of the inspection reports. The request was divided into two sections, one general for the whole city, one specific for two playgrounds with which we were very familiar.

1. How much was actually spent in each ward for these CSA playground repairs, compared to the projected amount to be spent?

How was the 15% contingency money spent?

What was the dollar value of repair parts money that went to Henderson Playground Co?

What was the dollar value of repair parts money that went to Belair equipment Co?

Which two playground companies sold the most repair parts to the City, and what was the dollar value of what each sold?

2. How much repair money (parts, base material, labour) was spent at Huron playground?

How much repair money (base, parts, labour) was spent at Dufferin Grove park?

(Please include dates of repairs, itemized by tasks with actual costs)

What was the 15% contingency money spent on, at these two locations?

January 5, 2005: **Response from City of Toronto C.A.P.:** “The Parks and Recreation Division has advised that Departmental Purchase Orders (DPO) for each year will have to be reviewed by the four District park Supervisors responsible for playgrounds....the Supervisors will have to manually search/review daily work sheet reports of all work crews to determine who worked where and when. Approximately 200 DPO’s per year will have to be reviewed.”
Price tag: Access Request question 1 (all parks): \$9,600; question 2: details on two parks: \$3,360.

January 13 2005: e-mail from *City of Toronto Property and Real Estate* maintenance manager Don Eastwood (responsible for any Parks and Recreation building repairs, as opposed to outside park repairs such as playground problems). **In response to my question of how long it would take him to track any repair costs:** “Usually the worker hours are inputted into the program within five to seven days. Contractor and material purchases are inputted into the system once they come in and are processed for payment...So on average, I would say that all the total information is available within 3 to 4 weeks of the job being completed. But **this only requires us to perform a query which is a click of the computer. All the info is inputted on an ongoing basis. The amount of time staff spend inputting info is minimal....I’m guessing Parks has no such tracking system!**”

January 20 2005: Appeal re the size of the fee to Information and Privacy Commissioner. Appeal # MA-050045-1.

Feb.7 2005: Mediator appointed: Maria Tzimas. She said I could also apply for a fee waiver to City of Toronto C.A.P., but said that her mediation will go ahead.

March 1, fee waiver request sent to Kerry-Anne Sween of C.A.P., cc'd to Maria Tzimas and P&R general manager Brenda Librecz. Reasons given by us:

1. Our park friends group does not have \$12,960 asked for by the Parks and Recreation Division, or even a fraction of that amount, to spend on releasing this basic book-keeping information.
2. Since the work done on CSA-related changes in Toronto playgrounds has been accompanied by a statistical *rise* in playground injuries, there is a public health and safety issue here.
3. Since over \$4 million in special City Council retrofit allocations is unaccounted for, in the interest of fair and equitable allocation of taxes, proper accounting needs to be done by the Division and the results need to be made public. Some other City Divisions do track their expenses in a reasonably accessible way, and so it would only be fair and equitable for parks and recreation to follow suit."

March 8 2005: **conference call between IPC mediator, acting manager of City of Toronto access manager Rob Candy, and me. Candy asked if I had any suggestions. I said that if Candy would ask the city for all the supervisors' budget reports for South District [pre-amalgamation City of Toronto] only, 2000-2004 I would look there myself for the playground expenditures and use that as a starting point.** I told Candy that I had requested a fee waiver. **I explained that it would be much easier for me to talk directly with P&R staff in charge of playground repairs** but that John Searle had sent James an e-mail apparently disallowing direct contact between me and the departments (see above). Mr. Candy asked to see a copy of Searle's e-mail and gave me his e-mail address. I sent him a copy.

March 10: I wrote for advice to a municipal administrator I know, Andre Carrel, and he told me how to clarify my questions for the budget reports. **I sent the following details to Rob Candy:**
"Please ask for these pieces of specific information on my behalf:
A computer print-out showing all account code numbers and titles/names relating to "park/playground upgrades."
If the City's parks are accounted for separately or individually, ask for a computer print-out showing all account code numbers and titles/names relating to Dufferin Grove Park.
I hope this will help to expedite my appeal. The information will enable me to ask specific follow-up questions to get me to the answers I seek, but the code of accounts described above are necessary to begin."

Rob Candy sent back an e-mail asking if I had changed my mind about what I wanted.

I wrote to him that I had sent the question as a clarification that might help people find what I wanted.

He forwarded me an e-mail from Julia Madden, assistant to P& R general manager Brenda Librecz, saying she was getting confused because I kept changing my request.

April 20: A thick package of very general budget summaries arrived in the mail, not in any way responsive to the playground information I asked for.

I called Mr.Candy and explained the problem and followed up with an e-mail:

“Each sub-district has a manager, and then there is one additional manager for all of South District technical services -- Mr. Bob Crump. Mr. Crump has two supervisors directly under him, Mr. Dominic Fantauzzi and Mr. Bill Gaudet. The budgets of these two supervisors presumably contain the extra amounts allocated by City Council for doing the repairs called for in the 1999 City-wide assessment of playground sites. ***[Note to adjudicator: As far as I know, it would be only the two technical services work crews who performed all playground repairs, NOT any work crews under the other four supervisors mentioned in the City’s fee estimate.]***

-- If I understood them right, Parks and Recreation have sent word that Mr. Gaudet and Mr. Fantauzzi do not have the level of detail that would allow them to show what they did with the South District share of the \$4 million repair funds. In this they are very different from the City Property Department, the department responsible for repairing all Parks and Recreation buildings. Don Eastwood, manager for City buildings in parks in our area, wrote to me that he has every repair expenditure in Parks and Recreation buildings itemized and easy to identify.

-- perhaps it would be best if Mr. Crump was asked to share the best level of detail he can come up with, in relation to the playground repair expenditures of the crews directed by his supervisors. If that level of detail still leaves the puzzle unilluminated, perhaps it's very much in the public interest to proceed with the \$12,000 task (charged to the City) of finding the individual CSA-related playground repair work orders for the whole City. These work orders could be entered into the computer at the same time, and thus begin a long-overdue process of transparency in book-keeping.”

Mr. Candy informed me on April 20 that *City of Toronto C.A.P.* had received no fee waiver request from me, so I sent him an e-mail copy of it [submitted March 1] and he apologized for the oversight and said I would have a decision within a week.

April 28, 2005: **City of Toronto C.A.P. response:** No to the fee waiver, and no to providing any records of the \$4.2 million/ \$4.9 million repair money spending: **“no record exists in hard copy or electronic format that responds to your request.... Requesters have no right....to require an institution to create a record in response to a request.”**

Jutta Mason
CELOS
June 15, 2005