



**Information and Privacy
Commissioner/Ontario**
**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER MO-1763

Appeal MA-030398-1

City of Ottawa



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NATURE OF THE APPEAL:

The City of Ottawa (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records in the Building Services files containing information relating to a named subdivision in the City, that had not previously been produced in response to earlier requests made by the requester under the *Act*. The requester clarified that she was not interested in building permit information. In response, the City issued a decision stating that no other records exist.

The requester, now the appellant, appealed this decision. The appellant believes that records responsive to her request, beyond those which she has already received plus building permit information, should exist. She stated that there were many letters of complaint from homeowners in the subdivision in the City's files, but no indication of management response to these letters, such as internal correspondence, trend analyses, and management reporting. She had received a document labelled "Appendix 1" in an earlier request, and expected to receive it in this request as well. She also believed that there should have been documentation relating to a "special investigation" which she indicates was conducted by a City building inspector at three specific addresses in the subdivision in March 2002. She noted that an email relating to the subdivision, received by one of her neighbours from a City employee, had not been produced in response to her requests.

I provided the appellant and the City with a Notice of Inquiry informing them that an oral inquiry would be held to determine whether the City had conducted a reasonable search for records responsive to the request.

Prior to the inquiry, during mediation, the appellant agreed that as "Appendix 1" had been received by her in an earlier request, it would not have been responsive to this request. She also removed the issue of the email from the appeal.

The City provided the mediator with affidavits signed by the Access and Privacy Analyst, the Director of the Building Services Branch, the Manager, Property Standards Division of the Building Services Branch and the Manager, Building Inspections of the Building Services Branch. These affidavits outlined the involvement of each employee in the search for records responsive to this request and were shared with the appellant.

The appellant sent the mediator and the City a response to the affidavits, challenging a statement in two affidavits that no investigation was undertaken in March 2003 of the three specific addresses. She provided three "Order to Comply" forms for these addresses on which she stated the inspector based his inspection. She also noted that she accompanied him on these inspections.

The inquiry was conducted via teleconference. The appellant was present, as were the legal representative for the City, the Director of the Building Services Branch, the Manager, Property Standards Division of the Building Services Branch and the Manager, Building Inspections of the Building Services Branch, the Access and Privacy Analyst and the Municipal Freedom of

Information Co-ordinator of the City. Both the appellant and the City provided oral representations.

DISCUSSION:

Introduction

Where a requester provides sufficient details about the records that he or she is seeking, and the institution indicates that records do not exist, it is my responsibility to ensure that the institution has made a reasonable search to identify all responsive records. The *Act* does not require the institution to prove with absolute certainty that records do not exist; however, in order to properly discharge its statutory obligations, the institution must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response to a request, the appellant must, nevertheless, provide a **reasonable** basis for concluding that such records may in fact exist.

In her submissions, the appellant raised three points.

Her first point was that a City inspector did inspect the homes at three specific addresses in March 2002 and she referred to the three Orders to Comply, which formed the basis of this investigation. She notes that she had accompanied him. She understood that this inspection was not part of the City's normal process, and believed that the City would use this to determine if any trends or systemic issues could be identified. Because of the unprecedented nature of this investigation, and the serious nature of the deficiencies, the appellant believes that a report would have been produced.

Her second point was that there should have been a response on the part of City management to the numerous inspection reports by their inspectors and to the reports provided to the City by different homeowners. She noted that she would have expected to see a trend analysis or some kind of global management response to the problems in this subdivision.

Her third point was that although she narrowed the scope of her request through discussions with the City, she found no records from a named General Manager, and noted that he had not provided an affidavit for the inquiry. She believes that there should be records created by him that would be responsive to her request.

The City responded to the appellant's points. The Director of the Building Services Branch explained that the mandate of the Branch is to enforce the *Building Code Act* and other building-related statutes and bylaws. She agreed that special attention was given to the three specific addresses in this subdivision, that there was an inspection of these houses, and that this inspection was not part of their normal process. However, she pointed out that their

documentation is restricted to what flows from their mandate, such as inspection reports, orders to comply, stop work orders, and orders to uncover.

The Director stated that she spoke to the inspector (who has since retired) who conducted the inspection of these three houses, and he confirmed to her that all his findings were summarized in orders to comply. Any action taken by the builder would subsequently be documented in inspection reports that are maintained in the building permit files, which the appellant had excluded from her request.

The Director clarified that because of the volume of records created for two of the addresses, all records for these two addresses were kept in two binders, which were provided to the appellant. For the third property, everything was provided to the appellant except for records that might be located in the building permit files.

In terms of the appellant's second point, the Director explained that their mandate is to enforce the *Building Code Act* and specific records must be prepared to discharge their duties and document inspections. She outlined the kinds of records the Branch maintains: building permit applications; plans and records submitted by an applicant; notions and approvals of the plans; the building permit; inspection reports to document inspections undertaken at certain stages of construction; orders to comply, stop work orders, orders to uncover, and orders to remedy an unsafe building, and she stated that the Branch produces no other kind of record. Generally, interactions with other City officials or homeowners would be done verbally or in the course of on-site meetings.

Regarding the third point, the City noted that the appellant had specified that she wanted records from the Building Services Branch, and the General Manager was not a part of that Branch. The Director noted that any correspondence directed to the General Manager relating to this subdivision would have been redirected to her for response, or she would have been copied on any such correspondence he created.

The issue of the records from the named General Manager was subsequently resolved during a discussion between the parties and the mediator, in the absence of the acting Adjudicator.

The appellant acknowledged that while she was seeking records that documented a more global view of the trends and of the systemic issues that had emerged within the subdivision, the City's position is that their focus was on individual homes.

When asked if there was another area in the City that would be concerned with the broader picture, the City indicated that there would be no other part of the municipality that would deal with building construction issues except the Building Services Branch.

The affidavits provided by the Director, Building Services Branch, and the Managers of Property Standards Division and the Building Inspections Division of that Branch outline the search that was undertaken in response to the requests by the appellant.

In the affidavit, the Director stated that there is no corporate general file for the subdivision development, nor are there any "chrono" files. The Director searched her email account and had provided the appellant with responsive emails. She had also provided a white binder which contained records concerning the named subdivision's Citizen's Group, and three Director's files containing information relating to properties in the subdivision, two white binders concerning one specific address, and a general folder relating to the named subdivision's Citizen's Group.

The Manager of Property Standards Division searched the Municipal Application Partnership (MAP) database. This database is used to track service requests that are generated either through a complaint or through staff requests. Files for eight addresses within the subdivision were located in this way. For three other addresses it was noted that the files had been referred to the Building Inspections Division. The file for one address could not be located. These records have been provided to the appellant.

The Manager of the Building Inspections Division produced two blue binders for each of two of the specific addresses named by the appellant, which contained building inspection information, and a green binder containing information relating to building issues about other addresses within the subdivision. These binders also contained emails, but he subsequently undertook a further search of his emails and additional documents were located. These records had been provided to the appellant. He did not search the building permit files as this was not part of the request.

Conclusion:

I have carefully considered all of the representations provided by the parties. As I indicated earlier, the *Act* does not require the institution to prove with absolute certainty that records do not exist; however, in order to properly discharge its statutory obligations, the institution must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.

Based on the information provided by the City, I find that the search conducted by the City was undertaken by experienced, knowledgeable employees of the institution and that all reasonable steps were taken to respond to the appellant's request.

On this basis, I find that the City's search for responsive records was reasonable.

ORDER:

I dismiss the appeal.

Original signed by: _____
Leslie McIntyre
acting Adjudicator

_____ March 5, 2004