



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER MO-2246

Appeal MA-060232-1

City of Toronto



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NATURE OF THE APPEAL:

The City of Toronto (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to building plans and permits related to the requester's home. The request specifically stated:

I would like to see and obtain copies of ALL records/plans (including all building permits, occupancy permits, clearances, work orders, building plans, site plans) related to [a named address] (previously known as [another named address]).

I want the records/plans (including building plans, electrical and plumbing, and Heating Ventilation Air Conditioning (HVAC) plans) to my house which is a three-story building of approximately 2800 sq ft and described as the "Sterling" model. These plans should show any changes or adjustments (in the final building) that differ from the approved plan.

I want copies of the occupancy permit and final clearances that were issued for the property before the building became occupied on November 8, 2002, as well as any clearances and permits required by Ontario's Building Code.

The City located the responsive records and provided full access to the building permit records. The City also advised the appellant that she could contact the Building Division (West District) to make an appointment to see the drawings of her home or that she could obtain a copy of the drawings from a photographic reproduction company.

The requester, now the appellant, appealed the decision on the basis that additional records exist.

During mediation, the appellant advised that although she received a number of records, she believed that additional records, namely permits, should exist. On July 17, 2006, the City sent the appellant a follow-up letter and enclosed 19 pages of additional building permit records. The City advised that after the second search no additional records exist.

After reviewing this follow-up decision, the appellant continued to assert her belief to the mediator that additional records should exist. Accordingly, the sole issue in this appeal is whether the City conducted a reasonable search under section 17 of the *Act*.

Because mediation did not resolve the appeal, it was transferred to the inquiry stage of the appeal process.

Upon reviewing the file, this office initially determined that it would not proceed with an inquiry. A letter was sent to the appellant which stated:

Having reviewed the file, I note that the City located and provided you with full disclosure of an additional 19 records.

The records disclosed, in my view, address the reasons you provided during mediation as to why you believed additional records existed. You believed that more records existed because you received HVAC plans for a different model. I

note that the records disclosed during the mediation stage of your appeal relate to the correct model of home. Additionally, you thought it was possible that records might exist under another address because the original address of your property was [named address]. The City wrote to you on May 17, 2006 and in that letter the City referred to the original address. In my view, because the City was aware of the possibility of another address it is reasonable to infer that they searched for records under both addresses. I also note that in another letter to you, dated July 17, 2006, the City explained that its West District office had located additional records; thereby satisfying our other concern that another office might also have records.

The City has also provided you with the contact information of the Building Inspector responsible for the active permits relating to your property, and suggested that you contact this individual.

Based on my review of the file, the reasons you have provided for believing additional records exist have been satisfied. Accordingly, please be advised that I have decided not to conduct an inquiry in this matter and will be closing the file on that basis on February 6, 2007. If you wish to provide me with representations indicating why you feel this action ought not to be taken, please do so by February 6, 2007.

The appellant provided representations in response to this letter. Those representations persuaded me to proceed to an inquiry.

I sought and received representations of the City, initially. The City provided representations.

I then sent a Notice of Inquiry to the appellant along with a complete copy of the City's representations. The appellant did not make further representations.

DISCUSSION:

REASONABLE SEARCH

Where an appellant 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 [Orders P-85, P-221, PO-1954-I]. 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.

The *Act* does not require the City to prove with absolute certainty that further records do not exist. However, the City must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624].

Although an appellant will rarely be in a position to indicate precisely which records the institution has not identified, the appellant still must provide a reasonable basis for concluding that such records exist. The appellant provided two reasons for her belief that further records should exist. The first reason was that the appellant received the HVAC drawings for a different model than her own. The appellant states:

In his letter, [named individual] admits that they provided the wrong drawings ([specified permit number]). He should have provided drawings for HVAC [specified permit number]. I want those plans & drawings for HVAC [specified permit number] as described in the Inspection Report by [named individual]. According to the Builder of these homes, the Cartier model is a 1776 sq ft semi while the Sterling model is 2080 sq ft –a difference of over 300 sq ft. And it's obvious from [named individual's] letter that a separate and different Residential Mechanical Ventilation Design Summary was prepared and approved for the Sterling model.

Secondly, the appellant submits that as a number of plans and drawings are required to be submitted to the City, then these records should exist. The appellant explains that:

Every municipality requires permits, plans and inspections for plumbing, drains, sewers and water service, pre-backfill, framing (including HVAC and plumbing rough-in), insulation, and final inspection of HVAC final, plumbing final, and exterior final – and appropriate documentation of such. Most other municipalities also issue certificates of occupancy. I have requested all of those documents as they relate to my house but have not received all of them.

The City was asked to provide a written summary of all steps taken in response to the request and to comment on the appellant's representations. The City submits:

The appellant has referred to correspondence from the Acting Director, Building Division dated October 31, 2006. The Corporate Access and Privacy (CAP) office can only comment on the issues raised by the appellant and addressed in this letter that are specifically related to the issue of reasonable search. With respect to item 4, all "clearance" records that were located have been provided to the appellant. With respect to item 5, as the Acting Director acknowledges the information *initially* provided in response to the access request included incorrect information. The correct information was subsequently sent to the appellant with the City's second decision letter. In addition, as indicated in the attached affidavit, the appellant was invited to attend and view the drawings relevant to her model. She did not, however, indicate at that time, that the second set of drawings she saw were *not* of her unit. [emphasis in original]

Details of the searches are provided in the affidavit attached.

The retention schedule for construction and renovation records is 20 years after file is closed upon completion of the construction or renovation. Records are then destroyed, subject to archival review. In the circumstances of this appeal no records have been destroyed.

The City submits that in the circumstances of this appeal, that a knowledgeable staff member of Buildings West conducted thorough searches for records responsive to the appellant's request.

The City then provided an affidavit of the Document Management Clerk, Customer Services at the Toronto Buildings, whose responsibilities include providing copies of records to the City's Corporate Access and Privacy Office (CAP), in response to access requests made pursuant to the *Act*.

In the affidavit, the Document Management Clerk affirms that she conducted a search in response to the appellant's request using the two specified addresses and the specified building application number. The search was conducted using the Central Property Register, a computer application through which all building records are documented from 1970 to the present time. The Document Management Clerk explains that this is the standard method of search for records after 1970. In addition to the search, the Document Management Clerk also emailed and confirmed with the South District office that it had no active building permits under the two specified addresses.

The Document Management Clerk located 20 pages of records and drawings in response to the initial search. She advised the City that the appellant could come in to view the drawings. The appellant attended the Buildings West office to view the drawings. At that time, she viewed both the requested permit files and drawings and realized they were not for the model unit that she had purchased. Based on this, the Document Management Clerk states:

On May 29, 2006, I received an email from [named Access and Privacy Officer] indicating the following:

The requester had been in touch with her, indicating that some of the information she had received did not relate to her particular model. The requester had asked that we check for any additional information which might be available. The requester had noted that the records she had been given had a reference to another permit number: [specified permit #] that also dealt with her property (address shown in the data base is [specified address number]). The requester wanted a copy of records relating to this permit number.

The requester had also mentioned a drawing related to the area above the garage. She had advised that she could not get access to

this record because there had been handwritten notes on the drawing. However, she had been informed that it would be sent to [named Access and Privacy Officer] for processing.

The requester had also asked that a search be conducted for any records related to electrical work done on her home (Sterling model) as well as any mechanical and ventilation information.

On June 2, 2006, I received another email from [named Access and Privacy Officer] with further clarification of what the requester was seeking.

Based on this new information and clarification, another search was conducted using the building permit number specified by the appellant. The Document Management Clerk again contacted the City and requested that the appellant attend the office in order to view the additional drawings that had been located. The appellant did come in to view the drawings.

After the appellant appealed the City's decision, the Document Management Clerk also confirmed that the City had copies of all the responsive records.

Finding

As stated above, the City is not required to prove with absolute certainty that further records do not exist. The City must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.

The appellant believes that further records should exist because she initially did not receive the correct HVAC plans for her model home. The City submits that while the information sent to the appellant in the initial decision related to the incorrect model home, the appellant was sent the information relating to her model home in the City's second decision letter.

The City further submits, in the affidavit of the Document Management Clerk that a search was conducted with another permit number relating to the appellant's property, and additional documents and drawings were located and provided to the appellant. At that time the appellant attended and viewed the drawings. The Document Management Clerk affirmed that the appellant did not indicate to her that the drawings were incorrect or did not relate to her home. Accordingly, I find that the search with respect to the HVAC plans and drawings to be reasonable.

The appellant also believes that there should be final clearances, a certificate of occupancy and additional plans and permits relating to her property. In regard to the final clearances and the certificate of occupancy, the Acting Director of the City's Building Divisions provided the appellant with a detailed explanation as to the permits issued on her property and the clearances received for such work. The Acting Director also explains to the appellant why she was permitted to occupy her home before final clearance was received. In addition, the City

submitted in its representations that all the "clearance" records were located and provided to the appellant. Based on the City's representations and the explanations of the City's Acting Director, I find that the City's search for the final clearances and certificate of occupancy to be reasonable.

Regarding the additional plans and permits, I also find the City's search to be reasonable. The City conducted its search for responsive records in the Central Property Register using the addresses and permit numbers specified by the appellant. As this is the repository of building records from 1970 to the present time, it is reasonable to expect that any records relating to the appellant's property would be found in this area. The City located records after both searches. The appellant was either provided with the records resulting from those searches or was invited to come and view the relevant drawings and plans at the City's office. Again, while the City admits that the appellant did receive records relating to another model home, this has since been rectified by the City providing the appellant with the correct information.

While the appellant may have lingering doubts as to the record keeping abilities of the City and its building inspectors, the appellant has not provided me with the reasonable basis needed to conclude that additional records exist. The City provided responses to the appellant's concerns that additional records should exist and, although given the opportunity, the appellant did not respond to the City's representations. Based on my review of the searches undertaken by the City and the City's representations, I find the City has provided sufficient evidence to show that it has made a reasonable effort to identify and locate the responsive records. Accordingly, I find the City's searches to be reasonable in the circumstances.

ORDER:

I uphold the City's search for responsive records and dismiss the appeal.

Original signed by: _____
Stephanie Haly
Adjudicator

_____ November 20, 2007