



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-2277**

**Appeal MA07-63**

**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 records and drawings for permit numbers 366550, 368394 (7<sup>th</sup> and 8<sup>th</sup> revisions) and 383446 pertaining to a specified property in Toronto.

The City issued a decision dated February 14, 2007 granting full access to, and enclosing copies of, the records requested. The City also provided relevant contact information for obtaining copies of the building plans from the City's Building Division (South District).

The requester subsequently advised the City that he had not received records relating to an 8<sup>th</sup> revision of the drawing for permit number 368394. Following a second search by the Building Division (South District), the City issued a supplementary decision dated March 2, 2007 advising that records relating to an 8<sup>th</sup> revision do not exist.

The requester (now the appellant) appealed the City's decision that the record does not exist.

In appeals such as this one, involving the denial of access on the basis that no additional records exist, the sole issue to be decided is whether the institution has conducted a reasonable search for responsive records, as required by section 17 of the *Act*.

This office provided the appellant and the City with a Notice of Inquiry informing them that if the appeal was not resolved in mediation, an oral inquiry would be held to determine whether the City had conducted a reasonable search for records responsive to the request. The Notice of Inquiry also contained information provided by the appellant to this office to substantiate his belief that an 8<sup>th</sup> revision of the drawing for building permit number 368394 should exist.

As the matter did not resolve during the mediation stage of this appeal, an oral inquiry was held at this office.

The appellant represented himself at the inquiry and provided oral submissions. The following individuals, who also provided oral submissions, were present on behalf of the City: the Manager of Public Access for the Corporate Access and Privacy Unit (CAP), the Supervisor of Document Management for the Building Division Records, and a Building Zoning Plans Examiner.

## **DISCUSSION:**

### **REASONABLENESS OF SEARCH**

As set out above, in appeals involving a denial of access on the basis that no records or no additional responsive records exist, the sole issue to be decided is whether the institution has conducted a reasonable search for responsive records, as required by section 17 of the *Act* [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried out was reasonable in

the circumstances, the decision of the City will be upheld. If I am not satisfied, further searches may be ordered.

Where a requester provides sufficient detail about the records he is seeking and the institution indicates that records do not exist, it is my responsibility to ensure that the institution has conducted a reasonable search to identify any records that are responsive to the request. The *Act* does not require the institution to prove with absolute certainty that records do not exist. However, in order to properly discharge its obligations under the *Act*, the institution must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate responsive records [Order P-624].

A reasonable search is one in which an experienced employee expends a reasonable effort to locate records that are reasonably related to the request [Order M-909].

## **REPRESENTATIONS**

### **The Appellant**

As indicated above, the appellant believes there should be an 8<sup>th</sup> revision of a drawing for building permit number 368394. The appellant provided oral submissions as to why he believes this record should exist and where it may be located. He also provided background to this appeal, setting out in extensive detail the nature of his ongoing dispute with the City.

The appellant explained that an investigation was conducted by the City in 1996 concerning the size of his restaurant, and since that time, there have been ongoing issues relating to the issuance and revocation of various building permits for his property. Following a fire in 2005 which partially destroyed the property, the appellant was required to obtain approval for minor variances through the City's Committee of Adjustment. Throughout this process, there was an ongoing dispute between the City and the appellant with respect to floor area calculations, which also became the subject of court proceedings.

The appellant indicated that his calculations were based upon an 8<sup>th</sup> revision of a drawing which he says was approved and provided by the City to his representative during a meeting. The appellant asserts that the City should have a stamped/approved copy of an 8<sup>th</sup> revision of the drawing since it had previously provided a copy to his representative. The appellant noted that having a stamped copy of this document is extremely important to show that it was actually approved by the City. The appellant submitted that, in addition to searching the building division records department, the City should also search through its litigation files, particularly those of a named Solicitor.

### **The City**

The Manager of Public Access for CAP (the Manager) initially provided submissions on behalf of the City. She advised that there were nine searches conducted by the City in relation to this

particular request. She noted that the City had conducted numerous searches for these types of records in the past, as a result of 28 overlapping requests received from the appellant since 1998. The Manager explained that, in addition to searches conducted by the two key individuals attending the inquiry, the City had requested that other knowledgeable staff conduct a search for the responsive record. In particular, she canvassed the following four individuals: the Chief Building Official, the Deputy Chief Building Official, a Solicitor from the Municipal Law practice section and a Solicitor from the Prosecutions section. The latter was the individual named by the appellant as the one most likely to have the record.

The Manager stated that after conducting a search through their files, the Building Officials both confirmed to her that they did not have a copy of the record at issue. The Solicitor from the Municipal Law practice section also conducted a search of his office and confirmed that he did not have any files or documents pertaining to this matter, but suggested that she speak with the Solicitor from the Prosecutions section who had carriage of the litigation file. The Solicitor from the Prosecutions section (the named Solicitor) conducted a search through his litigation file pertaining to the appellant's case, and confirmed that he did not have a copy of an 8<sup>th</sup> revision of the drawing in question. He also provided a copy of the entire litigation file to the CAP Unit for review. The Manager stated that the CAP Unit and the named Solicitor then searched through the litigation file together, but the record was not found.

The Manager then invited the Building Zoning Plans Examiner (the Examiner) to provide details of the searches he conducted with respect to this request.

The Examiner explained that he became involved in this case after the fire in order to establish existing building parameters and to determine the last approved condition of the building under a construction permit. He stated that for the purposes of the ongoing review, he currently has related files in his office which he had signed out from the records department. He explained that all records in his possession are copies obtained from the records department, and that the files will be kept in his office until the issue is resolved, after which time the documents will be returned to the records department. The Examiner stated that he conducted two searches through his files: the first search was in response to the request and the second search was specifically for an 8<sup>th</sup> revision of the drawing. The Examiner confirmed that he did not locate a copy of an 8<sup>th</sup> revision and that the last drawing that he has on file is a 7<sup>th</sup> revision.

By way of background, the Examiner explained that the appellant's use of the term "revision" refers to a minor change made to a construction permit by an architect, engineer or designer and is usually noted in the legend of a floor plan drawing. He explained that a more elaborate change, such as expanding a building beyond what was originally approved, is called an "altered plan". He advised that he does not rely upon revisions to floor plans that have not been approved by the City by way of a certified stamp and noted that he is not in a position to certify copies of any drawings himself. The Examiner noted that because the property has been the subject of ongoing issues for many years, he has had numerous discussions with the appellant and his representative at the front counter. He said that most of these discussions were informal and that in certain cases he made copies of drawings and other documentation from his files for the

appellant, all of which were provided informally for discussion purposes only. He stated that he was not authorized to certify plans and that any conversations he had with the appellant would have been based upon certified, stamped copies of documents received from the records department, as would any of his decisions or reviews of the property. The Examiner submitted that he had searched all files relevant to this matter and could not locate an 8<sup>th</sup> revision of the drawing.

The Supervisor of Document Management for Building Division Records (the Supervisor) then provided details of the searches that she had conducted with respect to this request, together with an overview of her department's records management system. She explained that she was responsible for processing freedom of information requests from CAP with respect to building permit records. She noted that she was essentially the gatekeeper for all the records in her department, and that all requests for records from the building department had to go through her.

With respect to the department's records management system, the Supervisor explained that there is one file for each building permit number which would contain all documents and drawings pertaining to that permit number. Each file is always kept on site in her department in a microfilmed format. She said that when a building permit gets issued or revoked, the first thing they do is microfilm it to ensure that nothing goes missing or that no-one alters the plans. In this way, all changes are recorded on microfilm. The Supervisor noted that there may also be paper copies of files which are eventually transferred to an off-site storage location, but that no files are ever transferred to storage without first being microfilmed in their entirety. She confirmed that the microfilmed copies are then maintained on site in her department and that they rely on these files most of the time because they are more easily accessible.

The Supervisor stated that when she first received this request for records from the CAP Unit, she obtained the three microfilmed files pertaining to the three building permits specified in the request. She noted that copies of these files had also been transferred to the off-site storage, but those files had been signed out by the Examiner. The Supervisor reiterated that any transferred files signed out by the Examiner are duplicates of the microfilmed files which are kept on site in her department. The Supervisor stated that, upon retrieving the microfilmed files, she photocopied every document in each file and provided them to the CAP Unit for review. She stated that she did not read or review the documents at that time, but forwarded them to the CAP Unit in their entirety.

The Supervisor advised that when the CAP Unit requested that she conduct a second search specifically for an 8<sup>th</sup> revision of the drawing pertaining to permit number 368394, she again retrieved the microfilmed file and then searched through the entire file for the specific drawing in question. She was not able to locate an 8<sup>th</sup> revision of the drawing contained in the building permit file and confirmed that the last drawing they had on file is a 7<sup>th</sup> revision. She said that she also went through the file a third time with the Examiner to ensure that she did not miss anything and to confirm that the drawing in question was not contained in the file. As an extra precaution, she said that she also went through the files for the other permit numbers to ensure that an 8<sup>th</sup> revision of this particular drawing had not been misfiled.

The Supervisor advised that if this document had ever existed in their files, it would not have been shredded pursuant to any retention schedules, as they had stopped destroying records after the City's amalgamation. She explained that the City is currently consolidating its By-laws for incorporation into the Municipal Code, and that all records are being maintained until the consolidation is complete. She noted that even if these particular off-site files had been destroyed, they would still have the microfilmed copy which is always kept on site in her department. The Supervisor reiterated that there is nothing in the file that would be sent off-site and/or destroyed without first being microfilmed.

The Supervisor submitted that she had conducted a thorough search for an 8<sup>th</sup> revision of the drawing and that the record was not located anywhere in the Building Division Records Department.

The Manager summarized the City's submissions and stated that experienced and knowledgeable staff had conducted thorough searches for the 8<sup>th</sup> revision of the drawing and that it did not exist in any of its files. Furthermore, if such a record had ever existed, it would have been retained by the City in a microfilmed format. Finally, the Manager submitted that there is no other City department where such a record would be located and that all relevant areas had been thoroughly searched, as outlined above.

During the inquiry, the appellant maintained his position that the City had provided him with a certified copy of an 8<sup>th</sup> revision of the drawing for permit number 368394 and there should therefore be a copy of this record in the file. However, the City stated that certified records are always microfilmed and maintained in the Building Division Records Department, and that there was no such record on microfilm. During the inquiry, the appellant acknowledged that the Supervisor had conducted numerous and appropriate searches for the record in question, but indicated that the City should also conduct a search in the offices of the Deputy Chief Building Official and the Solicitor from the Prosecutions section. As outlined above, the City did conduct searches in the offices suggested by the appellant and the City has confirmed that the record at issue could not be located.

## **FINDINGS**

I have carefully considered the representations submitted by both parties. As I indicated previously, my responsibility is to ensure that the institution has made a reasonable search to identify responsive records. The *Act* does not require the institution to prove with absolute certainty that records do not exist. Based on the evidence presented at the oral inquiry, I find that the searches conducted by the City were carried out by experienced, knowledgeable employees. In addition, I find that the City expended reasonable efforts to identify and locate the responsive record. As a result, I am satisfied that the City's searches to locate the record were reasonable.

**ORDER:**

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

Original signed by: \_\_\_\_\_  
Shaun Sanderson  
Acting Adjudicator

February 20, 2008 \_\_\_\_\_