



**Information and Privacy
Commissioner/Ontario**

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

FINAL ORDER MO-2230-F

Appeal MA07-84

City of St. Catharines



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NATURE OF THE APPEAL:

This is my final order disposing of the outstanding issue in this appeal.

The appeal arises out of a decision of the City of St. Catharines (the City) made pursuant to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* (the Act). The requester (now the appellant) made a request for

COPIES OF All records of information, regardless of how it is recorded.” All *correspondence, including without limiting to; Computer entries/electronic records*, Hand written, unedited reports, meeting minutes, log books, records of inspection, daily diaries, call notes, emails, faxes, photographs, receipts, messages, accounts, (etc.) pertaining to the property known as [a specified municipal address] from Jan. 1, 2004 to the present”. This is to include information obtained under or for the Waste by law, Property Standards and The Ontario building code. EXCLUDE ALL DOCUMENTATION **SENT** FROM [the requester] TO THE CITY OF ST. CATHARINES such as the submissions of evidence, the property standards appeal documentation and the applications for a building code hearing.

The City issued a decision, providing partial access to a number of responsive records, including the minutes of the Property Standards Committee meeting (the Meeting) held on June 23, 2006 (the Minutes), photographs and inspection reports. Access to the non-disclosed portions was denied pursuant to the exemptions in sections 8(1) (law enforcement) and 14(1) (personal privacy) of the Act. The City also issued a fee of \$271.30.

The appellant appealed the City’s decision.

During the mediation stage, the City clarified that it was relying on section 8(1)(d) (confidential source).

Also during mediation, the appellant identified the following three concerns regarding the information received from the City:

1. The completeness of the Minutes - The appellant stated that the Minutes reflect his participation at the Meeting, but do not reference the participation of other individuals who were also in attendance. The appellant, therefore, believes that the Minutes are incomplete.
2. The quality and content of some of the disclosed photographs.
3. The quality and content of some of the disclosed inspection reports.

Finally, the appellant confirmed that he is not appealing the application of sections 8(1)(d) and 14(1) to the withheld portions of the records. Accordingly, the application of these exemptions was removed from the scope of the appeal. The appellant also indicated that he is not pursuing his concerns with respect to the copy quality and content of the photographs and inspection reports. Accordingly, the sole remaining issue was whether the City had conducted a reasonable search, within the meaning of section 17 of the *Act*, as the appellant considers the Minutes to be incomplete.

On July 17, 2007 I conducted an oral inquiry, by way of teleconference, into the reasonable search issue. The appellant represented himself at the inquiry. Participating for the City were the Assistant City Solicitor (the Solicitor), the Deputy City Clerk and Freedom of Information Coordinator (the Coordinator), the Chief Building Inspector (the Building Inspector) and the Secretary for the Committee of Adjustments and the Property Standards Committee (the Committee Secretary).

I subsequently issued Order MO-2214-I in which I expressed serious questions regarding the City's search processes generally and, more specifically, its search efforts in this case. I concluded that the City had not conducted a reasonable search in this case and I ordered it to conduct further searches for records responsive to the appellant's request.

Pursuant to my decision I made the following order provisions:

1. I order the City to provide a decision letter in accordance with the *Act* with regard to access to the [Committee] Secretary's handwritten notes, considering the date of this order as the date of the request.
2. I order the City to conduct further searches for responsive records, whether in printed form, on film, by electronic means or otherwise, in each of the City's Planning, Legal, Fire and Transportation and Environmental departments, as well as within the offices of the Committee of Adjustments and the Property Standards Committee. In conducting these searches, the City is requested to consult all staff employed within these departments and offices that may have records responsive to the appellant's request. With regard to this provision, I order the City to provide me with affidavits sworn by the individuals who conduct the searches within 21 days of the date of this Interim Order. At a minimum, the affidavit should include information relating to the following:
 - (a) information about the employee(s) swearing the affidavit describing his or her qualifications, position and responsibilities;
 - (b) a statement describing the employee's knowledge and understanding of the subject matter of the request;

- (c) the date(s) the person conducted the search and the names and positions of any individuals who were consulted;
 - (d) information about the type of files searched, the nature and location of the search, and the steps taken in conducting the search;
 - (e) the results of the search;
 - (f) if as a result of the further searches it appears that responsive records existed but no longer exist, details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.
3. If further responsive records are located as a result of the searches referred to in Provision 2, I order the City to provide a decision letter to the appellant regarding access to those records in accordance with the provisions of the *Act*, considering the date of this order as the date of the request.
 4. The affidavits referred to in Provision 2 should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 2 Bloor Street East, Suite 1400, Toronto, Ontario, M4W 1A8. The affidavits provided to me may be shared with the appellant, unless there is an overriding confidentiality concern. The procedure for the submitting and sharing of representations is set out in *IPC Practice Direction 7*, which is available on our website.
 5. I remain seized of this appeal in order to deal with any other outstanding issues arising from this order.

In response to Provisions 1 through 4 of the Interim Order, the City submitted the following documentation:

- a copy of a new decision letter, dated August 20, 2007, regarding the disclosure to the appellant of further records located as a result of its additional searches
- affidavits prepared by four City employees documenting the City's additional efforts to search for records responsive to the appellant's request

I provided the appellant with copies of the four affidavits and invited him to provide further representations with respect to the reasonable search issue. The appellant chose to not submit further representations.

DISCUSSION:

The City submitted affidavits from the following four City employees:

- the Committee Secretary
- the Secretary for the Fire Chief for the Fire Services Association (the Secretary for the Fire Chief)
- the Building Inspector
- the City Solicitor

The Committee Secretary confirms in her affidavit that she took five pages of notes during the course of the Meeting. She states that she referred to these notes in preparing the Minutes of the Meeting. The Committee Secretary submits that there are no formal City by-laws or policies that govern the preparation of minutes or their contents, nor is there a requirement that these meetings be recorded. The Committee Secretary submits that the Minutes were not intended to be a verbatim transcript of what transpired at the Meeting. She states that the Minutes are intended to provide a synopsis of what transpired at the Meeting, including a summary of the appellant's arguments, the key issues addressed and the evidence raised.

The Committee Secretary states that the five pages of handwritten notes that she made during the Meeting had not been included in the files maintained by the City's Planning Services Department, but that she understands that a copy of her notes would be provided to the appellant, in accordance with Interim Order MO-2214-I.

The Committee Secretary states that following the issuance of the Interim Order she conducted a "complete search" of the files maintained by the Planning Services Department with respect to the appellant's property. In particular, she submits that she conducted a search for records pertaining to the Meeting. During the course of her search, the Committee Secretary states that she also consulted with other staff of the Planning Services Department, including a clerk who attended the Meeting, to determine whether anyone else had additional records, such as notes. She states that she was advised by the staff she consulted that any notes made during the course of a meeting of this nature are destroyed once the minutes have been produced. The Committee Secretary states that in this instance no other staff had any notes or additional documents regarding the appellant's property.

The Committee Secretary states that although these meetings are not "formally recorded as a matter of practice", she has been advised by clerks who attend them that some clerks may bring a tape recorder into the room to help address hearing difficulties and to assist in note-taking. She states that she was further advised that any such tapes are erased or reused once they have been listened to, and do not form part of the City's file. The Committee Secretary states that this practice is in accordance with the City's Retention By-law No. 2006-264, which provides (at section 8) that voice records may be destroyed once they have been listened to. The Committee

Secretary states that in light of this information, she located and reviewed the tapes that had been used for this purpose and found a tape that contained approximately seven minutes of the Meeting that had been recorded by a clerk who had been in attendance. She states that the remainder of the Meeting had since either been taped over or erased. The Committee Secretary states that she believes that a copy of this tape recording would be provided to the appellant.

The Secretary for the Fire Chief states that she reviewed the appellant's access request and Interim Order MO-2214-I and then conducted a search of the records maintained by the City's Fire Services Department. In particular, she states that she searched the Standard Incident Reports maintained by Fire Services and the records maintained by the Fire Prevention Office. During the course of her search, she submits that she also consulted with Fire Services staff, including firefighters and fire prevention officers, who had had some involvement with the files and records maintained by Fire Services regarding the appellant's property. As a result of her search efforts, she states that one additional record was located, comprised of a diary entry completed by a firefighter who attended at the appellant's property in response to an open burning complaint, which she understood would be disclosed to the appellant.

The Building Inspector and Solicitor both state in their affidavits that they conducted complete searches of the files maintained by their respective departments, including making enquiries of department staff, in accordance with Interim Order MO-2214-I. They both report that further records responsive to the appellant's request were not found.

I have also been provided with a copy of a new decision letter, issued and delivered to the appellant in accordance with Interim Order MO-2214-I. This decision letter confirms the disclosure of additional responsive records, located as a result of further searches conducted after the issuance of the Interim Order. In this letter, the City confirms the disclosure of the following additional records:

- five pages of handwritten notes recorded by the Committee Secretary during the course of the Meeting, disclosed in their entirety
- a cassette tape with a recording of approximately seven minutes of the Meeting
- a diary entry made by one of the firefighters who attended the appellant's property for an open burning complaint, portions of which were severed pursuant to section 14(1) (personal privacy) of the *Act*

On my review of the information contained in the four affidavits provided by the City and its decision letter issued after the completion of its additional searches, I am satisfied that the City has complied with Provisions 1 through 4 of my Interim Order MO-2214-I and, in particular, has established that it has conducted a reasonable search for records responsive to the appellant's request.

ORDER:

On the basis of the City's compliance with the terms of Interim Order MO-2214-I, I uphold the City's new search for records responsive to the appellant's request.

Original Signed by: _____
Bernard Morrow
Adjudicator

_____ September 25, 2007