

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER MO-3057

Appeals MA13-40 and MA13-41

City of Toronto

June 4, 2014

Summary: The city received two requests under the *Act* for information relating to city owned lands from three identified divisions of the city. The city located responsive records and issued a decision letter to the requester. The requester appealed the city's decision, claiming that the city did not conduct a reasonable search for records. This order upholds the city's search and dismisses the appeal.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 17.

OVERVIEW:

[1] The City of Toronto (the city) received two requests under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). In the first request, the requester stated that he sought access to:

... all documents related to the consideration of the city owned lands on the east side of Dufferin Street from Peel Avenue the CN Railway corridor known as 405 Dufferin for public park or public recreational purposes.

[2] The requester specified that he sought the above records from the Real Estate Services and Parks, Forestry & Recreation Divisions of the city.

[3] In the second request, the requester stated that he sought access to the following information:

... all documents related to the consideration of the extent of any surplus or excess lands on the east side of Dufferin Street from Peel Avenue to the CN Railway corridor known as 405 Dufferin following completion of the Dufferin underpass at Queen Street.

[4] The requester specified that he was seeking the above records from both the city's Real Estate Services and Transportation Services Divisions.

[5] In response to the first request, the city issued a decision granting partial access to the responsive records. Access to some information was denied pursuant to sections 7(1) (advice or recommendations) and 12 (solicitor-client privilege) of the *Act*.

[6] In response to the second request, the city advised the requester that the staff of the Transportation Services Division conducted a thorough search, but were unable to locate any responsive records. With respect to the request for records from the Real Estate Division, the city advised the requester that he received access to them in response to the first request.

[7] The requester, now the appellant, appealed the city's decision.

[8] During mediation, the city agreed to conduct another search for records responsive to the first request in the Transportation Services Division. The city located further responsive records and issued a revised decision, granting the appellant access to them.

[9] With regard to the first request, the city conducted another search for responsive records in the Real Estate Services and Parks, Forestry & Recreation Divisions. The city located additional responsive records and issued a revised decision. The city informed the appellant that the Parks, Forestry & Recreation Division advised that, despite a thorough search through hardcopy files, electronic project files and archived email files, they were unable to locate any additional responsive records. The city also provided the appellant with additional information obtained through consultation with staff from the Parks, Forestry & Recreation Division. In addition, the city advised the appellant that staff at the Real Estate Services Division located additional responsive records and granted him partial access to them. Access to the remaining undisclosed portions of those records was denied pursuant to sections 12 and 14(1) (personal privacy) of the *Act*.

[10] The appellant advised the mediator that he is not seeking access to the records denied pursuant to sections 12 and 14(1) of the *Act*. The appellant also confirmed that he does seek access to the portions of the records withheld under section 7 of the *Act*.

In addition, the appellant advised the mediator that he believes that additional responsive records should exist and that the city did not conduct a reasonable search for records responsive to both requests.

[11] Mediation did not resolve these appeals, and it was transferred to the inquiry stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*. I began my inquiry by inviting the city to make representations in response to two Notices of Inquiry addressing the two appeals filed. The city submitted representations in which it advised that it was no longer relying on section 7 of the *Act* to exempt portions of the records and issued a revised decision to the appellant, disclosing the portions of the records withheld under section 7. As a result, section 7 is no longer at issue in appeal MA13-41.

[12] As the only issue outstanding is whether the searches conducted by the city were reasonable. The city submitted a single set of representations for both appeals and I joined the two appeals and sent the appellant a single Notice of Inquiry, asking him for submissions. I also shared the city's representations with the appellant in accordance with section 7 of this office's *Code of Procedure* and *Practice Direction* number 7. The appellant did not provide submissions in response to the Notice of Inquiry.

[13] In this order, I find that the city conducted a reasonable search for responsive records and dismiss the appeals.

DISCUSSION:

Did the institution conduct a reasonable search for records?

[14] Where a requester 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 of the *Act*.¹ 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.

[15] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it made a reasonable effort to identify and locate responsive records.² To be responsive, a record must be "reasonably related" to the request.

[16] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.³ A further search will be ordered if the institution

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Orders M-909, PO-2469 and PO-2592.

does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.⁴

[17] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester must still provide a reasonable basis for concluding that such records exist.⁵

[18] In its representations, the city submits that it conducted a reasonable search for responsive records. The city advised that the exact texts of the two requests were provided to staff in the three divisions named in the request. The city states that it imposed no limitation on the scope of either request and that they were sent to city staff who are knowledgeable about the property that was the subject of the requests. The city identifies the staff members that were sent the requests.

[19] As the Transportation Services Division were unable to locate responsive records in its initial search and because the appellant asserted that additional records existed, the city states that staff in that division conducted a second search, forwarding the request to more management staff. The city advises that an additional 61 pages of records were located and sent to the requester. The city states that its staff did not limit their searches, reviewing hard copy files, electronic copy files and archived emails.

[20] The city stated that the Parks, Forestry & Recreation Division staff provided additional information regarding their understanding of the city's intentions with regard to the property in question. The city advises that this information was communicated to the requester in its decision letter. The city also provided a sworn affidavit, which includes a detailed account of the searches conducted by members of the city's Access & Privacy Unit, Real Estate Services, Transportation Services and Parks, Forestry & Recreation Divisions.

[21] In addition, the city submits that the requests were clear and communicated to those undertaking the searches without modification or limitation. The city states that the searches were conducted by city staff in the divisions identified by the appellant as the source of the records and information sought. The city submits that the staff that conducted the searches are knowledgeable about the administration and decision making processes relating to the subject of the request. The city submits that the affidavit attests to the thoroughness of the searches conducted. On these grounds, the city submits that the searches conducted were reasonable. Finally, the city notes that while the appellant has advised that he believes that additional records should exist and that the city did not conduct a reasonable search for responsive records, he did not provide any evidence to support that claim.

⁴ Order MO-2185.

⁵ Order MO-2246.

[22] Although I provided the appellant with a complete copy of the city's representations and affidavit and invited him to make submissions in response to a Notice of Inquiry, he did not do so.

[23] Based on my review of the city's representations, I am satisfied that the city has provided sufficient evidence to demonstrate that it discharged its responsibility under the *Act* and made a reasonable effort to identify and locate records responsive to the appellant's request. In addition, as the appellant did not make submissions, I am not satisfied that there is a reasonable basis for his belief that additional records should exist.

[24] I find that the searches were conducted by experienced employees knowledgeable in the subject matter of the request, in accordance with the city's obligations under the *Act*.⁶ I find that the city provided me with sufficient evidence to demonstrate that it made a reasonable effort to locate records responsive to the appellant's request. As noted above, the *Act* does not require an institution to prove with absolute certainty that additional records do not exist. Additionally, the institution is not required to go to extraordinary lengths to search for responsive records. An institution is only required to provide sufficient evidence to show that it made a reasonable effort to identify and locate records responsive to the request.

[25] In the circumstances of these appeals, I find that the city provided a sufficiently detailed explanation of the efforts it expended to identify and locate any records responsive to the appellant's request. Therefore, in the absence of any evidence from the appellant demonstrating that there is a reasonable basis to believe otherwise, I am satisfied that the city's searches were reasonable.

ORDER:

The appeals are dismissed.

Original signed by: _____
Justine Wai
Adjudicator

_____ June 4, 2014

⁶ Orders M-909 and PO-1744.