

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3270

Appeal MA14-187-2

City of Toronto

December 17, 2015

Summary: The appellant sought access to records that contained information regarding fraud within a named incorporated club for a specified time period. The city located responsive records and disclosed them to the appellant. The appellant believed that additional responsive records should exist. This order upholds the city's search for responsive records 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 a request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*). The request was clarified to seek access to any communications made between seven named city Parks, Forestry & Recreation Division employees, one named city councilor, and any outside party regarding fraud within a named incorporated club from December 15, 2013 to March 13, 2014.

[2] The city issued a decision advising the requester that the Parks, Forestry and Recreation Division staff had been unable to locate responsive records from four of the named staff. Access was provided in full to the other responsive records. The city identified a number of records as being non-responsive.

[3] The requester, now the appellant, filed an appeal, including two emails to support his position that there should be additional records.

[4] During mediation, the appellant confirmed that he was not pursuing access to the records identified by the city as non-responsive in his appeal. The reasonableness of the city's search for responsive records, therefore, was the only issue that remained.

[5] As mediation did not resolve all of the issues in this appeal, the file was transferred to the adjudication stage of the appeal process where an adjudicator conducts an inquiry. Representations were sought and exchanged between the parties in accordance with section 7 of the IPC's *Code of Procedure* and *Practice Direction 7*.

[6] In this order, I uphold the city's search for responsive records and dismiss the appeal.

DISCUSSION:

Did the institution conduct a reasonable search for records?

[7] 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 17.¹ 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.

[8] 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 has made a reasonable effort to identify and locate responsive records.² To be responsive, a record must be "reasonably related" to the request.³

[9] 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.⁴

[10] A further search will be ordered if the institution 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.⁵

[11] Although a requester will rarely be in a position to indicate precisely which

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Order PO-2554.

⁴ Orders M-909, PO-2469 and PO-2592.

⁵ Order MO-2185.

records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.⁶

[12] A requester's lack of diligence in pursuing a request by not responding to requests from the institution for clarification may result in a finding that all steps taken by the institution to respond to the request were reasonable.⁷

[13] The city was asked to provide a written summary of all steps taken in response to the request. In particular, it was asked:

1. Did the institution contact the requester for additional clarification of the request? If so, please provide details including a summary of any further information the requester provided.
2. If the institution did not contact the requester to clarify the request, did it:
 - a. choose to respond literally to the request?
 - b. choose to define the scope of the request unilaterally? If so, did the institution outline the limits of the scope of the request to the requester? If yes, for what reasons was the scope of the request defined this way? When and how did the institution inform the requester of this decision? Did the institution explain to the requester why it was narrowing the scope of the request?
3. Please provide details of any searches carried out including: by whom were they conducted, what places were searched, who was contacted in the course of the search, what types of files were searched and finally, what were the results of the searches? Please include details of any searches carried out to respond to the request.
4. Is it possible that such records existed but no longer exist? If so please provide details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.
5. Do responsive records exist which are not in the institution's possession? Did the institution search for those records? Please explain.

[14] The city states that during its search for responsive records 189 pages were reviewed, with 133 pages determined to be non-responsive as a result of the time frame set out by the appellant. The city disclosed 56 pages in full. It states that no responsive records were located by four of the Parks, Forestry & Recreation Division

⁶ Order MO-2246.

⁷ Order MO-2213.

staff who were named in the request.

[15] The city provided a detailed response to the specific questions posed in the Notice of Inquiry. This response included the details of the searches conducted and the records located by the city. These searches included searches of the record holdings of the Parks, Forestry and Recreation Division by the:

- Manager, Customer Service Unit,
- Support Assistant for the Manager of Community Recreation
- Supervisor of Customer Service,
- Supervisor of Community Recreation
- Community and Recreation Programmer
- Director, Management Services
- Administrative Assistant for the Director, Parks⁸
- Administrative Assistant to the now former General Manager of Parks, Forestry and Recreation.⁹

[16] The city states that it is not possible that records that once existed now no longer exist. This is because city staff cannot delete emails from the city's email archive system. It further states that given the history of the issues with the appellant and his numerous access requests filed previously for similar information; staff ensured that all email records were retained. Furthermore, given the dates of the records, the city states that no records would have been destroyed in accordance with the city's approved retention schedules.

[17] The city states that the councilor's office was not asked to conduct a search for records, as the request dealt with correspondence between the named individuals in the Parks, Forestry and Recreation Division. Thus it states that any responsive records would have been captured in the searches conducted by Parks, Forestry and Recreation staff.

[18] The appellant submits that he has not received all of the responsive records from the city and alleges that the city wants to "cover up" fraud and signature forgery on official city documents in which the Parks, Forestry and Recreation Division is involved. With his representations, the appellant provided four documents in support of his

⁸ This individual searched both her records and the Director's records.

⁹ This was an additional search conducted by the city, as the appellant had not requested this individual's records.

position that he has not received all of the responsive records.

[19] The appellant states that he did not receive emails sent to a named city councilor. The appellant also states that the city did not release records because the city is "hiding" them. He states that there are numerous emails by the club members that he did not receive and these emails may be in the "severed in part" emails.

[20] In reply, the city states that the documents supplied as evidence by the appellant have either been previously disclosed to him or are documents that fall outside of the request's timeframe, and therefore are non-responsive to the request.

[21] Concerning the emails sent to a city councilor, the city states that no responsive records were located for the time period outlined in the request and that the councilor's office was not asked to conduct a search as the city does not have custody or control over records held by city councilors. Additionally, it states that as the request related to correspondence between the named individuals, any responsive records, i.e., correspondence any of the staff had with the councilor, would have been captured in the searches conducted by Parks, Forestry and Recreation Division staff.

[22] With respect to previous searches and decisions for this access request, the city states that the Parks, Forestry and Recreation Division staff had indicated that in order to avoid duplication of the records, wherever possible, only a single copy of each record was provided to the Access & Privacy Unit for review since many individuals would have been copied on the same email. However, in an effort to resolve this appeal, the city asked the staff involved to conduct another search for responsive records.

[23] In these additional searches, records were located and the city provided the appellant with a copy of additional responsive records, which were primarily correspondence from the appellant to the city or duplicates of previously disclosed records. The city states that most of the other records that were located were records that were not responsive as they fell outside the time-frame or subject matter of the request.

[24] In his sur-reply, the appellant states that the city should have an independent body conduct a search for records, not its own staff. He states that this is the only way for requesters to receive all of the information that they requested.

Analysis/Findings

[25] This order only concerns the reasonableness of the city's search for responsive records, as set out in the Mediator's Report and the Notice of Inquiry sent to the city and the appellant.

[26] The appellant submits that the city has withheld responsive information from the severed emails. The only severed emails that the appellant received were with the supplementary decision letter referred to in the city's reply representations. The

information from these emails was severed as being not responsive to the appellant's request. The appellant has not indicated which portions of which emails he believes contain responsive information. If the appellant wishes to have a decision from this office about access to the severed portions of any particular email he should file an appeal of the supplementary decision letter with this office and advise this office which portions of which emails he believes are responsive to his request.

[27] In addition, regarding the appellant's concern that an independent body should be conducting the searches of the city's and other institution's record holdings, *MFIPPA* provides that this office may review any decision of a head of an institution under the *Act*. Sections 17(1)(b), 20, 45(1) and Regulation 823 under *MFIPPA* provide that an institution is required to search through its own record holdings for records responsive to a request for access to information received by it.

[28] Concerning the actual search conducted by the city for responsive records, I find that the city has conducted a reasonable search for responsive records. I find that the city has provided sufficient details of the extensive searches it undertook for records responsive to the appellant's request which sought communications between seven named city Parks, Forestry & Recreation Division employees, one named city councilor, and any outside party regarding fraud within a specific incorporated club from December 15, 2013 to March 13, 2014.

[29] The appellant has not provided a reasonable basis for me to conclude that additional responsive records exist. In particular, the appellant has not indicated which particular records responsive to his request the city has not yet located, nor has he identified any additional reasonable searches the city should have undertaken in response to his request.

[30] Although the appellant states he should have received additional emails concerning club members, he has not identified how these emails relate to the parameters of his request as clarified by him.¹⁰

[31] In the circumstances, and based on my findings above, I am satisfied that the searches conducted by the city were reasonable. Therefore, I will not consider the appellant's suggestions further concerning searches to be conducted by an independent body.

[32] Accordingly, I uphold the city's search for responsive records and dismiss the appeal.

¹⁰ As set out above, the appellant sought access to specific city records containing information regarding fraud within a specific incorporated club from December 15, 2013 to March 13, 2014.

ORDER:

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

Original Signed by: _____

Diane Smith
Adjudicator

December 17, 2015 _____