

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3396-F

Appeal MA14-400

The Corporation of the City of Cambridge

December 23, 2016

Summary: The appellant submitted a multi-part request under the *Municipal Freedom of Information and Protection of Privacy Act* for records relating to the city's purchase and restoration of a historic building. In Interim Order MO-3285-I, I ordered the city to conduct a further search for records for parts 2 and 3 of the appellant's request. This order finds that the city's further search was reasonable.

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

Orders and Investigation Reports Considered: Interim Order MO-3285-I

OVERVIEW:

[1] The appellant submitted an 8-part request to the Corporation of the City of Cambridge (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to the city's purchase and restoration of the Old Post Office building, including records regarding the construction of a proposed restaurant.

[2] In Order MO-3285-I, I ordered the city to conduct further searches for parts 2 and 3 of the appellant's request. I also ordered the city to issue an access decision to the appellant regarding access to records responsive to parts 4, 5 and 7 of the request and any additional records located as a result of its further search for records responsive to parts 2 and 3 of the request.

[3] In compliance with Interim Order MO-3285-I, the city conducted a further search for records and submitted representations detailing its further search efforts. The city advised that it located records responsive to parts 2 and 3 of the request and provided the appellant with copies of these records. The city also advised that some of the responsive records, such as its Steering Committee meeting minutes and agendas, could be located on its public website. The city also advised that it conducted a search of two databases but that no additional records were located.

[4] The city also issued an access decision to the appellant to respond to parts 4, 5 and 7 of the appellant's request. The city takes the position that records responsive to part 4 of the request qualifies for exemption under sections 10(1) (third party information), 11 (economic and other interests) and 14(1) (personal privacy). The city's access decision also advised that it does not have custody of records responsive to parts 5 and 7 of the request.

[5] The city's representations were shared with the appellant in accordance with this office's confidentiality criteria and the appellant was given an opportunity to submit representations in response. The appellant submitted representations in support of her position that additional records should exist. However, the appellant did not appeal the city's access decision regarding records responsive to parts 4, 5 and 7 of the request. Accordingly, this order will not review the city's access decision regarding records responding to parts 4, 5 and 7 of the request. Since the time to appeal the city's access decision has expired, the appellant may file a new request under the *Act* if she wishes to obtain access to these records.

[6] The sole issue in this appeal is whether the city's further search was reasonable.

[7] In this order, I find that the city's further search was reasonable.

DISCUSSION:

[8] As noted above, in Interim Order MO-3285-I I ordered the city to conduct further searches for records responsive to parts 2 and 3 of the appellant's request, which sought access to:

- Business plan of [named company] to Council allow for sole partner and other supporting documentation [part 2]; and
- Any documents with [named company] to allow as sole partner, in particular signed documents [part 3].

[9] Accordingly, my review of the city's further search is limited to these two category of records. Following the issuance of Interim Order MO-3285-I, the city conducted a further search for records and provided the appellant with copies of the following documents which it advises responds to part 2 of the request:

- Request for Proposal for Architectural/ Consultant Services, dated February 24, 2014 (Attached as Appendix A to the city's decision letter to the appellant);
- computer print-out listing Steering Committee meeting minutes and agendas located on the city's website (Appendix B);
- Request for Proposal RFP #2015-50, dated May 15, 2015 (Appendix C);
- Computer print out of the city's key word search of its database which did not locate additional records which are not available on the city's website (Appendix D); and
- Signed Agreement of the sale, dated September 12, 2012 (Appendix E).

[10] With respect to part 3 of the request, the city advises that it "... has no agreements/plans with any partners for a sole partner at the Old Post Office" and takes the position that the above-referenced records it released to the appellant also respond to part 3 of the appellant's request. In support of its position, the city states:

As for Part 3 of the request asking for any documents allowing a sole partner, in particular signed documents, I am attaching the signed agreement of sale, attached as Appendix E. Again, in my search and in speaking with various staff I have been told that no documents of a sole partner exist. It is anticipated that the Library Board will enter into an operating agreement with a restaurateur through the current RFP process #2015-50 [Appendix C], this initiative is through the Library Board. ... [An] additional search was conducted as per Interim Order MO-3285-I of the Archives Database and the Documentum database (ECM system). This additional search (Appendix D), offers no further documentation. I also have currently spoken to several City Staff who have directed me to discussions on such matters regarding plans etc. that were done at the Steering Committee level and those minutes are posted on the City's website and available to you and the public, as per Appendix B.

[11] The appellant's representations question the reasonableness of the city's search given that the city did not conduct a search for responsive records in email exchanges between the named company and the city. In support of this position, the appellant states:

[w]hat is not noted in [the city's submissions] are any references that email exchanges between any of the parties have been checked. In a previous response the city indicated that I had not actually specified emails as a method of communication. As emails are considered as methods of communication, these should have been part of the search.

Decision and Analysis

[12] 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.

[13] 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

[14] 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

[15] 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

[16] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.⁶

[17] In Order MO-3285-I, I found that the city provided insufficient evidence to demonstrate that it made a reasonable effort to identify and locate records responsive to parts 2 and 3 of the request. My decision, in part, found that the city did not conduct an actual search for the requested business plan and partnership/agreement records relating to the named company's potential involvement in the project. Instead, for various reasons the city had decided that a search for these records would be premature having regard to the status of the renovation project. Accordingly, I ordered the city to conduct further searches for records responsive to parts 2 and 3 of the request.

[18] I have considered the submissions of the parties and am satisfied that the city's further search was conducted by an experienced employee knowledgeable about the subject-matter of the request and a reasonable effort to locate responsive records was expended. In particular, the city's Manager of Information Management and Archives/FOI Co-ordinator conducted a search of the city's record-holdings, including two databases in addition to having several discussions with various program areas in an effort to locate additional records.

[19] The appellant takes the position that the city should have also searched for copies of email exchanges between the city and company in question. Having regard to

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.

⁶ Order MO-2246.

the wording of the request, I find that requiring the city to conduct a search of its email servers at this stage would expand the scope of the request to records that do not "reasonably relate" to the request.

[20] The appellant's request sought access to a business plan and its supporting documentation (part 2). The request also sought access to any documents, in particular signed documents which would have designated the named company to be a sole partner (part 3).

[21] In my view, there was no ambiguity in the appellant's request. It appears that the city responded literally to the appellant's request and conducted a search for the business plan submitted by the company and sole partnership agreement. The city did not locate the specific records requested but appears to have adopted a liberal interpretation of the request and identified other documents relating to the subject-matter of the request as responsive.

[22] Further, there is insufficient evidence to establish that there is a reasonable basis to conclude that a business plan or sole partnership agreement should exist. Accordingly, I am satisfied that the city's further search was reasonable and it expended a reasonable effort to locate records which "reasonably relate" to parts 2 and 3 of the appellant's request. As noted above, the *Act* does not require the institution to prove with absolute certainty that records do not exist.

[23] Having regard to the above, I am satisfied that the city's search for further responsive records remedied the deficiencies in its prior search. Accordingly, I find that the city's further search was reasonable and close this appeal matter.

ORDER:

1. I find that the city's further search for responsive record was reasonable.

Original Signed By: _____
Jennifer James
Adjudicator

December 23, 2016 _____