

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3824-F

Appeal MA17-518

City of Ottawa

August 29, 2019

Summary: The City of Ottawa (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records related to a petition to change the parking regulations on the appellant's street. In Interim Order MO-3790-I, the city was ordered to conduct a further search for responsive records. In this final order, the adjudicator finds that the city's further search is reasonable.

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 Ottawa (the city) received a request from the appellant under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following:

Copy of petition and any other communications and/or documents produced and/or received by [named individual] and/or members of his organization in relation to parking on [street name].

[2] The individual named in the appellant's request was the city's Director of Traffic Services and the petition related to changes to parking restrictions on the appellant's street.

[3] The city issued a decision granting the appellant partial access to the records, which were comprised of emails and attachments, written correspondence and copies

of a petition. The city withheld some of the information in the records pursuant to the mandatory exemption in section 14(1) (personal privacy) of the *Act*.

[4] The appellant appealed the decision and the parties attempted mediation, which resolved part of the appellant's request. At mediation, the mediator noted that the records appeared to also relate to the appellant and as a result, section 38(b) of the *Act* (discretion to refuse requester's personal information) was added as an issue to the appeal.

[5] During mediation, the appellant also told the mediator that he did not believe the city conducted a reasonable search for responsive records. The city agreed to conduct a further search for records, after which it issued a supplementary decision stating that it did not locate any further responsive records. In that supplementary decision, the city also decided to disclose a portion of the petition it had previously withheld.

[6] The appellant advised the mediator that he wished to pursue access to the remaining records at issue and also asserted his belief that additional records should still exist. Further mediation was not possible and the appeal was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry under the *Act*.

[7] In Interim Order MO-3780-I, I determined that the discretionary personal privacy exemption at section 38(b) applied to the information at issue and I upheld the city's exercise of discretion to withhold that information. However, I ordered the city to conduct a further search for responsive records.

[8] In compliance with Interim Order MO-3780-I, the city conducted a further search and submitted representations along with an affidavit detailing its further search efforts. The city also issued a further decision to the appellant granting him full access to three additional pages of records. I invited and received representations from the appellant in response to the city's affidavit.

[9] In this final order, I find that the city's search is reasonable, and dismiss the appeal.

DISCUSSION:

[10] The sole issue remaining in this appeal is whether or not the city conducted a reasonable search for responsive records.

[11] Where a requester claims 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 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.

[12] 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 it has made a reasonable effort to identify and locate responsive records.² 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

[13] 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 such records exist.⁴

[14] In Interim Order MO-3780-I, I determined that the appellant had provided a reasonable basis for me to conclude that additional records may exist that predated what the city had provided. This finding was based on a letter from the General Manager of Traffic Services that specified that the Traffic Services branch undertakes a number of steps (including a review of collision records and site check) before a resident is offered a petition to change street parking. I agreed with the appellant that it was reasonable to expect there to be records related to those steps. Accordingly, I ordered the city to conduct a further search for responsive records and submit an affidavit detailing steps taken in this new search.

[15] In response to Interim Order MO-3780-I, I received representations and an affidavit sworn by an analyst from the city's Access to Information and Privacy Office. In its representations, the city asserts that it completed a comprehensive search for responsive records. It provided the following overview of the steps it says it took:

- Subsequent to receiving Order MO-3780-I, the city's Access to Information and Privacy Analyst, who was originally assigned to process the appellant's request, worked with city staff to complete a comprehensive third search for responsive records.
- The third search included an in-person discussion and email correspondence with the Manager of Traffic Services, his staff who completed the work with respect to the petition, and a specialist in the Traffic Services Road Safety and Traffic Investigations Branch.

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.

⁴ Order MO-2246.

- The Analyst also received email confirmation from a Program Manager with the city's Road Safety and Traffic Investigations branch that he had no further responsive records.
- The Analyst confirmed that all responsive records were located in the city's electronic record keeping system and/or employee email accounts. The Analyst also ensured further searches were conducted by other individuals who would be knowledgeable about the subject matter and have access to all responsive records.
- The Analyst followed-up directly with two additional staff who he had determined had limited knowledge with respect to the matter that both worked in the Traffic Management Branch of Traffic Services.
- In contacting these staff members, the city submits that the Analyst has ensured that staff in the relevant branches of the city's Traffic Services department have searched for any responsive records.
- In total, two pages of additional responsive records were located as a result of the above described search for records. The city says that it provided three pages of responsive records in total to the appellant in full with a view to ensuring the appellant is able to fully follow the email trails.

[16] The city provided an affidavit, sworn by the Analyst, in support of its representations. The affidavit confirms the statements in the city's representations and offers further specific details about the its latest search.

[17] The Analyst attests that he discussed the absence of any records related to a site-check with the city staff members who would be responsible for undertaking that task. He says the staff members confirmed that there were no further records related to a site-check because, in some circumstances, a site-check may be conducted using google street view and that in the context of this request, it was not unusual that there were no records that specifically related to that task.

[18] The appellant submitted representations in response. He asserts that the city has not conducted a reasonable search and asks that I order a further search. He says that even if a site-check was conducted using google street view, records should still have been generated and he also notes that no records were provided with regard to collision checks.

[19] The appellant submits that the city has either not followed its own procedures or has decided not to disclose information. He also points to page 15 of the records, where he says an email indicates that there should be further responsive records that have not been provided.

[20] I am not persuaded that the appellant has established a reasonable basis for concluding that further responsive records exist. First, I accept that there are no records relating to the steps mentioned in the General Manager of Traffic Services letter. While the letter specifies that those steps occur, the steps either occurred without a record of them taking place, or did not occur in this case. Either way, there is no basis for me to order a search for further records in that regard.

[21] I also do not accept the appellant's submission that page 15 of the records indicates there are further responsive records that have not been provided. The email references costs and the appellant says that there should be further records in this regard. I have reviewed this page and based on the information in the severed portion of page 16 (which I cannot refer to further without revealing the content of the severed portion) and the subsequent emails on page 15, I am satisfied that there is no basis to conclude additional records should exist regarding the costs referred to in the email the appellant has referenced.

[22] Based on the city's representations, I find that it has provided sufficient evidence to establish the reasonableness of its search. Since I have no reasonable basis to conclude that a further search would yield further responsive records, I find that the city conducted a reasonable search in response to my findings in Interim Order MO-3780-I, and I will dismiss this appeal.

ORDER:

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

Original Signed By: _____
Meganne Cameron
Adjudicator

August 29, 2019 _____