

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## ORDER MO-3868

Appeal MA18-563

Corporation of the City of Belleville

November 28, 2019

**Summary:** The City of Belleville (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for records related to the hiring of a specific property standards officer and for records about how the city hires and pays contractors doing work on citizens' properties. The city granted access to records but withheld one record, the property standards officer's resume, on the basis that it was not responsive to the request. The requester appealed.

The adjudicator finds that the record at issue, the property standards officer's resume, is responsive to the appellant's request and she orders the city to issue an access decision concerning this record. She also finds that the city conducted a reasonable search for responsive records and dismisses that aspect of 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 Belleville (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or *the Act*) for information regarding:

[Name] (property standards officer) hiring process and how she [is] working this job. [Does] she have any kind of certificate?

Also, want to find [out] how you hir[e] companies [doing] work [on] citizens' property and how they charge ... amount[s] bill[ed] to taxpayer.

[2] The city issued a decision denying access to the responsive records, which included the relevant job posting and the property standards officer's certificate of membership in her professional association. Access to the withheld information was denied pursuant to the labour relations and employment exclusion in section 52(3) and the discretionary solicitor-client privilege exemption in section 12 of the *Act*.

[3] The requester (now the appellant) appealed the city's decision.

[4] Prior to the commencement of mediation, the city notified the property standards officer (the affected person) of the appellant's request and sought representations regarding the disclosure of her information to the appellant.

[5] The city subsequently issued a revised decision granting access to the records it identified as responsive to the request.<sup>1</sup> The city advised that no further records responsive to the request exist.

[6] During the course of mediation, the city clarified with the mediator that one record had been withheld, the affected person's resume, as it was deemed non-responsive to the request.

[7] At the appellant's request, the city provided a list of areas of the city where staff were asked to search for responsive records.

[8] The appellant advised the mediator that he wished to pursue access to the withheld record and believed that further responsive records exist at the city. As no further mediation was possible, this file proceeded to adjudication, where an adjudicator conducts an inquiry.

[9] Representations were then sought and exchanged between the parties.

[10] In this order, I find that the record at issue, the affected person's resume, is responsive to the appellant's request and I order the city to issue an access decision concerning this record. I also find that the city conducted a reasonable search for responsive records.

## **RECORD:**

[11] The five-page resume of the affected person, a by-law enforcement officer with

---

<sup>1</sup> The five responsive records are listed below under Issue A.

the city,<sup>2</sup> is at issue in this appeal, because the city deemed this record as non-responsive to the request and the appellant challenges that decision.

## **ISSUES:**

- A. What is the scope of the request? Is the record at issue responsive to the request?
- B. Did the city conduct a reasonable search for records?

## **DISCUSSION:**

### **Issue A: What is the scope of the request? Is the record at issue responsive to the request?**

[12] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

(1) A person seeking access to a record shall,

(a) make a request in writing to the institution that the person believes has custody or control of the record;

(b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;

...

(2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[13] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.<sup>3</sup>

[14] To be considered responsive to the request, records must "reasonably relate" to

---

<sup>2</sup> A by-law enforcement officer is also referred to as a property standards officer in this order.

<sup>3</sup> Orders P-134 and P-880.

the request.<sup>4</sup>

### ***Representations***

[15] The city states that it interpreted the request, set out above, as a request for information regarding:

- the hiring process and any qualifications possessed by [the affected person] a named property standards officer, and
- the city's hiring of companies to do work on citizen's properties and information regarding how these costs are billed to the taxpayer.

[16] It states that in response, it provided the following records to the appellant:

1. Job posting for file [#] (by-law enforcement officer position outlining the qualifications required);
2. By-law number [#] (section [#] appoints [the affected person] as a property standards officer and municipal [by-law] enforcement officer);
3. [Municipal Law Enforcement Officers' Association] membership certificate for the affected person – [date];
4. Request for Proposals (RFP) re: contract building [#] (for remedial work & property clean-up pertaining to the clean yards by-law); and,
5. Sample of orders re: property standards and clean yards by-law.

[17] The city submits that the document in question, the resume provided by the affected person during her hiring process, is not responsive to this request. The city states that the information the appellant has asked for - the affected person's professional qualifications - has already been provided to him.

[18] The appellant did not respond directly to this issue, but mentioned that he "...has a big concern there is big nepotism in the city's building department."

### ***Analysis/Findings***

[19] In his request, regarding the affected person, the appellant sought information about two matters: her hiring process and her professional certificate.

[20] The city provided the requested information that it deemed responsive to the

---

<sup>4</sup> Orders P-880 and PO-2661.

appellant regarding the affected person's hiring process and her certificate.

[21] Regarding the hiring process for the affected person, the city disclosed the job posting for the by-law enforcement officer position outlining the qualifications required, as well as the by-law appointing the affected person as a property standards officer and municipal by-law enforcement officer.

[22] For the certificate, the city provided a copy of the affected person's professional certification in the form of her Municipal Law Enforcement Officers' Association membership certificate.

[23] I note that the appellant specifically sought the affected person's certificate. The request did not specifically seek the affected person's resume.

[24] Nevertheless, as stated above, institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.

[25] Taking into account the wording of the request, which sought information about the affected person's hiring process and "how she [is] working this job," I find that the affected person's resume is related to the affected person's qualifications and the hiring process for the job as a property standards officer.

[26] Therefore, I find that the record at issue, the affected person's resume, does reasonably relate to the request and is responsive to it. As it is responsive to the request, I will order the city to issue an access decision concerning this record.

### **Issue B: Did the city conduct a reasonable search for records?**

[27] 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.<sup>5</sup> 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.

[28] 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.<sup>6</sup> To be responsive, a record must be "reasonably related" to the request.<sup>7</sup>

---

<sup>5</sup> Orders P-85, P-221 and PO-1954-I.

<sup>6</sup> Orders P-624 and PO-2559.

<sup>7</sup> Order PO-2554.

[29] 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.<sup>8</sup>

[30] 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.<sup>9</sup>

[31] 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.<sup>10</sup>

[32] 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.<sup>11</sup>

### ***Representations***

[33] The city states that in responding to this request, it undertook to search for, and produced, all records relating to the request. Since this request dealt with confidential human resources information, the city states that the request was discussed with its human resources department, which then provided all documents that it still had in its possession.

[34] The appellant states that he does not know how the city hires employees and he is concerned about nepotism in the building department. He alleges that the building department's manager hires people without a job application and without qualifications. He states that he asked about this, but did not receive records that related to this concern.

### ***Analysis/Findings***

[35] As stated above, during mediation of the appeal, the city provided a list of areas where it searched for responsive records. These areas are the city's:

- finance department
- engineering and development services department
- human resources department, and

---

<sup>8</sup> Orders M-909, PO-2469 and PO-2592.

<sup>9</sup> Order MO-2185.

<sup>10</sup> Order MO-2246.

<sup>11</sup> Order MO-2213.

- corporate services department.

[36] In his representations, the appellant indicates that the records that he has not received relate to the city's, and in particular its building department's, hiring process. However, the request did not seek records about the city's or its building department's general hiring process. The appellant's request sought records about the hiring process of the affected person. Other than the affected person's resume, the appellant has received records about the affected person's hiring process. By the terms of this order, the appellant will receive an access decision for the affected person's resume.

[37] The appellant did seek access to records on how the city hires outside companies to do work on taxpayer's properties. The appellant is not claiming that he did not receive responsive records about this aspect of his request. His representations focus on his concern about the hiring process for city employees.

[38] I find that the records that the appellant claims have not been located, namely, those about the city's and its building department's general hiring process are not records that come within the scope of the appellant's request. The city did search its building department records for responsive information about the affected person. The city's building department is part of its engineering and development services department.<sup>12</sup>

[39] Taking into account the wording of the appellant's request and his representations, I find that the appellant has not provided a reasonable basis for me to conclude that additional responsive records exist. Therefore, I am upholding the city's search as reasonable.

## **ORDER:**

1. I order the city to issue an access decision concern the affected person's resume to the appellant, treating the date of this order as the date of the request.
2. I uphold the city's search as reasonable.

Original Signed By \_\_\_\_\_

Diane Smith  
Adjudicator

November 28, 2019 \_\_\_\_\_

---

<sup>12</sup> See <https://belleville.ca/city-hall/directory/engineering-development-services>