

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3896-F

Appeal MA16-323

Region of Peel

January 29, 2020

Summary: In Interim Order MO-3814-I, the adjudicator ordered the institution to conduct a further search for records which would identify the security officer on duty on a specified day the appellant attended the region's office. In this final order, the adjudicator finds that the region's further search is reasonable 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 appellant filed a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) with the Regional Municipality of York (York Region) for records contained in his Ontario Works file. York Region transferred part of the appellant's request to the Region of Peel (the region or Peel Region). The region issued a decision letter to the appellant granting him partial access to responsive records. The appellant appealed the region's access and fee decisions to this office. The appellant took the position that the region's search for responsive records should have identified surveillance videos and security reports for a specified time period. The appellant also sought access to the name of the security officer on duty on a specified date.

[2] In Interim Order MO-3814-I, I upheld the region's decision to withhold portions of the records under the personal privacy exemption in section 38(b). I also found that the region's search for surveillance videos and security reports was reasonable and dismissed that part of the appeal.

[3] However, I set aside the region's \$6,030.50 fee and ordered it to issue a new fee decision. I also did not uphold the region's search for responsive records that would identify the security guard on duty the day the appellant says that he fell and ordered it to conduct a further search for these records. The region conducted the further search as ordered, but did not find additional records.

[4] In this final order, I find that the region's further search remedied the deficiencies with its previous searches outlined in Interim Order MO-3814-I, and I dismiss this appeal.

DISCUSSION:

Did the region conduct a reasonable search in accordance with Interim Order MO-3814-I?

[5] In Interim Order MO-3814-I, I ordered the region to search for records which would identify the security officer on duty the day the appellant says he slipped and fell at its offices, which would include contacting the third party security company, if necessary.

[6] The sole issue to be determined is whether the region's further search for responsive records in response to Interim Order MO-3814-I is reasonable.

Representations of the parties

[7] The region submits that its further search was reasonable. In support of its position, the region's Property Integration Manager (the manager) submitted an affidavit describing the region's further search efforts.

[8] The manager advised that records regarding security vendors contracted to the region are stored in its information management system,¹ network drives and physical files. The manager also stated that "it is not the Region's practice to maintain a record of the names and corresponding shifts of individual security vendors contracted in Regional buildings."²

¹ The region's affidavit referred to its information management system as "Facility and Occupant Services Enterprise Information Management System".

² In Interim Order MO-3814-I, in support of its position that it does not maintain records containing daily shift log information of security guards reporting to work on the region's premises, the region provided me with a copy of a tender document which contains the contractual terms between the region and security company in question. In Interim Order MO-3814-I, I stated that "I have reviewed the tender document and agree with the region that it does not contain a provision that requires the security vendor to provide daily shift log information".

[9] The manager submits that she conducted a search for records in the region's record holdings that would identify the name of the security officer on duty but that no records were located. She also advises that she contacted the third party security company contracted to the region at the time the appellant says he slipped and fell on the region's property and directed it to conduct a search for records which would identify the name of the security guard. The manager advises that she received a response from the security company that it does not "possess records relating to the individual who was working as a security guard at [the specified address on the specified date] as per [its] internal retention policies."

[10] The appellant was given an opportunity to make submissions in response to the region's position that its further search was reasonable. The appellant questions whether the region conducted a thorough search. The appellant expresses concern that he experienced a number of setbacks in the processing of his request and appeal, which led to a situation where the region was ordered to search for older records years after he made his request initially.

[11] The appellant's submissions also raise questions concerning searches by York Region for receipts, meeting records and a specified courier slip. However, these issues were addressed in Interim Order MO-3816-I.³

Decision and analysis

[12] I ordered the further search in Interim Order MO-3814-I because I found that the region had failed to demonstrate that it expanded its search for responsive records to the record holdings of its service provider. In Interim Order MO-3814-I, I stated:

Accordingly, given the contractual relationship between the vendor and the region, along with the fact that the services provided to the region take place at the region's facility, I conclude that the region by implication has the right to possess or otherwise control any records created as a result of the vendor providing security services to it.

[13] In response to Interim Order MO-3814-I, the region searched its internal record holdings and directed the security company to conduct a search for responsive records

³ In Interim Order MO-3816-I, I found that York Region's search in response of the appellant's request for a copy of his complete file was reasonable despite the appellant's submissions that the region failed to locate the following records: copies of the receipts he provided his caseworker, records of meetings that took place and a courier slip. However, I ordered York Region to issue an access decision to the appellant in response to his request for video surveillance footage of himself and the names of the security guard and receptionist on duty the day he attended York Region to pick up records. York Region subsequently issued an access decision to the appellant identifying the security guard and receptionist. York Region's access decision also granted the appellant partial access to the requested video surveillance record, and I closed the related York appeal file.

which would identify the name of the security guard in question. However, no records were identified as a result of these further searches.

[14] In my view, the region has adduced sufficient evidence to establish that it made a reasonable effort to locate records which would identify the security guard on duty the day the appellant says he fell. In contrast, I find that the appellant's submissions fall short of establishing a reasonable basis to conclude that these records should exist in the region's or third party service provider's record holdings. In addition, I am satisfied that the region's search was completed by an experienced individual knowledgeable in the subject matter of the request.

[15] Throughout this appeal, the appellant has expressed frustration about the level of service he received from the region, including the lack of assistance he says he received during the processing of his request. The appellant is adamant that the security guard he spoke to on the day he slipped and fell created records which should have been located by the region. The appellant appears to take the position that if no such records were created, they should have been and that the region should be held accountable.

[16] However, the issue before me is whether the region conducted a reasonable search for the purpose of section 17, not whether the region should have created records in response to the appellant's alleged fall. The *Act* does not require the region to prove with absolute certainty that further records do not exist. However, the region must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records, and I am satisfied that its further search has met this standard, namely, that the region has contacted the third party security company and directed it to conduct a search to locate the name of the security guard in question. Though this further search did not result in locating the information sought by the appellant, I am satisfied that the further search remedied the deficiencies in the region's prior search for this information.

ORDER:

I uphold the reasonableness of the region's further search following Interim Order MO-3814-I and dismiss this appeal.

Original signed by _____
Jennifer James
Adjudicator

January 29, 2020