

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-3994

Appeal MA17-28

City of Burlington

December 23, 2020

**Summary:** The appellant submitted a multi-part access request under the *Municipal Freedom of Information and Protection of Privacy Act* to the City of Burlington (the city) for various records, including those relating to a bylaw inspection conducted by the city after it received a complaint regarding waste and debris on the property where she lives. The city provided her with access to most of the requested records but withheld some information relating to the property owner and the personal contact information of the members of two city committees under the mandatory exemption in section 14(1) (personal privacy) of the *Act*. In addition, it refused to disclose copies of provincial statutes under the discretionary exemption in section 15(a) (information available to the public). The appellant appealed the city's access decision to this office and also claimed that the city had not conducted a reasonable search for records. At the adjudication stage of this appeal, the property owner consented to the disclosure of the information in the records relating to him. In this order, the adjudicator upholds the city's decision to withhold the personal contact information of the committee members under section 14(1) and copies of provincial statutes under section 15(a). He finds that the city conducted a reasonable search for records that are responsive to the appellant's access request, except for records documenting any bylaw complaints that it received relating to the property. He orders the city to disclose the information in the records relating to the property owner to the appellant, to conduct an additional search for records documenting any bylaw complaints that it received, and to issue an access decision to the appellant with respect to one responsive record that was apparently not disclosed to her.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of "personal information"), 14(1), 15(a) and 17.

## OVERVIEW:

[1] The appellant is a renter in a house in the City of Burlington (the city), which received a complaint regarding waste and debris on the property. The city conducted an inspection and then issued at least two notices of bylaw contravention to the property owner.

[2] The appellant submitted an access request to the city under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to the above matter and the city partly disclosed the responsive records to her.<sup>1</sup> She then submitted a further multi-part access request to the city for the following records:<sup>2</sup>

-any & all records regarding [name of appellant] and the owner [name] and the property [street address] Burlington where I have lived as a renter since August 2001 – am still today November 7, 2016 especially before April 15, 2016 inspection reports, notices of alleged contravention, number of complainants, proof of alleged complaints against me (exact texts & dates) time of day, emails or communication sent to my owner [name] re my back yard, photos (other than April 15/16) especially Oct 19/16

-any communication on or between [name of city employee] & her supervisor [name] – Code of conduct for by-law enforcement officers, supervisors & managers, amount of fine (for untrue complaints) against complainants.

-times of day for any & all notes, or communications etc. already provided by [name of city employee] and new ones to be provided by this new request

-mandate for enforcement officer SUB, supervisors CLS, manager [name]

-code of ethics for above mentioned

-names & coordinates & mandates for the Property Standards Committee members

-texts for:

1. Mission statement of Building By-Law Enforcement, etc.

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<sup>1</sup> City file number 180-04-16-50.

<sup>2</sup> City file number 180-04-16-58.

2. Vision statement of building By-Law Enforcement etc.
3. Privacy code
4. Evidence Act
5. Municipal Act – S.O. 2001 c.25,
6. Building Code Act – 1992 S.O. chapter 23,
7. Inspection Act – s. 15, 21
8. The By-Law itself

-any more material re files no. 08007414 & 09009960

-any & all pictures other than the 2 provided, especially Oct 10, 2016 or Oct 19, 2016 & all other mentioned by [name of city manager] by saying "lots here"

-any & all communications between SUB & for CLS with [name of individual] with time of day

-list of tools permitted to use when responding to 1st complaint & authority for such uses & text

-any and all entries in the Amanda file

-information missing from:

page 3 file 16008110

page 2 file 16007956

-a copy of certificate of offence & the protocol for its issuance

-the number of entries in this Amanda file

-the date of the last entry

-the date of the first entry

-section 14 of the Act, Personal Privacy

-expectation of privacy in back yard, whatever Act, whatever section

-appendix A of Field Notice of contravention

-appendix C of letter of contravention

-legal action request form as per Appendix D

-investigation brief(s) & field report(s)

[3] The city located records that are responsive to the appellant's access request, including the records that it previously disclosed to her in response to her first access request. It then sent a decision letter to her stating that it was disclosing most of these records, including inspection and job history reports, emails, photos taken of the backyard, notices of by-law contraventions, a property standards order to comply, a city procedure regarding its lot maintenance bylaw, a process flow chart for building bylaw enforcement investigations, a code of conduct for city employees, a list of Property Standard Committee members, terms of reference for both the Property Standards Committee and the Committee of Adjustment, and a city bylaw regarding yard waste and exterior property maintenance.

[4] It denied access to information relating to the property owner and the personal contact information of the members of two city committees under the mandatory exemption in section 14(1) (personal privacy) of the *Act*. In addition, it denied access to copies of the provincial statutes requested by the appellant under the discretionary exemption in section 15(a) (information available to the public) of the *Act*. It also stated that there are no responsive records for some parts of her access request. Finally, it provided her with an index of records.

[5] The appellant appealed the city's access decision to the Information and Privacy Commissioner of Ontario, which assigned a mediator to assist the parties in resolving the issues in dispute. During mediation, the appellant stated that she believes that additional records exist. Consequently, whether the city conducted a reasonable search for records is at issue in this appeal.

[6] This appeal was not resolved during mediation and was moved to adjudication for an inquiry. I decided to conduct an inquiry and sought and received representations from both the city and the appellant. I also contacted the property owner and advised him that his name, sex, home address, telephone number, and email address appear in the records and are at issue in this appeal. He consented to disclosing that information to the appellant.

[7] In this order, I find that:

- The personal contact information of the members of both the Property Standards Committee and the Committee of Adjustment is exempt from disclosure under section 14(1) of the *Act*.
- The provincial statutes requested by the appellant are exempt from disclosure under section 15(a) of the *Act*.

- The city has conducted a reasonable search for records that are responsive to the appellant's access request, except for records documenting any bylaw complaints that it received relating to the property where the appellant lives.
- The city does not appear to have disclosed a responsive record that it located called the "Amanda complaint folder cheat sheet."

## **RECORDS:**

[8] The city withheld the following information in the records:

- the personal contact information of members of the Property Standards Committee and the Committee of Adjustment – section 14(1) exemption; and
- copies of the *Evidence Act*, *Municipal Act*, *Building Code Act*, and the *Municipal Freedom of Information and Protection of Privacy Act* – section 15(a) exemption.

## **ISSUES:**

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the mandatory exemption at section 14(1) apply to the information at issue?
- C. Does the discretionary exemption at section 15(a) apply to the records?
- D. Did the city exercise its discretion under section 15(a)? If so, should the IPC uphold the exercise of discretion?
- E. Did the city conduct a reasonable search for records?

## **DISCUSSION:**

### **A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?**

[9] The mandatory personal privacy exemption in section 14(1) of the *Act* only applies to "personal information." Consequently, it must be determined whether the personal contact information of the members of the Property Standards Committee and the Committee of Adjustment constitutes their "personal information." That term is defined in section 2(1) as follows:

“personal information” means recorded information about an identifiable individual, including,

(a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except if they relate to another individual,

(f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual, and

(h) the individual’s name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[10] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.<sup>3</sup>

[11] Sections 2(2.1) and (2.2) also relate to the definition of personal information. These sections state:

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<sup>3</sup> Order 11.

(2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[12] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.<sup>4</sup>

[13] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.<sup>5</sup>

[14] The city has withheld the personal contact information of the members of the Property Standards Committee and the Committee of Adjustment. It states that although these members are appointed in a professional capacity and are doing work on behalf of the city, they have not consented to disclosing their personal contact information, which qualifies as their "personal information," under section 2(1).

[15] In her representations, the appellant does not address whether the personal contact information of the committee members is their "personal information."

[16] In my view, any city telephone numbers or email addresses that are assigned to members of the city committees would fall within section 2(2.1) and not constitute their "personal information." However, the information at issue here is the personal contact information of these committee members, which presumably includes their home addresses, telephone numbers and email addresses, which they apparently provided to the city as part of the appointment process. There is no evidence before me to show that these committee members use this contact information when carrying out their professional or official duties as members of these committees.

[17] In these circumstances, I find that the personal contact information of the members of the two committees constitutes their "personal information" because it falls within paragraphs (c) and (d) of the definition of that term in section 2(1). I will now turn to assessing whether such information is exempt from disclosure under section 14(1) of the *Act*.

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<sup>4</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>5</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

**B. Does the mandatory exemption at section 14(1) apply to the information at issue?**

[18] Where a requester seeks the personal information of another individual, the personal privacy exemption in section 14(1) of the *Act* prohibits the city from disclosing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. In my view, the only exception that could apply is section 14(1)(f), which states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

[19] The city has withheld the personal contact information of the members of the two committees from the appellant, such as their home addresses, telephone numbers and email addresses. I found above that this information constitutes their “personal information.” Under section 14(1)(f), if disclosing these individuals’ personal information to the appellant would not constitute an unjustified invasion of their personal privacy, it is not exempt from disclosure. Sections 14(2), (3) and (4) help in determining whether disclosing this information would or would not be an unjustified invasion of their personal privacy.

***Section 14(3)***

[20] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the personal information is presumed to be an unjustified invasion of personal privacy under section 14(1). Once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the “public interest override” at section 16 applies.<sup>6</sup>

[21] The city does not claim that any of the presumptions in section 14(3) applies to the personal information of the committee members. However, the appellant cites the presumption in section 14(3)(b), which states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

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<sup>6</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div. Ct.).



[22] However, she does not elaborate on how this presumption would or would not apply to the personal information of the committee members.

[23] I have considered the presumptions in section 14(3) and find that none of them, including section 14(3)(b), apply to the personal information of the committee members.

***Section 14(4)***

[24] Section 14(4) lists circumstances in which the disclosure of personal information does not constitute an unjustified invasion of personal privacy, despite section 14(3). If any of the paragraphs in section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 14(1).

[25] The city submits that none of the circumstances in section 14(4) apply to the personal information of the committee members.

[26] The appellant cites section 14(4)(a), which states:

Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution;

[27] She submits that section 14(4)(a) gives her the right [TRANSLATION] "to use all names of staff members with whom I have had any contact."

[28] The personal information at issue in this appeal is the personal contact information of the members of two city committees, such as their home addresses, telephone numbers and email addresses. This personal information is not included in the types of personal information listed in section 14(4)(a).

[29] I find that none of the circumstances listed in section 14(4), including section 14(4)(a), applies to the personal information of the committee members.

***Section 14(2)***

[30] If no section 14(3) presumptions apply and the exceptions in section 14(4) do not apply, section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of

personal privacy.<sup>7</sup> Section 14(2) states:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

[31] The factors in paragraphs (a), (b), (c) and (d) of section 14(2) generally weigh in favour of disclosure, while those in paragraphs (e), (f), (g), (h) and (i) weigh in favour of privacy protection.<sup>8</sup>

[32] The list of factors under section 14(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2).<sup>9</sup>

[33] In order to find that disclosing personal information does not constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances

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<sup>7</sup> Order P-239.

<sup>8</sup> Order PO-2265.

<sup>9</sup> Order P-99.

favouring disclosure in section 14(2) must be present. In the absence of such a finding, the exception in section 14(1)(f) is not established and the mandatory in section 14(1) exemption applies.<sup>10</sup>

[34] The city claims that the factor weighing in favour of privacy in section 14(2)(h) applies to the personal information of the committee members. Under section 14(2)(h), the city is required, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, to consider whether the personal information has been supplied by the individual to whom the information relates in confidence.

[35] This factor applies if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. Thus, section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.<sup>11</sup> The city submits that the committee members supplied their personal contact information to the city in confidence and had a reasonable expectation that it would not be disclosed.

[36] The appellant cites the factors in sections 14(2)(d), (e), (f) and (g) but does not explain how or why they apply to the personal contact information of the committee members.

[37] I am satisfied that both the committee members and the city had an expectation that the committee members' personal contact information would be treated confidentially, and this expectation was reasonable in the circumstances. I find, therefore, the factor in section 14(2)(h) applies to this information and weighs in favour of privacy protection. In my view, none of the factors cited by the appellant apply to this personal information.

### ***Conclusion***

[38] In determining whether disclosing the committee members' personal information would not be an unjustified invasion of their personal privacy under the exception in section 14(1)(f), I have found that the presumptions in section 14(3) do not apply, nor do the circumstances listed in section 14(4). The only factor in section 14(2) that applies is section 14(2)(h), which weighs in favour of privacy protection.

[39] In these circumstances, I find that disclosing the committee members' personal information to the appellant would be an unjustified invasion of their personal privacy. As a result, the exception in section 14(1)(f) is not made out, and this information is exempt from disclosure under section 14(1).

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<sup>10</sup> Orders PO-2267 and PO-2733.

<sup>11</sup> Order PO-1670.

### **C. Does the discretionary exemption at section 15(a) apply to the records?**

[40] In her access request, the appellant sought access to a number of provincial statutes, including the *Evidence Act*, *Municipal Act*, *Building Code Act*, and the “privacy code,” which the city has interpreted as a reference to the *Municipal Freedom of Information and Protection of Privacy Act*. The city denied access to these statutes under the discretionary exemption in section 15(a), which states:

A head may refuse to disclose a record if,

the record or the information contained in the record has been published or is currently available to the public;

[41] For this section to apply, the institution must establish that the record is available to the public generally, through a regularized system of access, such as a public library or a government publications centre.<sup>12</sup>

[42] To show that a “regularized system of access” exists, the institution must demonstrate that:

- a system exists;
- the record is available to everyone; and
- there is a pricing structure that is applied to all who wish to obtain the information.<sup>13</sup>

[43] Section 15(a) is intended to provide an institution with the option of referring a requester to a publicly available source of information where the balance of convenience favours this method of alternative access. It is not intended to be used in order to avoid an institution’s obligations under the *Act*.<sup>14</sup>

[44] The IPC has found in previous orders that statutes and regulations are exempt from disclosure under section 15(a).<sup>15</sup>

[45] The city states that after meeting with the appellant, it provided her with excerpts from the statutes she requested that relate to the property standards matter that she was involved in. However, it refused to download and disclose these statutes in their entirety under section 15(a) and instead provided the appellant with the link for each statute in e-Laws, which is the Ontario government website that contains all

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<sup>12</sup> Orders P-327, P-1387 and MO-1881.

<sup>13</sup> Order MO-1881.

<sup>14</sup> Orders P-327, P-1114 and MO-2280.

<sup>15</sup> Orders P-170 and P-1387.

provincial statutes and regulations.

[46] The appellant submits that section 15(a) does not allow the institution to extract a small amount of information from a long record, especially when the entire record must be disclosed under the *Act*.

[47] I am satisfied that the statutes sought by the appellant are available through a regularized system of access that is accessible to everyone. As noted above, the city provided the appellant with the link for each statute in e-Laws, which is the Ontario government website that contains all provincial statutes and regulations. This website can be accessed from a home computer or from computers in public libraries.

[48] I find, therefore, that the provincial statutes sought by the appellant are exempt from disclosure under section 15(a) because these records have been published or are currently available to the public.

**D. Did the city exercise its discretion under section 15(a)? If so, should the IPC uphold the exercise of discretion?**

[49] The section 15(a) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[50] In addition, the IPC may find that the institution erred in exercising its discretion where, for example:

- it does so in bad faith or for an improper purpose;
- it takes into account irrelevant considerations; or
- it fails to take into account relevant considerations.

[51] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>16</sup> The IPC may not, however, substitute its own discretion for that of the institution.<sup>17</sup>

[52] The city submits that it exercised its discretion in deciding to withhold the provincial statutes under section 15(a) and states that it took the following factors into account:

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<sup>16</sup> Order MO-1573.

<sup>17</sup> Section 43(2).

- The statutes and regulations are provided through a regularized system of access currently available free to the public through e- laws.
- The [appellant] is an individual who may or may not have access to the internet; therefore, to assist the requester, after discussions with the [appellant] and Supervisor of By-Law Enforcement assigned to the case, we provided links and excerpts of relevant information in the Records of Index that we thought would be helpful.
- Where the information is currently available to the public, the city has historically denied access under the *Act* and directed the [appellant] to the appropriate staff, department or website to retrieve the information. Most times, the information is provided quicker and at a lesser cost.
- Consideration was given to changing the city's practice; the statutes and regulations can be downloaded from the internet for free. Given the significant size of these statutes, if the city provided the information, it could be cost prohibitive for the [appellant].

[53] The appellant submits that the IPC should not uphold the city's exercise of discretion and characterizes the city's refusal to disclose the provincial statutes as an [TRANSLATION] "abusive exercise of power."

[54] I find that the city exercised its discretion in denying access to the provincial statutes requested by the appellant under section 15(a) and did so appropriately by considering a number of relevant factors and no irrelevant factors. I am not convinced that it exercised its discretion in bad faith or for an improper purpose or that its exercise of discretion constitutes an abuse of power. In short, I uphold the city's exercise of discretion under section 15(a) of the *Act*.

#### **E. Did the city conduct a reasonable search for records?**

[55] The appellant believes that additional records exist that are responsive to her access request that have not been disclosed to her by the city.

[56] 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>18</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.

[57] The *Act* does not require the institution to prove with absolute certainty that

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<sup>18</sup> Orders P-85, P-221 and PO-1954-I.

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>19</sup> To be responsive, a record must be "reasonably related" to the request.<sup>20</sup>

[58] 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>21</sup>

[59] 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>22</sup>

[60] 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>23</sup>

### ***Summary of city's representations***

[61] The city submits that it conducted a reasonable search for records that are responsive to the appellant's access request and that no further responsive records exist.

[62] It states that its Records and Information Coordinator and its Supervisor of Bylaw Enforcement had numerous discussions with the appellant both in person and on the telephone about both her access request and the records that were located.

[63] The city's searches were overseen and undertaken by its Supervisor of Bylaw Enforcement and the bylaw enforcement officer who was assigned to the property standards investigation that took place after the city received a complaint about waste and debris at the property where the appellant lives. The city submits that both of these individuals are experienced employees who are knowledgeable in the subject matter of the appellant's access request.

[64] Both individuals provided sworn affidavits setting out their search efforts to locate records that are responsive to the appellant's access request. In particular, they state that they searched the AMANDA 5.4 database, electronic folders, Outlook email, physical paper files, and iPhones.

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<sup>19</sup> Orders P-624 and PO-2559.

<sup>20</sup> Order PO-2554.

<sup>21</sup> Orders M-909, PO-2469 and PO-2592.

<sup>22</sup> Order MO-2185.

<sup>23</sup> Order MO-2246.

[65] The Supervisor of Bylaw Enforcement also states that he forwarded the appellant's access request to other city employees who might have responsive records, including:

- Customer service representatives in the city's Licensing and Permit Administration department;
- Secretary Treasurer of the Committee of Adjustment and Property Standards Appeals Committee;
- Manager of Licensing, By-Law Enforcement and Animal Services;
- Director of Planning and Building; and
- Assistant in the local councillor's office.

[66] These individuals searched for records that are responsive to the appellant's access request. Some of these individuals, including the Manager of Licensing, By-Law Enforcement and Animal Services, the Director of Planning and Building, and the assistant in the local councillor's office were unable to locate any records that are responsive to the appellant's access request.

[67] The city then compiled all of the responsive records that it located and disclosed them to her, with severances made under section 14(1) and 15(a) of the *Act*. It states that several meetings then took place with the appellant to review the records that were disclosed to her. At these meetings, the appellant claimed that additional records must exist that are responsive to her access request. The city states:

The [appellant] stated that she had personal copies of letters of contravention on the property, but did not see any in her package of records provided by the city. She further indicated that pictures were missing from the package of information. It was confirmed with the Supervisor of By-Law Enforcement that the Letters of Contravention were addressed and sent to the property owner.

Staff undertook an additional search to ensure that all responsive records were provided. All records were provided that were responsive to the request, including the Notice of By Law Contravention Letters that were sent to the property owner and photos taken that were attached to the file.

The Records & Information Coordinator reviewed the records in detail at a meeting with the [appellant]. Some of the records could not be provided as they were never created and didn't exist. The [appellant] expressed that she was unsatisfied and thought we were hiding information that she



wanted. The [appellant] was assured several times that all the responsive records were provided.

[68] The city further states that in preparing its representations on reasonable search, it decided, in the interests of due diligence, to conduct a search for archived records at its off-site commercial storage facility. It states that its Records & Information Assistant, whose duties managing the city's inactive records at this facility, conducted a "thorough search" of the off-site records database and did not find any responsive records.

[69] Finally, the city provided a chart that sets out each part of the appellant's multi-part access request and whether responsive records exist for each part. For some parts, the city has indicated that "no records exist" and for other parts, "no further records exist."

### ***Summary of appellant's representations***

[70] The appellant submits that the city has not conducted a reasonable search for records that are responsive to her access request and claims that additional records exist. She states:

[TRANSLATION]

The greatest proof that other records exist is the disclosure of the ½ page of the Amanda 5.4.4.3 file. It also revealed:

- (a) that for 2 files. . . no information had been provided
- (b) that the text of each complaint was there, for the other files
- (c) that the dates and times of the day were there too

With the records provided called historical notes on the property, I saw that the city did not do a reasonable research. . . .

[71] The appellant also responds to the affidavits of the two city staff who provided sworn affidavits setting out their search efforts to locate records that are responsive to the appellant's access request. She states:

[TRANSLATION]

Both affidavits revealed to me:

- (a) which of the 7 disclosed files still lacked information
- (b) that other emails existed (a variety of) and from CLS and SVB.
- (c) that an email sent by CLS, to a variety of people, existed

(d) that at least one other email sent to the owner existed

(e) that the email between SVB and CLS existed and maybe several others

(f) that the Customer Service section of the Customer Service & By-Law Enforcement flow chart had not been provided and that the section provided was not numbered, so no proof that the entire record had been provided.

[72] Finally, the appellant also alleges that a number of other responsive records should exist in the city's record holdings:

[TRANSLATION]

I have not received the record that is called Amanda complaint folder cheat sheet. If there is a mandate for the members of the committee for the appeal, there must be a mandate for SVB, CLS, T.B. and MLT & A.M. & T.N. The Standard Operating Guidelines document informs us of the records refused as non-existent but named in paragraphs 5 and 9. The same applies to the (a) legal action request form and (b) the investigation brief and (c) the field reports and (d) a notebook for SVB mentioned in item 5. These are the last 5 responses in the index (the last) + the 10th from the end. [emphasis in original]

### ***Analysis and findings***

[73] I have considered the parties' representations and for the reasons that follow, I find that the city conducted a reasonable search for records that are responsive to the appellant's access request, except for one type of records.

[74] The appellant submitted a lengthy, multi-part access request to the city for records after the city received a complaint regarding waste and debris on the property where she lives and then conducted a bylaw inspection. Some parts of her request relate to this matter, while others are broader in scope.

[75] It is evident from the city's evidence that its staff expended considerable time and effort to search for records that are responsive to the appellant's access request. In particular, the city's Supervisor of Bylaw Enforcement and the bylaw enforcement officer who was assigned to the property standards investigation, searched numerous record holdings, including the city's AMANDA 5.4 database, electronic folders, Outlook email, physical paper files, and iPhones for records that are responsive to the appellant's access request.

[76] The Supervisor of Bylaw Enforcement also asked at least four other city employees and an assistant to a city councillor to search for records. As a result of

these searches, the city located a significant number of records and disclosed them to the appellant, with only minor severances. City staff also had several in-person and telephone conversations with the appellant to discuss both her request and whether any further records might exist.

[77] In these circumstances, I am satisfied that with the exception of one type of record described below, experienced employees knowledgeable in the subject matter of the appellant's access request expended a reasonable effort to locate records which were reasonably related to that request.

[78] As noted above, 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>24</sup>

[79] In her representations, the appellant alleges that a number of additional records exist that have not been located or disclosed to her by the city. For the most part, I find that these records are either not responsive to her access request or she has not provided sufficient detail that would lead me to have a reasonable basis for concluding that they exist.

[80] In my view, however, the appellant has provided sufficient evidence to show that one type of record exists that is responsive to her access request. In that request, she asked for "proof of alleged complaints against me (exact texts & dates)." Although it is awkwardly worded, a reasonable interpretation of this part of her request is that she is asking for records documenting the complaints themselves, because she requested the "exact texts & dates." In her representations, she alleges that an excerpt that was disclosed to her from the Amanda database shows that the text for each complaint exists.

[81] The city's bylaw investigation was not self-initiated. It was triggered after the city received a complaint (or possibly complaints) regarding waste and debris on the property where the appellant lives. In my view, any complaints received by the city reasonably relate to the appellant's access request and are therefore responsive to it. However, I can see no evidence in the city's decision letter to the appellant, its representations, or the records disclosed to her that any records documenting such complaints were located by the city employees who conducted searches or, if such records were located, they were deemed responsive to her access request.

[82] In short, I find that the city has not conducted a reasonable search for records documenting any complaints that it received regarding the property where the appellant lives. As a result, I will order it to conduct a further search for such records and to issue

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<sup>24</sup> Order MO-2246.

an access decision for any records that it locates that are responsive to her access request.

[83] Finally, I note that the appellant alleges that she has not received a copy of a record called, the "Amanda complaint folder cheat sheet." This record is listed as a responsive record on both page 11 of the city's representations and in paragraph 5 of the Supervisor of Bylaw Enforcement's affidavit. I have reviewed the records that the city disclosed to the appellant and it appears that this record was not included. This is not a reasonable search issue, because the city appears to have located this record, but it was apparently not disclosed to her. In my order provisions below, I will order the city to issue an access decision to the appellant with respect to this record.

## **OTHER ISSUES**

[84] In her representations, the appellant raises a number of other issues, including the constitutionality of a city bylaw and the conduct of city staff. These issues fall outside my jurisdiction, and I do not intend to address them.

## **ORDER:**

1. I uphold the city's decision to withhold the personal contact information of the members of both the Property Standards Committee and the Committee of Adjustment under section 14(1) of the *Act*.
2. I uphold the city's decision to withhold copies of the provincial statutes requested by the appellant under section 15(a) of the *Act*.
3. I order the city to disclose a new version of those records that contain the property owner's name, sex, home address, telephone number and email address. These records should be disclosed to the appellant by **January 29, 2021**.
4. I order the city to conduct a search, within 30 days of this order, for records documenting any bylaw complaints that it received regarding the property where the appellant lives that cover the time frame set out in her access request. If the city locates any such records, it should issue an access decision to her with respect to those records.
5. I order the city to issue an access decision to the appellant, treating the date of this order as the date of the request, with respect to the "Amanda complaint folder cheat sheet" that is listed as a responsive record on page 11 of its representations and in paragraph 5 of the Supervisor of Bylaw Enforcement's affidavit.

6. The timelines noted in order provisions 3, 4 and 5 may be extended if the city is unable to comply in light of the current COVID-19 situation, and I remain seized to consider any resulting time extension request.

Original Signed by: \_\_\_\_\_

Colin Bhattacharjee  
Adjudicator

December 23, 2020 \_\_\_\_\_