

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## ORDER MO-4099

Appeal MA19-00504

City of Greater Sudbury

August 30, 2021

**Summary:** This appeal deals with an access request received by the City of Greater Sudbury (the city) for a copy of all minutes of the Tender Opening Committee's public tax sale tenders from January 1, 2003 to May 1, 2019. The city denied access to the responsive records pursuant to section 15(a) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) on the basis that the records are publicly available. The city advised the appellant of the location of the responsive records on its website. The appellant filed an appeal of the city's decision. The appellant maintains that the publicly available information is different from the version of the information that he is seeking. In this order, the adjudicator finds that the city properly relied on section 15(a) of the *Act* to deny the appellant access to the responsive records 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 15(a); *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, sections 228(1)(c), 253(1)(c) and 253(2).

### OVERVIEW:

[1] The City of Greater Sudbury (the city) received the following request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

A copy of all Minutes of the Tender Opening Committee documents from January 1, 2003 to May 1, 2019, or as far back in time as the records are available but not beyond January 1, 2003.

[2] The city sought clarification from the appellant, requesting the contract number,

or description, related to the requested records. The appellant responded to the city, noting that his request was not for the minutes of the Tender Opening Committee's procurement tenders, but rather for the minutes of the Tender Opening Committee's public tax sale tenders.

[3] The city issued a decision denying access to the responsive records, pursuant to section 15(a) of the *Act* on the basis that the responsive records are publicly available. The city advised the appellant of the location of the responsive records on its website.

[4] The appellant appealed the city's decision to the Office of the Information and Privacy Commissioner (the IPC).

[5] A mediator was appointed to explore the possibility of resolving the appeal. During mediation, the appellant provided a letter to the mediator,<sup>1</sup> which included an example of the type of record that he seeks. The appellant's letter indicated that he was interested in accessing similar documents from tax sales for specific dates between 2008 and 2017.

[6] With the appellant's permission, the mediator shared his letter with the city. In response, the city provided detailed instructions on how to locate and access the records that it has identified as being responsive to the appellant's request. The city also advised the appellant that it is not willing to certify and sign the records under seal.

[7] The appellant maintains that the publicly available records are different from the version of the information that he is seeking and are not the type of records that he is seeking access to. Therefore, the issue of reasonable search was added to the scope of the appeal.

[8] 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.

[9] The adjudicator originally assigned to this appeal decided to conduct an inquiry. She sought and received representations from the appellant and the city. The city's representations were shared with the appellant in accordance with the IPC's *Code of Procedure and Practice Direction 7*.

[10] The appeal was then transferred to me.<sup>2</sup> In this decision, I find that section 15(a) applies to exempt the records at issue from disclosure.

---

<sup>1</sup> This particular letter is dated August 18, 2019.

<sup>2</sup> I have reviewed all the file material and representations and have determined that I do not require further information before making my decision.

## **RECORDS:**

[11] The records at issue are the minutes of the Tender Opening Committee's public tax sale tenders from January 1, 2003 to May 1, 2019.

## **DISCUSSION:**

[12] The appellant argues that the city should not be able to rely on the discretionary exemption at section 15(a) of the *Act* because he believes that the city's online documents are not responsive to his request. For the reasons that follow, I find section 15(a) applies to the withheld records.

[13] Section 15(a) of the *Act* 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;

[14] 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>3</sup>

[15] 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>4</sup>

[16] Section 15(a) of the *Act* 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>5</sup>

[17] In order to rely on the section 15(a) exemption, the institution must take adequate steps to ensure that the record that they allege is publicly available is the

---

<sup>3</sup> Orders P-327, P-1387 and MO-1881.

<sup>4</sup> Order MO-1881.

<sup>5</sup> Orders P-327, P-1114 and MO-2280.

record that is responsive to the request.<sup>6</sup>

[18] Examples of the types of records and circumstances that have been found to qualify as a “regularized system of access” include:

- unreported court decisions<sup>7</sup>
- statutes and regulations<sup>8</sup>
- property assessment rolls<sup>9</sup>
- septic records<sup>10</sup>
- property sale data<sup>11</sup>
- police accident reconstruction records<sup>12</sup>
- orders to comply with property standards.<sup>13</sup>

[19] The exemption may apply despite the fact that the alternative source includes a fee system that is different from the fees structure under the *Act*.<sup>14</sup> However, the cost of accessing a record outside the *Act* may be so prohibitive that it amounts to an effective denial of access, in which case the exemption in section 15(a) would not apply.<sup>15</sup>

### **Appellant’s representations**

[20] The appellant submits that the city has failed to prove that section 15(a) of the *Act* applies to the records at issue because the requested records are not publicly available. He also amends his request from “a copy” to “a certified copy, under seal of the City” of the records, and “bearing all signatures thereon”.

[21] Specifically, he submits that:

The problem with the online version of the [c]ity's record, is that it is difficult to locate. Even so, when located, it is not the record I requested

---

<sup>6</sup> Order MO-2263.

<sup>7</sup> Order P-159.

<sup>8</sup> Orders P-170 and P-1387.

<sup>9</sup> Order P-1316.

<sup>10</sup> Order MO-1411.

<sup>11</sup> Order PO-1655.

<sup>12</sup> Order MO-1573.

<sup>13</sup> Order MO-2280.

<sup>14</sup> Orders P-159, PO-1655, MO-1411 and MO-1573.

<sup>15</sup> Order MO-1573.

and does not contain the same, or all the information when compared to the paper version which is expected to be certified and under the seal of the City.

The online version of the record and the paper version of the record have distinct differences and significantly vary in the information.

1. The online version is missing the phrase; "The chairman called the meeting to order and advised of the following:" The absence of this phrase puts into question whether or not the meeting was called to order and any advised information during the meeting.
2. The online version is unorganized and difficult to read and does not follow the City's format for standard Minute notes.
3. The online version is missing the phrase; "The foregoing tenders were turned over to the Assistant City Solicitor for review and award'. The absence of this phrase puts into question, the final step and/or result or conclusion regarding where the tenders went [to]. There is no indication on the online version, where the tenders went after the meeting.
4. The online version does not contain signatures.
5. The online version is not a certified copy of the records.
6. The online version is not under the seal of the City.
7. The online version is an uncertified and not under seal of the City document, representing only a portion of the information of the original.
8. The online version is only an incomplete digital reproduction of the original.

[22] According to the appellant, the records were not published and/or not published in their entirety, as required by section 15(a) of the *Act*. He submits that only some of the information that was contained in the records was published. He also submits that the online versions are not the records he seeks but merely transcribed information pertaining to the records.

[23] The appellant further submits that the records he is requesting should be certified copies of the original, under seal of the city and should contain two signatures. He submits that the online version is not a copy of the original.

[24] The appellant also refers to sections 228(1)(c), 253(1)(b) and 253(2) of the *Municipal Act, 2001*<sup>16</sup> (*Municipal Act*) in his representations. These sections state:

228(1) A municipality shall appoint a clerk whose duty it is, (c) *to keep the originals or copies of all by-laws and of all minutes of the proceedings of the council;*

253(1) Subject to the *Municipal Freedom of Information and Protection of Privacy Act*, any person may, at all reasonable times, inspect any of the records under the control of the clerk, including, (c) *minutes and proceedings of regular, special or committee meetings of the council or local board, whether the minutes and proceedings have been adopted or not;*

(2) *Upon request, the clerk shall, within a reasonable time, provide a certified copy under seal of the municipality of any record referred to in subsection (1) to any applicant who pays the fee established by council.*  
[emphasis added by the appellant]

[25] He submits that the minutes sought in this appeal are the minutes that are required to be under the control of the Clerk under the *Municipal Act*, whereas the online version of the minutes is not under the control of the Clerk. He further submits that the city's online version of the minutes is not a certified copy, is not under seal of the city and does not bear any signatures, which is required under the *Municipal Act*. He claims that the online version of the records is not responsive to his request and the city's reliance on section 15(a) is an attempt to avoid its obligations under the *Act*.

### **City's representations**

[26] The city submits that the requested records are publicly available online and that it appropriately applied section 15(a) of the *Act*.

[27] In response to the appellant's representation that the Tender Opening Committee is a committee of council, the city submits that this is not the case and therefore, the requirements outlined in the *Municipal Act, 2001* regarding minutes and the standard practices and format of the Clerk's Services Department for taking minutes are not applicable. According to the city, the inclusion of the word "committee" does not transform a staff committee into a committee of council. The city explains that the Tender Opening Committee is a group comprised of staff only and not members of council. The city also provided confirmation from its solicitor and Clerk that the Tender Opening Committee is not a formal committee of council, as it was not created by any bylaw or resolution of council. It further explains that the Tender Opening Committee is

---

<sup>16</sup> S.O. 2001, c. 25.

simply a group of city employees, who are responsible for opening a specific tender.

[28] The city submits that the sample record provided by the appellant during mediation supports its position that the requested records are those posted on the city's website. It also provided a direct link to the sample for my review.<sup>17</sup>

[29] The city further explains that the file type and overall look of the minutes of the Tender Opening Committee have changed to adapt to available technologies and department practices, noting that some of the minutes are PDF files while other are incorporated directly into the webpage. Despite this, the city submits that the entirety of the minutes are posted online. The city further submits that the appellant's dislike of the style of some of the minutes does not preclude the application of section 15(a) of the *Act* by referring to the specific wording in this section - "the record or the information contained in the record".

[30] In addition, the city submits that posting the minutes of the Tender Opening Committee on its searchable Tenders and Results webpage, which is accessible to the public at any time and at no charge, constitutes a regularized system of access.

### **Analysis and findings**

[31] Having reviewing the parties' representations, I find that section 15(a) applies to exempt the records from disclosure and that the city has exercised its discretion under section 15(a) of the *Act* in an appropriate manner.

[32] In his representations, the appellant amends his request from "a copy" to "a certified copy, under seal of the City" and "bearing all signatures thereon" of the records. I find that the information that the appellant is now seeking is outside the scope of his original request. I also note that there is no requirement under the *Act* for the city to provide the appellant with a certified copy of the records under seal of the city. I am mindful of previous orders of the IPC, which found that, generally speaking, institutions have no obligation under the *Act* to create records *that do not exist* in order to respond to a request.<sup>18</sup>

[33] The appellant references the city's obligation under section 253 of the *Municipal Act* to provide a certified copy under seal of the municipality in response to a request made under that legislation. However, I accept the city's explanation that the Tender Opening Committee is not a formal committee of council and therefore, the requirements under the *Municipal Act* are not applicable in the circumstances.

---

<sup>17</sup> I note that the link provided by the city in its representations is no longer active. However, at the time of issuing this order, I was able to use the instructions provided by the city to access the sample provided by the appellant on the city's website, as well as the minutes for the other dates provided by appellant.

<sup>18</sup> Orders P-50 and MO-2996.

[34] While the appellant submits that the requested records are hard to locate on the city's website, the city provided the appellant and the IPC with detailed instructions and images to locate the responsive records. I accept that that the records are "available to the public" as required by section 15(a).

[35] The appellant's representations refer to the specific wording of section 15(a), which emphasize the portion that reads "has been published". The appellant appears to be arguing that because the records he is seeking are not exactly in the format he would like, they do not qualify as being "published" for the purposes of section 15(a). I do not accept this argument and note that section 15(a) requires that the record "has been published *or* is currently available to the public". The city is relying on the fact that the information at issue (minutes of the public sales tax tenders) is currently available to the public.

[36] I find that the city has established that the records responsive to the appellant's request are currently available to the public through a regularized system of access, namely, on the city's website, where the records are searchable. As required by section 15(a) of the *Act*, the city has demonstrated that a system exists and that the records are available to everyone. Further, the records are available free of charge, so there is no argument to be made that the fee amounts to a denial of access. I find that the city has referred the appellant to a publicly available source of information in response to his access request, as an alternative to the process under the *Act* - and not to avoid its obligations under the *Act*.

[37] The city has taken adequate steps to ensure that the records, which are publicly available, are the records that are responsive to the appellant's request.<sup>19</sup> It has provided the appellant and the IPC with detailed instructions and images for accessing the records on the city's website, which I was able to confirm myself.

[38] Based on the city's representations and my review of its website, I uphold the city's claim that section 15(a) applies to exempt the requested records from disclosure.

[39] In exercising its discretion to withhold the records at issue from disclosure, I find the city properly considered the fact that the appellant was not seeking access to his own personal information and that there was no sympathetic or compelling need for the appellant to obtain access to information. Further, it is evident to me that the city considered that the government-held information (like the records at issue) should be available to the public, and that in fact, they already are.

[40] Accordingly, I also find the city did not err in its exercise of discretion in its decision to deny access to the records. I am satisfied that the city did not exercise its

---

<sup>19</sup> I do however note that the online record dated September 27, 2012 may be incomplete. I ask the city to verify this and to correct it, as necessary.



discretion in bad faith or for an improper purpose. I am also satisfied that the city took into account relevant factors and did not take into account irrelevant factors in the exercise of discretion.

[41] Based on how the city responded to the appellant's request, I find that the city exercised its discretion under section 15(a) of the *Act* in an appropriate manner in this appeal, and I uphold it.

[42] In addition, I wanted to address briefly the reasonable search issue raised by the appellant's assertion that the publicly available records are different from the version of the information that he is seeking and that is held by the city. I am satisfied that the information, in the format sought by the appellant, does not in fact exist. Therefore, there is no basis for ordering the city to conduct an additional search.

**ORDER:**

I dismiss the appeal and uphold the city's decision.

Original signed by: \_\_\_\_\_  
Valerie Silva  
Adjudicator

\_\_\_\_\_ August 30, 2021