

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4130

Appeal MA19-00590

City of Ottawa

November 25, 2021

Summary: The City of Ottawa (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to drainage at a specified property. The city issued a decision stating that responsive records do not exist. The requester, now the appellant, appealed the city's decision to the Information and Privacy Commissioner of Ontario, because he believes records responsive to his request should exist. In this order, the adjudicator finds that the city conducted a reasonable search for responsive records and dismisses the appeal.

Statutes Considered: The *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 17.

OVERVIEW:

[1] This order determines whether the City of Ottawa (the city) conducted a reasonable search for records relating to drainage at a specified property, a condominium building. The city received a request under the *Act* for access to the following information pertaining to a specified property:

Construction storm water discharge permits, sewer use compliance report.
Building permit storm water discharge – quantity of water the building expects to discharge annually, storm water management plan, sewer use fees assessed to building storm water.

[2] During its search, the city reached out to the requester to clarify the request and he clarified the request, as follows:

I would like to know how much water is pumped out of the pit/pits in the basement that collect the water from:

- 1) The weeping tiles around the building
- 2) The ground water from below the basement floor
- 3) The water collected into the elevator pits
- 4) The water from all the drains of the 9 floors parking garage.

Further, I would like to know where the water from this pit/pits is pumped and who pay to have it cleaned before it is discharged into the Ottawa River.

[3] The city issued an access decision stating the following:

Based upon an extensive review of our records, it has been concluded that the City of Ottawa does not have any documents that meet the description [in] your request. The information that you are seeking is not contained [in] any record that is in the custody or control of the City of Ottawa.

[4] The requester, now the appellant, appealed the city's decision to the Information and Privacy Commissioner of Ontario (IPC) and a mediator was appointed to explore resolution.

[5] During mediation, the appellant advised that he believes responsive records should exist. The city advised that it had consulted with its senior engineers and conducted searches for responsive records. The city maintained its decision that no responsive records exist.

[6] As a mediated resolution was not possible, the appeal was transferred to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. I decided to commence an inquiry by inviting representations from the city, initially. I received representations from the city, which I shared with the appellant. I then invited and received representations from the appellant.

[7] In this order, I find that the city has conducted a reasonable search for responsive records and dismiss the appeal.

DISCUSSION:

Did the city conduct a reasonable search for responsive records?

[8] The appellant claims that records responsive to his request about drainage at the specified property should exist. 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.

[9] 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 (responsive) to the request.³

[10] 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

Representations of the city

[11] The city submits that it conducted a reasonable search for responsive records. The city submits that the steps it took in response to the appellant's request constitute a reasonable search by experienced employees who were knowledgeable in the subject matter of the request.

[12] In support of its position, the city provided the affidavit of an analyst with the city's Access to Information and Privacy Office (the Analyst). The relevant portions of his affidavit are as follows:

- The Analyst directed the search for responsive records and sent retrieval requests to two departments within the city: the Public Works and Environmental Services (PWES) Department, and the Planning, Infrastructure and Economic Development (PIED) Department.

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.

- When an access request is received by the ATIP office, it is processed and sent to the appropriate department's Business Support Services (BSS) Branch representative for retrieval of responsive records. The BSS representative then sends the request to the branches and/or city employees that may have responsive records.
- After city staff asked for clarification on the wording and interpretation of the original request, the Analyst contacted the appellant in order to clarify the request, and the appellant sent a written clarification (as outlined above).
- The Analyst spoke to the following people, who conducted a search in their department, and advised that records responsive to the request did not exist:
 - Building Technical Clerk, from the Building Code Services Branch under the PIED Department;
 - Program and Project Management Officer, from the BSS Branch under the PIED Department;
 - The Senior Engineer of Stormwater Management Projects from the city's Stormwater Management Branch;
 - Program Lead at the Sewer Use Compliance Unit from the PWES Department;
- The Senior Engineer (Senior Engineer #1) of Infrastructure Applications from the Development Review Central Unit at the PIED Department advised that:
 - The city does not have records that would be responsive to the request, because the city does not collect information related to the volume of water being pumped out of specific areas of any property.
 - The city does not monitor the volume of water being pumped out of specific individual properties and into the stormwater and/or sewage system.
- Senior Engineer #1 identified records that were related to the specified property's overall capacity to pump stormwater and sewage, including the Site Servicing Study, and provided them to the Analyst, but the Analyst determined that these records were not directly responsive to the request. These records were still offered to the appellant, who declined copies.
- The Analyst attached an email from the Senior Engineer (Senior Engineer #2) of Infrastructure Projects with the Transportation Services Department, who previously worked for the Development Review Central Unit from the PIED

Department as a Senior Engineer of Infrastructure Approvals. He is also the former Project Manager assigned to the development of the specified property.

- Senior Engineer #2 provided the Analyst with a detailed explanation of the records that are available in relation to the development of the specified property.
- Senior Engineer #2 advised that the review of a development does not typically collect data on the amount of water that is collected by the weeping tile, or separate out the amount of water that comes from the elevator pits compared to the basement and other sanitary flows.
- Senior Engineer #2 advised that the city accounts for weeping tile drainage in general calculations for sanitary and storm sewer designs. He states that the city does this by accounting for infiltration into the system based on typical sewer systems across the city in accordance with the city's Sewer Design Guidelines.

[13] The city submits that in accordance with the searches conducted with other departments, and the information provided by the two senior engineers, the city advised the appellant that it does not have records responsive to his request. The city submits that it offered to provide the appellant with records identified by Senior Engineer #1 as related to the specified property's overall capacity to pump stormwater and sewage, but the appellant declined. The city submits that these were the same records previously offered to the appellant during mediation.

[14] The city submits that its Analyst and other employees took all steps necessary to complete a reasonable search, including an initial search sent to the PWES and PIED departments, clarification of the request through direct conversation with the appellant, and identification of a subject matter expert in the specific development that was the subject of the request.

[15] The city submits that it is reasonable to expect that records responsive to the subject matter of this request do not exist. The city submits that based on the information provided by two senior engineers knowledgeable in the area of site planning and development, it is reasonable to believe that the city does not collect information related to the amount of water being pumped from various parts of the specified property.

[16] The city submits that wastewater and stormwater services are charged on a fixed rate basis determined by the type of property, service area, and service type; and these charges are not determined based on the actual usage by each specific property. The city submits that this further supports a conclusion that it does not have a reason to create or maintain records relating to the specified property's discharge of wastewater or stormwater.

Representations of the appellant

[17] The appellant submits that he has worked as a stationary engineer for 35 years and he is sure that records responsive to his request should exist. The appellant submits that records responsive to the request should exist because when applying for rezoning and building permits, developers are required to submit to the city a stormwater management report by a civil engineer to establish the following:

- The maximum allowable rate of stormwater discharge from the site that is directly discharged into the city storm sewer;
- Any reduced water flow restricting site water storage requirement imposed by any storm sewer volume restraints; and
- Water flow calculations from ground water into a basement sump pit that will need to be pumped into the city storm system.

Analysis and findings

[18] The review of the issue of whether the city, as an institution under the *Act*, has conducted a reasonable search for records as required by section 17 arises where a requester claims additional records exist beyond those identified by the institution.⁵ As noted above, while 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.

[19] The city has provided an affidavit in support of its search for records responsive to the appellant's request. The city has described the individuals involved in the search, where they searched, and the results of their search. The city spoke with the appellant to clarify his request. The city also reached out to two senior engineers, including Senior Engineer #2, the former project manager for development of the specified property, to ascertain whether the city collects the type of information the appellant is requesting. Therefore, I am satisfied that experienced employees knowledgeable in the subject matter of the request conducted a reasonable search for responsive records.

[20] The appellant's request is for how much water is collected/pumped out from the weeping tiles around the specified property development, the ground water from below the basement floor, the water collected into the elevator pits, and the water from all of the drains in the parking garage. While the appellant has provided reasons for his belief that records responsive to his request should exist, I find that these reasons do not establish a reasonable basis under the *Act* to conclude that records responsive to his

⁵ Orders P-85, P-221 and PO-1954-I.

request should exist for the following reasons.

[21] For example, the appellant asserts that in order to obtain rezoning and building permits, developers are required to establish the maximum allowable rate of stormwater discharge from the site that is directly discharged into the city storm sewer. However, even if I were to accept that the maximum allowable rate of stormwater discharge is required for a permit, this would not provide the appellant with the actual amount of water collected/pumped from the weeping tiles, the elevator pits, etcetera, at the development. In other words, in my view, the information that the appellant argues should exist would not be responsive to his request.

[22] Furthermore, I accept the submission from the city's two senior engineers that the city does not collect information related to the current amount of water being pumped from various parts of the specified property. I also accept the city's submission that the city's wastewater and stormwater services are not determined based on actual usage of these services by each specific property, meaning that there is no reason to create or maintain records relating to the specified property's discharge of wastewater or stormwater.

[23] Additionally, I accept that the specified property's weeping tile drainage is accounted for in the city's sanitary and stormwater sewer designs based on typical sewer systems across the city in accordance with its guidelines. I also acknowledge that the Site Servicing Study⁶ for the specified property, which was identified by the city's Senior Engineer #1, does provide information about the specified property's overall capacity to pump stormwater and sewage, but not the actual volumes sought by the appellant.

[24] For the reasons above, I find that the appellant has not established a reasonable basis to conclude that records responsive to his request should exist.

[25] As noted above, 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.⁷ I am satisfied that the city has provided sufficient evidence to establish this. Based on the representations of the city, and in the absence of persuasive evidence to the contrary, I am satisfied that the city's search for responsive records was reasonable.

⁶ This document was provided by the city with its representations.

⁷ Orders M-909, PO-2469 and PO-2592.

ORDER:

I uphold the city's search as reasonable and dismiss the appeal.

Original Signed by: _____

Anna Truong
Adjudicator

November 25, 2021 _____