

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4321

Appeal MA21-00585

City of Toronto

January 25, 2023

Summary: The City of Toronto (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for access to records relating to carbon monoxide at a specified address. The city issued a decision stating that records responsive to the appellant's request do not exist. The appellant appealed the city's decision to the IPC, 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] The City of Toronto (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all inspection records, reports, and notices from the city's Municipal Licensing Standards division regarding carbon monoxide at [specified address] between March 1, 2013 to March 1, 2018.

[2] The city issued a decision stating that it was unable to locate any records related to the request, and advised that responsive records do not exist.

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

[4] During mediation, the appellant advised that he believes that responsive records should exist relating to carbon monoxide at the specified address.

[5] The city conducted a second search for records, located some, and issued a revised decision granting partial access to the responsive records. The city withheld information under the mandatory personal privacy exemption at section 14(1) of the *Act*.

[6] The appellant maintained his position that further records should exist, but advised that he is not appealing the city's decision to withhold information under section 14(1).

[7] 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 commenced 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.

[8] In this order, I uphold the city's search as reasonable and dismiss the appeal.

DISCUSSION:

Did the city conduct a reasonable search for responsive records?

[9] The appellant claims that further records responsive to his request 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.

[10] 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

[11] 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

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.

basis for concluding such records exist.⁴

Representations of the parties

[12] The city submits that it conducted a reasonable search for responsive records. In its representations, the city described its two searches for records in response to the appellant's request. The city described the department staff involved in the searches, the departments that were searched, including Municipal Licencing & Standards and Toronto Fire Services, and the results of the searches.

[13] The appellant takes the position that further records responsive to his request should exist, because he made complaints about carbon monoxide and an inspector from the city attended the specified address.

Analysis and findings

[14] Based on the representations of the parties, I am satisfied that the city conducted a reasonable search for records.

[15] The city has described the staff involved in the search, where it searched, and the results of its search. I am satisfied that the city carried out a search involving experienced employees knowledgeable in the subject matter of the request and that those employees expended a reasonable effort to locate records which are reasonably related to the request.⁵ I am satisfied that the city has provided sufficient evidence to establish this. The city's searches were sufficiently thorough and logical in response to the appellant's request. The second search yielded some records, which have been partially disclosed to the appellant.

[16] When I consider the appellant's position, with the context of the city's search and the records that were located, I can understand why he believes additional records exist. However, from his representations, I am unable to conclude that further searches will locate such additional records. 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 such records exist.⁶ Therefore, I am not persuaded that ordering the city to conduct another search will locate further records responsive to the appellant's request.

[17] For the reasons above, I find that the city conducted a reasonable search for responsive records.

⁴ Order MO-2246.

⁵ Orders M-909, PO-2469 and PO-2592.

⁶ Order MO-2246.

ORDER:

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

Original signed by: _____

Anna Truong
Adjudicator

January 25, 2023