

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## ORDER MO-4326

Appeal MA21-00460

City of Toronto

February 7, 2023

**Summary:** The City of Toronto (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for an apology letter to a "Mrs. T," referenced in the publicly available Toronto Ombudsman's 2018 annual report. The city advised that no record could be located due to limited information provided to perform a search, and that access could not be granted as the responsive record does not exist. In this order, the adjudicator finds that the request clearly identifies the record being sought, and that the requester has reasonable grounds for believing it exists. She also finds that the city has not established that it could not conduct a search for responsive records, in the particular circumstances of this appeal. As a result, the adjudicator allows the appeal and orders the city to search for the apology letter.

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

### OVERVIEW:

[1] This order concerns an appeal from a decision of the City of Toronto (the city), in response to an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for an apology letter that was referenced in the Toronto Ombudsman's 2018 annual report.<sup>1</sup> Although the issue at adjudication was

---

<sup>1</sup> This report can be accessed here: [Ombudsman Toronto - Annual Reports](#). The record sought by the appellant is referenced on page 25 in item 7 of the 2018 annual report.

reasonable search, the city stated that it did not conduct a search. In this order, I explain why I find it reasonable that the city can conduct a search for the apology letter through searching through records referenced in the Toronto Ombudsman's 2018 annual report and/or the appellant's initial representations. As a result, I order the city to conduct a search.

[2] The request was for the following:

"The Toronto Ombudsman's 2018 annual report, <https://www.ombudsmantoronto.ca/OmbudsmanToronto/media/Documents/Annual%20Report/2018-Ombudsman-Annual-Report.pdf?ext=.pdf> page 24 item 7. CLEARING UP CONFUSION: A NATURAL GARDEN EXEMPTION states "MLS wrote to Ms. T to apologize and explain steps it is taking to improve the process." I request the letter that MLS wrote to Ms. T."

[3] In response to the request, the city issued a decision stating the following:

"Staff of Municipal Licensing and Standards [MLS] has advised, given the limited information provided to perform a search, that no responsive record could be located. Therefore, it is the City's decision that access cannot be granted as the responsive record does not exist."

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

[5] The IPC appointed a mediator to explore resolution. During mediation, the appellant advised the mediator that he believed additional responsive records exist, and reasons for this belief. The mediator conveyed this to the city, but the city advised the mediator no records exist.

[6] Since no further mediation was possible, the file proceeded to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry.

[7] I conducted a written inquiry under the *Act* about the issue of reasonable search. The city provided written representations, which I shared with the appellant, in full, seeking a response. Upon my review of the appellant's representations, I sought and received a reply from the city.<sup>2</sup>

[8] For the reasons that follow, I order the city to conduct a search for the apology letter described in the request.

---

<sup>2</sup> Although I also sought sur-reply representations from the appellant, on further review of the city's reply representations, I determined that it is not necessary to consider the appellant's sur-reply representations in order to resolve this appeal.

## **ISSUES:**

Preliminary issue: What is the scope of the request for records? Which record(s) is/are responsive to the request?

A. Did the city conduct a reasonable search for the record requested?

## **DISCUSSION:**

**Preliminary issue: What is the scope of the request for records? Which record(s) is/are responsive to the request?**

[9] The Mediator's Report indicates that the appellant believes additional "records" exist.

[10] However, the appellant clearly identified one record in his request, saying, in part:

"MLS wrote to Ms. T to apologize and explain steps it is taking to improve the process." I request the letter that MLS wrote to Ms. T."

[11] If the appellant's request had included wording to the effect that he was seeking all records related to and including the apology letter, then I would accept more than one record was being sought through the request. However, while additional records related to the apology letter and/or flowing from it may exist, I find that these are not within the scope of this appeal, due to the clear wording of the request, and I find that only the apology letter is responsive to the request.<sup>3</sup>

### **Issue A: Did the city conduct a reasonable search for the requested record?**

[12] Since the appellant claims that the apology record exists and the city's access decision claimed that no responsive record exists, the issue is whether the city has conducted a reasonable search for records as *required* by section 17 of the *Act*.<sup>4</sup> In reasonable search appeals, if the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision. Otherwise, it may order the institution to conduct another search for records. Here, the city states that it did not conduct a search. For the reasons that follow, I order the city to do so, using the information available to it about the city's interactions with the Toronto Ombudsman's Office regarding "Mrs. T."

---

<sup>3</sup> If the appellant wishes to seek access to records related to and/or flowing from the apology letter, he may submit a new request to the city, to that effect.

<sup>4</sup> Orders P-85, P-221 and PO-1954-I.

***The appellant's reasonable basis for believing that a record exists***

[13] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.<sup>5</sup> I find that by seeking a record referenced in the publicly available Toronto Ombudsman's 2018 annual report, the appellant has established a reasonable basis for concluding that the record exists.

[14] Given how plainly this request was worded and the undisputed fact that the Toronto Ombudsman's report refers to an apology letter, I do not accept the city's position in its decision letter, that "access cannot be granted as the responsive record does not exist." Rather, the city's difficulty has been in *locating* the apology letter, and identifying the recipient and/or property in question, in the first place. This is different from there being no record in existence.

***Obligations on requesters and institutions***

[15] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

(1) A person seeking access to a record shall,

(a) make a request in writing to the institution that the person believes has custody or control of the record, and specify that the request is being made under this Act;

(b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, *to identify the record*;

...

(2) If the request does not sufficiently *describe the record sought*, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1). [Emphasis mine.]

[16] As the appellant's request clearly "describes the record sought," it was not necessary for the city to inform him of a defect and offer him assistance to reformulate his request, under section 17(2) of the *Act*.

[17] The city states that it did not conduct a search for the apology letter. Its position is that, according to its MLS staff, the city has none of the search terms needed to search the relevant database. The city submits that it "cannot confirm" if the "T" in

---

<sup>5</sup> Order MO-2246.

"Mrs. T" is the individual's first or last initial, or if her name contains the letter "T" at all.

[18] The city submits that it is the "requester's responsibility . . . to provide an institution with enough information to locate the record," and highlights the language of section 17(1)(b) in support of this.

[19] The appellant submits, and I find, that the city's position amounts to substituting the word "identify" in section 17(1)(b) of the *Act* with the word "locate." Sections 17(1) and 17(2) refer to the requester's obligation to provide detail to the institution to "describe the record" being sought. Section 17(2) imposes an obligation on the institution if the request does not sufficiently describe the record sought. That is understandable as a requester will rarely, if ever, be as familiar with an institution's record holdings as a requester. The institution is to search its records, and it is unreasonable to expect a requester to understand how the institution stores its records in order to do so.

### ***Reasonable alternate location(s) to search***

[20] While I acknowledge, and accept, that the database in question may not be searched without specified search criteria (or by using the word such as "apology"), I am not satisfied that the city has sufficiently explained why the matter reasonably ends there.

[21] In the specific circumstances of this appeal, I find that the Toronto Ombudsman's 2018 report provides information about record holdings that could have been a reasonable, alternate path to locating the apology letter. It is helpful to set out what the Toronto Ombudsman's report says about Mrs. T's situation, to understand what I mean:

## **7. CLEARING UP CONFUSION: A NATURAL GARDEN EXEMPTION**

Ms. T's front yard garden contained native plants and wildflowers to attract pollinators. This type of garden landscaping, known as a "Natural Garden", has environmental benefits and creates a habitat for birds, butterflies and other wildlife. The City's Municipal Licensing & Standards Division (MLS) grants "Natural Garden Exemptions" for such spaces and had issued Ms. T an exemption for her garden for over ten years.

However, every year a neighbour complained about long grass and weeds in Ms. T's garden and MLS always responded by sending Ms. T a warning letter, giving her the option of either trimming the grasses and plants or applying for a "Natural Garden Exemption". Every year, Ms. T had to remind MLS about her exemption and ask them to send an expert to assess her natural garden.

Ms. T eventually wrote to MLS, asking why she had to go through this process every year and refusing to comply with the most recent warning letter. When she did not receive a response from MLS, she came to Ombudsman Toronto for help.

When we spoke with MLS, it agreed its system for handling complaints about Natural Gardens was flawed. MLS committed to revising staff procedures on Natural Garden exemptions and told us its new computer system will allow staff to better record and flag exemptions.

MLS also wrote to Ms. T to apologize and explain the steps it is taking to improve the process.

[22] From the Toronto Ombudsman's report, I find that several types of city records exist, or would reasonably be expected to exist, relating to Mrs. T, including city records relating to the Toronto Ombudsman's office communications with the city about Mrs. T's issues. The appellant raised this too, and named an MLS executive whose email is said to have led the appellant to the Toronto Ombudsman's 2018 annual report in the first place. Despite these aspects of the annual report and the appellant's representations, the city focussed on its inability to search the database by certain terms, or without certain information.

[23] While the *Act* does not require an institution to prove with certainty that further records do not exist, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;<sup>6</sup> that is, records that are "reasonably related" to the request.<sup>7</sup> A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are reasonably related to the request.<sup>8</sup> The IPC will order a further search if the institution does not provide enough evidence to show that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.<sup>9</sup>

[24] I find that the city has not sufficiently explained why it did not, or could not, conduct a search for the apology letter, using information referenced in the Toronto Ombudsman's report itself and/or the appellant's initial representations in this inquiry. While the city claims that it "could never be sure it was the correct letter" without the "exact address, full home owner name or investigation number," in my view, the Toronto Ombudsman's 2018 annual report appears to offer relevant, narrowing information such that the city could search for the right apology letter in a location other than the database it described; or, such a search could reasonably be expected to lead to search criteria for the database. If there were reasons that this would not be so,

---

<sup>6</sup> Orders P-624 and PO-2559.

<sup>7</sup> Order PO-2554.

<sup>8</sup> Orders M-909, PO-2469 and PO-2592.

<sup>9</sup> Order MO-2185.

the city ought to have explained them.<sup>10</sup>

[25] In these circumstances, I am not persuaded that the database was the only reasonable location that the city could have engaged an experienced employee knowledgeable in the subject matter of the request to make reasonable efforts to locate the apology letter.<sup>11</sup> As a result, I am unable to conclude that the city has reasonably justified why it did not conduct any search under the *Act*.

[26] For these reasons, I allow the appeal, and will order the city to conduct a search for the apology letter.<sup>12</sup>

### **ORDER:**

I order the city to conduct a search for the apology letter, treating the date of this order as the date of the request.

Original Signed By: \_\_\_\_\_

Marian Sami  
Adjudicator

February 7, 2023 \_\_\_\_\_

---

<sup>10</sup> If, for example, the information in the Toronto Ombudsman's report would not have been of assistance in narrowing the timeframe and city employees whose record holdings, such that the apology letter could be located, the city ought to have reasonably explained that in its representations and in an affidavit.

<sup>11</sup> None of this is to say that the city would have still found any of its communications relating to the Toronto Ombudsman's Mrs. T file in the city's record holdings. However, if, for example, retention issues were applicable, the city ought to have explained that in its representations and in an affidavit.

<sup>12</sup> Given my findings in this order, it is not necessary to discuss the reasonableness of any of the other means suggested by the appellant for locating the apology letter. The city is to avail itself of the relevant fee/fee estimate provisions of the *Act* in relation to its search.