

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4336

Appeal MA21-00501

City of Mississauga

February 22, 2023

Summary: The appellant alleges that the City of Mississauga (the city) failed to conduct a reasonable search for responsive records. The city took the position that it conducted a reasonable search for responsive records in compliance with their obligations under the *Municipal Freedom of Information and Protection of Privacy Act*. The adjudicator finds that the city conducted a reasonable search for responsive records and dismisses the appeal.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, RSO 1990, c M.56, section 17.

OVERVIEW:

[1] The City of Mississauga (the city), received a request under the *Act* for access to records pertaining to the requester and his house. This included all of the inspection reports for his home “from the construction phase (e.g. sanitary sewer inspection report...etc.)” The request appears to have arisen from the requester’s concerns about the city’s role in the approval of the sewer system serving his newly-built home, the city’s alleged failure to remedy issues that he says exist in the sewer system and the city’s response to his earlier access to information request.

[2] The city identified responsive records and in its initial decision letter decided to grant partial access to them, relying on a number of exemptions to deny access to the portions it withheld.

[3] In response, the appellant raised a concern about the adequacy of the city's search for inspection records and also asked that the city provide the meaning of the term "DC" found in information the city had disclosed.

[4] In a supplementary decision letter, the city confirmed that it conducted a further search for responsive records but that none were found.

[5] The requester (now the appellant), appealed the city's decision to the Information and Privacy Commissioner of Ontario (the IPC). In an attachment to his Appeal Form the appellant expressed his dissatisfaction with the city's response to his earlier access request for information about him and his home and recounted the consequences of what he alleged was the city's failure to remedy his concerns about the sewer system.

[6] At mediation, the appellant maintained his position that additional records ought to exist. As set out in the Mediator's Report, the appellant believed that there were "reports and emails" as noted in the comment section of a document entitled List of Inspections; and a letter dated March 9, 2021 from the City's Director, Building and Chief Building Official. The mediator conveyed the appellant's concerns to the city.

[7] In response, the city conducted an additional search for responsive records and issued a further access decision. The city disclosed to the appellant the March 9, 2021 correspondence and advised him that:

... Building Division staff (staff) have conducted a thorough search and confirmed with this office that those reports relating to a building complaint, as noted on the List of Inspections, have been destroyed and no longer exist under the custody or control of the city.

Staff has advised us that the complaint was closed (rectified) on April 25, 2013. Such file [sic] then fulfilled the retention period requirement and were destroyed in accordance with the city's Records' Retention Schedule bylaw (the bylaw) at the time.

For your information and clarity, please note that in 2013 those complaint files were only required to be retained for 2 years after being closed notwithstanding its subsequent amendment in 2017, which requires such files be retained for 6 years in total after being closed. Attached is a copy of the comparison table with old and current bylaw for building complaint files, under the code LP.55 with series title, BUILDING COMPLAINTS AND ORDERS TO COMPLY – RECTIFIED.¹

¹ The appellant's request was made in 2021.

You may access the entire bylaw via the city website at:
<https://www.mississauga.ca/publication/records-retention-schedule-by-law/>

[8] The appellant advised the mediator that he was still not satisfied with the city's response. He believed that more records exist and wanted the city to respond to the following four questions and concerns:

1. Where is the city's record of Tarion's confirmation which they are relying on?²
2. Again, what records are they relying on? If these records were destroyed then where is this information coming from?
3. I have also made further requests for information from the city related to this appeal which they have not responded to and are withholding information for. This email [specified date] has still not been responded to by the city nor has the information requested been provided.
4. Also, a number of city workers took some of my personal property from my personal property. When I asked the city for the identity of the city employees they refused to share this information. After submitting video evidence to the city, they have since returned the property and admitted to the infraction but have not disclosed the identity of the employees.

[9] The city then conducted a further search for responsive records and issued its last access decision. The city advised that no further responsive records were found. However, the city states in the letter that Building Division staff provided the following information:

Once building permits are signed-off as complete, post occupation/possession alleged deficiencies should be referred to the builder and Tarion. Should deficiencies be deemed warrantable, Tarion will enforce a resolution with the builder. Should a homeowner not be satisfied with Tarion's intervention and/or adjudicated decisions pursuant to the ONHWPA,³ appeals can be made to the Licence Appeal Tribunal or the New Home Buyer Ombudsperson Office.

[10] Mediation did not resolve the appeal and it was moved to the adjudication stage of the appeals process where an adjudicator may conduct an inquiry under the *Act*.

[11] I decided to conduct an inquiry and sought representations from the city on the

² As set out in its website, Tarion provides new home warranty protection in Ontario. From the materials the appellant provided it appears that he has concerns about how Tarion and the city mutually addressed his concerns about his property.

³ *Ontario New Home Warranties Plan Act*, RSO 1990, c O.31.

facts and issues set out in a Notice of Inquiry. The city provided its representations. I then sent a Notice of Inquiry to the appellant along with a copy of the city's representations. The appellant confirmed that his responding representations consist of emails and attachments that he provided to the IPC in the course of adjudication.

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

Did the city conduct a reasonable search for records?

[13] As explained in the Overview, the appellant believes that the city's search failed to locate responsive records. In that regard, he takes issue with the city's failure to respond to the four questions and concerns that he raised at mediation.

[14] If a requester claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act*.⁴ 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.

[15] 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.⁵

[16] The *Act* does not require the institution to prove with certainty that further records do not exist. However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;⁶ that is, records that are "reasonably related" to the request.⁷

[17] 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.⁸ 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.⁹

The city's representations

[18] The city submits that after it received the appellant's access request its Access and Privacy Officer (APO) reached out to the supervisors of Building Inspection of the Planning and Building Department (Building) and of the Enforcement - Compliance and

⁴ Orders P-85, P-221 and PO-1954-I.

⁵ Order MO-2246.

⁶ Orders P-624 and PO-2559.

⁷ Order PO-2554.

⁸ Orders M-909, PO-2469 and PO-2592.

⁹ Order MO-2185.

Licensing (of the Transportation and Works (T&W) Department (Enforcement) asking for any responsive records. It states that:

APO received all of the responsive records from Building on [specified date].

Upon APO's follow-up, Enforcement staff advised APO on [specified day] that their file was in storage and required additional time to retrieve and copy.

APO received responsive records from Enforcement on [specified date].

[19] It submits that it then issued its first access decision letter releasing records to the appellant through a download link.

[20] It states that shortly thereafter the appellant called the APO and requested information relating to the IPC appeal process, asked it to search for any additional inspection records and to provide the meaning of the term "DC" found in the responsive Building records.

[21] The city submits that the APO provided the IPC appeal process information to the appellant. It submits that the APO then contacted the supervisors and the manager from Building and asked that they conduct a further search for any additional inspection records and for the meaning of the term "DC" found in the responsive Building records. To ensure that the search was as complete as possible, the city says the APO also requested that the supervisor at the Development and Engineering Division of T&W (Development) conduct a search for any additional inspection records.

[22] The city submits that in response, the city's Building staff advised the APO that:

... no further notes or documents associated with [identification number] are available. All available information as shown on MAX [which is the building permit application database system] building permit history was previously provided. Should the requestor seek any clarification on the technical information provided, they should consult with their own technical consultant.

[23] The APO also received the following response from Development staff confirming that any responsive records would reside with Building:

[S]anitary and water inspections in the right-of-way are undertaken by the Region of Peel. Building, Plumbing inspections inspects connections on the private side of the lot.

[24] The city then issued its second decision letter providing the appellant with the results of the searches conducted by staff from Building and from Development. The

city subsequently provided the appellant with the definition of the term "DC" that it received from Building staff.

[25] The city then received email correspondence from the appellant posing the following question:

Please advise what a Drain Card is and what it means on record 37 of the document the city released as part of my FOI request. Please also provide more specifically (the name of the person) the source of the information.

[26] The APO responded as follows:

Please call 311 to speak to the Building Division as this is beyond the scope the FOI request, which we have completed and provided all responsive records.

[27] With respect to the additional information that the appellant sought at mediation, the city indicates that the following items required the city to conduct another search, namely the appellant's additional request for access to,

1. The 'reports and email' as noted in the comment section of the List of Inspections;
2. [The city's Director and Chief Building Official] March 9th letter.

[28] The city submits that it's Director, Building and Chief Building Official (the Director) and his staff were asked to conduct another search for responsive records. In response the city issued a further access decision regarding the results of its search, also disclosing the March 9, 2021 letter in full to the appellant.

[29] The city submits that the Mediator then contacted the APO asking the city to address and search for records responsive to the four questions and concerns discussed in the Overview above. The city submits that the APO asked the Director to conduct yet another search for responsive records. The APO advises that the Director responded to the request by confirming that no responsive records exist relating to the 4 items.

[30] The city then issued its final access decision letter setting out that no further responsive records exist.

The appellant's representations

[31] The appellant provided no specific submission on the reasonableness of the ministry's search for responsive records. His emails and attachments address a number of matters, including his concerns with the city's approach to the issues that he had with his newly constructed home and its sewer service and how he was not satisfied with the manner in which the city and its staff addressed the issues regarding his

property. He also included various exchanges that he had with the city's APO with respect to his access request.

Analysis and finding

[32] In all the circumstances, I find that the city properly interpreted the scope of the appellant's access request and understood and addressed the subsequent questions he posed as set out in the Overview above. I find that the city made a reasonable effort to locate records that are responsive to the appellant's initial request and the subsequent questions he posed. I find that, based on the searches they conducted and who was tasked with conducting them, as well as the efforts set out in its representations to answer the additional questions posed by the appellant during the course of mediation, that the city has complied with its obligations under the *Act*.

[33] In reaching this conclusion, I have considered the city's approach to its search in response to the questions raised by the appellant during mediation. Although these questions arguably expanded the scope of the initial request, the city did carry out searches for records that may be reasonably related to them. I understand that the appellant remains dissatisfied in part because he does not believe that the city has answered some of his questions. The right to "information" in the *Act* does not include the right to require the institution to provide an answer to a specific question.¹⁰ However, an institution is obligated to consider what records in its possession might, in whole or in part, contain information which would answer the questions asked in a request. The city has met this burden.

[34] Accordingly, I find that the city has conducted a reasonable search that is in accordance with the requirements of the *Act*.

ORDER:

I uphold the reasonableness of the city's search for responsive records and dismiss the appeal.

Original signed by: _____
Steven Faughnan
Adjudicator

February 22, 2023 _____

¹⁰ See in this regard the discussion in Orders MO-2096, MO-2285 and MO-2957. What can be distilled from these authorities is that a right to "information" does not include the right to require the institution to provide an answer to a specific question. However, an institution is obligated to consider what records in its possession might, in whole or in part, contain information which would answer the questions asked in a request.