

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4345

Appeal MA21-00341

City of Thorold

March 15, 2023

Summary: The sole issue in this appeal is whether the City of Thorold (the city) conducted a reasonable search for records responsive to the first part of the appellant's multi-part request under the *Municipal Freedom of Information and Protection of Privacy Act*. In this order, the adjudicator finds that the city conducted a reasonable search 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 17.

OVERVIEW:

[1] The City of Thorold (the city) received an eight-part request under the *Municipal Freedom of Information and Protection of Privacy Act (Act)*. The only portion of the request that remains at issue in the appeal is item 1:

1. Please provide me with a copy of all the corresponds with Attorney General with respect to Administrative Penalty System (City's By-law 148-2019)¹ for no parking and parking offences including:

City of Thorold Council Meeting - December 17, 2019

¹ The appellant refers to the "Administrative Penalty System (City's By-law 148-2019)." However, By-law 148-2019 is referred to as "Administrative Penalty By-law," according to section 1 of the By-Law. Where the appellant refers to the "Administrative Penalty System", I will use "by-law."

<https://www.youtube.com/watch?v=z5-F931mj04> -time 2:40:20
from the start

[specified individual] talk about "...Attorney General had approved these fines for Residential Rental Licensing....." Also to examine the original of these corresponds.

[2] The city issued a decision along with an index of records, which specified that no responsive records exist in relation to item 1.

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

[4] During mediation, the appellant advised that he disagreed that no responsive records exist relating to item 1. Specifically, he believes that communication between the Attorney General and the city, relating to the by-law, should exist.

[5] The parties participated in a teleconference, but the issue of the city's search remained unresolved.

[6] As mediation did not resolve the appeal, this file was transferred to the adjudication stage. The adjudicator originally assigned to this appeal invited the city to submit representations in response to a Notice of Inquiry, which summarized the facts and issues in the appeal. The city requested and was granted an extension, however, it did not submit representations. The appellant was then invited to submit representations and did so.

[7] The file was assigned to me to continue the adjudication of the appeal.

[8] After reviewing the file, including details of the city's search that it provided during mediation, I decided to invite further representations from the appellant in response to this information, which he provided.

[9] For the reasons that follow, I find that the city conducted a reasonable search for records responsive to item 1 and dismiss the appeal.

DISCUSSION:

[10] The sole issue to be determined is whether the city conducted a reasonable search for records responsive to item 1 of the appellant's request.

[11] 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*.² 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.

[12] 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.³

[13] 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;⁴ that is, records that are "reasonably related" to the request.⁵

[14] 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.⁶ 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.⁷

Representations, analysis and findings

[15] As noted above, the city did not provide representations in response to the Notice of Inquiry. The city had, however, provided details of its search for records related to item 1 during mediation. It indicated that the individual the appellant identified in item 1 of the request (the named individual), was the one to conduct the search. The city explained that the search took place within 30 days of receipt of the request, and noted that the following places and types of files were searched: the city database, paperwork regarding residential licensing, and files from predecessors. The city included a copy of its current records policy, specifying that it was not in effect at the time that conversations were had with the Attorney General, and that as a result, documents could have been discarded at any time.

[16] In his representations, the appellant reiterates his belief that records related to item 1 of his request exist. The appellant provides a link to a YouTube video of the city's December 17, 2019 council meeting, including a time stamp corresponding to the part of the meeting during which the named individual addressed the matter of penalties in relation to the Residential Rental Licensing By-Law. The appellant submits that the fines are an important part of the by-law adopted by the city, and were approved by the Attorney General, according to the named individual's statements at

² Orders P-85, P-221 and PO-1954-I.

³ Order MO-2246.

⁴ Orders P-624 and PO-2559.

⁵ Order PO-2554.

⁶ Orders M-909, PO-2469 and PO-2592.

⁷ Order MO-2185.

the city council meeting. The appellant submits that the requested correspondence between the city and the Attorney General is important, affects many, and dates from the last four years. In the appellant's view, the city should have records of exchanges with the Attorney General, which should be kept until discarded in the proper way. He notes that if communications took place via email, the city can search its email archives. The appellant adds that if records have been discarded, he requests that the city acquire a copy from the Attorney General. Sections 18(2) and (3) of the *Act* provide for the forwarding or transfer of the request should the institution that received the request not have the record in its custody or under its control, or consider that another institution has a greater interest in the record. However, these provisions are not relevant given the city's position that responsive records would be in its custody or control, and that it has an interest in responsive records.

[17] Based on my review of the parties' representations, I find that the city conducted a reasonable search. According to the city, the named individual conducted the search. As the appellant points out, at the December 17, 2019 city council meeting, this individual noted previous communications between the city and the Attorney General in relation to the subject matter of the request. Accordingly, I am satisfied that this individual has the required expertise to conduct a search for records related to item 1.

[18] The city documented the steps of its search, specifying when it was conducted and the places and types of files searched, which included both paper and electronic records. It also provided a reasonable explanation for why it had not located responsive records, noting that the relevant records policy was not in effect at the time responsive records may have been created. I accept the city's explanation.

[19] The appellant notes that the city could also search its email archives, however, he does not explain why a search of the city's emails is needed, in addition to its database, and relevant paperwork and files.

[20] Accordingly, I find that the city met its search obligations, as required by section 17 of the *Act*.

ORDER:

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

Original signed by: _____
Hannah Wizman-Cartier
Adjudicator

_____ March 15, 2023