

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4381-F

Appeal MA21-00436

City of Thorold

May 29, 2023

Summary: This final order resolves the search issue arising out of Interim Order MO-4328-I. Following the interim order, the City of Thorold (the city) conducted a further search for records responsive to the appellant's request and provided an affidavit in support of its search. In this final order, the adjudicator finds that the city provided sufficient evidence of its search and that it has now conducted a reasonable search. The appeal is dismissed.

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

Orders Considered: Interim Order MO-4328-I.

OVERVIEW:

[1] This final order disposes of the remaining issue arising from Interim Order MO-4328-I – whether the City of Thorold (the city) conducted a reasonable search for records responsive to the appellant's request, as required under section 17 the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] The appellant submitted the following four-part request to the city under the *Act*:

1. Print copy and/or original image file of S_Email Send window-Image of the screen for Tax Arrear -2019 05, March; Tax Arrear 2019 03,July ; Tax Arrear - 2019 09,Sept 2019 - Print copy Email Send Report for Tax Notice 2019 Interim 07,Feb; Tax Notice 2019 Final 03,June,2019

2. Print copy and/or original image file of S_Email History Inquiry window for module for all emails sent to address: [appellant's email address] Emails Requested to be Resend for Tax Notice 2019 Interim 07, Feb; Tax Notice 2019 Final 03, June, 2019

IT Manager to help with [following] requests:

3. Please Confirm or Deny the comments /explanations on Appendix A (August 24 ,200) and /or make you own comments /explanations
4. Print copy and/or original image of the SMTP log files for the emails to [appellant's email address] Thank you

[3] The city issued a decision, granting full access to the requested records, and the appellant appealed the city's decision on the basis that additional records should exist. The appeal was not resolved during mediation, and was transferred to the adjudication stage of the appeal process. During the inquiry, I received representations from the appellant, and not from the city.

[4] In Interim Order MO-4328-I, I determined that the city had not met its search obligations under section 17 the *Act* and ordered it to conduct a further search for records responsive to the appellant's request.

[5] The city conducted a further search, and submitted a response and an affidavit describing its search, which were shared with the appellant in accordance with the IPC's *Code of Procedure* and *Practice Direction Number 7*. The appellant did not submit representations in response.

[6] In this final order, I find that the city has now conducted a reasonable search and dismiss the appeal.

DISCUSSION:

[7] The sole issue to be determined is whether the city conducted a reasonable search in response to the appellant's request.

[8] 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*.¹ 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.

[9] 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

¹ Orders P-85, P-221 and PO-1954-I.

for concluding that such records exist.²

[10] 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;³ that is, records that are "reasonably related" to the request.⁴

[11] 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.⁵ 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.⁶

Representations, analysis and finding

[12] For the following reasons, I am satisfied that the city has now conducted a reasonable search for records responsive to the appellant's request.

[13] In its response and affidavit, the city indicates that the city clerk and IT manager conducted a search further to Interim Order MO-4328-I. In his affidavit, the IT manager specifies that he was responsible for responding to the request.

[14] I find that an experienced employee, knowledgeable in the subject matter of the request undertook the further search. In making this finding, I have considered the IT manager's previous background with the request. I have also considered the nature of the request, which includes logs and other records related to the sending of emails, matters an IT manager would reasonably be expected to have experience with.

[15] I also find that the city made reasonable efforts to locate records responsive to the appellant's request. In its response and affidavit, the city cites the date of its search, the places it searched, the results of its search, and where relevant, the responsive records that were found and shared with the appellant. The city also provides an explanation as to why no records were found in response to certain items. I note that in relation to item 3, the city explains that it did not receive the information required to carry out a search from the appellant. I accept that the city would not be able to search for records related to this part of the request without this information.

[16] As noted above, the appellant did not provide representations addressing the reasonableness of the city's search further to Interim Order MO-4328-I.

[17] Based on the evidence before me, I am satisfied that the city has made

² Order MO-2246.

³ Orders P-624 and PO-2559.

⁴ Order PO-2554.

⁵ Orders M-909, PO-2469 and PO-2592.

⁶ Order MO-2185.

reasonable efforts to locate records responsive to the appellant's request, and fulfilled its obligation under 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

_____ May 29, 2023