

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4382-F

Appeal MA21-00653

City of Thorold

May 29, 2023

Summary: This final order resolves the search issue arising out of Interim Order MO-4329-I. Following the interim order, the City of Thorold (the city) conducted a further search for records responsive to item 2 of 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-4329-I.

OVERVIEW:

[1] This final order disposes of the remaining issue arising from Interim Order MO-4329-I – whether the City of Thorold (the city) conducted a reasonable search for records responsive to item 2 of 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 a two-part request to the city under the *Act*. Item 2, the part of the request that remains at issue, reads as follows:

2. To receive a copy and to examine the original files for images INTERIM 2019.JPG and NON CAPPED FIN.JPG - As a picture taken by [specified city employee]

[3] The city issued a decision advising the requester that it will not be processing

the request as he was previously provided with responsive records. The appellant appealed the city's decision to the Information and Privacy Commissioner of Ontario (IPC).

[4] During mediation, the parties narrowed the scope of the appeal to item 2 of the request. Specifically, the records that were previously disclosed to the appellant in JPG format. The appellant advised that the original files for the JPGs should exist. The city responded that the original files no longer exist and the records are only available in JPG format, as previously disclosed.

[5] 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.

[6] In Interim Order MO-4329-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 item 2 of the appellant's request.

[7] 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.

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

DISCUSSION:

[9] The sole issue to be determined is whether the city conducted a reasonable search in response to item 2 of the appellant's request.

[10] 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.

[11] 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.²

[12] 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

¹ Orders P-85, P-221 and PO-1954-I.

² Order MO-2246.

³ Orders P-624 and PO-2559.

is, records that are "reasonably related" to the request.⁴

[13] 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

[14] For the following reasons, I am satisfied that the city has now conducted a reasonable search for records responsive to item 2 of the appellant's request.

[15] In its response and affidavit, the city indicates that the city clerk and IT manager conducted a search further to Interim Order MO-4329-I. In his affidavit, the IT manager specifies that he was responsible for responding to the request.

[16] I find that an experienced employee, knowledgeable in the subject matter of the 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, based on the city's response and affidavit, relates to the sending of emails, a matter an IT manager would reasonably be expected to have experience with.

[17] I also find that the city made reasonable efforts to locate records responsive to item 2 of the appellant's request. In its response and affidavit, the city cites the date of its search, where and how it searched, and the results of its search. In the city's response, the city clerk provides additional background explaining the circumstances in which the JPGs the appellant refers to in his request were created, and why the originals he seeks may not exist.

[18] As noted above, the appellant did not provide representations addressing the reasonableness of the city's search further to Interim Order MO-4329-I.

[19] Based on the evidence before me, I am satisfied that the city has conducted a reasonable search for records, 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

_____ May 29, 2023

⁴ Order PO-2554.

⁵ Orders M-909, PO-2469 and PO-2592.

⁶ Order MO-2185.