

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4491-F

Appeal MA20-00294

Corporation of the City of Belleville

February 22, 2024

Summary: Interim Order MO-4446-I resolved two of three appeals relating to access requests the appellant filed under the *Act* to the City of Belleville (the city). In Interim Order MO-4446-I, the adjudicator ordered the city to conduct a further search for records related to the attendance of city staff at the appellant's property on a specified date. In accordance with Interim Order MO-4446-I, the city conducted a further search and located an updated record. The appellant continued to take the position that additional records should exist. In this final order, the adjudicator finds that the city's further search was reasonable 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.

Related Cases: Interim Order MO-4216-I, Reconsideration MO-4273-R, Interim Order MO-4342-I and Interim Order MO-4446-I.

OVERVIEW:

[1] The background of the appeal is that the Corporation of the City of Belleville (the city) and the appellant have been involved in civil litigation matter for a lengthy time related to a property owned by the appellant. The parties were also involved in various municipal and administrative proceedings. One of the proceedings was a complaint the appellant brought against two city staff members who, she says, attended her property without her consent or proper authorization.

[2] This final order resolves the outstanding search issue related to the appellant's third request she filed under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the city for records relating to the city's staff members attendance to her property.¹ In Interim Order MO-4446-I, I ordered the city to conduct additional searches for records which would respond to the appellant's third request.

[3] After considering the representations of the parties, I find the city's further search remedied the deficiencies of its original search and find that it conducted a reasonable search.² Accordingly, I find that the outstanding search issue has been resolved and have closed the appeal file.

DISCUSSION:

[4] The sole issue before me is whether the city's further search remedies the deficiencies I found related to its search for records responsive to the appellant's third request, which sought access to:

"...a copy of all records related to the entry to [the appellant's property] by [two named employees in the city's Engineering and Development Services department] on [a specified date]. 'All records' is meant to include all telephone, email and letter communications and notes leading up to, during and after the entry between [the two named city employees] and any and all persons, both employees of the Corporation of the City of Belleville and non-employees."

[5] In response, the city issued an access decision indicating it located one responsive two-page email. The appellant took the position that additional records should exist. During adjudication, I invited the written representations of the parties on this issue but found in Interim Order MO-4446-I that the city's representations did not provide an explanation of the steps it took to locate additional records other than the one record it located.³

[6] After the issuance of Interim Order MO-4446-I, the city conducted a further search

¹ Interim Order MO-4446-I addresses issues relating to three separate access requests the appellant filed with the city. The wording of the three requests, along with a description of what occurred during the request, mediation and adjudication stages of the three requests are set out in Interim Order MO-4446-I.

² The city submitted an email, dated November 16, 2023 setting out its response to Interim Order MO-4446-I. In this email, the city confirmed that it had disclosed the records the interim order required it to disclose to the appellant. The city also confirmed that it completed its further search and attached copies of its access decision to the appellant, affidavits setting out its further search efforts and a copy of the updated email record located as a result of its further search. For the remainder of this order, the email and materials the city sent to the IPC on November 16, 2023 will be referred to as the city's representations. The appellant was provided with a copy of the city's representations, but for a copy of the updated record which the city says contains legal privileged information.

³ See paragraphs 37 to 40 of Interim Order MO-4446-I.

and located an updated email exchange of the same record it originally located. The city issued an access decision to the appellant identifying this record taking the position that it qualified for the legal privilege exemption under the *Act*.⁴ The city also provided the IPC with two affidavits explaining the steps it took to locate additional records.

[7] The affidavits were prepared by the city's Clerk and Information Systems Manager (IT manager). In his affidavit, the Clerk provided an explanation as to why written documents the appellant says should have been created had not been. The Clerk says that "the substance of the site visit was decided in conversation" during a meeting at city hall with the Director and the consultant the appellant's lawyer had retained. The Clerk says that a new planner at the city was asked to attend this meeting with the Director to provide him experience. The Clerk says that the Director told him that no documents were created related to this meeting. The Clerk also says that the new planner was brought along for the site visit at the appellant's property. The Clerk also says that the only document created after the site visit was the original email exchange located during its original search and updated email exchange located in its further search.

[8] The Clerk says it coordinated the city's further search by directing the IT manager to conduct a search of the Director's email account for any emails containing the names of a consultant and a lawyer at an external law firm. The IT manager's affidavit confirms the search terms identified in the Clerk's affidavit were used to conduct the electronic search and says that the search terms were "not limited to the to/from/subject fields" but also captured any terms appearing in the entire email. The IT manager also says the further search "captured any emails from archived folders that may have been deleted."

[9] The non-confidential portion of the city's representations and affidavits were provided to the appellant who was given an opportunity to make written representations in response.⁵ The appellant takes the position that the city's further search was not reasonable as it "failed to locate records that should logically have been readily available." The appellant explains that she is looking for records which would set out any "authority or consent" the city had to attend her property. The appellant says that the city staff members who attended her property told their professional regulator their attendance was authorized. The appellant says given her understanding of how municipal governments operate, the city staff in question must have been told by someone beyond the Director's level to attend her property and take photographs.

[10] The appellant also says that the city should have expanded its further search to other individuals' paper and email records and that the paper records of the Director should have also been searched. She says that the IT manager should have "searched the deleted email folders."

[11] The appellant insists that many more photographs exist than which were provided

⁴ The appellant has appealed the city's access decision to the IPC and a new file was opened.

⁵ The updated email record was not provided to the appellant due to confidentiality concerns, under the *Practice Direction 7* of the IPC's *Code of Procedure*.

to her given her observations the day in question.⁶ The appellant argues “such a serious matter as entering private property must have had some planning and discussion and a report of some kind thereafter.” The appellant concludes her representations by saying:

Given all the facts in the matter, more records as how the event of [specified date] happened must exist and if only [the Director’s] emails were searched, then certainly there are many more to search, including possibly the superior who gave the men permission to enter the building and gather photo evidence.

Decision and Analysis

[12] 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*.⁷ 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.

[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.⁸ The appellant’s evidence focusses on the type of written records she says individuals working for a municipal government should create before and after their entry of her property. The appellant insists that the decision must have been made by the Director’s superior and that written records should exist.

[14] The *Act* does not require the institution to prove with certainty that further records do not exist. As a result, the city must only provide enough evidence to show that it has made a reasonable effort to identify and locate additional responsive records;⁹ that is, records that are “reasonably related” to the request.¹⁰

[15] 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.¹¹

[16] I have considered the representations of the parties and find that the city’s further search is reasonable. In Interim Order MO-4446-I I ordered a further search as I found that the city’s evidence in the inquiry which led to that order failed to provide an explanation of the steps it took to locate additional records responsive relating to city

⁶ The city provided the appellant with photographs taken the day in question. These photographs were provided to the appellant outside the *Act*.

⁷ Orders P-85, P-221 and PO-1954-I.

⁸ Order MO-2246.

⁹ Orders P-624 and PO-2559.

¹⁰ Order PO-2554.

¹¹ Orders M-909, PO-2469 and PO-2592.

staff member's attendance to her property.¹²

[17] I am satisfied that the city's further search results and representations demonstrate the efforts it made to locate additional responsive records. As noted above, the *Act* does not require the city to prove with certainty that further records do not exist. The city must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records, which I am satisfied that it did. I find that the additional search was coordinated and conducted by experienced employees knowledgeable in the subject matter of the request. In addition, I am satisfied that confining the search to the electronic records of the Director demonstrates a reasonable effort to identify and locate responsive records given the city's evidence that the planner who attended the appellant's property attended for training purposes.

[18] I find that the city's explanation that the decision to attend the appellant's property evolved from an in-person meeting with her consultant is reasonable. In my view, the appellant's argument that the city should have created a paper-trail does not demonstrate a reasonable basis for concluding that such records exist. The appellant's assertions in this regard address issues related to the city's decision-making processes which are outside the scope of my jurisdiction.

[19] Having regard to the above, I find that the city's further search is reasonable.

ORDER:

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

Original signed by: _____
Jennifer James
Adjudicator

February 22, 2024 _____

¹² See paras 38-39 of Interim Order MO-4446-I