

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4547

Appeal MA22-00694

City of Ottawa

July 12, 2024

Summary: The appellant asked the City of Ottawa for information about amendments to a by-law. The city granted access to some information. The appellant asked for more information at mediation that the city says went beyond the scope of the original request. The adjudicator finds that the new details are outside the scope of the original request and that the city was not required to search for additional records based on the new information. She 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.

Orders Considered: Order P-880.

OVERVIEW:

[1] The appellant made a request to the City of Ottawa (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information relating to an amendment to the city's solid waste management by-law. According to the request originally submitted, the appellant sought access to:

A document that lists or describes the steps that were taken in amended bylaw - Solid Waste Management (By-law No. 2012-370) especially - Part V - Preparation of Waste, 1) Section 23—Garbage Collection [named individual] Director of By-law and Regulatory Services Branch with the City

of Ottawa's Emergency and Protective Services Department 2015/01/01 to 2019/12/28.

[2] The city asked the appellant to clarify the request. After communication between the parties, the request was clarified to be for:

- records showing "the objective of the by-law and how it minimizes your rights to the benefit of all,"
- records that list "the steps taken to ensure the legality of the by-law in accordance with the Canadian Charter of Rights and Freedoms, in accordance with the Municipal Act,"
- information on "how the by-law meets the criteria of the Provincial Act 2001^[1] and the objective according to the Canadian Charter of Rights and Freedoms."²

[3] The city then issued a decision denying access to responsive records based on certain exemptions in the *Act*.

[4] The appellant appealed the city's decision to the Information and Privacy Commissioner of Ontario (IPC). The parties participated in mediation to explore the possibility of resolution.

[5] During mediation, the appellant advised that he was no longer seeking access to the information withheld based on the exemptions claimed by the city.

[6] However, the appellant provided additional information during mediation, claiming that the city should have disclosed the following in response to his request:

Mathematical calculations on cost savings/year and life span of landfill extended by how many years [...]

[7] The city took the position that this was additional information that is outside the scope of the original request and advised the appellant that he could submit a separate request for access to this information. The appellant disagreed. With no further mediation possible, the appeal was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry. I conducted an inquiry on this issue during which both parties made written representations.

[8] In this order, I find that the additional information requested by the appellant during mediation, as well as in his representations during the inquiry, falls outside the scope of the request he submitted to the city, which is the subject of the city's decision. I find that the city was not obligated to search for additional records based on the

¹ It is unclear which legislation is meant by "Provincial Act 2001."

² The clarified request is set out in the city's decision dated November 22, 2022.

appellant's expanded request and I dismiss this appeal.

DISCUSSION:

[9] The only issue before me is the scope of the appellant's request and what records are responsive to it. The appellant argues that the issue is the reasonableness of the city's search for responsive records because the city did not search for records relating to the mathematical calculations he requested during mediation. I will address this below.

[10] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to access requests. Section 17(1) states, in part, that a person seeking access to a record shall make the request in writing and provide sufficient detail to enable an experienced employee of the institution to identify the record upon a reasonable effort.

[11] Section 17(2) states that, if the request does not sufficiently describe the record sought, the institution must inform the requester of the defect and offer help in reformulating the request so that it complies with section 17(1).

[12] To be responsive to the request, records must "reasonably relate" to it.³

Representations

The city's representations

[13] The city says that the appellant's request was initially unclear, particularly the term "steps," which the city says was not clear enough for staff to identify responsive records. The city states that it sought clarification over a two-month period before it could identify responsive records and issue a decision.

[14] According to the city, the original and clarified request pertained to records on amendments to its solid waste by-law, specifically regarding legal authority and implications under provincial legislation and the *Canadian Charter of Rights and Freedoms* (the *Charter*). It says that the appellant clarified the request to focus on records about (1) the by-law's objective and how it minimizes individual rights for collective benefit; (2) steps taken to ensure that the by-law complied with the *Charter* and the *Municipal Act, 2001*;⁴ and (3) "how the by-law meets the criteria of the Provincial Act 2001"⁵ and the *Charter*.

[15] The city argues that the additional information requested by the appellant during mediation relates to details on costing and landfill lifespan that falls outside the scope of

³ Orders P-880 and PO-2661.

⁴ *Municipal Act, 2001*, S.O. 2001, c.25.

⁵ It is unclear which legislation is meant by "Provincial Act 2001."

the original and clarified request. The city says it cannot comment on the existence of records responsive to the “mathematical calculations” now sought by the appellant, as no search was conducted for what the city says should be submitted in a new request.

Appellant’s representations

[16] The appellant says that, since the city “found the mathematical calculations in one of their steps, they were legally [obligated] to provide me with this.” He submits that “[t]he question then pertains to why these mathematical calculations [sic] were never produced for Ottawa Bylaw Services” and that the city has “failed to explain why these mathematical calculations were found to be outside the scope” of his request.

[17] The appellant argues that the only issue for adjudication is the reasonableness of the city’s search for responsive records, based on an email he received from the mediator.

[18] The appellant describes “numerous different procedural steps taken” by municipalities in creating or revising by-laws and ensuring compliance with provincial legislation and the *Charter*. I have not summarized those portions of his representations here as they are not relevant to either the scope of the request or to a search for responsive records.

Analysis and findings

[19] I find that the appellant raised new information during mediation that does not reasonably relate to the original request and that his current request for access to “mathematical calculations” falls outside the scope of the original, clarified request.

[20] In Order P-880, the adjudicator determined that records must “reasonably relate” to the request in order to be considered “responsive records.” She found that:

...the purpose and spirit of freedom of information legislation is best served when government institutions adopt a liberal interpretation of a request. If an institution has any doubts about the interpretation to be given to a request, it has an obligation pursuant to section 24(2)⁶ of the *Act* to assist the requester in reformulating it. As stated in Order 38, an institution may in no way unilaterally limit the scope of its search for records.

[21] I agree with the city’s assessment that the original request was unclear. I find that the city complied with its obligations under section 17(2) when it sought clarification from the appellant so that experienced city employees could identify and locate responsive records. In my view, the appellant had occasion during the time it took for the parties to clarify the request to satisfy himself that the clarifications aligned with his objectives.

[22] On reviewing the original request, even after clarification, it is evident that its focus

⁶ Section 24(2) is the provincial counterpart of section 17(2).

was on information about legal authority for, and *Charter* implications of, the city's solid waste by-law. I find that the request for mathematical calculations relating to the costing of solid waste services and landfill lifespan does not reasonably relate to the by-law's compliance with provincial or federal legislation. The wording of the request, as clarified, was confined to the latter. I therefore find that the city was not required to search for information on costing and landfill lifespan (i.e. mathematical calculations) when processing the original request, as these details were introduced later and fall outside the scope of the original request submitted to, and clarified with, the city.

[23] The appellant submits that the issue for adjudication is the reasonableness of the city's search, based on an email from the mediator identifying search as the outstanding issue.

[24] The email is dated October 3, 2023. An amended mediator's report was issued on October 10, 2023. The report, issued at the conclusion of mediation, summarized the parties' positions, and identified the scope of the request as the only issue for adjudication.⁷ The appellant did not explain what, if anything, transpired in the interim. The amended mediator's report also sets out the city's rationale for considering the mathematical calculations to be outside of the scope of the request. It does not discuss or identify the reasonableness of the city's search for responsive records as an issue for adjudication.

[25] In correspondence accompanying the mediator's report, the parties were asked to contact the mediator if they believed the report contained errors or omissions. Neither party contacted the mediator to dispute the contents of the October 10, 2023 report, or the identification of the scope of the request as the sole issue for adjudication.

[26] From his representations, I understand the appellant's argument to be that because some of the records located by the city contained mathematical calculations, it was incumbent on the city to disclose those as well. Frequently, the records disclosed by an institution may contain information that a requester did not anticipate or that prompts new questions. This does not obligate the institution to disclose subsequent information that the requester may seek from the records already provided. Instead, if the disclosed records contain information that was not contemplated by the original request, a requester – in this case, the appellant – has the option to file a new request for that information.

[27] In any event, even if the reasonableness of the city's search for responsive records was omitted from the mediator's report, it is moot because I have found that the records for which the appellant wants the city to search fall outside the scope of his original and clarified request. Consequently, the city is not obligated to search for records containing the additional information unless the appellant submits a new request.

⁷ A mediator's report was first issued on September 26, 2023, followed by the amended mediator's report on October 10, 2023.

[28] For these reasons, I dismiss the appeal.

ORDER:

This appeal is dismissed.

Original Signed By: _____
Jessica Kowalski
Adjudicator

July 12, 2024 _____