

Information and Privacy Commissioner,
Ontario, Canada



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

FINAL ORDER PO-4543-F

Appeal PA21-00292

Metrolinx

August 8, 2024

Summary: This final order resolves the outstanding issue of the reasonableness of Metrolinx's search following Interim Order PO-4490-I. In compliance with the interim order, Metrolinx conducted further searches and provided five affidavits in support of its searches. In this final order, the adjudicator finds that Metrolinx has provided sufficient evidence to demonstrate that it has conducted a reasonable search for responsive records. The appeal is dismissed.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSO 1990, c. F.31, section 24.

OVERVIEW:

[1] This final order disposes of the remaining issue arising from Interim Order PO-4490-I – whether Metrolinx conducted a reasonable search for records responsive to the appellant's request, as required under section 24 of the *Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] Interim Order PO-4490-I addressed an appeal for a six-part request for records relating to the Hurontario Light Rail Transit (LRT) system.

[3] Metrolinx issued a decision withholding access, in full, to the records responsive to part 1 of the request pursuant to section 14(1)(i) (security) of the *Act*. Metrolinx advised that no records were found to be responsive to parts 2 to 6 of the request.

[4] As the appeal was not resolved during mediation, it was transferred to the adjudication stage of the appeal process, where I conducted an inquiry.

[5] In Interim Order PO-4490-I, I determined that Metrolinx had not fully met its search obligations under section 24 of the *Act*. I ordered it to conduct further searches for records responsive to parts 2 to 6 of the request and to provide evidence of the efforts it made in conducting its search.

[6] Metrolinx conducted further searches and submitted four affidavits describing its searches, which were shared with the appellant in accordance with the IPC's *Code of Procedure*. Subsequently, it provided a supplementary affidavit from one of the four affiants, clarifying certain statements made in his earlier affidavit. This supplementary affidavit was also provided to the appellant.

[7] In this final order, I find that Metrolinx has now conducted a reasonable search as required by section 24 of the *Act*. I uphold its searches and dismiss the appeal.

DISCUSSION:

[8] The sole issue remaining to be determined in this final order is whether Metrolinx conducted a reasonable search in response to the appellant's request.

[9] In Interim Order PO-4490-I, I ordered Metrolinx to conduct further searches for records responsive to parts 2 to 6 of the request and to provide evidence of the efforts it made in conducting its search.

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

[11] As indicated above, in compliance with Interim Order PO-4490-I, Metrolinx submitted four affidavits describing its searches. The affiants are a senior project manager, a lead document controller, the manager of community engagement and the vice president of community engagement 905+ regions. All these individuals are directly involved in the Hurontario LRT project. Metrolinx also submitted a supplementary affidavit from the vice president of community engagement 905+ regions.

[12] In his affidavit, the senior project manager states that he held his current position since 2019 and it entails overseeing the design and civil construction groups within projects. He also states that he is responsible for overseeing the Hurontario LRT project.

[13] With respect to search, the senior project manager searched his Outlook email account using various keywords for emails pertaining to parts 2 to 6 of the request. His search did not result in any additional records. Subsequently, he instructed a technical advisor to search for additional emails or files from preceding years. This search resulted in one email chain (which was attached as Exhibit "D" to his affidavit and disclosed to the

appellant).

[14] In his affidavit, the lead document controller states that he has held his current position since 2018 and it entails providing system enhancements, issuing and receiving documents, and processing submittals with contractors. He states that he is responsible for all document correspondence with contractors for the Hurontario LRT project.

[15] With respect to search, the lead document controller searched Project Wise, Metrolinx's main database for document storage, using various keywords. The search resulted in 42 files being located but on review they were not responsive to parts 2 to 6 of the request. He also searched his Outlook email account using various keywords for emails pertaining to parts 2 to 6 of the request. His search did not result in any additional records being located.

[16] In his affidavit, the vice president of community engagement 905+ regions states that he has held his current position since 2021 (but has been employed at Metrolinx since 2016). He states his position requires that he lead community engagement team activities, such as public meetings, community pop-ups, distributing construction communications and handle complaints and resolutions.

[17] With respect to search, the vice president of community engagement 905+ regions searched his Outlook email account (including his archived inboxes) using various keywords for emails pertaining to parts 2 to 6 of the request. His search did not result in any additional records. He also searched his hard drive using the same various keywords but it did not result in any additional records being located. Finally, he reviewed the Construction Liaison Community (CLC) meeting documents using the same various keywords, which resulted in three CLC decks from 2021 and two "Frequently Asked Questions" documents related to a virtual open house. However, these documents are not responsive to parts 2 to 6 of the request.

[18] As noted above, the vice president of community engagement 905+ regions provided a supplementary affidavit to clarify certain evidence given in his original affidavit. He pointed out that at paragraph 13 of his original affidavit he mistakenly referred to Commercial Liaison Community when he should have stated Construction Liaison Committee. He clarified that the CLC documents he searched were located on his desktop and Outlook email. He also clarified that the Hurontario CLC documents are not currently available online. He further clarified that the link he provided in paragraph 13 of his affidavit is to CLC documents for the Ontario Line Project. He confirms that he included the link as an example of CLC documents from other projects that are publicly available and the types of CLC documents that he reviewed.

[19] In her affidavit, the manager of community engagement states that she has held her current position since 2023 (but has been employed at Metrolinx since 2021). She explains that her position requires her to engage in community engagement activities, such as communications with contractors, residents, property owners, and businesses

along the alignment of the Hurontario LRT project.

[20] With respect to search, the manager of community engagement searched her Outlook email account using various keywords for emails pertaining to parts 2 to 6 of the request, including communications from the appellant. Her search resulted in locating an additional email from the appellant to a named councillor (copying Metrolinx Community Engagement amongst others), which was disclosed to the appellant. She also searched the Customer Relation Database (CRD), a centralized database that all community engagement teams at Metrolinx use to store information, with the same various keywords. Her search did not result in any additional records being located. Finally, the manager of community engagement consulted with Metrolinx's contractors' community engagement counterparts from Mobilinx and the City of Mississauga for any additional information. These individuals advised that they had no additional records pertaining to the request.

[21] The appellant provided lengthy representations with attachments in response to Metrolinx's affidavits. He continues to take the position that Metrolinx's search was not reasonable. He argues that record(s) of Emergency Medical Services (EMS) sign off must exist. In support of this argument, he provided an email from a named councillor and an email from a named member of provincial parliament (MPP) with his representations. The appellant also argues that the affiants did not search for email correspondence between Metrolinx and the City of Mississauga or contact the City of Mississauga's EMS. As well, he argues that traffic studies post-2015 must exist due to a statement made by a named councillor that the Hurontario LRT project is required to continuously update the traffic modelling (traffic studies). Finally, the appellant argues that, in his original affidavit, the vice president of community engagement 905+ regions appears to have mistakenly searched the files for the Ontario Line as demonstrated by the link provided. He notes that his request is for the Hurontario Line.

[22] From my review of the evidence, specifically the affidavits provided by Metrolinx, I find that experienced employees, knowledgeable in the subject matter of the request undertook the searches for records responsive to parts 2 to 6 of the appellant's request. In making this finding, I have also considered the affiants' knowledge of Metrolinx's records holdings.

[23] I also find that the evidence before me demonstrates that those experienced employees made reasonable efforts to locate records responsive to parts 2 to 6 of the appellant's request. All four affiants provided detailed information about the searches that they conducted. They cited the dates of their search(es), where and how they searched, and the results of the searches.

[24] The appellant is correct that the vice president of community engagement 905+ regions reviewed the CLC meeting documents for the Ontario Line. However, in his supplementary affidavit, the vice president of community engagement 905+ regions clarified that he provided a link to CLC documents for the Ontario Line as an example of

publicly available CLC documents from other projects. From my review of the supplementary affidavit, it is clear that the CLC documents for the Hurontario Line are not currently available online. As such, the vice president of community engagement 905+ regions could not provide a link to the CLC documents for the Hurontario Line.

[25] I understand that the appellant continues to believe that additional records responsive to parts 2 to 6 of his request exist. In particular, the appellant argues that EMS sign off exist due to emails from a named councillor and a named MPP. I note that the named councillor's email¹ does not state that the named councillor has seen or was aware of EMS sign off. The named councillor simply states that the City of Mississauga's Fire and Emergency Services (MFES) has indicated to Metrolinx that the construction and operation of the Hurontario LRT would not significantly impact its response time. I also note that the named MPP's email² simply states that the MFES, the City of Mississauga and the Region of Peel evaluated and signed off all design plans. In my view, the named MPP's email does not specifically refer to an EMS sign off. As a result, I find that the appellant has not provided a reasonable basis for concluding that an EMS sign off exists.

[26] In any event, I find the appellant's arguments to be repetitive as they are the same arguments as those he raised during the initial inquiry. As stated in Interim Order PO-4490-I, the *Act* does not require Metrolinx to prove with certainty that responsive records do not exist for parts 2 to 6 of the request. Metrolinx is simply required to demonstrate that experienced employees, knowledgeable in the subject matter of the request³ have made a reasonable effort to identify and locate responsive records within their custody or control.⁴ I find that they have done so.

[27] For the reasons set out above, I find that Metrolinx has discharged its obligations under section 24 of the *Act* and has conducted a reasonable search for responsive records.

ORDER:

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

Original Signed by: _____
Lan An
Adjudicator

_____ August 8, 2024

¹ Dated February 26, 2021.

² Dated November 21, 2023.

³ Orders M-909, PO-2469 and PO-2592.

⁴ Orders P-624 and PO-2559.