

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-4558-I

Appeal MA21-00682

City of Toronto

August 27, 2024

**Summary:** An individual asked the city for records relating to sidewalk repairs at a specific address. The city granted access in full to the records. The individual believes more records should exist. The city said that no more records exist. In this order, the adjudicator determines that the city did not conduct a reasonable search for records and orders it to conduct another search.

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

### OVERVIEW:

[1] This order determines whether the City of Toronto (the city) conducted a reasonable search for records relating to repairs to sidewalks at a specific address. The city received the following access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

This Freedom of Information Access Request is to obtain copies of any & all City records, work photographs, work product, notes, memos, correspondence or any other documentation that contains information relating to step-by-step actions-initiated/documents-examined, approvals taken/given to arrive at the decision and various actions thereafter by City Staff on

(a) my eMAIL [sic] dated Mon, Jan 18, 2021, at 2:40 pm sent to [an identified email address] and

(b) my above eMAIL [sic] had an attachment dated January 15, 2021, which was my review petition addressed to [a city employee].

This petition was to dispute the City invoice [invoice number] dated [an identified date] regarding cost of regular repairs made in 2020 to public side-walks adjoining our residence [an identified address].

[2] The city granted full access to the records.

[3] The appellant advised the city that the records provided were not responsive to his request as there was no information related to his January 2021 email or "actions taken by Transportation Services."

[4] In response, the city conducted another search and issued a supplementary decision. The city specifically asked staff of Transportation Services to conduct another search, but no further responsive records were located.

[5] The appellant appealed the city's decision to the Information and Privacy Commissioner of Ontario (IPC) because he believes that further records responsive to his request should exist. A mediator was appointed to explore resolution.

[6] During mediation, the city conducted an additional search. It issued a supplementary decision advising that additional records were located and disclosed in full. After reviewing the additional records, the appellant still believes that further records responsive to his request should exist.

[7] As mediation did not resolve the appeal, it proceeded to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. I decided to begin an inquiry in which I sought and received representations from the parties about the issue in this appeal.

[8] In this order, I find that the city has not established that it conducted a reasonable search for records responsive to the appellant's request, and I order it to conduct a further search.

## **DISCUSSION:**

[9] The sole issue in this appeal is whether the city conducted a reasonable search for responsive records. Where a requester claims additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has

conducted a reasonable search for records as required by section 17.<sup>1</sup> If I am satisfied the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[10] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show it has made a reasonable effort to identify and locate responsive records.<sup>2</sup> A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related (responsive) to the request.<sup>3</sup>

[11] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding such records exist.<sup>4</sup>

### **Representations, and analysis and findings**

[12] Based on the parties' representations, I am not satisfied that the city conducted a reasonable search for responsive records.

[13] The city submits that it conducted a reasonable search for responsive records. In support of its position, it provided affidavits of the following staff: (1) the General Manager for Transportation Services (GM); (2) an Administrative Assistant to the General Manager of Transportation Services; (3) an Accounting Assistant of Revenue Services, Policy, Planning, Finance and Administration (PPFA); (4) the Program Manager of Customer Services & Issues Management, Transportation Services; and (5) a Senior Access & Privacy Officer of Corporate Information Management Services, City Clerks Division.

[14] In these affidavits, the city described the staff involved in the search, what and where they searched, and the results of the search. The city staff mainly searched for email resources within their own designated city email inboxes, except for the Accounting Assistant who also searched a general PPFA email inbox. However, it was not the inbox of the email listed in the appellant's request.

[15] The appellant takes the position that additional records responsive to his request should exist. The appellant submits that the records disclosed to him do not show "step-by-step actions initiated/documents-examined, approvals taken/given to arrive at the decision" on the appellant's specific "dispute/petition" dated January 18, 2021.

[16] The appellant submits that his petition was sent by email to a specified toronto.ca

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<sup>1</sup> Orders P-85, P-221 and PO-1954-I.

<sup>2</sup> Orders P-624 and PO-2559.

<sup>3</sup> Orders M-909, PO-2469 and PO-2592.

<sup>4</sup> Order MO-2246.

email address, which the city acknowledges in the affidavits. However, the appellant submits that the affidavits only refer to city staff conducting “extensive searches of their email resources.” The appellant also questions why the city staff who conducted the search only searched their own email inboxes and did not search for records in a paper file or an electronic database.

[17] The *Act* does not require the city to prove with absolute certainty that further records do not exist. However, the city must provide sufficient evidence to show they have made a reasonable effort to identify and locate responsive records, and I find that they have not done so in this appeal.<sup>5</sup>

[18] As noted above, from their affidavit evidence, the city staff only searched for responsive records in their own designated city email inboxes except for the Accounting Assistant who also searched a general PPFA email inbox. However, the city has not provided evidence to show that its staff searched the inbox for the specified toronto.ca email address listed in the appellant’s request.

[19] Furthermore, per the affidavits submitted by the city, it does not appear that the city staff searched for records that may be held outside of email inboxes, such as an electronic database or local hard drives or even physical files. I find that a reasonable search would have included a search of the email inbox listed in the appellant’s request and searches for records responsive to the appellant’s request outside of email inboxes.

[20] For the reasons above, I find that the city has not established that it conducted a reasonable search for records responsive to the appellant’s request. I will order the city to conduct a further search for responsive records in its record holdings, including any physical records and records in any applicable electronic database. I will also order the city to conduct a search of the inbox of the specified toronto.ca email address listed in the appellant’s request. If there is a reason why the city is unable to complete the search as ordered, it should state so in the affidavit outlined below.

## **ORDER:**

1. I order the city to conduct a further search for responsive records in its record holdings, including any physical records and records in any applicable electronic database. The city should also specifically search the email inbox for the specified toronto.ca email address listed in the appellant’s request.
2. I order the city to issue an access decision to the appellant with respect to any further responsive records located because of the search ordered in provision 1, in accordance with the *Act*, taking into consideration the notice provisions under

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<sup>5</sup> Orders P-624 and PO-2559.

section 21(1). The city should treat the date of this order as the date of the request.

3. I order the city to provide me with a copy of the decision sent to the appellant in accordance with order provision 2.
4. The city shall send its representations on the new search referred to in provision 1 and an affidavit outlining the following, by **September 27, 2024**.
  - a. the names of the individuals who conducted the further search;
  - b. information about the types of files searched or why certain types of files were not searched, the nature and location of the search, and the steps taken in conducting the further search;
  - c. the results of the further search; and
  - d. details of whether the records could have been destroyed, including information about record maintenance policies and practices such as retention schedules.

The city's representations, including the affidavit, will be shared with the appellant, unless there is an overriding confidentiality concern. The procedure for submitting and sharing representations is set out in the IPC's *Practice Direction Number 7*, which is available on the IPC's website. The city should indicate whether it consents to the sharing of its representations with the appellant.

5. I remain seized of this appeal to deal with any other outstanding issues arising from provisions 1 to 4 of this interim order.

Original signed by: \_\_\_\_\_  
Anna Truong  
Adjudicator

\_\_\_\_\_ August 27, 2024