

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-4574

Appeal MA23-00611

City of Hamilton

September 27, 2024

**Summary:** The city received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for records related to a fire at a specified property. The city provided some records, but the appellant believed that additional records about a city order being revoked should also exist. The adjudicator finds that the city conducted a reasonable search for records 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.

### OVERVIEW:

[1] The City of Hamilton (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records related to city fire department documents regarding a fire at a specified address.

[2] The city issued a decision stating that staff from the city's Fire and Building Division conducted searches and located 44 pages of records responsive to the request. The city granted partial access to the responsive records, with some portions withheld under the *Act*. Portions of the records were also deemed non-responsive and withheld. The requester (now the appellant) was dissatisfied with the records he received and appealed the city's decision to the Information and Privacy Commissioner of Ontario (IPC).

[3] During mediation, the appellant specified that he was looking for records related to the revocation of a particular inspection order. The appellant confirmed that he is not pursuing access to any withheld portions of the records. The city issued a supplemental decision expanding the scope of the request to a larger timeline of March 9, 2019, to September 30, 2019. A revised records package including "inspectors notes" was provided to the appellant. The appellant maintained that additional records responsive to the request exist, while the city maintained that no further records existed.

[4] No further mediation was possible, and the appeal was transferred to the adjudication stage of the appeal process. I conducted an inquiry where I sought and received representations from the city and the appellant.

[5] For the reasons that follow, I uphold the city's search for records as reasonable and dismiss the appeal.

## **DISCUSSION:**

[6] The sole issue in this appeal is if the city conducted a reasonable search for records responsive to the appellant's request. 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*.<sup>1</sup> 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.

[7] 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.<sup>2</sup> 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;<sup>3</sup> that is, records that are "reasonably related" to the request.<sup>4</sup>

[8] 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.<sup>5</sup> 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.<sup>6</sup>

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

<sup>2</sup> Order MO-2246.

<sup>3</sup> Orders P-624 and PO-2559.

<sup>4</sup> Order PO-2554.

<sup>5</sup> Orders M-909, PO-2469 and PO-2592.

<sup>6</sup> Order MO-2185.

## **Representations**

[9] The city provided an affidavit from a city privacy officer explaining the city's search efforts following receipt of the appellant's access request. The affidavit outlined the privacy officer's qualifications and experience in conducting searches. It set out her understanding of the request and her determination that she did not need to seek further clarification prior to conducting the search.

[10] She outlined the city's search efforts, which included searches by two city employees, who she submits would have had sufficient knowledge to identify and locate responsive records or to properly direct the search to other appropriate employees within their division. She explains that the employees located responsive records, which were forwarded to her for review. She states that an employee indicated that two other city departments may also have records related to the access request. She submits that she contacted these departments, but they did not provide any additional new records. She explains that she reviewed the records that were found and, satisfied that all responsive records had been located, issued her access decision.

[11] She notes that the original date range for the access request was March 9, 2019 to July 31, 2019, but a date range of March 9, 2019 to September 9, 2019 was searched, with the records for the expanded range provided in a revised decision during mediation. During mediation, an additional search for records from September 10, 2019 to September 30, 2019 was also conducted, with no additional records found.

[12] The city's privacy officer affirmed that during the adjudication stage she contacted city staff for additional details on the searches. The staff provided an overview of how the search was conducted, and the privacy officer remains satisfied that there are no additional records responsive to the request.

[13] In response to the city's representations, the appellant provided a September 9, 2019 document from the city that revoked portions of an order related to the specified property underlying the request. He submits that it is not reasonable for the city to withhold correspondence or notes related to the decision to revoke portions of the order, and states that a search in the original date range should have produced additional records related to the decision.

[14] The appellant's representations were shared with the city for reply, with the city specifically asked to comment on the existence of additional records related to the city's decision to revoke portions of the order. The city submits that the decision to revoke the order related to a pilot project that the city was implementing, which would require property owners in certain parts of the city, including where the specified property is located, to apply for a license for each rented unit in a rental property.

[15] It submits that in anticipation of this new program, a decision was made by city fire division staff to revoke all orders in connection with certain properties that would be

subject to the new program, which included, among many others, the specified property. The city submits that this decision was made by the fire chief, who provided verbal direction to other city staff, who then issued the relevant revocation notices. It states that since the decision-making process was an internal decision with verbal direction provided, there are no written notes or other correspondence that was created by the city for this decision. The city reaffirmed that there are no additional records responsive to the appellant's access request.

[16] The city's reply representations were provided to the appellant, but he did not provide sur-reply representations.

### **Analysis and finding**

[17] Based on my review of the parties' representations and evidence, I am satisfied that the city conducted a reasonable search for records.

[18] The core of the appellant's concerns with the city's search efforts is that there are no additional records related to the revocation of an order related to the specified property, and he provided evidence that additional records related to the revocation notice may exist. While I understand the appellant's concerns about the order being revoked with no further documentation, I find that the city has provided an adequate explanation for why there are no other records responsive to the request. I accept the city's submission that the communications surrounding the decision to revoke the orders for the relevant properties were verbal, and I find that it is reasonable to conclude that there are no additional records responsive to the appellant's request.

[19] Considering the evidence before me, the city properly understood the appellant's access request, and then had experienced employees make a reasonable effort to identify and locate responsive records, which were disclosed to the appellant. Given the searches already conducted by the city, the records already provided to the appellant, and the city's explanation regarding why there are no additional records, I am not satisfied that ordering an additional search would yield additional records. I find that the city conducted a reasonable search for records in response to the appellant's request.

### **ORDER:**

I dismiss the appeal.

Original signed by:  
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Chris Anzenberger  
Adjudicator

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September 27, 2024