

Information and Privacy Commissioner,
Ontario, Canada



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

INTERIM ORDER PO-4558-I

Appeal PA23-00349

Ministry of Municipal Affairs and Housing

October 4, 2024

Summary: An individual asked the ministry for the names of the public servants who participated in the selection of lands proposed for removal from the Greenbelt. The ministry located a spreadsheet containing a list of names and other information and decided not to grant access to it.

This interim order disposes of the preliminary issue of whether all the information in the spreadsheet is responsive to the request.

The adjudicator finds that the scope of the request does not include all the information in the spreadsheet. Accordingly, portions of the spreadsheet are not responsive to the appellant's request and have been removed from the scope of this appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.F.31, sections 10, 24 and 53.

Orders Considered: Order P-880.

Reports Considered: *Special Report on Changes to the Greenbelt*, Office of the Auditor General, August 2023; *Report of the Integrity Commissioner re: Minister of Municipal Affairs and Housing*, August 2023.

OVERVIEW:

[1] This interim order considers a preliminary issue relating to the scope of a request

for the names of the public servants who participated in the selection of lands proposed for the removal from the Greenbelt.

[2] The Ministry of Municipal Affairs and Housing (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for the following:

(1) A complete description of the “enhanced confidentiality protocol” required of the public servants who participated in the selection of the lands proposed for removal from the Greenbelt, as described in the [August 30, 2023]¹ report by Ontario’s Integrity Commissioner; and

(2) The names of the public servants who participated in the selection of the lands proposed for removal from the Greenbelt on November 4, 2022.

Time period: June 2, 2022 to November 4, 2022.

[3] The ministry located responsive records comprising a spreadsheet and emails and granted the requester partial access, withholding portions of the records on the basis of the law enforcement exemption in section 14(1)(e) (endanger life or safety) of the *Act*.

[4] The requester (now appellant) appealed the ministry’s decision to the Information and Privacy Commissioner of Ontario (IPC) stating that additional responsive records ought to exist. During the mediation stage of the appeal, the ministry conducted a further search and located an additional record. The ministry issued a supplemental access decision granting the appellant partial access to the additional record. The ministry decided to withhold a portion of the additional record pursuant to the law enforcement exemptions in section 14(1)(e) and 14(1)(i) (security) of the *Act*.

[5] The appellant advised the mediator that he is no longer challenging the reasonableness of the ministry’s search and is not pursuing access to the information withheld on the basis of section 14(1)(i) of the *Act*. The file was transferred to the adjudication stage to determine the issue of the application of section 14(1)(e) to a spreadsheet and a portion of an email.

[6] I decided to conduct an inquiry. I sought and received representations from the ministry on the facts and the issues set out in a Notice of Inquiry. In light of the ministry’s representations, I identified the individuals whose names appear in the spreadsheet as affected parties and decided that they should be notified of the appeal and provided an opportunity to participate in the appeal process.

¹ In the request, the requester incorrectly cites the date of the *Report of the Integrity Commissioner re: The Minister of Municipal Affairs and Housing* as January 28, 2023.

[7] The spreadsheet that is at issue in this appeal contains information in addition to the list of names of the affected parties. This information includes dates, email addresses and names of offices within the ministry. Before notifying the affected parties, I invited and received representations from the ministry and the appellant on the responsiveness of the information in the spreadsheet.

[8] For the reasons that follow, I find that only the names listed in rows 1 to 11 of the spreadsheet are responsive to the appellant's request. Accordingly, I have removed from the scope of the appeal the possible application of section 14(1)(e) to the non-responsive information in the spreadsheet.

RECORDS:

[9] The records at issue in this appeal comprise a spreadsheet (3 pages) and a portion of an email (1 page).

DISCUSSION:

[10] The sole issue in this interim order is which information in the spreadsheet is responsive to the appellant's request, specifically the second part of the request for the names of the public servants who participated in the selection of the lands proposed for removal from the Greenbelt on November 4, 2022.

[11] Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. Section 24 states that a person seeking access to a record shall provide sufficient detail to enable an experienced employee of the institution, upon reasonable effort, to identify the record. When responding to a request, an institution interprets the request to understand its scope and identify records that are "responsive" to the request in its searches.

[12] To be considered responsive to the request, records must "reasonably relate" to the request.² Institutions should interpret requests generously, in order to best serve the purpose and spirit of the *Act*. Generally, if a request is unclear, the institution should interpret it broadly rather than restrictively.³

Ministry's representations

[13] The ministry states that the spreadsheet that it identified as responsive to the request contains a list of names of the individuals who completed the "document

² Orders PO-881 and PO-2661.

³ Orders P-134 and P-880.

security attestation.”⁴ The ministry’s position is that the spreadsheet contains both responsive and non-responsive information. The ministry states that some information is outside the time period specified in the request and that not all the public servants listed participated in the selection of lands proposed for removal from the Greenbelt.

[14] The ministry states that the individuals listed in the first 11 rows are the individuals who participated in the identification and review of lands to prepare the proposal for consideration by decision-makers, as described by the Auditor General of Ontario and Integrity Commissioner of Ontario in their reports.

[15] The ministry submits that the information in the two columns of the spreadsheet that contains the names of public servants is directly responsive to the request, which specifies that the appellant is seeking the “names” of public servants. The ministry acknowledges that the email addresses listed in the spreadsheet are in a format that includes the names of the public servants. However, the ministry states that the appellant did not request the public servants’ email addresses and this information is therefore not responsive to the request.

[16] The ministry’s position is that the information in the other columns of the spreadsheet is not responsive to the request. The ministry describes this information as relating to the enhanced confidentiality protocol form that the named individuals completed, the office in which they worked and the date the form was completed.

[17] The ministry submits that its interpretation of the request is reasonable. The ministry states that there is no ambiguity in the wording of the request that should be resolved in the appellant’s favour. The ministry submits that its interpretation of the scope of the request best serves the purpose and the spirit of the *Act*.

[18] The ministry submits that it identified the spreadsheet as a responsive record because it contains, “in part”, the names of the public servants sought by the appellant. The ministry submits that the fact that it identified the spreadsheet as a responsive record does not mean that all information in the record is responsive to the request.

Appellant’s representations

[19] The appellant accepts that the additional information within the record such as “dates, email addresses and names of offices within the ministry” is by itself not responsive to his request. However, the appellant states that this information is part of a record that is responsive. The appellant’s position is that the ministry has identified the spreadsheet as responsive to the request and the *Act* does not permit the ministry to refuse access to part of it without reference to a valid exemption. The appellant cites

⁴ The “document security attestation” is also described as the “enhanced confidentiality protocol” in the *Report of the Integrity Commissioner re: Minister of Municipal Affairs and Housing* and referred to in the first part of the appellant’s request. In this decision, I refer to it as the “enhanced confidentiality protocol.”

section 53 of the *Act* in support of this submission.⁵

[20] The appellant also cites section 10(2) of the *Act* and submits that the ministry is required to disclose as much of the record as can reasonably be severed without disclosing information subject to an exemption. The appellant states that it would undermine the purposes of the *Act* for the ministry to redact parts of a responsive record that it deems to be non-responsive. The appellant also makes submissions about the compelling public interest in the subject matter of his request. The appellant states that given the serious concerns that have been raised about the ministry's handling of Greenbelt records, the ministry ought to err on the side of transparency when responding to requests for information made under the *Act*.

Analysis and finding

[21] For the reasons that follow, I find that the information comprising the names listed in rows 1 to 11 only of the spreadsheet are responsive to the appellant's request.

[22] Clarifying the scope of a request to identify responsive records or information is a fundamental first step in responding to an access request made under the *Act*. The IPC has previously held that it is the request itself that sets the boundaries of relevancy and circumscribes the records, or parts of records, which will ultimately be identified as being responsive to the request.⁶

[23] Where there are different interpretations as to which information falls within the scope of a request, an institution has an obligation to seek clarification. The spirit of the *Act* requires any ambiguity to be resolved in favour of the requester.⁷

[24] If an institution fails in its obligation to seek clarification regarding the scope of a request, it cannot rely on a narrow interpretation of the scope of the request on appeal.⁸ In this appeal, the ministry did not seek clarification from the appellant before responding to the request.

Responsive information vs responsive records

[25] The appellant submits that having identified the spreadsheet as responsive to his request, there is no basis under the *Act* for the ministry to refuse access to part of the spreadsheet because it deems the information in that part as not responsive to the request. I do not accept this submission. I find that the appellant's request is for information, not the record, and the scope of the request does not encompass all the information in the spreadsheet.

⁵ Section 53 of the *Act* states that when an institution refuses access to a record, or part of a record, the institution bears the burden of proving that the withheld record, or part of it, falls within one of the specified exemptions in the *Act*.

⁶ Order P-880.

⁷ Order P-134.

⁸ Order P-134

[26] In Order P-880, the adjudicator considered a similar argument. In that appeal, the appellant submitted that because the institution had identified the document containing the information they were seeking as responsive to the request, the document *in its entirety* must be considered responsive to the request. The adjudicator disagreed with the submission in light of the wording of the appellant's request. The adjudicator stated:

In my view, the request ... was clearly one for **information** as opposed to one for specified **records** or documents. The request does not describe a document by date, title, author or the like; nor does it ask for an entire file or "all the information related to" a particular matter. Rather, it describes the nature of the information sought and the types of documents in which such information may be contained.

...

I do not believe it follows that merely because responsive information is contained in a larger document, one must "reinterpret" the request to find that the balance of the document is also responsive to the request. I also do not believe that the fact that this approach may result in a particular record being parsed and examined line by line offends the spirit of the legislation. [Emphasis original]

[27] The adjudicator went on to consider the language of section 10 of the *Act* that provides the right of access:

Section 10(1) of the Act refers to rights of access to a record or a part of a record. In effect, the legislation recognizes that only portions of a document may be responsive to requests for general information. Thus, institutions must entertain requests for information which may be contained in a part of a record, as opposed to the record itself. In some cases, the requests may be in the form of questions. In others, they may be framed, as here, as requests for information.

[28] I agree with the approach taken in this analysis and adopt it in this appeal.

[29] The appellant seeks access to the *names* of the public servants who participated in the selection of the lands proposed for removal from the Greenbelt. I find that the appellant's request is a request for information, not records.

[30] I am satisfied that the request does not describe a type of document (e.g. a spreadsheet) or a compilation of related information (e.g. a list of names with corresponding email addresses and ministry offices). From my review of the request, I find that the type of information sought is clear and unambiguous. I am satisfied that the appellant is seeking access to "names" only and the additional information in the spreadsheet is outside the scope of this part of the request.

[31] I agree with the ministry's submission that the names, as they appear in email addresses, are not responsive to the request. Email addresses and names are different types of information. Email addresses can but do not necessarily identify the individuals to whom they belong. I am not satisfied that the fact that names are used to formulate the email addresses listed in the spreadsheet makes the emails responsive to the request. The appellant does not specify in his request that he is seeking access to email addresses. For these reasons, I find that the names as they appear in the list of email addresses in the spreadsheet are outside the scope of the request and therefore not responsive.

[32] For the reasons that follow, I am also satisfied that my finding that only part of the record is responsive to the appellant's request is a finding that is contemplated by the language of the *Act*.

[33] The appellant submits that the only basis that the *Act* permits an institution to refuse access to a portion of a record is for the information in the record to be exempt. The appellant cites two sections of the *Act* in support of this submission. First, the appellant cites section 10(2), which provides for an institution's duty to reasonably sever exempt information from records.⁹

[34] I agree with the analysis of the adjudicator in Order P-880 that the language of section 10(1) of the *Act* recognises that only portions of a record may be responsive to a request for general information. In my view, the right of access to a record, or a part of a record, in section 10(1) and the severability of records provided for in section 10(2) both indicate that the legislation contemplates that only some information within a record can be responsive to a request.

[35] The appellant also cites section 53 in support of his submission that the *Act* only permits the ministry to refuse access to a record on the basis of an applicable exemption. Section 53 applies where an institution refuses access to a record, or part of a record, on the basis of an exemption. In these circumstances, the institution bears the burden of proving the application of the exemption.

[36] As explained above, the issue of whether a part of a record is responsive to a request is determined with reference to the language of the request. Identifying information as responsive or not responsive to a request does not determine a requester's right of access to that information. The right of access is determined by the application of the exemptions in the *Act*.

[37] Ultimately, a finding on appeal that the information at issue falls outside the scope of a request is without prejudice to a requester's right to submit a new request for access to the information found to be non-responsive.¹⁰

⁹ Severability is set out in section 10(2) of the *Act*.

¹⁰ Order P-880.

[38] For these reasons, I find that the request itself seeks access to some of the information in the spreadsheet and not the entire record and that this finding is within the contemplation of the language of the *Act*.

Interpretation of the request

[39] Having determined that the only type of information in the spreadsheet that is responsive is the names and not the additional information, I now consider which names are responsive to the request.

[40] The ministry submits that the appellant uses two parameters in the request to describe the names he is seeking to access. First, the ministry states that the appellant describes the requested names as those belonging to “the public servants who participated in the selection of the lands proposed for removal from the Greenbelt.” Second, the ministry submits that the appellant defines the time period of the request as June 2, 2022 to November 4, 2022.

[41] The ministry’s position is that not all those individuals whose names appear in the spreadsheet match the appellant’s description in the request. The ministry submits that the public servants listed in the first 11 rows of the spreadsheet were the individuals who participated in the “identification and review of lands to prepare the proposal for consideration by decision-makers, as described by the Auditor General of Ontario and Integrity Commissioner of Ontario.” The ministry states that the other individuals named in the spreadsheet were involved in other capacities or aspects of the project.

[42] The appellant does not directly address how his request should be interpreted to identify the public servants who participated in the selection of lands proposed for removal from the Greenbelt. The appellant submits that, given the compelling public interest in the subject matter of his request, the ministry “ought to err on the side of transparency” in its response.

[43] From my review of the appellant’s request and the spreadsheet, I am satisfied that the ministry adopted a liberal interpretation of the request. The spreadsheet contains information that reasonably relates to the appellant’s request and includes the names of individuals who completed the enhanced confidentiality protocol to work on the Greenbelt project. By identifying the spreadsheet, I find that the ministry responded to the request in a way that is consistent with the purpose and spirit of the *Act*.

[44] Notwithstanding that I find the ministry adopted a liberal interpretation of the request, I am not satisfied that the scope of the appellant’s request includes the characteristic that unifies all the names in the spreadsheet so that all the names qualify as responsive information. The appellant’s request is not for access to the names of the individuals who completed the enhanced confidentiality protocol. Accordingly, I find that the appellant’s request is not for all the names in the spreadsheet.

[45] Without revealing the contents of the spreadsheet, I note that the additional information it contains includes the names of different ministry offices. Staff in different offices perform different roles and I therefore accept that the individuals named in the spreadsheet filled different roles and were working in different capacities that required them to complete the enhanced confidentiality protocol. I find that not all those individuals named in the spreadsheet participated in the selection of the lands proposed for removal from the Greenbelt.

[46] The ministry submits that the public servants listed in rows 1 to 11 of the spreadsheet are the individuals who participated in the selection of lands proposed for removal from the Greenbelt described by the Integrity Commissioner and the Auditor General.

[47] I have reviewed the Auditor General's Special Report on Changes to the Greenbelt (the Auditor General's report) and the report of the Integrity Commissioner following his inquiry into the minister's decision to allow development on Greenbelt land (the Integrity Commissioner's report).

[48] In section 4.2 of the Auditor General's report, the Auditor General refers to the "Greenbelt Project Team" as "a small team of six to 10 public servants to assess specific land sites in the Greenbelt for possible removal from the Greenbelt Area."¹¹

[49] Similarly, in the Integrity Commissioner's Report, the Integrity Commissioner describes the ministry's Greenbelt team as a small team of staff assembled by the ministry's director of the Provincial Land Use Planning Branch.¹²

[50] From my review of the descriptions of the Greenbelt Project Team in the published reports of the Auditor General and the Integrity Commissioner, I am satisfied, based on the wording of the request, that it is the individuals that made up this team whose names the appellant is seeking to access.

[51] The ministry submits that the names in rows 1 to 11 are responsive to the appellant's request. These rows contain the names of 11 individuals. I find that the size of the Greenbelt Project Team, described as a "small team of six to 10 public servants," in the Auditor General's report is consistent with the number of names that the ministry has identified as responsive to the appellant's request.

[52] Finally, the time period for the appellant's request is from June 2, 2022 to November 4, 2022. The additional information in the spreadsheet includes dates. From my review of the spreadsheet, I find that the dates corresponding to the named individuals in the first 11 rows all fall within the time period of the appellant's request. Accordingly, I am satisfied that the names in these 11 rows are within the parameters

¹¹ Auditor General's Report, Detailed Observations: *Section 4.2 The Selection of Land Sites for Removal from the Greenbelt was Biased and Lacked Transparency*, page 32.

¹² Integrity Commissioner's Report, *Creation of the Ministry's Greenbelt Team*, paragraphs 130 and 131.

set by the appellant for the information he is seeking.

[53] In summary, I accept the ministry's interpretation that the names in rows 1 to 11 are the only names that are responsive to the appellant's request. As this interpretation is supported by the description of the Greenbelt Project Team in the Auditor General's report and the team of staff assembled to do the work described in the Integrity Commissioner's report, I am satisfied that the ministry has not relied on a narrow interpretation of the appellant's request.

[54] For these reasons, I find that the names of the 11 individuals listed in rows 1 to 11 is the only information in the spreadsheet that is responsive to the request.

[55] The remaining information in the spreadsheet is non-responsive and will be removed from the scope of this appeal.

ORDER:

1. The portion of the spreadsheet remaining at issue in this appeal comprises the names in rows 1 to 11 only. For clarity and not before **October 25, 2024**, I will notify the 11 individuals of this appeal.
2. I remain seized of this matter to dispose of the issues raised by the exemption claimed by the ministry.

Original Signed By: _____
Katherine Ball
Adjudicator

_____ October 4, 2024