

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-4607-F

Appeal MA21-00682

City of Toronto

December 23, 2024

**Summary:** This final order determines whether the City of Toronto (the city) conducted a reasonable search under the *Municipal Freedom of Information and Protection of Privacy Act* for records relating to repairs to sidewalks at a specific address. In Interim Order MO-4558-I, the adjudicator determined that the city had not conducted a reasonable search and ordered it to conduct a further search for responsive records. In this final order, the adjudicator finds that the city has now conducted a reasonable search for responsive records, and 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:** Interim Order MO-4558-I.

### OVERVIEW:

[1] This final order addresses the reasonableness of the City of Toronto's (the city) search for responsive records relating to repairs to sidewalks at a specific address after having been ordered to conduct a further search in Interim Order MO-4558-I.

[2] By way of background, the city received the following 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].

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

[4] 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."

[5] 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.

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

[7] As a mediated resolution was not possible, the appeal proceeded to the adjudication stage, and I conducted an inquiry. In Interim Order MO-4558-I, I found that the city had not conducted a reasonable search for records responsive to the appellant's request. I ordered 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 also ordered the city to search the email inbox of the specified toronto.ca email address listed in the appellant's request. I further ordered the city to issue a decision to the appellant with respect to any new records located, and to provide me with an affidavit outlining its new search.

[8] Subsequently, the city conducted a further search, which did not locate further records, and submitted representations and an affidavit outlining its search efforts. I shared them with the appellant and invited his representations several times, but he did not submit any.

[9] In this final order, I uphold the city's further search as reasonable and dismiss the appeal.

## **DISCUSSION:**

[10] The sole issue to be determined in this appeal is whether the city conducted a reasonable search for responsive records in response to Interim Order MO-4558-I.

[11] 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.

[12] 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>

[13] 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**

[14] In response to his request for records relating to repairs to sidewalks the city granted full access to the records that it located. The appellant claimed that further records responsive to his request should exist. In Interim Order MO-4558-I, I found that the city did not conduct a reasonable search, and I ordered the city to conduct a further search for responsive records, including records in the email inbox for the specified toronto.ca email address listed in the appellant's request.

[15] In Interim Order MO-4558-I, I also ordered the city to provide me with representations and an affidavit setting out the details of its further search, including the names of the individuals who conducted the search, information about the types of files searched, the nature and location of the search, the steps taken in conducting the search, and the results of the further search.

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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.

[16] In response to Interim Order MO-4558-I, the city conducted a further search for records responsive to the appellant's request and submitted representations and the affidavit of its Senior Access & Privacy Officer, Corporate Information Management Services, City Clerks Division. The city's representations and affidavit provide details about the further search for records responsive to the appellant's request, but notes that no further responsive records were located. The relevant portions of the city's representations and affidavit are as follows:

- The city listed the staff from its Transportation Services division and its Policy, Planning, Finance and Administration division who conducted further searches for responsive records in response to Interim Order MO-4558-I, the locations they searched, and the keywords they used in their searches.
- The city advised that the specified toronto.ca email address listed in the appellant's request does not exist, but similar email inboxes do exist, which have already been searched and the records disclosed to the appellant previously.
- The city advised that digital records (including emails and any attachments) are not printed out and filed in hard (paper) copy format, as this is not part of its filing practices for the relevant divisions.
- The city advised that since the appellant's petition was initiated digitally over email, all responsive records related to this process would only exist in digital format.
- The city advised that there is no database or other digital storage location, other than email inboxes or shared network drives for the divisions, which have all been searched.

[17] As noted above, the city's representations and affidavit were shared with the appellant and the appellant was given several opportunities to submit representations, but he did not submit any.

[18] The city has provided representations and an affidavit of its Clerk and Head of Freedom of Information, which outlines its search efforts in response to the appellant's request and Interim Order MO-4558-I. The city has listed the individuals involved in the search, provided a sufficient explanation of where it searched, and the result of the search. The city's representations and affidavit provide all the details that I directed it to provide in Interim Order MO-4558-I.

[19] 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 to the request. <sup>5</sup>Based on the evidence that the city has provided, I am satisfied that experienced employees knowledgeable in the subject matter of the request conducted a search for further records responsive to the appellant's request, and

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

that they expended a reasonable effort in doing so. Therefore, I find that the city has conducted a reasonable search for records responsive to the appellant's request.

[20] Given the city has now conducted at least four searches for records responsive to the appellant's request, I am not persuaded that ordering the city to conduct another search will locate further responsive records. 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>6</sup> which I find that the city has done. In my view, its reasonable effort is evident from the evidence it has provided in compliance with Interim Order MO-4558-I, in particular, the city's explanation about its further search of its record holdings and the specified toronto.ca email address listed in the appellant's request.

[21] For the reasons set out above, I find that the city has conducted a reasonable search for records responsive to the appellant's request.

**ORDER:**

I uphold the city's search as reasonable and dismiss the appeal.

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

December 23, 2024 \_\_\_\_\_

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<sup>6</sup> Orders P-624 and PO-2559.