

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4617

Appeal MA23-00548

City of Markham

January 20, 2025

Summary: An individual asked the City of Markham (the city) for specific records about one of the committees of the Markham City Council. The city initially informed the individual that no records existed. Having conducted an additional search, the city located two records, which it provided to the individual in full. The individual states that more records 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] This order determines whether the City of Markham (the city) conducted a reasonable search for responsive records in accordance with section 17 of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] During a specified council meeting, the Markham City Council adopted a resolution to dissolve its Animal Care Committee and replace it with an annual roundtable.

[3] Following the City Council's resolution, the city received an access request under the *Act* for the following:

“[a]ll records with respect to the dissolution of the Animal Care Committee, including recommendations, reasons and motions. Related is also a request

for an accounting of funds raised by the committee which remained in committee account at the time of dissolution including confirmation of funds to be given to Shades of Hope, as confirmed by City staff”.

[4] In response, the city issued a decision, advising that it had conducted a search and did not locate any responsive records. The appellant was not satisfied with the city’s decision and appealed it to the Information and Privacy Commissioner of Ontario (the IPC).

[5] The IPC attempted to resolve the matter through mediation. During mediation, the appellant provided a description of the records that they believed ought to exist. Following an additional search for records, the city issued a supplemental decision, fully disclosing to the appellant two records it located. The city also explained that there were additional publicly available records and provided the appellant with information about how to access them. The city claimed the section 15 exemption for publicly available records over these records, a claim that the appellant did not challenge. After a further discussion between the parties, the city conducted a third search for records. The city confirmed that no additional responsive records were found. The appellant continued to believe that the city had additional responsive records.

[6] The matter proceeded to the adjudication stage of the appeal process, where I decided to conduct an inquiry. I sought and received parties’ representations in accordance with the IPC’s *Code of Procedure* and *Practice Direction Number 7*. I provided the city with an opportunity to reply to the appellant’s representations.

[7] For the following reasons, I uphold the city’s search as reasonable.

DISCUSSION:

[8] The appellant claims that additional records exist beyond those found by the city. Where a requester claims that additional records exist, the issue to decide is whether an institution conducted a reasonable search for records as required by section 17 of the *Act*.¹

[9] 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.² 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

¹ Orders P-85, P-221 and PO-1954-I.

² Orders M-909, PO-2469 and PO-2592.

records;³ that is, records that are "reasonably related" to the request.⁴

[10] 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.⁵

City's representations

[11] To support its position that it conducted a reasonable search for responsive records, the city provided an affidavit from the Manager of Access and Privacy outlining its search. The affidavit describes how the Deputy City Clerk and the Supervisor of Animal Care were consulted about the request. Neither the Deputy City Clerk nor the Supervisor of Animal Care had responsive records. The city then issued an initial decision to the appellant advising that no responsive records existed.

[12] The Manager of Access and Privacy further states that during mediation, a second search was conducted. The Finance Department was consulted about the portion of the request that dealt with the accounting of funds raised by the Animal Care Committee which remained in the committee's account at the time of the dissolution. The Manager of Access and Privacy confirms that the Finance Department prepared a spreadsheet outlining the funds raised by the committee. Both the spreadsheet and a letter to Shades of Hope confirming a donation were disclosed to the appellant in full.⁶ The Manager of Access and Privacy notes that the donation and the letter to Shades of Hope were not located during the initial search because the donation was made and the letter created after the initial decision letter was issued.

[13] The affidavit also describes the information that the City Clerk provided to the appellant during mediation about how the decision to dissolve the Animal Care Committee was made. The City Clerk explained to the appellant that only the City Council can create or dissolve advisory committees and boards. The City Clerk received verbal direction by phone from the Mayor to draft a council resolution proposing changes to several committees and boards. She drafted the resolution based on a similar resolution from a previous council term and made revisions in real-time while on a call with the Mayor. The City Clerk did not recall making notes of the discussion with the Mayor, and if notes were made, they would have been destroyed after the resolution was finalized. The final draft resolution was included in the published City Council agenda, presented at a City Council meeting, publicly discussed, and adopted.

[14] The Manager of Access and Privacy further notes that, following the discussion with the appellant during which the above information was shared, she contacted the Mayor and a city councillor who was the City Council representative on the Animal Care

³ Orders P-624 and PO-2559.

⁴ Order PO-2554.

⁵ Order MO-2246.

⁶ The excel spreadsheet and the letter to Shades of Hope were disclosed in a supplemental decision.

Committee about the request. No responsive records were located.

Appellant's representations

[15] The appellant submits that additional records ought to exist and provides several reasons to support their position. First, the appellant says that to be transparent, a municipality must document its decisions that affect the public and rationale for such decisions. More specifically, the appellant says that there must be a record that documents the decision to replace the Animal Care Committee with an annual roundtable.

[16] Second, the appellant says that there must be a record reflecting that the funds that remained in the Animal Care Committee's account were added to the city's account. The appellant notes that the spreadsheet of the funds raised by the Animal Care Committee provided to them as part of the supplemental decision was created after they submitted the access request.

[17] Finally, the appellant relies on a statement by a specified city councillor that, before being brought to a City Council meeting, all matters (except for development matters) are first discussed at the General Committee. The appellant says that the city did not produce records to confirm that the issue of the dissolution of the Animal Care Committee was brought before the General Committee.

City's reply representations

[18] The city reiterates that there are no additional responsive records and confirms that it continues to rely on its initial representations. The city further adds that the purpose of the access regime is to allow requesters to obtain access to records held by an institution and not to receive answers to their questions.

Analysis and finding

[19] I am satisfied that the city's search for responsive records was reasonable. The city considered where responsive records might be located and contacted experienced employees knowledgeable in the subject matter of the request to search for the records. Given the city's explanation about how the City Council made the decision at issue, it was reasonable for the city to consult the Mayor, City Clerk, and Deputy City Clerk. Given that the matter related to the Animal Care Committee, it was reasonable for the city to consult the Supervisor of Animal Care and a city councillor who served on the committee. Since the request asked, in part, for records related to the committee's funds, the city appropriately consulted with the Finance Department. During its consultations, the city appropriately described the scope of the request. The city provided the appellant with the records it located.

[20] Based on their understanding of the city's processes, the appellant submits that additional records ought to exist. I find that the appellant has not provided a reasonable basis to conclude that additional records exist.

[21] Based on their understanding, the appellant submits that responsive records involving the General Committee and the decision to replace the Animal Care Committee with a roundtable ought to exist. However, I accept the city's explanation about how the resolution to dissolve the Animal Care Committee was drafted and when it was discussed. Considering this explanation, there is no reasonable basis to conclude that there would be records involving the General Committee or the decision to replace the Animal Care Committee with a roundtable. As a result, I find that additional searches will not yield responsive records.

[22] The appellant also provides examples of records that they believe the city ought to have related to the funds that remained in the Animal Care Committee's account at the time of the committee's dissolution. I accept the city's evidence that it consulted relevant departments and individuals during its searches and disclosed to the appellant responsive records that were located. The appellant has not provided a reasonable basis to conclude that a further search would result in additional records.

ORDER:

I dismiss the appeal.

Original Signed by: _____
Anna Kalinichenko
Adjudicator

_____ January 20, 2025