

Information and Privacy Commissioner,
Ontario, Canada



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

INTERIM ORDER MO-4636-I

Appeal MA21-00522

City of Toronto

March 25, 2025

Summary: An individual asked the City of Toronto for all records related to a specified property. The city searched for records in three of its divisions. The city provided the appellant with records from two divisions, withholding some information because its disclosure would be an unjustified invasion of another individual's personal privacy (section 14(1)) or because it was non-responsive to the request. The city withheld the records from the third division in full on the basis that they were excluded from the *Municipal Freedom of Information and Protection of Privacy Act* due to an ongoing prosecution.

The individual appealed the city's decision because they disagreed that the records from the third division were excluded. The individual also argued that the city narrowed the scope of the request and did not conduct appropriate search.

In this order, the adjudicator upholds the city's decision that the ongoing prosecution exclusion applies to the records in the third division. Regarding the remainder of the request, the adjudicator finds that the city narrowed the scope of the request. The adjudicator identifies city divisions and types of records that are within the scope of the request. Further, the adjudicator finds that, except for the search within one division, the city did not conduct reasonable search for records and orders the city to conduct further searches.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 17 and 52(2.1).

Orders Considered: Orders PO-4613, PO-3642, MO-4554, MO-3067, MO-3828, P-540, and PO-1775.

OVERVIEW:

[1] The appellant submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the City of Toronto (the city) for access to records related to a specified property. The request stated:

All building permits, records, deficiencies, violation notices and infractions, notices of inspection for [a specified address] in any City department that I can be given access to (and may not have named them all) including 311 records, the City of Toronto, Zoning, Planning, Committee of Adjustment, MLS [Municipal Licensing Services], Property Standards Committee and Toronto Fire Services documents including inspectors' notes and captains' notes and engineers reports or any associated notes, reports or records. Building archives. Building and zoning records. TPS Reports. City of Toronto Archives. Municipal tax records. Any city council records and city meetings or consultations, court documents, orders, charges laid for any kind of enforcement like tickets, fines or penalties or grants and rebates issued. From the date the house was first proposed to be built until the present.

[2] The city searched and located responsive records in three divisions: Toronto Fire Services (TFS), Municipal Licensing & Standards (MLS), and Toronto Building. The city denied the appellant access to TFS records claiming that the *Act* did not apply to them due to an ongoing prosecution (section 52(2.1)). The city partially disclosed the MLS records to the appellant, withholding some information on the basis of the personal privacy exemption (section 14(1)) and because it was non-responsive. The city disclosed Toronto Building records in full.

[3] The appellant appealed the city's decision to the Information and Privacy Commissioner of Ontario (the IPC).

[4] During mediation, the appellant raised a number of issues with the city's access decision. The appellant took issue with the city's search. The appellant claimed that additional responsive records ought to exist and provided examples of such records. The appellant also claimed that the records they received were disorganized, repetitive, and did not have an index, which made it difficult to tell if records were missing. In addition, the appellant took issue with the city's interpretation of the scope of the request, claiming that the city narrowed the scope. Finally, the appellant confirmed their interest in TFS records.

[5] In response to the appellant's concerns about the city's search, the city conducted an additional search in MLS and located additional responsive records. The city issued a supplemental decision, granting the appellant partial access to the records. Some information was withheld under the personal privacy exemption or because it was not responsive to the request.

[6] With respect to the scope of the request, the city advised that although it initially engaged the appellant in a conversation about narrowing the scope of the request, it ultimately conducted the search based on the request as it was originally submitted. With respect to TFS records, the city maintained that the ongoing prosecution exclusion continued to apply.

[7] The appellant confirmed to the mediator that they were not seeking access to the information withheld under the personal privacy exemption or as non-responsive in the records that were disclosed to them. As such, this information is not at issue in the appeal. However, the appellant continued to seek TFS records and maintained that additional records existed, and that the city improperly narrowed the scope of the request. Therefore, the ongoing prosecution exclusion, the reasonableness of the city's search, and the scope of the request remain at issue.

[8] As a mediated resolution was not reached, the appeal was transferred to the adjudication stage of the appeal process. An IPC adjudicator decided to conduct an inquiry under the *Act*. The adjudicator sought, received, and shared parties' representations in accordance with the IPC's *Code of Procedure* and the *Practice Direction Number 7*. The appeal was then transferred to me to continue the inquiry. I have reviewed the materials and determined that I did not require further representations before making my decision.

[9] For the following reasons, I uphold the city's decision to withhold TFS records on the basis that they are excluded from the *Act*. However, I find the city improperly narrowed the scope of the request. I also find that, except for its search in MLS, the city did not conduct a reasonable search for records and order the city to conduct further searches of the Toronto Building, as well as other divisions that may contain records.

PRELIMINARY ISSUES

[10] In their representations, the appellant asks that the withheld records be provided to an adjudicator to review and confirm whether the personal privacy exemption was applied correctly and/or whether the city correctly deemed withheld information non-responsive. The appellant also asks that the city identify exemptions for withholding records. The issues of personal privacy exemption and non-responsiveness were not identified as issues when the file came to adjudication. Accordingly, an IPC adjudicator did not conduct an inquiry into these issues, and I will not address them further in this decision.

[11] The appellant asks that records be provided to them in a digital format as an accommodation for their disability. If the appellant still requires an accommodation, the appellant may make this request to the city.

[12] I have considered all parties' arguments and documents provided as part of the

inquiry. However, I will only refer in this order to relevant representations and evidence.

RECORDS:

The records remaining at issue consist of TFS records, as well as the appellant's contention that additional responsive records exist.

ISSUES:

- A. Does the section 52(2.1) exclusion for records relating to a prosecution apply to the Toronto Fire Services records?
- B. What is the scope of the request for records? Which records are responsive to the request?
- C. Did the institution conduct a reasonable search for records?

DISCUSSION:

Issue A: Does the section 52(2.1) exclusion for records relating to a prosecution apply to the Toronto Fire Services records?

[13] The city withheld TFS records on the basis that the ongoing prosecution exclusion at section 52(2.1) applied to them.

[14] Section 52(2.1) of the *Act* states:

This Act does not apply to a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed.

[15] The purposes of section 52(2.1) include maintaining the integrity of the criminal justice system, ensuring that the accused and the Crown's right to a fair trial is not infringed, protecting solicitor-client privilege and litigation privilege, and controlling the sharing and publication of records relating to an ongoing prosecution.¹

[16] The term "prosecution" in section 52 (2.1) means a proceeding in respect of a criminal or quasi-criminal charge brought under an Act of Ontario or Canada. A "prosecution" may include prosecuting a regulatory offence that carries "true penal consequences" such as imprisonment or a significant fine.²

¹ *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991, March 26, 2010, Tor. Doc. 34/91 (Div. Ct.).

² Order PO-2703.

[17] The phrases “relating to” and “in respect of” are intended to convey “some connection” between two related subject matters.³ The phrase “relating to” requires some connection between a record and a prosecution.⁴ The phrase “in respect of” requires some connection between a proceeding and a prosecution.⁵

City’s representations

[18] The city submits that at the time of the access request, there were proceedings before the courts with respect to the specified property. The city asserts that these proceedings qualify as “prosecution” for the purposes of section 52(2.1). In an appendix to its representations, the city lists charges under the *Fire Prevention and Protection Act, 1997* (the *Fire Protection Act*) against the owner/property management company of the specified property. The city also says that the proceedings were not concluded at the time of the access request.

[19] The city submits that there is “some connection” between TFS records and the prosecution because the records contain information about the city’s enforcement of the *Fire Protection Act*. Specifically, the records contain information about the property and about the enforcement activities of the Fire Safety Commission with respect to the property and the appellant. The city says that the enforcement activities occurred in the context of an active prosecution and that all records speak to actions of the owner/property management company in the context of an active prosecution. To support its representations, the city provides a confidential affidavit of the District Chief – Fire Prevention Division describing the types of records that TFS located.

[20] In addition, the city says that the appellant is the subject of proceedings brought by the Fire Safety Commission involving the specified property.

Appellant’s representations

[21] The appellant submits that the city has not provided details about the prosecution, including which records it claims are covered by the ongoing prosecution exclusion, who is the subject of the prosecution, the basis for the prosecution, and when the prosecution is expected to conclude. Further, the appellant submits that the city’s confirmation that there is some connection between the records and the prosecution is not sufficient to establish the connection.

[22] The appellant explains in their representations the importance of TFS records to them and submits that the denial of access to the records causes them prejudice.

³ *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, cited above; see also *Canada (Information Commissioner) v. Canada (Commissioner, RCMP)*, 2003 SCC 8, [2003] 1 S.C.R. 66 at para. 25, and Orders MO-3919-I, PO-4613.

⁴ *Ibid.*

⁵ *Ibid.*

[23] With respect to the city's claim that there is a proceeding against the appellant, the appellant disagrees that there is any proceeding against them. The appellant says that the only proceeding before the Fire Safety Commission with respect to them was an appeal that the appellant filed and which has concluded.

City's reply representations

[24] In response to the appellant's claim that they have no information about the prosecution, the city says that file numbers/case reference information for the prosecution was provided to the appellant.

[25] With respect to a proceeding against the appellant, the city says that when TFS staff advised the city of the persons/entities who were subject to a prosecution related to the specified property, the appellant's name came up.

Appellant's sur-reply representations

[26] The appellant maintains that the ongoing prosecution exclusion does not apply. The appellant asserts that there was no ongoing prosecution as of the date of their representations.

[27] The appellant continues to disagree that there is a prosecution against them and disputes the city's claim that a proceeding before the Fire Safety Commission is a "prosecution" because the Fire Safety Commission does not have jurisdiction to order fines or impose imprisonment.

[28] The appellant submits that the order that TFS issued against them was unrelated to orders issued against the owner/property management company of the specified property. As a result, the appellant argues that even if there was prosecution against the owner/property management company and some TFS records had some connection to the prosecution, TFS records related to the order issued against the appellant would not be related to the prosecution against the owner/property management company.

Analysis and findings

[29] I find that at the time when the city issued the access decision,⁶ TFS records were excluded from the application of the *Act* due to an ongoing prosecution against the owner/property management company of the specified property.

[30] First, I find that at the time of the access decision, there was a "prosecution" within the meaning of section 52(2.1) against the owner/property management company of the specified property. I accept the city's evidence that the owner/property management company of the specified property were charged with offences under the *Fire Protection*

⁶ In Order PO-4613, Commissioner held that the IPC's jurisdiction to deal with an appeal is to be determined based on the facts and law existing at the point in time when an institution issues an access decision.

Act. Offences under the *Fire Protection Act* are quasi-criminal offences under an act of Ontario and carry a significant fine or an imprisonment term. Accordingly, I find that the prosecution of these offences qualifies as a “prosecution” under section 52(2.1).

[31] I do not accept the appellant’s speculation that it is possible that the owner/property management company were only fined, and no prosecution occurred. The city provided evidence that there were charges laid against the owner/property management company of the specified property and these charges were prosecuted in court.

[32] Second, I accept the city’s representations and find that at the time when the access decision was issued, the prosecution was ongoing. Even if I accept the appellant’s assertion that the owner/property management company eventually complied with TFS orders, there is no evidence before me that contradicts the city’s evidence that at the time when it issued the access decision, there was basis to prosecute owner/property management company.

[33] Third, I find that TFS records relate to the prosecution of the owner/property management company of the specified property. I have reviewed the confidential affidavit of the District Chief – Fire Prevention Division that describes the types of records that TFS located. I am persuaded that all records have some connection to the city’s investigation, enforcement, and prosecution of the owner/property management company of the specified property with respect to their non-compliance with the *Fire Protection Act*.

[34] The appellant submits that TFS records that relate to an order issued against them cannot have any connection to the prosecution of the owner/property management company of the specified property. Based on the confidential affidavit of the District Chief – Fire Prevention Division and parties’ description of the relevant context, I understand that the orders that TFS issued with respect to the specified property are connected to the same or related investigation(s) and/or inspection(s). Prior IPC orders held that records must be considered as a whole when determining if they are subject to an exclusion.⁷ Accordingly, even if portions of TFS records that relate to an order issued against the appellant have no connection to the prosecution of owner/property management company, records are excluded in their entirety because some portions of those records have some connection to an ongoing prosecution.

[35] Based on the above, the city established that at the time of the access decision, TFS records were related to an ongoing prosecution against owner/property management company of the specified property and therefore were excluded from the application of the *Act* under section 52(2.1). My finding applies to all TFS records, including those that may relate to the Fire Safety Commission proceeding.

⁷ Orders PO-3642 and MO-4554.

[36] Given that, for the purpose of this appeal, TFS records were excluded from the application of the *Act*, I will not discuss TFS records in Issues B and C.

[37] The city informed the IPC that all legal matters related to the specified property had concluded. Therefore, the appellant may make a new request to the city for these records if they continue to seek access to them.

Issue B: What is the scope of the request for records? Which records are responsive to the request?

[38] There is a dispute between the parties about the scope of the request. The appellant's request was for all records related to the specified property from the time when the property was proposed to be built. The city narrowed the request to records within specified divisions. The appellant says that the city's narrowing of the request was improper.

[39] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

(1) A person seeking access to a record shall,

(a) make a request in writing to the institution that the person believes has custody or control of the record, and specify that the request is being made under this Act;

(b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and

. . .

(2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[40] To be considered responsive to the request, records must "reasonably relate" to the request.⁸ Institutions should interpret requests liberally in order to best serve the purpose and spirit of the *Act*. Generally, if there is ambiguity in the request, this should be resolved in the requester's favour.⁹

City's representations

[41] The city says that despite its numerous attempts to clarify the scope of the request with the appellant, the appellant never provided a consistent response with respect to

⁸ Orders P-880 and PO-2661.

⁹ Orders P-134 and P-880.

the scope of the request. The city outlines communications between it and the appellant about the scope. The city says that in its last email to the appellant, it outlined a final proposed scope of the request, identifying the following divisions (in addition to TFS) where responsive records could be located: MLS, Toronto Building, Toronto Planning, and 311. The city says that the appellant's response to that email did not make changes to the proposed scope.

[42] The city says that its staff also outlined to the appellant where the information could be available through routine disclosure process and is outside of the *Act* by virtue of being publicly available.

[43] The city says that the appellant did not raise the issue of scope until after it was confirmed at mediation that the city would not change its decision with respect to TFS records.

Appellant's representations

[44] The appellant submits that their request seeks access to all records about the specified property. The appellant disagrees that they consented to narrow the scope of the request to search in the specified divisions. The appellant says that they repeatedly communicated to the city the broadest possible scope.

[45] With respect to the records that the city informed the appellant are available through routine disclosure process or are publicly available (on public databases), the appellant says that they were unable to access any records on public databases, including those records that the appellant knows exist. The appellant says that it is their understanding that these records can alternatively be either accessed with a consent of the property management of the specified property or by paying fees. The appellant explains that they sought access to records through an access process and asked for a fee waiver because they couldn't afford to pay fees to access the records.

City's reply representations

[46] In response to the appellant's assertion that they were unable to access records through means identified by the city, the city says that its staff made several attempts to assist the appellant with accessing materials. However, the appellant refused to avail themselves to these services and insisted on an exception being made for them.

Appellant's sur-reply representations

[47] The appellant disagrees that the city attempted to assist them in accessing the records.

[48] In addition to trying to access records using public databases, the appellant says that they followed the city's direction to obtain records from individual city divisions through routine disclosure process. However, the appellant learnt that the records that

they were seeking were not available through the routine disclosure process.

[49] The appellant argues that if they are unable to obtain records from databases and routine disclosure process, they should be able to obtain them through an access request.

Analysis and findings

[50] I find that the request is for all records related to the specified property from the time the property was first proposed to be built until the access request within the following divisions: MLS, Toronto Building, Toronto Planning, 311, and the city's archives.

[51] The appellant sought access to all records in all city divisions regarding the specified property. While the access request identified types of records that the appellant sought and divisions that the appellant wanted to be searched, it was clear from the language of the request that the appellant sought access to all records.

[52] Given the broad nature of the request, in compliance with its obligations under section 17(2) of the *Act*, the city reached out to the appellant to clarify the request. The city and the appellant exchanged numerous emails about the request. The appellant provided a list of types of records that they were seeking from MLS, Property Standards Committee, Toronto Local Appeal Board, Committee of Adjustments, Toronto Building, Toronto Zoning, Toronto Planning, City of Toronto Archives, and 311. Based on communications with the appellant, the city identified the following divisions where responsive records could be located – MLS, Toronto Building, Toronto Planning, and 311 – and narrowed the scope of the request to these divisions. The city identified specific records within each division that are within the scope of the request. The city informed the appellant of the proposed scope of the request.

[53] While I disagree with the city that the appellant did not object to the city's proposed scope, I find that it was appropriate for the city to identify those four divisions as being within the scope of the request.

[54] First, pursuant to section 17(1)(b), a requester must provide sufficient detail to enable an institution to search for records. The appellant's initial request was unwieldy and overly broad. Second, these four divisions are consistent with the divisions that the appellant identified in their communications with the city. Third, based on the types of records the appellant was seeking and the appellant's intent, it was reasonable for the city to conclude that these four divisions would have responsive records. The appellant sought access to building plans, blueprints, permits, zoning records, complaints, and records related to inspections, investigations, and proceedings related to the specified property. These records would be located within the four divisions identified by the city.

[55] However, I also find that the records within the city's archives are within the scope of the request. Despite the fact that the appellant consistently reiterated to the city that they wished to access records about the specified property in the city's archives, the city did not identify its archives as being within the scope of the request. I understand from

communications between the city and the appellant that the city deemed the records within its archives to be outside the *Act* on the basis that the records are publicly available.

[56] The city appears to have conflated two distinct situations: one where records are excluded from the *Act* and one where records are exempt on the basis that they are available to the public (section 15(a)). Some records in an institution's archives are excluded from the *Act*. Those are records that were placed by or on behalf of a person or an organization other than the institution.¹⁰ An institution's own records in its archives are subject to the *Act*.¹¹ Accordingly, the city's own records in its archives are subject to the *Act*.

[57] If an institution's records are available to the public, the institution may withhold those records under the exemption at section 15(a). However, an institution must explicitly claim the exemption in its access decision.¹² The city has not claimed the information available to the public exemption in its access decision. Regardless, the application of the exemption is not relevant to the issue of the scope of the appellant's request.

[58] I will now turn to specific records that are within the scope of the request. While the appellant provided to the city examples of records that they wanted to access, they clearly stated that they listed types of records as examples only and sought access to all records related to the specified property from the time the property was proposed to be built.

[59] Given my finding that the scope of the request is for records within the five specified divisions, I find that a request for all records related to the specified property within each of the five divisions provides sufficient detail to allow an experienced city employee, upon a reasonable effort, to identify responsive records. There is no evidence before me that a search for all records regarding the specified property within each division would be unwieldy. To the contrary, the city's evidence about its search of MLS supports a conclusion that records are held in a manner that would allow the city to locate responsive records.

[60] The appellant identifies in communications with the city and their representations a variety of records that they seek to access. For clarity, only records about the specified property within the five divisions that I found to be within the scope of the request are responsive to the request. If the appellant seeks records in other divisions, they may make a new access request for records within those divisions.

[61] Both parties provided representations on the city's direction to the appellant to access some records using city's routine disclosure process or public databases. The fact that the city provides access to some information through alternative means is not

¹⁰ Section 52(2) of the *Act*; Order MO-1227.

¹¹ *Ibid.*

¹² Orders MO-3067 and MO3828.

relevant to the issue of scope. Accordingly, all records in five specified divisions related to the specified property, regardless of whether they are available through routine disclosure process or on public databases, are within the scope of the request.

Conclusion on scope

[62] According to the above, I find that the appellant's request is for all records related to the specified property within MLS, Toronto Building, Toronto Planning, 311 and the city's archives from the time when the property was first proposed to be built to the date of the access request.

Issue C: Did the institution conduct a reasonable search for records?

[63] The appellant claims that additional records exist beyond those found by the city. Therefore, the issue that I need to determine is whether the city conducted a reasonable search for records as required by section 17 of the *Act*.¹³

[64] 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.¹⁴ 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;¹⁵ that is, records that are "reasonably related" to the request.¹⁶

[65] 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.¹⁷

City's representations

[66] The city says that based on its understanding of the scope of the request, it asked MLS and Toronto Building to conduct searches. During mediation, the city conducted another search of MLS. The city admits that it did not search Toronto Planning and 311, and I will therefore order it to conduct a search of these divisions.

[67] The city provided an affidavit for each search in MLS. The affidavit with regards to the first search in MLS was sworn by a Support Assistant in MLS. The Support Assistant states that having reviewed the request, they determined that responsive records would be in an electronic database, in staff emails, and in other records related to employees' workplace responsibilities. The Support Assistant searched the electronic database by inputting the address of the specified property. The city says that the database contains

¹³ Orders P-85, P-221 and PO-1954-I.

¹⁴ Orders M-909, PO-2469 and PO-2592.

¹⁵ Orders P-624 and PO-2559.

¹⁶ Order PO-2554.

¹⁷ Order MO-2246.

all information regarding notes, reports, violations, permits and correspondence related to a property. The Support Assistant then contacted all employees who dealt with the specified property to request that they conduct a search for all relevant records, including emails. The records located as a result of these searches were provided to Senior Access and Privacy Officer.

[68] The affidavit with regards to the second search in MLS was sworn by the Supervisor of Court Liaison Unit in MLS. The Supervisor of Court Liaison Unit searched in folders within electronic and physical email resources. They also used a record system to locate physical and electronic locations of responsive records. The Supervisor of Court Liaison Unit used search tools in these resources to locate records related to the specified property. In addition, they searched in locations which they believed, based on their personal experience, could contain responsive records. The records located as a result of these searches were provided to Senior Access and Privacy Officer.

[69] The Supervisor of Court Liaison Unit reviewed the collection of records that was identified as responsive to the request. They assert that, based on their roles with the city and personal experience with the matter, the collection of records located in response to the access request reflects a complete collection of records that are expected to be located in the areas of the search.

Appellant's representations

[70] The appellant lists a number of records that they say exist but were not released to them. With respect to the records in Toronto Building, the appellant requests that the city provide a document confirming that Toronto Building provided all responsive records.

[71] In addition, the appellant says that the records that they received were disorganized, which indicates that the search might not have been thorough.

City's reply representations

[72] With respect to some of the records that the appellant says exist but were not provided to them, the city says that all MLS records have been provided to the appellant.

[73] The city disagrees that the records it provided to the appellant were disorganized. The city explains that there were several duplicate records because the matters had been ongoing for some time and the city did not wish to be viewed as withholding any information from the appellant.

Appellant's sur-reply representations

[74] In addition to the list of records that ought to exist that the appellant provided in their initial representations, the appellant lists further records that they say exist but were not released to them.

[75] The appellant requests that the city provide the details about its searches to understand which records are withheld, the reason for withholding the records, and which records were not located. The appellant says they specifically told the city that they were seeking information about whether some records were not located due to retention policies.

Analysis and findings

[76] Given my finding with respect to the ongoing prosecution exclusion and scope of the request, the city needed to search within MLS, Toronto Building, Toronto Planning, 311, and the city's archives.

[77] I find that the city's search for MLS records is reasonable. I find that both employees who conducted city's searches in MLS are experienced employees knowledgeable in the subject matter of the request. I also find that these employees searched in locations where records could be located: electronic database, emails, physical files, and other resources.

[78] I find, based on the city's description of the search, that it searched for all records within MLS. I accept the city's representations that a database used by MLS captures certain information about properties. As a result, I am satisfied that it was reasonable for a city employee to start their search with the database. Having reviewed the records available on the database, the city employee reached out to those employees who could have responsive records. The city also searched in other resources and locations.

[79] The appellant asserts that additional records – such as information about two charges from 2016 against the owner/property management company of the specified property – ought to exist. I am satisfied that the city made reasonable efforts to identify and locate responsive records within MLS. The *Act* does not require the city to prove with certainty that further records do not exist.

[80] With respect to the city's search for records within Toronto Building, the city did not provide an affidavit or other evidence with details about the search it conducted. The Notice of Inquiry identified information that I require to determine whether the city's search was reasonable. In the absence of any evidence about the city's search, I cannot find that its search of Toronto Building was reasonable.

[81] In addition, the appellant provided reasonable basis to conclude that additional records in Toronto Building exist. The appellant says that building plans, blueprint, and compliance report for the specified property ought to exist. I am satisfied that these types of records are likely to exist and would be located within Toronto Building. Therefore, I will order the city to conduct a further search of Toronto Building to ensure that all records about the specified property, including building plans, blueprints and compliance report, are searched.

[82] Regarding the appellant's request that the city provide a confirmation that Toronto

Building provided all responsive records, I find that the city is not obligated to do so. The city is only required to conduct a reasonable search for records. In issuing an access decision, the city informs a requester what records it located.

[83] The city did not search in Toronto Planning, 311 and its archives. The appellant clearly expresses in their representations that their request for responsive records included these divisions as well. Therefore, I order the city to conduct a search for responsive records within Toronto Planning, 311 and its archives and issue an access decision to the appellant about these searches.

ORDER:

1. I order the city to conduct a search for responsive records within Toronto Planning, 311, and the city's archives based on my findings outlined above with respect to the scope of the request. I order the city to issue, in accordance with all applicable provisions of the *Act*, an access decision to the appellant regarding any records located in its searches, treating the date of this order as the date of the request for administrative purposes.

2. I order the city to conduct a search for responsive records within Toronto Building based on my findings outlined above with respect to the scope of the request.

a. I order the city to issue, in accordance with all applicable provisions of the *Act*, an access decision to the appellant regarding any records located in further search(es), treating the date of this order as the date of the request for administrative purposes.

b. I order the city to provide me with an affidavit sworn by the individual(s) who conducted the city's search(es) pursuant to this order by **April 24, 2025**, describing the search efforts. At minimum, the affidavit(s) should include the following information:

i. The names and positions of the individual(s) who conducted the search(es) and their knowledge and understanding of the subject matter and the scope of the request;

ii. The dates the search(es) took place and the steps taken in conducting the search(es), including:

1. the places that were searched;

2. the individuals that were contacted in the course of the search;

3. the types of records searched;

4. steps taken during the search;
5. the results of the search;
6. If it appears that no further responsive records exist after further search(es), a reasonable explanation for why further records do not exist; and
7. If additional records existed but no longer exist, a reasonable explanation for why those records no longer exist. The city must provide details of when such records were destroyed, including information about record maintenance policies and practices, such as evidence of retention schedules.

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

3. I remain seized of this appeal in order to deal with any outstanding issues arising out of provision 2 of this order.

4. In order to verify compliance with the provision 2 of this order, I reserve the right to require the city to provide me with a copy of the access decision referred to in provision 2a and any records disclosed with that access decision.

Original Signed by: _____

Anna Kalinichenko
Adjudicator

March 25, 2025 _____