

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** September 9, 2024

**CASE:** 2024-00055R

**Citation:** Fouda v. Toronto Standard Condominium Corporation No. 1790, 2024 ONCAT 137

Order under section 1.44 of the *Condominium Act, 1998*.

**Member:** Mary Ann Spencer, Member

**The Applicant,**  
Susanne Fouda  
Self-Represented

**The Respondent,**  
Toronto Standard Condominium Corporation No. 1790  
Represented by Natalia Polis, Counsel

**Hearing:** Written Online Hearing – June 26, 2024 to August 30, 2024

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

- [1] Susanne Fouda (the “Applicant”) is the owner of a unit of Toronto Standard Condominium Corporation No. 1790 (“TSCC 1790” or the “corporation”). On January 22, 2024, Ms. Fouda submitted a Request for Records to TSCC 1790 in which she requested various plumbers’ reports. She alleges that the corporation has refused to provide the records without reasonable excuse. She requests that the Tribunal order the corporation to provide the records and to pay a penalty. She is also requesting reimbursement of the Tribunal fees she paid.
- [2] TSCC 1790 submits that Ms. Fouda’s application should be dismissed. Its position is that the records she requested relate to a specific unit of the corporation and its refusal to provide them is in accordance with section 55 (4) (c) of the *Condominium Act, 1998* (the “Act”). It submits that Ms. Fouda was aware of the reason for its refusal to provide the records and made her application to the Tribunal for an improper purpose. It requests its costs in this matter.

- [3] For the reasons set out below, I find that Ms. Fouda is entitled to receive some of the records she requested, redacted for information identifying unit numbers and/or owners' names, and I am ordering the corporation to provide these at no cost. I also order the corporation to reimburse Ms. Fouda the \$200 she paid in Tribunal fees and \$500 as penalty for refusing to provide records without reasonable excuse. I order no further costs in this matter.

**B. BACKGROUND**

- [4] On January 22, 2024, Ms. Fouda submitted a request for records to TSCC 1790 in which she requested various plumbers' reports. She was seeking information about the cause of water escape on October 24, 2023 which she contends damaged her unit's flooring.
- [5] The Act does not require condominium owners to provide a reason when submitting a Request for Records. They are only required to affirm that their request is with respect to their interests as an owner. When documents were first disclosed in this matter, it became apparent that there was some dispute between the parties about whether Ms. Fouda's unit was in fact damaged, and I advised them that the Tribunal's jurisdiction was limited to addressing the Request for Records at issue in this case. However, the background to Ms. Fouda's request provides context for her argument refuting the corporation's reason for its refusal to provide the records.
- [6] Ms. Fouda does not reside in the unit of TSCC 1790 that she owns. She rents the unit, which was managed on her behalf by Ashbridges Property Management at the time she contends the damage occurred. Its principal, Paul Cherry, was notified on October 30, 2023 by Ms. Fouda's tenant about a flood.
- [7] On November 2, 2023, Mr. Cherry contacted Anthony Piacentini, then TSCC 1790's condominium manager, with respect to alleged water damage to the flooring in Ms. Fouda's unit. Mr. Piacentini provided Mr. Cherry with a redacted copy of an October 25, 2023 e-mail from GNB Contracting Inc. ("GNB") which indicated that when they attended the site on October 24, 2023, they had inspected Ms. Fouda's unit but had found no evidence of any water damage. I note that while the numbers of two units (other than Ms. Fouda's) which were also inspected are redacted in the body of the e-mail, Mr. Piacentini included the number of one unit in the e-mail's subject line which states "Unit **[redacted by this Tribunal]** – Water Loss."
- [8] GNB conducted a further inspection of Ms. Fouda's unit on November 2, 2023 and found no evidence of moisture in the flooring. The same day, Mr. Piacentini

e-mailed photographs of the moisture meter readings GNB had taken to Mr. Cherry, copying Ms. Fouda.

- [9] Ms. Fouda filed an insurance claim in respect of damage to her flooring. On January 12, 2024, Nico Drambalas, an adjuster employed by Zorayan Claims Services, requested documents, including the standard unit by-law, the Declaration and an incident report confirming the date and cause of the loss, from Mr. Piacentini. Mr. Piacentini provided the governing documents but advised Mr. Drambalas that Ms. Fouda's flooring had not been damaged; he provided a copy of the e-mail he had sent to Mr. Cherry together with the redacted copy of GNB's October 25, 2023 e-mail.
- [10] On January 15, 2024, Mr. Drambalas inspected Ms. Fouda's unit's flooring and determined that there was evidence of water damage. He again contacted Mr. Piacentini who advised that he could not release the cause of the water escape because there was no damage to Ms. Fouda's unit. On January 16, 2024, Mr. Drambalas e-mailed Mr. Piacentini and advised that he only needed the cause of the water escape, and that all private information could be withheld. Because Mr. Drambalas has yet to receive any documentation of the cause of the water escape, Ms. Fouda's insurance claim has not been processed.
- [11] On January 16, 2024, Ms. Fouda contacted the Condominium Management Regulatory Authority of Ontario (the "CMRAO") who she testified advised her that Mr. Piacentini was required to provide the information. However, I note that the CMRAO has no jurisdiction over section 55 of the Act. Ms. Fouda also testified that, in a subsequent call, the CMRAO advised her to file the Request for Records which she submitted to the corporation on January 22, 2024.
- [12] Ms. Fouda received the Board's Response to Request for Records from TSCC 1790 on January 26, 2024. The response states the records are refused because "The record relates to other units and unit owners. This was brought to the attention of the Corporation solicitor who agreed with this." Ms. Fouda subsequently filed her application with the Tribunal.

### **C. ISSUES & ANALYSIS**

- [13] The parties agreed that the issues set out in the Stage 2 Summary and Order prepared by the Mediator in this matter are those to be addressed:

1. Has the Respondent refused the Applicant's request for records without a reasonable excuse?
2. Is a penalty warranted against the Respondent in accordance with section 1.44 (1) 6 of the Act?
3. Should there be an order for costs and fees?

**Issue 1: Has the Respondent refused the Applicant's request for records without a reasonable excuse?**

[14] In her January 22, 2024 Request for Records, Ms. Fouda requested the following three non-core records, all with the date range of October 1 to November 30, 2023:

1. Plumber's report showing cause of flood from unit **[redacted by this Tribunal]** from October 2023
2. Plumber's report
3. Cause of water leak from unit **[redacted by this Tribunal]**

[15] Counsel for the Respondent submits that the Respondent did not refuse to provide records without reasonable excuse; rather, in accordance with section 55 (4) (c) of the Act, the Respondent refused the requested records because they relate to specific units and owners. Section 55 (3) of the Act states that a corporation shall permit an owner "to examine or obtain copies of the records of the corporation in accordance with the regulations, except those records described in subsection (4)." Section 55 (4) (c) states:

(4) The right to examine or obtain copies of records under subsection (3) does not apply to,

...

(c) subject to subsection (5), records relating to specific units or owners;

Counsel noted that the purpose and intent of this exemption is to protect the privacy of owners and submitted that corporations have an obligation to do so.

[16] Ms. Fouda submits that the corporation's refusal to provide records to protect the unit owner's privacy is invalid because the unit number included in her Request for Records was already revealed by the corporation. She also indicated that she only requires redacted documents.

[17] Counsel submits that there is “no fathomable way to redact the record(s) in order to conceal the identity of the unit owner given the Applicant requested records pertaining to a specific unit.” As noted above in paragraph 7, the October 25, 2023 e-mail from GNB revealed the unit number which Ms. Fouda included in two of her three requests. Arguably, this was only included because Mr. Piacentini had disclosed it when he provided that e-mail, however unintentional that disclosure may have been. However, Ms. Fouda’s second request did not include a unit number; it was for “plumber’s report” dated between October 1 and November 30, 2023. In this regard, I note that the Board’s Response to Request for Records was incomplete because it only responds to the first of Ms. Fouda’s three requests. Mr. Piacentini testified this was because the corporation determined that all of the requests were for the same records. While the corporation may well have determined that the same records would be responsive to the three requests, it should have completed the Board’s Response to Request for Records form for each of them as set out in section 13.3 (7) of Ontario Regulation 48/01 (“O. Reg. 48/01”) which requires the response to set out an index of the requested records and to provide information about each record. The Board’s Response also did not include the required reference to the section of the Act on which the board based its decision.

[16] Mr. Piacentini testified that well before Ms. Fouda submitted her Request for Records, the corporation had voluntarily provided her and/or her agent with GNB’s October 25, 2023 e-mail and the photographs Mr. Piacentini sent to Mr. Cherry on November 2, 2023. With respect to additional records, he testified:

Any other report rendered by GNB is specific to other units and/or other owners and has information pertaining to other units and/or unit owners, and not any information relating to the Applicant or the Unit. Moreover, providing the Applicant with any other report from GNB, even redacted, would clearly identify the units and/or owners that the reports pertain to.

[17] I asked Mr. Piacentini to expand on this testimony. His response was that “the other report from GNB says nothing about the applicant’s unit so it is completely unrelated. If we were to provide it redacted, we would need to redact everything in it as it all pertains to other units.” Similarly, Counsel for the Respondent submits “the only way to maintain the privacy of the unit and/or unit owner in question is to deny the Applicant’s request in its entirety or, alternatively, provide the Applicant with completely blank document(s).” In this regard, Counsel referred me to the Tribunal’s decision in *Walsh v. Simcoe Standard Condominium Corporation No. 432*, 2023 ONCAT 34, a case in which the Tribunal denied the applicant’s request for records on the basis that the records would be blank. However, in that case, the requested records were forms on which the **only** information was the

unit number and the name and signature of the unit owner, all of which the Tribunal found to be exempt under section 55 (4) (c) of the Act.

- [19] Counsel also referred me to the decision in *Salpi Bechlian v. Toronto Standard Condominium Corporation No. 2418*, 2018 ONCAT 8, a case in which the applicant disputed the redaction of an incident report and the Tribunal decided that identifying information should be redacted. This case was considered in the Tribunal's decision in *Mellon v. Halton Condominium Corporation No. 70*, 2019 ONCAT 2, a case where the scope of redaction of board minutes was at issue. At para. 39, the Tribunal wrote:

... The complete redaction of all words in each of the subject paragraphs (including redaction of information relating to the Applicant and the Applicant's unit, if that was the case) suggests that the Respondent was not careful in making its redactions, but simply blanked out all contents of all paragraphs that included any reference to an owner or unit, without considering whether or not some information could be preserved without disclosing private or personal information about an owner or unit.

- [20] I recognize that the redaction of records requires the exercise of some judgment on the part of the individual reviewing them. However, I question that the full redaction which TSCC 1790 indicates would be necessary is required. In this regard, I note that in addition to two unit numbers, a full paragraph of GNB's October 25, 2023 e-mail was redacted. It is unknown if the content of this redacted paragraph would serve to identify units and/or otherwise compromise the privacy of their owners.
- [20] I also question whether the corporation has provided Ms. Fouda with all of the documents relevant to her own unit. While the Respondent referred to the November 2, 2023 e-mail to Mr. Cherry as a "report", in fact it is an e-mail from Mr. Piacentini which includes two photographs of moisture meter tests in Ms. Fouda's unit. It may well be that the photographs are all that Mr. Piacentini received from GNB. However, section 13.1 (1) 9 of O. Reg. 48/01 requires a corporation to keep "all reports and opinions of an architect, engineer, or other person whose profession lends credibility to the report or opinion" as records. If the corporation received any accompanying explanation with the photographs with respect to GNB's November 2, 2023 inspection of Ms. Fouda's unit, she is entitled to receive a copy.
- [21] Section 55 (4) (c) of the Act is clear that owners are not entitled to information relating to specific units and owners. As the Counsel for the Respondent submitted, this is to protect the privacy of owners. However, I am ordering the

corporation to provide Ms. Fouda with copies of the reports dated between October 1, 2023 and November 30, 2023 as she requested in her second request, redacted only for identifying information; that is, the names and unit numbers of other owners/occupants or any other information which would specifically identify the unit(s). Notwithstanding Mr. Piacentini's testimony, this would not necessarily mean that all information about those units must be redacted. These records are to include GNB's October 25, 2023 e-mail, the redaction of which should be carefully reviewed, and any written information the corporation may have received with respect to the November 2, 2023 inspection of Ms. Fouda's unit. I recognize that Ms. Fouda may be able to deduce unit numbers from redacted documents; however, this would be due to Mr. Piacentini's oversight in not redacting one of the unit numbers when he initially provided the October 25, 2023 e-mail.

- [22] Ms. Fouda should be aware that the records I am ordering the corporation to provide may not include the specific information which she is seeking. I also note that the third request in her Request for Records, "Cause of water leak from Unit **[redacted by the Tribunal]**", is a request for information rather than for a specific record. Section 55 of the Act applies only to requests for records, not to requests for information.

**Issue 2: Is a penalty warranted against the Respondent in accordance with section 1.44 (1) 6 of the Act?**

- [23] In her closing submission, Ms. Fouda cited a number of sections of the Act to support her request that the Tribunal order the corporation to pay a penalty. However, only section 1.44 (1) 6 of the Act, which provides for a penalty if a corporation has refused to provide requested records without reasonable excuse, is applicable to this case:

An order directing a corporation that is a party to a proceeding with respect to a dispute under subsection 55 (3) to pay a penalty that the Tribunal considers appropriate to the person entitled to examine or obtain copies under that subsection if the Tribunal considers that the corporation has without reasonable excuse refused to permit the person to examine or obtain copies under that subsection.

- [24] The content of the redacted October 25, 2023 e-mail indicates that the requested records relate to other units and the corporation has relied on section 55 (4) (c) of the Act to refuse to provide them. On its face, this is not unreasonable. However, I find its position that the records responsive to the second of Ms. Fouda's three requests would require full redaction in order to conceal the identity of specific units and/or maintain the privacy of unit owners to be unreasonable; the

October 25, 2023 e-mail in fact redacts the number of more than one unit other than Ms. Fouda's. Further, no unit numbers would have been known to Ms. Fouda had Mr. Piacentini redacted the subject of that e-mail. I find the corporation's position that the records cannot be redacted in any manner to be a refusal to provide records without reasonable excuse and I order it to pay a penalty of \$500. I note that there is no provision in the Act for a penalty for failing to provide the detail required in statements accompanying a refusal to provide records.

### **Issue 3: Should there be an order for costs and fees?**

[25] Ms. Fouda was successful in this matter as I am ordering the corporation to provide her with redacted records responsive to the second request for records of January 22, 2024. Therefore, I am ordering TSCC 1790 to pay her \$200 in respect of her Tribunal fees, in accordance with Rule 48.1 of the Tribunal's Rules of Practice which states:

If a Case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party's CAT fees unless the CAT member decides otherwise.

[26] TSCC 1790 requests costs of \$6,472.64 representing its legal fees in this Stage 3 proceeding. Rule 48.2 of the Tribunal's Rules of Practice states:

The CAT generally will not order one Party to reimburse another Party for legal fees or disbursements ("costs") incurred in the course of the proceeding. However, where appropriate, the CAT may order a Party to pay to another Party all or part of their costs, including costs that were directly related to a Party's behaviour that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.

Counsel for the Respondent submitted that Ms. Fouda had been told the reason for the corporation's refusal to provide the records before this matter came before me. Counsel also submitted that Ms. Fouda made her application to the Tribunal in bad faith and/or for an improper purpose:

Furthermore, the Respondent submits that the Case was filed in bad faith and/or for an improper purpose. The underlying issue at hand is not the record itself but rather the damage the Applicant alleges occurred to her unit resulting from a flood. The alleged damage that the Respondent verified did not occur.



[27] I award TSCC 1790 no costs. I acknowledge that much of Ms. Fouda's evidence in this matter was related to the damage to her unit. However, this evidence was presented as contextual background to her Request for Records which was made to obtain the cause of the October 24, 2023 water escape in order to satisfy insurance requirements. This is clearly with respect to her interests as an owner. The corporation appears to be relying on the GNB reports for its position that there was no damage to Ms. Fouda's unit. The insurance adjuster reached a different conclusion, notwithstanding that he received those same reports. Whether the corporation's position that there was no damage is sufficient reason to withhold the requested cause of the water escape and whether or not there was damage to Ms. Fouda's unit are questions that are not within this Tribunal's jurisdiction to decide. However, that Ms. Fouda decided to submit a Request for Records to obtain the information she sought and that she chose to dispute the corporation's response to that Request is not an improper reason for an application to the Tribunal.

**D. ORDER**

[28] The Tribunal Orders that:

1. Within 15 days of the date of this decision, Toronto Standard Condominium Corporation No. 1790 shall carefully review the plumber's reports dated between October 1, 2023 and November 30, 2023, including those already provided to the Applicant, and, at no cost to the Applicant, shall provide her with copies which are redacted only for information that specifically identifies other units and/or owners.
2. Within 30 days of the date of this decision, Toronto Standard Condominium Corporation No. 1790 shall pay \$200 to the Applicant in respect of Tribunal fees and \$500 as a penalty for refusing to provide records without reasonable excuse.

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Mary Ann Spencer  
Member, Condominium Authority Tribunal

Released on: September 9, 2024