

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: June 20, 2025

CASE: 2024-00653R

Citation: Cho v. Toronto Standard Condominium Corporation No. 1644, 2025 ONCAT 105

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

Member: Anne Gottlieb, Member

The Applicant,

Patsy Cho

Self-Represented

The Respondent,

Toronto Standard Condominium Corporation No. 1644

Represented by Alex Chan, Agent

Hearing: Written Online Hearing – December 4, 2024, to May 23, 2025

Video Conference Hearing – March 5, 2025

REASONS FOR DECISION

A. INTRODUCTION

- [1] The parties have appeared before this Tribunal on prior occasions. The Respondent, Toronto Standard Condominium Corporation No. 1644 (“TSCC 1644”), is a commercial condominium corporation operating a retail mall. The Applicant, Patsy Cho, is a unit owner. She made a Request for Records on August 7, 2024 (the “Request”). TSCC 1644 provided a Board Response to the Request for Records (the “Board Response”) on September 6, 2024.
- [2] The Request listed core and non-core records. The core records are not the subject of this hearing. One of the non-core records was denied pursuant to an exemption in the *Condominium Act, 1998* (the “Act”). The Board Response provided an estimate for fees for the remaining non-core records. Ms. Cho asked me to find that she was refused the record without a reasonable excuse. She also asked me to determine if the fees proposed by the condominium corporation to redact and produce the remaining records are reasonable.

- [3] For the reasons set out in this decision, I find that the Incident Report of March 24, 2024 (the “Incident Report”) does not fall under an exemption specified in the Act, and that TSCC 1644 does not have a reasonable excuse for refusing this record. I find that Ms. Cho is entitled to this record. With respect to the fee estimate for the production and redaction of the ballots and proxies for the AGM of May 28, 2024 (the “Ballots and Proxies”), I find the fee estimate to be excessive and I have reduced the hourly rate and the number of hours in the estimate. Similarly, I have reduced the hourly rate in the estimate for the AGM Unit Attendee list of in-person and proxy voters (the “AGM List”). For reasons outlined below, I find that there is no basis to award a penalty in the circumstances of this case. I do award Ms. Cho the costs for filing this application.

B. BACKGROUND

- [4] The six records itemized below are the subject of this hearing:

1. Incident Report March 24, 2024;
2. Rental Agreement for 2022-2024 (the “Rental Agreement”) for a specific unit not owned by the Applicant;
3. Current 2024 Shiu Pong Management Contract (the “Management Contract”);
4. Site Administrator Contract for 2022-2024 (the “Site Administrator Contract”);
5. All ballots and proxies submitted to support May 28, 2024 AGM Election of Directors Voting Results; and
6. Annual General Meeting Registration and Unit Attendee List of units in attendance in-person and by proxy.

- [5] In the Board Response provided on September 6, 2024, the Incident Report was denied, based on the exemption in s. 55 (4) (b) of the Act, which is an exemption based on contemplated litigation. This will be discussed below. Fee estimates for producing and/or redacting the remaining five non-core records were provided in the Board Response, as follows:

1. Rental Agreement: \$10
2. Management Contract: \$20
3. Site Administrator Contract : \$30 x 3 hours = \$90

4. Ballots and Proxies: 592 pages, \$30 x 16 hours = \$480
 5. AGM List: \$30 x 1 hour = \$30
- [6] On November 12, 2024, prior to the commencement of this hearing, Ms. Cho received by email a copy of the Rental Agreement, the Management Contract and the Site Administrator Contract. TSCC 1644 did not charge anything to her for these records. The Rental Agreement was for the period from June 1, 2021, to May 31, 2024. Ms. Cho wishes to see the rental agreement that covers the remaining months in 2024. She also wants a determination on the reasonableness of the fees quoted by the condominium corporation to produce the Ballots and Proxies and the AGM list.

C. ISSUES AND ANALYSIS

Issue 1: Has TSCC 1644 refused to provide records to Ms. Cho without a reasonable excuse?

Incident Report

- [7] The Incident Report relates to an occurrence on March 24, 2024. The parties do not dispute that on March 24, 2024, Ms. Cho and her husband were in the mall, which comprises the commercial condominium known as TSCC 1644. There is testimony that she was taking pictures of a particular unit. She was approached by a security guard and told to stop taking pictures. She was also handed the security guard's phone to speak with the manager, Alex Chan.¹ The parties do not agree on the content of this conversation. A report was generated because of this incident.
- [8] On March 30, 2024, Ms. Cho made a Request for Records and asked for a copy of the Incident Report. This was the first time the Incident Report was requested. On April 24, 2024, TSCC 1644 refused the request for the Incident Report based on an exemption in the Act which relates to actual or contemplated litigation (see below). The Request of August 7, 2024, requested the same Incident Report.
- [9] The Board Response of September 6, 2024, cites the same grounds as outlined in the earlier Board Response for the same record. The exact wording from the condominium corporation, in both instances, is: "during the incident you indicated to the manager and to the security guard on duty that you were willing to pursue legal action against the Corporation. The document is therefore a record relating to

¹ Mr. Chan is the general manager and representative for the condominium corporation before this Tribunal. He is a board member and a unit owner.

contemplated litigation involving the Corporation and is exempted by Section 55 (4) (b) [of the *Condominium Act, 1998*].”

- [10] TSCC 1644 asked me to find that this second request for the same record is an abuse of the CAT process. It appears that Ms. Cho requested the same record again, to bring the case to the Tribunal for a determination. I do not find that to be an abuse of process.
- [11] Ms. Cho submits that the Incident Report is a record about her. She wants to see what the report says. She states that she is entitled to a copy as an owner because it “relates to specific units or owners that the corporation creates or receives”. She cited the case *Salpi Bechlian v. Toronto Standard Condominium Corporation No. 2418*, 2018 ONCAT 8 (“Bechlian”) to support that she is entitled to such a record.
- [12] TSCC 1644 refused the Incident Report based on the exemption set out in s. 55 (4) (b) of the Act, which relates to actual or contemplated litigation. Section 55 (4) (b) states that:
- (4) The right to examine or obtain copies of records under subsection (3) does not apply to,
- ...
- (b) records relating to actual or contemplated litigation, as determined by the regulations, or insurance investigations involving the corporation
- [13] Both Ms. Cho and Mr. Chan testified as to the telephone conversation that took place on March 24, 2024. Mr. Chan recounts the conversation with detail. He says that Ms. Cho said she would call the police. He claims that specific words were used by Ms. Cho to threaten litigation. I accept his testimony in this regard.
- [14] Mr. Chan detailed the nature of the security and lock system of some units. He explained that photographs were not permitted for reasons of privacy and security. He explained how photographs could comprise the security of a unit in a mall. Ms. Cho was taking pictures of a specific unit, which was not her unit. This was helpful to understand the context in which the security guard was alerted to the taking of the photographs, which prompted the Incident Report.
- [15] In his testimony Mr. Chan stated that there were signs posted in the mall entrances advising the public to refrain from taking photographs. Ms. Cho indicated that she was a unit owner and not a member of the public. That does not

seem relevant, as the testimony from Mr. Chan is that Ms. Cho was not photographing her own unit. This fact has not been denied.

- [16] Ms. Cho stated that she did call the police department on March 24, 2024, to ascertain if she had a right to take photographs in the mall. The testimony is that she was photographing a specific unit, that was not her own unit. This is the same unit for which she requested a Rental Agreement. There is a definite focus on this specific unit, although there is no evidence before me respecting any actual litigation.
- [17] Ms. Cho refers to a dominant purpose test to deny that the record is for litigation purposes. She references a case from British Columbia to stand for this principle². I find that the grounds and facts of that case are not applicable, here. That was a personal injury case dealing with disclosure and the claim of solicitor-client privilege.
- [18] An owner is not required to state their purpose when requesting records; however, the request must be in the interest of the owner for the purposes of the Act. In this case the Incident Report is about Ms. Cho's own actions. Based on the facts and evidence presented, Ms. Cho may have made an assertion relating to litigation, but as the Tribunal found in *Bechlian*, "a vague assertion" is not enough to find that s. 55 (4) (b) of the Act applies. It is now more than a year since the incident, and there is no evidence of litigation. I find that Ms. Cho is entitled to a copy of the Incident Report, although this may not have been readily evident to TSCC 1644, given her references to litigation in 2018 and the obvious tension between the individuals.

Rental Agreement

- [19] Ms. Cho requested the Rental Agreement for a specific unit, covering the years 2022 to 2024. She states that the unit is occupied by property management and site administrators. She does not own the unit. It is likely that this record would fall under an exemption based on s. 55 (4) (c) of the Act, which exempts records from examination when they relate to specific units or unit owners. However, I do not need to make that determination, because on November 12, 2024, a copy of the Rental Agreement for the period of June 1, 2021, to May 31, 2024, was provided to Ms. Cho. No fee was charged by TSCC 1644 for providing this record.

² *Buettner v. Gatto*, 2015 BCSC 1374 (CanLII)

The testimony of Mr. Chan is that the rental continued month to month, and that there is no written agreement for the remaining months of 2024.

Management Contract and Site Administrator Contract

- [20] The Management Contract and the Site Administrator Contract were both provided to Ms. Cho on November 12, 2024. Although the Board Response indicated that there would be a charge for these records, they were provided at no cost. Ms. Cho has asked for a penalty regarding the delay in providing these records and the Rental Agreement mentioned above. This will be addressed under a separate heading.

Issue 2: Are the fees proposed by TSCC 1644 to redact and produce the following records reasonable?

Ballots and Proxies

- [21] The evidence of Mr. Chan is that the vote relating to the 2024 AGM was held online and conducted by a third party called Condonexus. TSCC 1644 did not receive any paper ballots. Mr. Chan testified that the online ballots are extractable from the voting result summary. He explained that administrative time and effort is necessary to extract this information, and the information would be subject to redaction, pursuant to the exemption in s. 55 (4) (c) of the Act.
- [22] As for the proxies, much of the information contained in a proxy is subject to redaction. This includes information relating to the unit number, and personal information relating to a unit and the voting preference. I accept the testimony that to provide the proxies, heavy redaction needs to be applied to every page. Redaction needs to cover the unit-identifying information which includes the name, the unit number, address, initials, signature, from each of the 592 pages.
- [23] Ms. Cho has asked to be informed, in advance, of any redaction that will take place. That is not a requirement of the Act. The requirement of s. 13.8 (1) (b) of Ontario Regulation 48/01 ("O. Reg. 48/01" is:
- (b) if the board has determined that the corporation will redact the record to remove any part that the board has determined that the corporation will not allow the requester to examine or of which it will not allow the requester to obtain a copy, a written statement of the board's reason for its determination and an indication on which provision of section 55 of the Act or this Regulation the board bases its reason

[24] The decision of this Tribunal in *Tanel v. York Condominium Corporation No. 247*, 2025 ONCAT 39 is instructive on this matter. The Tribunal dismissed that records case, because the applicant requested unredacted election proxies. That case cited a prior case of this Tribunal, *Janet Cangiano v. Metropolitan Toronto Condominium Corporation No. 962*, 2018 ONCAT 7, which stated in paragraph 19:

The provisions of the Act and O. Reg. 48/01 set out above [s. 55 (3) and (4) (d) of the Act and s. 13.11 (2) (4) of O. Reg. 48/01] are very clear. An owner is not entitled to receive the information contained on proxy forms which identifies specific units or owners unless a by-law of the corporation permits this. There is no evidence before me that the Respondent has such a by-law.

[25] Here, as in the case cited above, Ms. Cho is not entitled to receive unredacted copies of the Ballots and Proxies. These must be redacted for information which identifies specific units or owners of TSCC 1644. Mr. Chan has indicated that there are 592 pages which require redaction. He has estimated this would take 16 hours. I consider 16 hours an excessive amount of time.

[26] I accept the submission of Ms. Cho that the case of *Harder v. Metropolitan Toronto Condominium Corporation No. 905*, 2022 ONCAT 58 (“Harder”) is a useful comparison. In that case, an estimate was provided of 4 hours to redact 177 virtual proxies and 0.1 hour to redact 3 paper proxies. Here, it appears that we are dealing with 592 pages representing the Ballots and Proxies associated with 187 attendees, comprised of 144 virtual proxies and 43 in-person attendees.

[27] TSCC 1644 argues that the method of redaction detailed in Harder was “papers being printed out or copied out for manual pen-based redaction and then scanning back for delivery purpose. The Respondent has long abandoned such method for environment, practicality, safety, concerns, etc.” He claims the time for redaction needed in this instance is more because the process is complicated.

[28] I find that the number of hours estimated to produce the Ballots and Proxies is not reasonable and should be reduced. I accept the testimony of Mr. Chan who says the process is complicated and that more time is required than the process in the Harder case. I consider 5 hours as a fair number for the purposes of the estimate for the Ballots and Proxies.

[29] As for the hourly cost to redact, the estimate from TSCC 1644 is based on \$30 per hour. Ms. Cho requests that the Tribunal “apply the \$19 per hour site administrator labor rate to perform the repetitive and simple redactions”. Ms. Cho indicates that in two prior cases involving the same parties before this Tribunal, the fee of \$24 per hour and \$25 per hour were allowed, and she sees no reason to pay \$30 per

hour. Considering the information provided to me, and the charges allowed in the two prior Tribunal decisions between these parties, I find that a rate of \$25 per hour is appropriate.

AGM List

- [30] Ms. Cho argues that the AGM List forms part of the minutes. I do not accept these submissions. Generally, the registration itself is separate. The minutes may refer to the number of units in attendance but would not list the units.
- [31] The Board Response estimated 1 hour to redact the AGM List. Ms. Cho herself, in opening remarks, refers to an email from Mr. Chan explaining that any list would redact any information that would be exempted by s. 55 (4) of the Act.
- [32] I find 1 hour to be reasonable, given the number of units involved. As with the Ballots and Proxies, the rate of \$30 per hour was in the estimate. I have determined that the hourly rate of \$25 is more reasonable in these circumstances.

Issue 3: Should a penalty be awarded?

- [33] Ms. Cho asks that I award the maximum penalty of \$5000 for the refusal to provide the Incident Report and for TSCC 1644's delay in providing the Rental Agreement, Management Contract and Site Administrator Contract. She states that in accordance with s. 55 (1) 8 of the Act, owners have the right to access agreements entered by or on behalf of the condominium corporation.
- [34] Section 1.44 (1) 6 of the Act states that the Tribunal may order a penalty if it finds that the condominium corporation has, without reasonable excuse, refused to permit an owner to examine or obtain copies of records. I have found that Ms. Cho is entitled to the Incident Report and that the condominium corporation did not have a reasonable excuse to refuse the Incident Report. Although there was a refusal to provide the record, I do not consider that the entitlement to this record was clear, from the outset to the extent that this, in and of itself, would warrant a penalty.
- [35] Ms. Cho contends that the penalty will serve as a reminder to the condominium corporation of its obligations to appropriately respond to a Request for Records. She indicated in her opening remarks that TSCC 1644 provided the unredacted agreements to her on November 12, 2024, which is 22 days after the release of the Tribunal's decision in *Cho v. Toronto Standard Condominium Corporation No. 1644*, 2024 ONCAT 156. TSCC 1644 provided these records, unredacted and without any fee. Mr. Chan states that the condominium corporation did so, having

learned from the release of that decision. I come to the same conclusion

[36] I accept that TSCC 1644 had a better understanding of their obligations regarding records, following the release of the previous decision between the parties. That serves as the same 'lesson' which Ms. Cho wishes, by way of a penalty. I do not find that a penalty is warranted. In the circumstances of this case, I do not find that the delay in providing the records is equivalent to a refusal under s. 1.44 (1) 6 of the Act. While there was some delay, TSCC 1644 provided the records to the Applicant prior to the start of this hearing.

Issue 4: Should an order for costs be awarded?

[37] Ms. Cho has been successful in bringing this case to the Tribunal. I therefore order that the cost of Tribunal filing fees, in the amount of \$200, be awarded to her, pursuant to Rule 48.1 of the Tribunal's Rules of Practice.

D. ORDER

[38] The Tribunal orders that:

1. Within 30 (thirty) days from the date of this Order, Ms. Cho is to be provided with a copy of the Incident Report from March 24, 2024.
2. Within 30 (thirty) days of the payment of \$125 by Ms. Cho to TSCC 1644, Ms. Cho is to be provided with a redacted copy of the Ballots and Proxies relating to the May 28, 2024 AGM and an accompanying statement explaining the reasons for any redactions made.
3. Within 30 (thirty) days of the payment of \$25 by Ms. Cho to TSCC 1644, Ms. Cho is to be provided with a redacted copy of the May 28, 2024, AGM List and an accompanying statement explaining the reasons for any redactions made.
4. Within 30 (thirty) days of the date of this Order, TSCC 1644 is to pay the sum of \$200 to Ms. Cho as reimbursement of Tribunal filing fees for this case pursuant to Rule 48.1 of the Tribunal's Rules of Practice.

Anne Gottlieb

Member, Condominium Authority Tribunal

Released on: June 20, 2025