



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER MO-1820**

**Appeal MA-040119-1**

**City of Toronto**



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## **NATURE OF THE APPEAL:**

The City of Toronto (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act) for a copy of drawings of the requester's property at a given address.

In its response, the City informed the requester that, "The Building Division (South District) has conducted a thorough search for any drawings responsive to [given address] and advised that no drawings have been found for this property. We must, therefore, conclude that no records exist".

The requester appealed the City's decision on the basis that records responsive to his request should exist.

Mediation was not successful. I sent a Notice of Inquiry to the appellant and the City informing them that an oral inquiry will be held to determine whether the City conducted a reasonable search for records that respond to the request. The oral inquiry was held at this office. Present on behalf of the City were the Acting Director, Corporate Access and Privacy, a solicitor from the City's Litigation Section, a Document Management Clerk, Urban Development Services, South District and a City Building Inspector. The appellant spoke on his own behalf.

## **DISCUSSION:**

### **Introduction**

In appeals involving a claim that responsive records exist, as is the case in this appeal, the issue to be decided is whether the institution involved conducted a reasonable search for the records as required by section 17 of the Act. If I am satisfied that the search carried out was reasonable in the circumstances, the decision of the City will be upheld. If I am not satisfied, further searches may be ordered.

Where a requester provides sufficient detail about the records that he or she is seeking and the institution indicates that records do not exist, it is my responsibility to ensure that the institution has made a reasonable search to identify any records that are responsive to the request. The Act does not require the institution to prove with absolute certainty that records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the institution must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records responsive to the request. A reasonable search is one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request (Order M-909).

### **Representations**

During the oral inquiry, the appellant explained that he wishes to obtain the City's copy of the drawings for his home, which were submitted by the builder at the time of construction. He has learned from professionals in the construction industry that such drawings must be submitted by the builder to the City for approval. His home was built less than two years ago. He is the first owner.

The City confirmed that it received the plans for the appellant's home from the builder in February 2000. A building permit was issued in November 2002. A permit number was assigned and a file was created. In processing the appellant's present request, the City located the permit file, but the file did not contain drawings.

The City acknowledged that it was in possession of the drawings when the permit was issued.

The City's Document Management Clerk described the process involved in the issuance of a building permit.

An applicant for a permit submits an application for construction or for an alteration along with the drawings for the project. An examiner on the main floor assesses the application and if a permit is issued, forwards the documentation to the records room on the seventeenth floor of the same building for file creation, storage and maintenance. Because the clerk receiving the documentation is not familiar with or qualified to assess the specific requirements for any construction project, and it does not form part of his or her responsibilities, the clerk does not check the file to see if it is complete. The applicant is provided with an approved copy of the drawings once the permit is issued.

In this case, according to the City, the drawings at issue would have been sent to the records room in the usual manner once the permit was issued.

The City explained that documents may be removed from the file folder at the request of City staff. A process is in place requiring anyone removing drawings from the file to sign for them. The City Building Inspector advised that he was the building inspector assigned to the development in which the appellant's home is located. He explained that in the vast majority of cases, when inspecting a construction site, instead of using the City's copy, the inspector will rely on the builder's approved copy of the drawings at the site. He stated that he had never requested the City's file copy of the drawings for the appellant's home from the records area. The City's Document Management Clerk confirmed that, according to their sign out process, the drawings were never removed.

According to the City, the development in which the appellant's home is located was a large project involving a number of phases. The appellant's home was built in the last phase. One set of plans was kept for each model, and as a result, plans were not kept for every house built. The appellant's home is semi-detached. He and the adjacent unit are the only units of that model design in the development.

The City explained that when the appellant's request was first received, the Document Management Clerk checked their computer using the permit number assigned to the appellant's home. The screen showed the address of the unit adjacent to the appellant. This was because they shared the same model. The clerk checked the file for the adjacent unit and discovered that there were no drawings in that file. There were, therefore, no drawings for that model in either the appellant's or the adjacent unit's file.

The City described the searches that were conducted to locate the drawings for the appellant's home.

As well as the file for the appellant's home, the City checked the permit file for the adjacent unit.

The City checked the files for the other semi-detached units in the development.

A search was conducted of the files for the complete block in which the appellant's home is located, including all files for homes on the appellant's street.

The City checked the garage permit file, which is separate from the house permit files, and contains plans for the garages in the development, all of which are based on the same design. This file did not contain the drawings at issue. The City disclosed the garage plans to the appellant after the conclusion of the oral inquiry.

The City checked with the examiner who was responsible for the area in which the permit for the appellant's house was issued. The City also searched the main floor where the permit was issued.

As mentioned above, there was no record of anyone having signed for the removal of the drawings from the permit file.

Because of boundary re-alignments, files, including the appellant's file, were transferred this year from the South District records office to the West District office. This took place after the City conducted its searches for the drawings within the South District office. Although the City believes that the drawings at issue were not contained in those files at the time of the transfer, another search was conducted by the receiving office of the appellant's and the adjacent unit's files.

The City suggests that the drawings could have been attached to a file for a completely unrelated property. However, because of the volume of records, it would be impossible to check all property files located in their records. In the City's view, it would be unreasonable to expect such a search to be conducted.

### **Findings**

The appellant is of the view that building plans for his house existed and, given the relatively short period of time since the construction of his home, should still exist in the City's custody or control. His position has merit. His understanding of the general requirements for obtaining a building permit has been confirmed by the City. The City acknowledges that in February 2000 it received the plans from the builder and in November 2002 issued a building permit for the construction of the appellant's house. The City further acknowledges that when the permit was issued, a file was created and stored in its records office and that the drawings should have been included in that file.

The City does not know where the drawings might be located and believes they may have been misplaced, either at some point between the permit approval on the main floor and storage on the seventeenth floor, or after the file was initially stored on the seventeenth floor, but before being transferred to the South District office.

As mentioned earlier, the *Act* does not require the institution to prove with absolute certainty that records do not exist. In this case, the City is not maintaining that the drawings do not exist, only that they cannot be located. The City is not disputing that the drawings should be in the permit file, as would normally be the case.

As also stated earlier, in order to properly discharge its obligations under the *Act*, the institution must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records responsive to the request.

The City has described the steps taken to locate the missing drawings. They include searching the appellant's permit file and that of the adjacent unit, checking the files for the other semi-detached units in the development, searching the files for the complete block in which the appellant's home is located, including all files for homes on the appellant's street, checking the garage permit file, checking with the examiner who was responsible for the area in which the permit was issued, as well as the main floor where the permit was issued and searching the appellant's and the adjacent unit's files once again after their files had been transferred to another office.

### **Conclusion**

In my view, the City has made a reasonable effort to locate the records. I find that the City has adequately discharged its responsibilities under section 17 of the *Act* to conduct a reasonable search.

### **ORDER:**

I dismiss the appeal.

Original Signed By: \_\_\_\_\_  
Alex Kulynych  
Acting Adjudicator

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August 12, 2004