



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2185

Appeal MA-060137-1

City of Ottawa



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NATURE OF THE APPEAL:

The City of Ottawa (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act) for various records related to a land severance proceeding involving the requester's property at a specified address. The requester sought the following information:

The following is a list of missing documentation that involves that land severance proceedings for the property at [address] in Ottawa, ON. The documentation requested may or may not be available at certain institutions, depending on their jurisdiction. Please review the list and provide all documentation that is, or should be, available at the institutions at the Provincial and Municipal levels. ...

1. Application of Consent for Severance of Property

Date: June 4, 1985

Details: Property severance took place with consent. Documentation is required to show the application of consent and who authorized it.

2. Name of Person who signed the Consent Application

Details: The abovementioned Consent Application (June 4, 1985) was signed and thus authorized by someone. The name(s) of those who authorized the Consent Application are required.

3. Land Severance/Surveyor Records

Date: June 1985

Details: (Surveyor) completed the severance of the property. Documentation is required to show who gave the surveyor authorization to proceed with Land Severance.

4. Authorization for Land Severance/Documentation for Severance

According to then Mayor's office, the Committee of Adjustment said that the "consent to convey ... was approved with certain conditions"

Date: April 26, 1989

Details: The 'certain conditions' were not met, according to the Mayor's office, yet the land conveyance still took place. Documentation is required to show how the authorization to proceed with land severance took place.

Copy of Documentation used for Land Severance in accordance with the Planning Act of 1983.

Date: March 7, 1991

Details: According to the Planning Act of 1983, the documentation for severance was not completed but the Land Severance proceeded nonetheless. A copy of the documentation used to

authorize the Land Severance (when the Planning Act said it should not proceed) is required.

5. Conversion of Land Titles

Date: 1996

Details: Conversion of Land Titles took place in 1996 without consent. The Land Registry Act allowed for this Conversion. Documentation is required to show authorization of this Conversion.

6. Name Change Correction

Date: February 20, 2002

Details: A correction to the name “[name]” was made on the files pertaining to the property. Documentation is required to show who authorized the name correction on the files pertaining to the aforementioned property.

7. TITLE and DEED to the property

Details: These are critical missing documents. To date, there are no Titles and Deeds that exist for the property.

Assistance is required to find these documents as they are imperative for the owner of the property.

The City granted full access to records within the custody or control of its Committee of Adjustment, which are responsive to Items 1 to 4 of the request. In its decision, the City included the following statement:

The Committee of Adjustment has advised that the records attached hereto constitute their entire file on the property at [the requester’s address]. With respect to certain portions of your request, you will need to attend at the Land Registry Office (LRO), Ottawa Courthouse, 4th Floor, 161 Elgin Street, Ottawa. The LRO registers, stores and manages documents such as deeds, mortgages and plans of survey.

The City provided the requester with copies of 73 pages of responsive records, including:

- Application for Consent by requester to the Committee of Adjustments;
- Letter by requester dated September 27, 1998;
- Letter by requester dated August 17, 1992;
- Letter from the Committee of Adjustments to Requester dated August 19, 1992;
- Letter from the Anti-Rackets Branch of the OPP to Requester dated November 9, 1988;

- Report from the Centre of Forensic Sciences dated October 28, 1988;
- Affidavit by Requester dated August 16, 1983;
- Lab Report from RCMP dated January 27, 1988;
- Letter from the City (Secretary-Treasurer) to Requester dated March 7, 1991;
- Letter from Requester to the Secretary-Treasurer dated March 11, 1991;
- Letter from Requester to the Secretary-Treasurer undated;
- Letter from Requester to the Secretary-Treasurer dated March 15, 1991;
- Memo from the Committee of Adjustment to different departments dated April 17, 1985, and responses from Consumer Gas, Ottawa Hydro, Engineering and Surveys, Bell, Skyline Cable vision and Buildings Branch;
- Notice of Public Hearing dated April 17, 1985;
- Letter from the Committee of Adjustment to counsel dated April 17, 1985;
- Decision from the Committee of Adjustment and cover letter dated May 2, 1985;
- Letter from Secretary General to counsel dated June 4, 1985;
- Handwritten notes;
- Letter from requester to the Secretary Treasurer dated March 8, 1989;
- Letter from Secretary Treasurer to Requester dated March 14, 1989;
- Affidavit of residence (land transfer) dated September 11, 1985;
- Letter to Requester by OPP dated June 12, 1989;
- Affidavit of Requester dated August 16, 1983;
- Preliminary Report to Requester dated March 24, 1989;
- Court order dated December 4, 1984;
- Letter from requester's counsel to the Committee of Adjustment dated July 7, 1989;
- Letter from the Committee of Adjustment to counsel dated April 1, 1985;
- Letter from Counsel to the Committee of Adjustment dated March 29, 1985;
- Court Order dated December 4, 1984;
- Letter from counsel to requester dated June 25, 1984 and attachment;
- Application for consent dated March 18, 1984.

The requester also sent a copy of his seven item request to the Ministry of Government Services (the Ministry), which is the Ministry responsible for the LRO, seeking responsive records pursuant to the *Freedom of Information and Protection of Privacy Act (FIPPA)*.

The Ministry located and granted access to records responsive to Items 5, 6 and 7 of the appellant's request. Records which are responsive to Items 5 to 7 of the request fall within the custody or control of the Ministry. Records responsive to Items 1 through 4 of the request were not in its possession. In its decision, the Ministry included the following statement:

Land severance is usually a municipal matter so you may wish to contact [the City of Ottawa's] *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* (the municipal Act) Coordinator for assistance in establishing whether the municipality has the records that you are seeking.

The requester, now the appellant, appealed the decisions of both the Ministry and the City.

The appellant is of the view that additional records responsive to his request ought to exist. The appellant claims that in 1984, a lawyer requested the appellant's signature on a document that would grant approval of the severance of the land for his property. The appellant indicates that he refused to sign the application for severance as he had the "right of first refusal" to purchase the land unsevered. The appellant believes that a severance of his land occurred despite his refusal and that additional records should exist, including records containing the signature of the person who authorized the severance of the land and the removal of the appellant's name from the property title.

Accordingly, the adequacy of the searches undertaken by the City and the Ministry are the sole issues to be determined in both appeals. As further mediation was not possible, both files were moved to the adjudication stage of the appeal process. In both appeals, I sent a Notice of Inquiry, setting out the facts and an explanation of the issues, to the institutions, initially. Both the City and the Ministry provided representations in response. I then sent a complete copy of the institutions' representations, along with both Notices of Inquiry, to the appellant. The appellant provided representations in response. I then sought reply representations from the Ministry only, which were shared with the appellant. The appellant was invited and provided surreply representations in response.

As the Ministry is governed by the provincial Act, I have issued a separate decision, Order PO-2565, disposing of the appellant's appeal of the Ministry's decision. Similarly, due to the involvement of two institutions and the numerous real estate and tribunal-related documents in the appellant's two appeals, I decided to proceed with a written, paper inquiry for both appeals, rather than proceeding with an oral inquiry as requested by the appellant.

DISCUSSION:

SEARCH FOR RESPONSIVE RECORDS

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17 [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried

out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624].

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

Representations of the Parties

The City was asked to provide a written summary of all steps taken in response to the request. In particular, the City was asked to respond to the following:

1. Did the institution contact the requester for additional clarification of the request? If so, please provide details including a summary of any further information the requester provided.
2. If the institution did not contact the requester to clarify the request, did it:
 - (a) choose to respond literally to the request?
 - (b) choose to define the scope of the request unilaterally? If so, did the institution outline the limits of the scope of the request to the requester? If yes, for what reasons was the scope of the request defined this way? When and how did the institution inform the requester of this decision? Did the institution explain to the requester why it was narrowing the scope of the request?
3. Please provide details of any searches carried out including: by whom were they conducted, what places were searched, who was contacted in the course of the search, what types of files were searched and finally, what were the results of the searches? Please include details of any searches carried out to respond to the request.
4. Is it possible that such records existed but no longer exist? If so please provide details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.

Items 1 to 4 of the appellant's request address records which are within the custody or under the control of the City. These portions of the request concerns documents related to a land severance application for the appellant's property.

In response to the Notice of Inquiry, the City provided a detailed affidavit of its Access and Privacy Analyst (the Analyst) who is responsible for receiving and processing access requests. In conducting the search for responsive records, the Analyst contacted the Secretary-Treasurer of the City's Committee of Adjustment. Among other things, the Committee of Adjustment hears applications seeking its consent to the severance of a property. The appellant was granted access to the Committee of Adjustment's complete file relating to this particular application. The Analyst also contacted the City's Manager of the City's Planning and Growth Management Department who also conducted a search for the requested records. The Planning and Growth Management Department did not possess any responsive records. The Manager of that Department informed the Analyst that: "...as this was a property severance issue only the Committee of Adjustment would have records if any were held by the City". The Analyst also contacted the City's Surveys and Mapping office and confirmed with that office that additional documents, such as registered surveys, were not in the possession of the City. The Surveys and Mapping office advised the Analyst that if such records were not held by the Committee of Adjustment, they would only be available at the Land Registry Office, which is operated by the Ministry.

In its submissions, the City states that:

[T]he Committee of Adjustments ...possesses a single file on a land severance application of the appellant's property...

[T]he responsive records released to the appellant provide the reason why the City does not possess the additional records sought. The procedure at the Committee of Adjustment is that once an application for consent is granted, there is a one year period for the parties to bring deeds to be stamped, failing which the application lapses. Numerous correspondence in the file between the appellant and the Committee of Adjustment indicate that once the consent to severe was granted, copies of the deed were never provided by the appellant. Correspondence as early as March 14, 1989 indicates that the required documentation, namely a copy of the deed, was not filed with the Committee of Adjustment within the prescribed time period, and that the application lapsed.

In the Analyst's affidavit she states that:

[T]he City never possessed a copy of the title, deed and survey which the [appellant] is seeking.

In response to the City's representations, the appellant posed questions concerning a survey to his property and the application for severance of his property (Items 3 and 4 of his request). He states:

Who authorized the consent? Where are the records to show this authorization?
Where are the surveyor records?

Analysis/Findings

The records disclosed by the City to the appellant, along with the documents provided by the appellant, concern an application for Committee of Adjustment consent to sever the appellant's property into two lots. One of these lots was to be conveyed to the appellant and the other lot was to be conveyed to a named person. At the time of this application, the appellant and this named person owned the entire property as tenants in common. The property is described in an Agreement between the appellant and the named person, dated September 27, 1968, as a double or a semi-detached residence. The appellant is described as the sole owner of one residence and the other named person is described as the sole owner of the adjoining residence.

The records reveal that in August 1983, the appellant swore an affidavit, before his lawyer, which was filed in court. He swears in this affidavit, that he is prepared to have the property severed by way of an application to the Committee of Adjustment. On June 25, 1984, the appellant's lawyer wrote the appellant and enclosed a plan of survey for the severing of the lots by the Committee of Adjustment. The appellant's lawyer advised the appellant that following severance by the Committee of Adjustment the appellant would retain one part of the property. On December 4, 1984, a court in Ottawa issued an order requiring the appellant to execute forthwith an application to consent to sever the property, failing which the appellant's lawyer, who ultimately signed the application for consent, was appointed as the appellants' agent for the purpose of executing the application for consent. The court also ordered that the appellant forthwith execute a quit claim, which is described as an ex parte order to go vesting title in the adjoining residence in the appellant's co-owner, failing which an order was to be issued ex parte vesting title in the adjoining residence to the appellant's co-owner.

The application for consent to the severance of the appellant's property was signed on March 18, 1985, by the appellant's co-owner and by the appellant's lawyer as the authorized agent for the appellant. On May 2, 1985, the Committee of Adjustment granted the application for severance, subject to the condition that the appellant and his co-owner register or deposit on title in the appropriate registry office a copy of the Decision of the Committee of Adjustment. Only the appellant's co-owner's lawyer appeared before the Committee. As no appeal of the Committee's decision was filed, the decision was deemed final and binding by the Secretary-Treasurer of the Committee of Adjustment on June 4, 1985. In November 1988, the appellant asked the Ontario Provincial Police to investigate the conduct of his lawyer who signed the consent to severance on his behalf. This investigation was closed with a finding by the police that the allegations the appellant made against his former lawyer were unfounded.

The Ministry, under separate cover letter, sent me some additional documents from the LRO to assist in the understanding of the events related to the appellant's appeal. These documents clarify the title history of the adjoining residence of the appellant's co-owner and confirm that the appellant's property was severed in 1985, followed by the sale of the appellant's co-owner's residence to a third party in 1986. I provided the appellant with copies of these documents and asked for his representations. These documents consist of:

- a copy of the parcel register;

- another copy of the registered deed from 1968 showing the appellant as the owner of the land as a tenant in common;
- a copy of the registration on title of the Deposit of the Committee of Adjustment Decision of May 2, 1985 on title on May 16, 1985;
- a June 7, 1985 plan of survey of the severed property registered on title on June 18, 1985;
- a copy of the registration on title on September 20, 1985, of an ex parte Vesting Order vesting title to the land occupied by the appellant's co-owner, as severed by the Committee of Adjustment, to the appellant's co-owner; and,
- a copy of the registered transfer of the appellant's co-owner land to a third party on January 9, 1986.

In response to the disclosure of these additional records by the Ministry, the appellant continued to claim that he had not received records concerning his consent to, and the authority for, the severance of his property.

With respect to records responsive to Items 1 to 3 of the appellant's request, which are within the City's custody or control, I find that the City has conducted a reasonable search by experienced employees, expending reasonable effort, to identify any records that are reasonably related to these parts of the appellant's request (Order M-909). I find that the City has provided me with a comprehensive description of the steps it undertook to locate records responsive to Items 1 to 3 of the appellant's request. I am satisfied that the City conducted a reasonable search for records responsive to Items 1 to 3 of the appellant's request.

However, I find that a reasonable search has not been conducted for records responsive to Item 4 of the appellant's request. Based on my review of the representations of both the City and the appellant, along with the records of both the City and the Ministry responsive to all items in the appellant's request, I find that the City has not provided me with sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control concerning Item 4 of the appellant's request. The appellant sought, inter alia, in Item 4 of his request, the following:

According to then Mayor's office, the Committee of Adjustment said that the "consent to convey ... was approved with certain conditions"

Date: April 26, 1989

Details: The 'certain conditions' were not met, according to the Mayor's office, yet the land conveyance still took place. Documentation is required to show how the authorization to proceed with land severance took place.

Copy of Documentation used for Land Severance in accordance with the Planning Act of 1983.

Date: March 7, 1991

Details: According to the Planning Act of 1983, the documentation for severance was not completed but the Land Severance proceeded nonetheless. A copy of the documentation used to authorize the Land Severance (when the Planning Act said it should not proceed) is required.

The records disclosed by the City to the appellant include letters the appellant wrote in 1989, 1991 and 1992 to the Secretary-Treasurer of the Committee of Adjustment. In these letters, the appellant states that the Committee of Adjustment approved the severance of his property without his knowledge. He asked for a complete copy of his file and the name of the person who approved the consent application. On March 14, 1989, March 7, 1991 and August 19, 1992, the Secretary-Treasurer of the Committee of Adjustment responded to the appellant.

In 1989, the Secretary-Treasurer informed the appellant that:

...the documentation required to complete this application [for consent to severance] had not been filed within the prescribed time period set out under the Planning Act, 1983, and, therefore, the application has lapsed and is no longer active.

In 1991, the same Secretary-Treasurer confirmed the contents of his letter of 1989 and stated that:

...the application has lapsed and any consent that may have been granted "is deemed to be refused". I can assure you that this office will not be approving any deeds of conveyance regarding this particular file.

In the most recent response (August 1992) the Secretary-Treasurer states:

Once again, as indicated in my previous correspondence to you, no deeds pertaining to this property were stamped by this office and, therefore, the application for consent which was heard by the Committee of Adjustment is deemed to be null and void. Under the circumstances, I cannot comment on the questions you raise in your letter.

There is nothing further I can do except to advise you that this file is closed and has been placed in the City of Ottawa archives for storage purposes.

There appears to be a conflict in the records as to what was required to complete the severance of the appellant's property. Specifically, it appears there exists a discrepancy between what the appellant was told by the Secretary-Treasurer of the Committee of Adjustment in 1989, 1991 and 1992 and what the Committee of Adjustment actually ordered in its decision in 1985. The Decision of the Committee of Adjustment of May 2, 1985, required that the appellant and his co-owner register, or deposit on title, in the appropriate registry office a copy of the decision of the Committee of Adjustment. This was done by the

appellant's co-owner following which he proceeded to deal with his severed part of the property as he was entitled to do.

The Secretary-Treasurer of the City's Committee of Adjustment advised the appellant in 1989, 1991 and 1992, that the application for consent to sever the appellant's property was deemed null and void. This is contrary to the Secretary-Treasurer's earlier correspondence of 1985, deeming the Committee's severance decision final and binding. Records have not been produced by the City that might demonstrate how the Secretary-Treasurer came to these opposing conclusions concerning the severance of the appellant's property.

I find that the appellant has provided a reasonable basis for concluding that additional records exist in response to Item 4 of his request and I will order the City to conduct an additional search for records responsive to that part of the appellant's request, in particular for any records that disclose how the Secretary-Treasurer came to the conclusion in 1992 that the "the application for consent which was heard by the Committee of Adjustment is deemed to be null and void".

ORDER:

1. I order the City to conduct a new search for records responsive to Item 4 of the appellant's request, in particular for any records that disclose how the Secretary-Treasurer came to the conclusion in 1992 that the "the application for consent which was heard by the Committee of Adjustment is deemed to be null and void".
2. I order the City to provide the appellant with a decision concerning this search in accordance with the provisions of section 19 of the *Act*, treating the date of this order as the date of the request, without charging a fee and without recourse to a time extension under section 20 of the *Act*. I further order the City to provide me with a copy of its decision letter to the appellant.
3. I uphold the City's search for records responsive to Items 1 to 3 of the appellant's request.

Original signed by: _____
Diane Smith
Adjudicator

April 19, 2007