



**Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER MO-2646

Appeal MA11-178

City of Windsor



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NATURE OF THE APPEAL:

The City of Windsor received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for:

...all information (work orders, request to repair and all Amanda sheets) for [a specified address].

...the permit numbers issued on [a home at the address] and their description.

The City located responsive records and provided the requester with an access decision dated February 25, 2011, together with an index of records. The City indicated it was releasing other records in full and certain records in part, claiming the discretionary exemptions in section 7(1) (advice or recommendations) and 38(b) (personal privacy).

The City released the following records in full to the requester:

- Order to Repair dated February 2, 2010 (3 pages)
- Order to Repair dated February 16, 2010 (3 pages)
- Amanda (the City's computer system) printouts 1969-2011 (80 pages)

The City also released other computer printouts, in part, to the requester

On March 2, 2011, following receipt of the City's decision and above-noted records, the requester emailed the City requesting it conduct a further search for the following records:

- Permit # for interior renovation – details of permit
- Permit # for balcony – details of permit
- Permit for occupancy – details of permit
- Permit for side porch – details of permit
- Missing information:
 - Amanda sheet about hose bib
 - Amanda sheet about stairs going upstairs
 - Amanda sheet about main water line in basement
 - Amanda sheet about hood range needing venting

On March 14, 2011, the City responded to the requester, indicating that that Building Department was contacted and asked to perform a further search of its records to locate the items listed in his email. The City indicated that no responsive records were located as a result of this further search.

On March 16, 2011, the City emailed the requester indicating that the Building Department had located an application for a building permit for the requested address. The City provided the requester with a complete copy of this document. The requester continued to contact the City, asserting the existence of additional records.

On March 17, 2011, the City emailed the requester, indicating that the Building Department had stated that no further responsive records exist.

The requester, now the appellant, appealed the City's decision to this office.

During the mediation stage of this appeal, the City issued a revised decision dated June 7, 2011. The City released the information from Records 1, 2, 3, 5, 6, that had initially been severed. The City also provided full copies of Records 3 and 6, since some of the wording in the copies originally provided to the appellant had been obscured. With respect to the existence of additional records, the City indicated there was one global building permit in 2009 for the address (the global permit), which was for interior renovations to restore an existing single family dwelling.

The appellant confirmed that he was not interested in pursuing access to any of the remaining severed information on the Amanda sheets. However, the appellant indicated that he remained of the view that there are additional permits relating to the address listed in the request (e.g. occupancy permit, balcony permit, side porch permit, chimney permit, dormer permit) and that the City's search was not complete.

As mediation did not resolve the issues in this appeal, the file was transferred to the adjudication stage of the inquiry process, where an adjudicator conducts an inquiry. On August 17, 2011, I conducted an oral inquiry via teleconference.

The City was represented at the oral inquiry by its Freedom of Information Coordinator (FOIC), its Manager of Inspections and its Chief Building Official. In addition, a City solicitor was present to assist the City. Testimony was primarily provided by the Manager of Inspections, who had attended at some site inspections of the property during a strike of City employees that occurred in 2009.

The appellant represented himself, and provided evidence along with his girlfriend.

Prior to the hearing, the appellant provided me with several sets of documents in support of his position that additional responsive records exist. At the outset of the hearing, the appellant confirmed that he believes that the following additional responsive records should exist:

- occupancy permit
- balcony permit
- side porch removal permit
- chimney removal permit
- dormer permit
- framing permit
- electrical permit
- drawings for the global permit

The City states that its searches for responsive records were conducted by both its Manager of Inspections and a named document clerk. I will now summarize the City's and the appellant's

evidence concerning the existence of these additional responsive records, as well as state my findings concerning whether the City has provided sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of these responsive records within its custody or control.

Occupancy permit

The City states that in 2009, when occupancy was assumed by the appellant, the *Ontario Building Code* did not require occupancy permits for residential dwellings. This remains the case, but is scheduled to change in 2012.

The appellant disputes how he could have occupied the home without a permit and prior to the global permit work being completed. The City responds that certain items needed to be complete before occupancy is allowed.

I accept the City's evidence that an occupancy permit was not required nor issued for the appellant's property. Section 1.3.3.2 of the *Ontario Building Code* affirms that an occupancy permit is not required for certain types of residential buildings. This section states:

Conditions for Residential Occupancy

(1) A person may occupy or permit to be occupied a building intended for residential occupancy that has not been fully completed at the date of occupation provided that,

(a) the building,

(i) is of three or fewer storeys in building height and has a building area not exceeding 600 m²,

(ii) has not more than 1 dwelling unit above another dwelling unit,

(iii) has not more than 2 dwelling units sharing a common means of egress, and

(iv) has no accommodation for tourists,

(b) the following building components and systems are complete, operational and inspected:

(i) required exits, handrails and guards, fire alarm and detection systems, and fire separations,

(ii) required exhaust fume barriers and self-closing devices on doors between an attached or built-in garage and a dwelling unit, and

(iii) water supply, sewage disposal, lighting and heating systems,

(c) the following building components and systems are complete, operational, inspected and tested:

(i) water systems,

(ii) building drains and building sewers, and

(iii) drainage systems and venting systems, and

(d) where applicable, the building conforms to Article 3.1.1.3. or 9.1.1.7. of Division B.

The scope of this inquiry is limited to whether the City conducted a reasonable search for responsive records. I am not empowered under the *Act* to make findings as to whether the appellant ought to have been permitted to occupy the home without all of the conditions in section 1.3.3.2 of the *Ontario Building Code* being met. Based upon my review of the evidence, I find that the City has provided sufficient evidence to show that it has made a reasonable effort to identify and locate a responsive occupancy permit.

Balcony permit

Dormer permit

According to the City, this work would have been covered by the global permit that was issued for “interior renovations to restore existing single family dwelling, install new furnace, ductwork and plumbing. All work subject to field inspections”. The appellant was provided with a copy of the computer (Amanda) printout showing when this global permit was issued and that it covered “interior renovations to restore existing single family dwelling, install new furnace, ductwork and plumbing. All work subject to field inspections”. The City also states that this work would have been reviewed by a field inspector as part of the inspection of the work done under the global permit.

The appellant questions how work on a balcony and dormer could be covered under the global permit. The City states that this type of work would have been completed within the scope of the work to be performed under the global permit.

Based upon my review of the evidence, including the documents supplied by the appellant, it is clear that separate permits did not exist for the balcony and dormer. Concerning the balcony, there is a note in the Amanda records related to the global permit that:

The scope of the permit did not appear to include [the balcony] as it was for interior alterations. It appears that the area inspector added [the balcony] by way of a direction to the permit holder.

Concerning the dormer, there is a note in the Amanda records related to the global permit that the framing for the dormer was inspected and requires repair.

Accordingly, I find that the City has provided sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate any responsive balcony and dormer permits and that the appellant has not provided a reasonable basis for me to find that such permits exist.

Side porch removal permit

The City states that it did not receive an application for the removal of the side porch. A permit would have been required if the side porch had been removed and not replaced.

The appellant questions how this could be done without a permit. Based upon my review of the evidence, I find that the City has provided sufficient evidence to indicate that it has conducted a reasonable search for a side porch removal permit and that such permit does not exist. It appears that the side porch was removed and replaced without a permit being issued.

Chimney removal permit

The City states that a permit is not required to remove a chimney that is no longer needed under the Ontario Gas Utilization Code after the installation of a high efficiency furnace. The City is not the authority that inspects the removal of a chimney after this type of furnace is installed.

The appellant questions how this could be done without a permit. He does not dispute the City's evidence about the replacement of the furnace with one that would not have required a chimney. In fact, the global permit lists the installation of a new furnace as one of the items to be completed under the permit. Based upon my review of the evidence, I find that the City has provided sufficient evidence to show that it has conducted a reasonable search for a chimney removal permit. A permit for the removal of the chimney was not required as the furnace was being replaced by one that did not require a chimney.

Framing permit

The City states that framing does not require a separate permit from the global permit. The appellant questions how this could be done without a permit. The records show that the framing was inspected under the global permit. Based upon my review of the evidence, I find that the City has provided sufficient evidence to demonstrate that it has conducted a reasonable search for a framing permit, and that such a permit was not required as the framing work for this property was covered under the global permit.

Electrical permit

The City states that electrical permits are issued by the Electrical Safety Authority (ESA) and the City is not provided a copy of it.

The appellant questions how this could be done without a permit issued by the City. The ESA is responsible for administering specific regulations related to the *Ontario Electrical Safety Code*, which requires electrical inspections for all electrical work (new installations and modifications). Accordingly, I accept the City's evidence that it did not issue or have possession of an electrical inspection permit related to the appellant's property.

Drawings for global permit

The City states that there would not have been drawings associated with the global permit, which was one of the reasons why this permit was able to be issued over the counter. The City states that depending on the scope of the work to be done, certain permits, such as the global permit in this appeal, can be issued over the counter and do not require the submission of drawings with the permit application.

The City also explained that although the application for the permit for the property sought a permit to "install new furnace, ducts, plumbing and restore entire home as per inspector's approval", the permit that was issued (as stated above) was for "interior renovations to restore existing single family dwelling...". This permit would have been issued after the City's Customer Service Representative discussed the permit application with the applicant for the permit as to what work was intended to be done on the property. The appellant did not apply for the global permit, but purchased the home from the person who had applied for and was issued the permit.

The City states that the hard copy of the global permit would have been given to the permit applicant at the time of issuance in June 2009 and that the City would not have kept a hard copy on file, as the permit information would have been stored electronically on its Amanda system. During the oral inquiry, the City reprinted a copy of the global permit from its Amanda computer system and emailed it to this office and to the appellant. This global permit is entitled "Residential Dwelling/Single Family Dwelling (Alteration) Construction Permit" and states that it was for "interior renovations to restore existing single family dwelling, install new furnace, ductwork and plumbing. All work subject to field inspections".

The reprinted global permit lists the completion date and describes the status of certain work as completed. The appellant sent me an email following the hearing asking, "...if this is the original Permit - how can it possibly be if it has a completion date - did they know when it was going to be finished when it was issued?" However, I find that the information on the printout from the City's computer system provided at the hearing was printed after the completion or closing of the permit. I find that the information in it about the completion date and status is consistent with the evidence provided by the City at the hearing and in the other records disclosed to the appellant as to the contents of the printed hard copy of the global permit.

Accordingly, I accept the City's evidence that drawings were not required nor do they exist in relation to the global permit.

Conclusion

The sole issue to be decided in this appeal is whether the City has conducted a reasonable search for responsive 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.

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 [Orders P-624 and PO-2559]. To be responsive, a record must be "reasonably related" to the request [Order PO-2554].

A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request [Orders M-909, PO-2469 and PO-2592].

Based upon my review of the evidence, I find that the City has provided sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records in its custody or control that the appellant submits have not been located by the City [Order MO-2185]. As stated above, these responsive records that have not been located consist of:

- occupancy permit
- balcony permit
- side porch removal permit
- chimney removal permit
- dormer permit
- framing permit
- electrical permit
- drawings for the global permit

Accordingly, I find that the City's search was reasonable. I do not have jurisdiction under the *Act* to address the issues raised by the appellant in this appeal concerning improper inspections, work being completed on his property without permits or outside of the scope of the global permit, and occupancy without the home being in a habitable condition.

During the oral inquiry, the appellant had questions about the existence of other records related to the property beyond those that were the subject of his request and this appeal. The appellant will need to make another request to the City if he wishes to obtain access to these records, as they are not the subject of this request and subsequent appeal.

ORDER:

I uphold the City's search and dismiss the appeal.

Original signed by: _____
Diane Smith
Adjudicator

_____ August 23, 2011