

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

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## ORDER MO-2780

Appeal MA09-254-2

City of Vaughan

August 21, 2012

**Summary:** The appellant submitted a seven part request for access to financial information from the city. The city granted partial access to records responsive to six of the seven items in the request, relying on sections 10, and 11(a), (c) and (d) to withhold the severed portions of these records. The appellant disputed the reasonableness of the city's search with respect to the records requested under item 2 of the request. The only issue in this order is whether the city's search was reasonable. The city's search is upheld as reasonable and this appeal is dismissed.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 17.

### OVERVIEW:

[1] The city of Vaughan (the city) received a request, under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), for access to the following records:

1. A copy of a Detailed General Ledger Summary for **185001** for 7520 and 7790 for the years 2003-2008. A copy of a Detailed Revenue General Ledger Summary for **185001** for 3522, 3582, 3614 and 3618 for the years 2003-2008.

2. A copy of any other Detailed Revenue General Ledger Summary for any other Policy Planning / Urban Design Capital Budget Funding Account of the years 2003-2008, please note project name on each of the Accounts including a Detail of Transactions (Revenue and Operating Expenses).
3. A copy of Detailed General Ledger Summary for **201001** for 7520 and 7790 for the years 2005-2008. A copy of Detailed Revenue General Ledger Summary for **201001** for 7790 and **201005** for 3620 for the years 2005-2008 including a Detail of Transactions related therein (Revenue and Operating Expenses).
4. A copy of a Detailed Transaction General Ledger Summary for Account Number **201005** – for the years 2004-2008.
5. A copy of a Detailed Transaction General Ledger Summary for Account Number **020020** – for the years 2004-2008
6. A copy of Detailed Revenue General Ledger Summary for **195003** for 3618 and 3620 for the years 2004-2008 and detail of transactions for the various expenses.
7. A copy of a Detailed Revenue General Ledger Summary for **1905006** for 7698 for the years 2004-2008 and vice versa for expenses.

[2] Before issuing its decision on access, the city sought clarification of the request. The city advised the requester that its accounting software did not produce a record called a "Detailed Revenue General Ledger Summary" or a "Detailed General Ledger Summary"; however, it could produce a record called a "Detailed Business Transactions Subtotal Object Account and Business Unit." The city provided an example of the latter record to the requester and asked her to confirm whether this record would satisfy her needs, including her request for a "Detailed Transaction General Ledger Summary." In respect of her request in item 2, the city advised the requester that information about capital budget projects was available in the city's annually published capital budget, which was available from its Department of Finance.

[3] The requester confirmed that the "Detailed Business Transactions Subtotal Object Account and Business Unit" record would satisfy her information needs, as long as it was produced separately for each of the years in question and included the corresponding expenses and revenues. Regarding item 2, the requester asked for "confirmation that all monies carried over into the next operating year are noted in the Capital Budget Project Annual Published Books from the earlier years and that all money is considered – not only money approved for specific projects."

[4] The city subsequently issued an interim access decision granting partial access to the records, and quoting a fee estimate of \$118.80 for providing the records. In its decision letter, the city asked for further clarification of the request. In response to item 2 of the request, the city provided printouts for 2007 and 2008 of a specific revenue account that was the sole revenue account associated with a specific budget unit of Policy Planning. The city advised that no printouts for 2003 through 2006 were provided for this account as none existed.

[5] The city also stated it believed that the requester's clarification regarding the capital budget information sought, did not satisfy the requirement in section 17(1)(b) of the *Act*, as it did not provide sufficient detail to enable it, upon a reasonable effort, to identify the records. The city advised that capital budgets are assigned different account numbers than operating budgets, and in order to search for revenue assigned to a capital budget, a capital budget project number was required. As such, if the requester did not provide specific capital budget project numbers, the city would not be able to conduct a reasonable search. The city also advised that the capital budget is produced annually, and therefore, it required clarification on the "monies carried over into the next operating year" request. The city stated that a subsequent decision letter would be issued upon receipt of further clarification of these issues.

[6] The requester provided further clarification and paid the fee of \$118.80 to obtain the records. The requester stated that the city should identify all Policy Planning Capital Projects for the years in question, as it was best positioned to gather this information, and because it would be unreasonable for the city to expect a requester to identify all the projects and their corresponding account numbers. The requester also stated that in many cases, projects would result in revenue money being carried into the next fiscal year, and that sometimes, transfers occurred with money from the assigned operating budget being moved to the capital budgets. The requester stated that the city's Capital Budget Manager would be in the best position to direct the city in completing this request.

[7] The city responded that the requester's clarification failed to provide sufficient detail to enable an experienced employee of the city to identify responsive records with a reasonable effort.

[8] The requester subsequently filed an appeal with this office because she did not receive a final decision and appeal file MA09-254 was opened. The city issued a final decision and the appeal file arising from that decision was closed by this office.

[9] In its final decision, the city granted partial access to the records. The city also provided an Index of Records showing which records were disclosed in their entirety, which records were withheld pursuant to sections 10 (third party information), and 11(a), (c) and (d) (economic and other interests) of the *Act*, and which records did not exist.

[10] The requester (now the appellant) appealed city's decision on the basis that more records must exist, and because the city denied access to portions of some records.

[11] As a result, appeal file MA09-254-2 was opened.

[12] The appellant retained a representative to represent her interests in this appeal. In this order, I refer to all actions taken by the representative as those of the appellant.

[13] During mediation, it was determined that the severed portions of Records 52, 53, 54, 55, 56, 57, 58 and 59 contained the information at issue. The withheld information consisted of the credit card numbers and account numbers of businesses. The appellant confirmed that she was not interested in obtaining access to this information and therefore, the above records and corresponding exemptions are not at issue in the appeal.

[14] During mediation, the appellant asserted her belief that more records exist with respect to item 2 of her request in accordance with the clarification she provided to the city in two prior e-mails. After being advised of the appellant's belief, the city conducted a further search and located responsive records. The city granted access in full to 62 pages of records for a fee of \$76.40. The city also provided explanations as to why responsive records did not exist with respect to some parts of item 2 of the request.

[15] The appellant remained dissatisfied with the decision, and in an e-mail, set out the basis for her belief that more records existed. She consented to providing a severed copy of this e-mail to the city.

[16] As a result, the city conducted a further search for responsive records and issued another decision, which indicated that certain responsive records had already been disclosed and explained why other records did not exist. The city stated that capital budgets are separate and distinct from operating budgets, are not used to fund anything, and do not generate revenue; therefore, "operating expenses", "funding accounts" and "revenue expenses" did not exist for capital budgets. The city also stated that because the budgetary status for capital budgets remains open for the duration of the project, capital projects do not "carry over" funds from one year to the next. Finally, the city advised that the printouts of the records requested in item 2 of the request, could not be produced by year, and were, therefore, provided by ledger.

[17] The appellant responded that she remained unsatisfied with the decision, as some of the disclosed records bore no details of dates and amounts. She insisted that the format she requested could be provided, and she asked for this to be done with respect to seven specified capital projects.

[18] The city responded by taking the position that all information requested had been provided and that extensive explanations had also been provided regarding records that did not exist. The city pointed out that, as reflected in the records provided, there were no expenditures in six of the seven capital projects noted by the appellant. The city also noted that the records for the sole capital project mentioned by the appellant that did have expenditures, had already been disclosed to her.

[19] The appellant did not accept the city's response and remained unsatisfied with city's decision.

[20] Mediation did not resolve the appeal, and it was moved to the adjudication stage of the appeal process where an adjudicator conducts an inquiry under the *Act*.

[21] During the inquiry into this appeal, this office sought and received representations from the city and the appellant. The representations were shared in accordance with section 7 of this office's *Code of Procedure and Practice Direction 7*.

[22] The appeal was subsequently transferred to me for disposition.

[23] The sole issue on appeal is whether the city's search for responsive records was reasonable in the circumstances of this request.

## **DISCUSSION:**

### **Did the city conduct a reasonable search for records?**

[24] Previous orders of this office have established that when 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.<sup>1</sup> 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 the city to conduct further searches.

[25] 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.<sup>2</sup>

[26] 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.

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<sup>1</sup> Orders P-85, P-221, PO-1954-I.

<sup>2</sup> Order P-624.

[27] In its representations, the city states that the majority of the records in this appeal were produced electronically as computer-generated printouts using the city's software. The city submits that the reasonableness of the search for and production of records can be determined by examining the content of the printouts to determine whether it provided the appellant with printouts (a) for the specific accounts and years identified in the request, and (b) of appropriate projects and their respective transactions in response to details that were clarified as part of mediation. The city details the steps that it took in response to the appellant's request for printouts for specific operating budget accounts and unspecified capital budget accounts.

[28] For operating budget printouts, the city notes that the printouts listed in the appellant's request are not available from its software. Therefore, it produced a sample printout for the appellant and confirmed with her that this format satisfied her information needs. It then produced printouts of the accounts identified in items 1, 3, 4, 5, 6 and 7 of the appellant's request. No printouts were generated for the years in which there were no financial transactions in an account, as there was no data in the printout. The city communicated this to the appellant in two letters. The city notes that the appellant has not challenged the production of operating budget materials.

[29] Regarding the capital budget printouts, the city submits that it repeatedly sought clarification from the appellant of item 2 of her request, which lacked specificity. The city states that rather than clarify the request, the appellant sought to expand it. The city states that it provided the contact information of the Director of Reserves and Investments and the *MFIPPA* Coordinator, and it encouraged the appellant to clarify her request; however, the appellant declined to provide details about item 2 of her request. The city submits that it again attempted to clarify item 2 of the appellant's request during mediation. Based on the clarification the city received at mediation, it produced printouts for all capital budget projects undertaken by Policy Planning and Urban Design from 2003 to 2008, and as a goodwill gesture, it agreed to search for information responsive to the appellant's expanded request.

[30] The city relates that staff from its Access and Privacy department met with the Director, who had compiled a list of all of the requested capital budget projects, and based on the list, the staff asked the Reserves and Investments department to produce printouts for each project. A Capital Finance Accountant produced printouts, screen shots and a manually prepared list of capital budget projects, and the appellant was granted full access to these records pursuant to a new access decision. This decision explained that some elements of the item 2 request did not have responsive records as there was no financial activity for these projects that could be produced as data.

[31] The city submits it used knowledgeable, experienced staff to search for and produce the records requested by the appellant, and where no records existed, it attempted to explain the reason to the appellant. The city concludes its representations

by stating that the appellant's disinclination to accept the city's search and explanations, does not materially challenge the validity of either.

[32] In her representations, the appellant questions why the city provided only screen shots for nine of the Policy Planning studies, when it provided printouts for a number of other studies. The appellant states that the print screens do not indicate a time period or specific dates for the transactions. The appellant expresses doubt that the city has provided information for every Policy Planning study as it appears to her that the Policy Planning Business Plan includes additional studies.

[33] The appellant also provides examples of what are, in her view, inconsistencies in the city's records and response. For example, the city indicates that no expenditures were made for the Steeles Avenue Corridor Study, yet the Business Plan indicates that this project was commenced in 2005 and completed in 2006. The appellant also notes that there was no Business Plan or activity for the Highway 27 Employment Study, however, a screen shot was provided for this project. The appellant states that this office could obtain a copy of the city's Policy Planning Business Plan and the 2009 Operating Budget from the city in order to verify the inconsistencies she notes.

[34] The appellant concludes her representations by asserting that the city has "not really co-operated" as it provided no proof from its software provider or affidavit from its Director of Reserves on its submissions. She states that this office should request confirmation from the city's software provider as to whether capital projects can be tracked, regardless of financial activity, in any manner other than a screen shot.

### **Analysis and Findings**

[35] As stated above, the issue for me to determine is whether the city conducted a reasonable search for records responsive to the appellant's request. In making my determination on this issue, I must be satisfied that the search conducted by the city was reasonable in the circumstances. Previous orders of this office have established that a "reasonable" search is one in which an experienced employee, knowledgeable in the subject matter of the request, makes a reasonable effort to locate records which are reasonably related to the request.<sup>3</sup> If I am not satisfied that the city's search efforts were reasonable, then I can order a further search.

[36] I have carefully considered the representations of the parties and the records provided by the city in response to item 2 of the appellant's request. Based on the evidence before me, I am satisfied that the city made reasonable efforts to identify and locate records responsive to item 2 of the appellant's request. I base my decision on the steps taken by the city set out below.

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<sup>3</sup> M-909, MO-2433, PO-2469, PO-2542, MO-2630.

[37] At the time of the request, the city advised the appellant that its software did not produce the document she requested in item 2, and it sought clarification of the appellant's request both before and after making its interim access decision and final decision. The city's Clerk and its Records Management Supervisor were involved in clarifying the request and issuing a decision.

[38] During mediation, the city conducted a further search, located 62 pages of responsive records, and granted the appellant full access to these records. The records include the following:

- A document entitled "Policy Planning / Urban Design, Budget / Actual Status, All Departments, As of 12/29/09" listing 21 projects. The job number, department, total budget, total actual, total variance and percentage spent are indicated for each project. As well, the document lists the cumulative totals for the 14 capital projects under Policy Planning, and for the seven capital projects under Development & Urban Design.
- Policy Planning / Urban Design budget overviews (21 pages) for each of the 21 projects listed in the "Policy Planning / Urban Design, Budget / Actual Status, All Departments, As of 12/29/09" document.
- Detailed Business Transactions Subtotal Object Account & Business Unit (VO Seq) printouts of Policy Planning / Urban Design capital ledgers (60 pages).

[39] The city had a Capital Financial Accountant manually prepare the "Policy Planning / Urban Design, Budget / Actual Status, All Departments, As of 12/29/09" document, and produce the remaining disclosed documentation. The city also explained that some of the projects had no financial activity and no data to produce, therefore, only a screen image budget overview was available in response.

[40] I accept the representations of the city regarding its repeated clarification attempts and the extent of the search it conducted. I also accept that the city engaged staff knowledgeable about the information requested, which was very specific and detailed, to carry out a search for responsive records. As a result of the city's search, the appellant has been provided with 62 pages of responsive records regarding item 2, along with detailed explanations of why the disclosed records appear in the format that they do, and why other records do not exist. There is nothing in the representations or the evidence before me that establishes a reasonable basis for me to conclude that additional records exist.

[41] While the appellant referred to alleged inconsistencies between the records produced and information from the city's Policy Planning Business Plan and 2009 Operating Budget, she did not submit copies of the city's Policy Planning Business Plan or its 2009 Operating Budget. Nor did she submit any documentation in support of her assertion that additional responsive records exist that were not disclosed, or that the search was not reasonable.



**ORDER:**

I find that the city's search for records responsive to the appellant's request was reasonable and I dismiss this appeal.

Original Signed By: \_\_\_\_\_ August 21, 2012 \_\_\_\_\_  
Stella Ball  
Adjudicator