Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-2948

Appeal MA12-360

City of Ottawa

September 16, 2013

Summary: The appellant sought access to records related to her property within a particular timeframe. The city located a number of by-law complaint occurrence reports and granted partial access to them. The city relied on the discretionary personal privacy exemptions at section 38(a), read in conjunction with the law enforcement exemption at section 8(1)(d), and section 38(b), of the *Act* to deny access to portions of the responsive records. The appellant appealed the city's decision. The appellant also indicated that she believed that additional records should exist and took the position that the city did not conduct a reasonable search.

This order upholds the city's decision to withhold portions of the by-law occurrence reports pursuant to section 38(b). This order also upholds the city's search for responsive records. The appeal is dismissed.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1); 8(1)(d); 14(2)(d), (e), (f), (h); 14(3)(b); 17; 38(a),(b).

OVERVIEW:

[1] The City of Ottawa (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all records held by the city relating to the requester or her property from March 30, 2004 to March 30, 2012. She also requested copies of the Access/Correction forms she completed under the *Act*

for any requests for access to information that she submitted within the same time period.

[2] The city located several by-law complaint occurrence reports and granted partial access to them severing portions pursuant to section 8(1)(d) (law enforcement) and section 14(1) (personal privacy), taking into consideration the presumption at section 14(3)(b) (investigation into a possible violation of law) of the *Act*.

[3] The appellant appealed the city's decision to deny access to portions of the records.

[4] In her appeal letter, the appellant raised her concern that additional records responsive to her request should exist. In that letter, she identified a number of specific documents that she believed were missing from the city's response to her request. During mediation, the letter was shared with the city and another search for responsive records was undertaken. The city confirmed that the by-law department searched their databases, internal files, files in storage, and officers' notes and no further records were located.

[5] The appellant responded that she was most concerned with 14 items that she specifically identified in section H of the appeal letter as not having been provided to her. These 14 records relate to an identified complaint number.

[6] At the conclusion of mediation, the appellant advised that despite the city's additional search she is not satisfied and believes that additional responsive records should exist. Accordingly, whether the city conducted a reasonable search is at issue.

[7] The appellant also advised that she is not seeking access to the names and contact information of the complainants, but she continues to seek access to all of the other information in the identified responsive records, including the complete narrative portions of the complaints. Accordingly, the disclosure of the names, addresses and contact information of the complainants are not at issue in this appeal.

[8] Although the city claimed only section 8(1)(d) and 14(1) to exempt the information from disclosure, as the records appear to contain the personal information of the appellant the relevant exemptions are sections 38(a), read in conjunction with section 8(1)(d), and 38(b).

[9] As further mediation was not possible, the file was moved to the adjudication stage of the appeal process where an adjudicator conducts an inquiry under the *Act*. Representations were initially sought and received from the city. I also contacted two complainants (the affected parties) to inquire as to whether they consented to the release of their personal information and, if not, provided them with the opportunity to submit representations. Neither of the affected parties provided representations, but

one of them responded generally that they did not wish any of their personal information to be disclosed to the appellant.

[10] The city's representations were shared with the appellant in accordance *Practice Direction 7* and I sought and, subsequently received, representations from the appellant.

[11] For the reasons that follow, I make the following findings in this order:

- the records contain the "personal information" of the appellant, as well as that of the affected parties;
- the discretionary exemption at section 38(b) applies to the information that has been severed from the responsive records, and
- the city conducted a reasonable search for records responsive to the request.

RECORDS:

[12] The records at issue consist of four by-law occurrence reports that have been severed. The portions that remain at issue have been severed from the section entitled "complaint information" and amount to select portions of the narrative description of the complaints.

ISSUES:

A. Do the records contain "personal information" as defined in section 2(1) of the *Act*, and, if so, to whom does it relate?

B. Does the discretionary exemption at section 38(b) apply to the information at issue?

C. Does the discretionary exemption at section 38(a), read in conjunction with the law enforcement exemption at section 8(1)(d), apply to the information at issue?

D. Did the city exercise its discretion under sections 38(a) or (b)? If so, should this office uphold the exercise of discretion?

E. Did the city conduct a reasonable search for responsive records?

DISCUSSION:

A. Do the records contain "personal information" as defined in section 2(1) of the *Act*, and, if so, to whom does it relate?

[13] In order to determine whether the exemptions at sections 38(a) and/or (b) of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except if they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name where it appears with other personal information relating to the individual or

> where the disclosure of the name would reveal other personal information about the individual;

[14] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.[1]

[15] Sections (2.1) and (2.2) also relate to the definition of personal information. These sections state:

> (2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
>
> (2.2) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[16] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.[2]

[17] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.[3]

[18] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[4]

[19] The city submits that the names of the affected parties that appear on the records constitute personal information as defined in section 2(1) of the *Act*. The city submits that the information at issue in this appeal is similar to that in Order MO-2814 in which the names of individuals who made by-law complaints were found to qualify as personal information under section 2(1)(h) of the *Act*. The city also submits that section 2(2.2) of the *Act* is not applicable to the information in this appeal because all of the affected parties contacted the city in their personal, as opposed to their business, professional or official capacities.

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[1] Order 11.
[2] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[3] Orders P-1409, R-980015, PO-2225 and MO-2344.
[4] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

[20] Other than stating that she does not dispute that the affected parties contacted the city in their personal capacities, the appellant does not make any specific representations on whether the information at issue qualifies as personal information within the meaning of the *Act*.

[21] Having reviewed the information at issue I find that it contains the personal information of both the appellant, and the affected parties.

[22] The records contain the names, addresses, and telephone numbers, of the affected parties and identify them as the individuals who made complaints to the municipality regarding the appellant's property. This qualifies as their personal information within the meaning of paragraphs (d) and (h) of the definition of that term in section 2(1) of the *Act*.

[23] Additionally, I find that the narrative portions of the complaint that have been severed also constitute the affected parties' personal information as their identity can be inferred from that information. As outlined in the definition in section 2(1), "personal information" means recorded information about an identifiable individual.

[24] The records also contain the appellant's name, address and telephone number as contemplated by paragraphs (d) and (h) of the definition of personal information in section 2(1) of the *Act*. The appellant's information has been disclosed to her.

B. Does the mandatory exemption at section 14(1) or the discretionary exemption at section 38(b) apply to the information at issue?

[25] Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

[26] Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would constitute an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester.

[27] If the information falls within the scope of section 38(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the requester's right of access to his or her own personal information against the other individual's right to protection of their privacy. See below for a more detailed discussion of the exercise of discretion issue.

[28] Under section 14, where a record contains personal information only of an individual other than the requester, the institution must refuse to disclose that information unless disclosure would not constitute an "unjustified invasion of personal privacy".

[29] In both these situations, sections 14(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold is met.

[30] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under either sections 38(b) or 14. Once a presumed unjustified invasion of personal privacy under section 14(3) is established for records which are claimed to be exempt under section 14(1), it can only be overcome if section 14(4) or the "public interest override" at section 16 applies.[5]

[31] With respect to records claimed to be exempt under section 38(b), in *Grant v. Cropley*,[6] the Divisional Court said that the Commissioner could:

> . . . consider the criteria mentioned in s.21(3)(b) [the provincial equivalent to section 14(3)(b)] in determining, under s.49(b) [the equivalent to section 38(b)], whether disclosure . . . would constitute an unjustified invasion of personal privacy.

[32] Section 14(3)(b) reads:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> > was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

[33] Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.[7] The presumption can apply to a variety of investigations, including those relating to by-law enforcement[8] and violations of the Ontario Human Rights Code.[9]

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[5] *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.
[6] [2001] O.J. 749.
[7] Orders P-242 and MO-2235.
[8] Order MO-2147.
[9] Orders PO-2201, PO-2419, PO-2480, PO-2572 and PO-2638.

[34] Sections 14(2)(d), (e) and (h) read:

> A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
>
> > (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
> >
> > (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
> >
> > (f) the personal information is highly sensitive.

[35] For section 14(2)(d) to apply, the appellant must establish that:

> (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
>
> (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
>
> (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
>
> (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.[10]

[36] To be considered highly sensitive, as contemplated by section 14(2)(f), there must be a reasonable expectation of significant personal distress if the information is disclosed.[11]

Representations

[37] In its representations, the city states that the information that it has severed qualifies for exemption under section 38(b) of the *Act* because:

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[10] Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).
[11] Orders PO-2518, PO-2617, MO-2262 and MO-2344.

> disclosure of the complainant name would constitute an unjustified invasion of the privacy of the complainant and that there is a presumed invasion of privacy under section 14(3)(b) of the *Act* due to the compliant information having been collected as part of an investigation into a possible violation of law.

[38] The city also submits that none of the criteria under section 14(2) weigh in favour of the disclosure of personal information that would reveal the identity of the affected parties. It states:

> The city has reached the conclusion that disclosure of the identity of the affected third parties could in no way be relevant to a fair determination of the rights affecting the appellant [section 14(2)(d)] because the appellant has been provided with all other responsive information.

[39] The city submits, however, that the criteria listed in sections 14(2)(f) (highly sensitive), 14(2)(h) (supplied in confidence), and possibly section 14(2)(e) (individual to whom the information relates will be exposed unfairly to pecuniary or other harm) might apply in favour of withholding the identity of the affected parties from disclosure.

[40] Specifically addressing the criteria identified at section 14(2)(h), the city submits that its "by-law enforcement system routinely receives complaints and it is the city's practice to keep confidential the names of the complainants."

[41] With respect to the criteria identified at section 14(2)(f), the city submits:

> [I]dentifying complainants in a nuisance and by-law enforcement context is highly sensitive [and] is likely to result in antagonism between the affected third parties and the appellant, and therefore disclosure of the information is likely to cause the affected third parties personal distress.

[42] With respect to the criteria in section 14(2)(e), the city submits that it defers to any representations submitted by the affected parties.

[43] In her representations, the appellant submits:

> I narrowed the scope of my request by "opting out" [of] receiving any information on the third party. Most of the city's response … is spent on point the protection of the third parties…. Opting out means I didn't want the personal information, I already know who did all the complaining. I don't understand why so much emphasis is on the disclosure of the identity.

Analysis and finding

[44] Although, the city's representations address the identity of the complainants in the occurrence reports and the appellant does not seek access to the names and contact information for those individuals, the city has also claimed that portions of the narratives of the complaints are exempt pursuant to section 39(b). I have found above, the disclosure of the narrative portions of the complaints would reveal the identity of the affected parties and therefore, amounts to their personal information. Accordingly, what is to be determined is whether the discretionary exemption at section 38(b) applies to the severances made to the by-law occurrence reports other than the complainants names and contact information because disclosure of the narrative portions that have been severed would constitute an unjustified invasion of another individual's personal privacy.

[45] As noted above, the city submits that section 38(b) applies because the disclosure of the information at issue would constitute a presumed invasion of personal privacy pursuant to section 14(3)(b). Previous orders of this office have consistently found that a municipality's by-law enforcement activities qualify as "law enforcement" and that the disclosure of personal information compiled and identifiable as part of the investigations into these matters would constitute a presumed unjustified invasion of personal privacy under section 14(3)(b) of the *Act*.[12] In my view, it is clear that the personal information relating to individuals other than the appellant that has been severed from the narrative portions of the occurrence reports was compiled and is identifiable as part of investigations into possible violations of the city's by-laws. This personal information comprises the complaint information that was taken at the time that the complaint regarding a potential by-law infraction was made. Therefore, I find that the presumption in section 14(3)(b) of the *Act* applies to the personal information in these records that pertains to the affected parties.

[46] Having found that the disclosure of the personal information at issue in the records, portions of the narrative section of the occurrence report detailing the complaint information, would constitute a presumed unjustified invasion of personal privacy under section 14(3)(b), I now turn to the applicability of the factors in section 14(2). I have reviewed section 14(4) and find that it does not apply in this appeal.

[47] Dealing first with the question as to whether the criteria at section 14(2)(d) should apply to permit the disclosure of the personal information despite the presumption of an unjustified invasion of personal privacy, I find that this is not a relevant consideration. The application of section 14(2)(d) has not been established. As previously noted, for this factor to be established, all four parts of the section 14(2)(d) test outlined above must be met. Specifically, I have not been provided with any

[12] Orders M-16, M-582, MO-1295, MO-2147 and MO-2814.

evidence to demonstrate that the information at issue is relevant to a fair determination of the appellant's rights. Accordingly, I find that the factor at section 14(2)(d), which weighs in favour of disclosure, has no application in the current appeal. Additionally, I find that no other factors favouring disclosure have any relevance in these circumstances.

[48] As I have found that none of the factors weighing in favour of disclosure might apply and the presumption weighing against disclosure under section 14(3)(b) applies, it is not necessary for me to consider whether any of the factors favouring non-disclosure apply to uphold the finding that the disclosure of the information at issue would result in an unjustified invasion of personal privacy.

[49] In conclusion, I find that the disclosure of the personal information at issue in the records, the severed portions of the complaint information narrative detailed in the occurrence reports, is presumed to constitute an unjustified invasion of personal privacy pursuant to section 14(3)(b), and that the sole potentially relevant factor favouring disclosure, section 14(2)(d), is not applicable. Accordingly, I find that the personal information at issue in this appeal qualifies for exemption under section 38(b).

C. Does the discretionary exemption at section 38(a), read in conjunction with the law enforcement exemption at section 8(1)(d), apply to the information at issue?

[50] For all of the information to which the city has claimed the application of the exemption at section 38(a), read in conjunction with the law enforcement exemption at section 8(1)(d), the city has also claimed the exemption at section 38(b). As I have found that section 38(b) applies to all of the information at issue, it is not necessary for me to determine whether the discretionary exemption at section 38(a) also applies to that information.

D. Did the city exercise its discretion under sections 38(a) or (b)? If so, should this office uphold the exercise of discretion?

[51] As I have found that, as a result of my findings in section 38(b), it is not necessary to determine whether the discretionary exemption at section 38(a) applies in the circumstances of this appeal, it is also not necessary for me to consider the city's exercise of discretion under that section. However, it is necessary for me to consider the city's exercise of discretion to withhold the personal information of the affected parties under section 38(b).

[52] The exemption at section 38(b) is discretionary and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[53] In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

[54] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[13] This office may not, however, substitute its own discretion for that of the institution [section 43(2)].

Relevant considerations

[55] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:[14]

- the purposes of the *Act*, including the principles that
    - information should be available to the public
    - individuals should have a right of access to their own personal information
    - exemptions from the right of access should be limited and specific
    - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons

[13] Order MO-1573.
[14] Orders P-344, MO-1573.

- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information

[56] In its representations, the city submits that it exercised its discretion to withhold the information at issue "in accordance with the purposes of the *Act* and for no improper/irrelevant purposes and considered all relevant circumstances." It submits that the information was applied "only to withhold the identity of confidential sources [as contemplated by section 8(1)(d)] and that this was consistent with the application of the personal information exemption" at sections 38(b) and 14(1) of the *Act*. The city also submits that the severances are consistent with section 4(2) of the *Act* as it "disclosed as much of the responsive record as possible without disclosing information which was exempt." The city states that the appellant has been provided with "a full description of the complaint including when it had been received by the city."

[57] The appellant does not specifically address the city's exercise of discretion.

[58] Based on my review of the representations of the city and the records themselves, I am satisfied that the city properly exercised its discretion to deny the appellant access to the severed personal information pursuant to section 38(b). In my view, disclosure of the personal information would result in the unjustified invasion of the personal privacy of individuals other than the appellant. Also, the city has disclosed the majority of the information contained in the record to the appellant recognizing that it contains her personal information as well.

[59] Accordingly, I find that city's exercise of discretion was appropriate and I uphold it.

E. Did the city conduct a reasonable search for responsive records?

[60] 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.[15] 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.

[15] Orders P-85, P-221 and PO-1954-I.

[61] 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.[16] To be responsive, a record must be "reasonably related" to the request.[17]

[62] 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.[18]

[63] A further search will be ordered if the institution does not provide 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.[19]

[64] 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.[20]

[65] A requester's lack of diligence in pursuing a request by not responding to requests from the institution for clarification may result in a finding that all steps taken by the institution to respond to the request were reasonable.[21]

Representations

[66] The city takes the position that it made a reasonable effort to identify and to locate any responsive records as required by section 17 of the *Act*. It submits that as the scope of the request was clear, it did not require clarification. The city states that "[c]ity staff knew that the appellant was seeking complaint and investigation records pertaining to her property that were held by the city By-law and Regulatory Services Department."

[67] The city submits:

> Despite eight years having [passed] since many of the records would have been created and a deceased by-law services officer [sic], the city submits that the Program and Project Management Officer drew on her expertise and knowledgeable staff in the By-law and Regulatory Services Department to ensure that a thorough search for all electronic and hard-

[16] Orders P-624 and PO-2559.
[17] Order PO-2554.
[18] Orders M-909, PO-2469, and PO-2592.
[19] Order MO-2185.
[20] Order MO-2246.
[21] Order MO-2213.

> copy records, including records that may have located in storage was conducted…. [T]he city submits that it is reasonable to expect that detailed information sought by the appellant was not retained as a record by the city or that the information is within the custody or control of another entity.

[68] In defence of its position, the city provided an affidavit sworn by a program and project management officer who has worked in the Access to Information and Privacy Office for approximately eight years. In her affidavit, she describes in detail the search that was conducted for responsive records. She states that she received the responsive records from the city employee in the City of Ottawa By-law and Regulatory Services Department who located the files containing the responsive records. She then emailed the employee indicating that some of the records referred to photographs being taken and that she required copies of those pictures. The program and project management officer was advised that no photographs were located in the files that had been retrieved from storage containing the responsive records, and the by-law officer who would have taken the photos is now deceased. She states that she requested a further search for the photographs be conducted and that following that search, no photographs were found.

[69] The program and project management officer states that during mediation, she reviewed a list of information in the appellant's appeal that set out the information that the appellant believed should exist and was not provided to her. In her affidavit, she states:

> Based on my past experience in processing requests for documentations from By-law and Regulatory Services Department, I am of the opinion that just because a By-law Services Officer visits a property, it does not necessarily mean that the officer created a record or recorded all details in respect of their visit. I also am of the opinion, based on discussions with affected third parties in this appeal and the Chief, By-law and Regulatory Services, who is familiar with this property, that it may be that the Ottawa Police responded to certain issues and therefore the Ottawa Police may have records relating to the requester and her property.

[70] The program and project management officer states that she again contacted the employee in the by-law and regulatory services department and reviewed all actions that had been taken to search for records. She states that she was satisfied that "all relevant databases, internal files, and files in storage were all searched and that no further records existed and that the search completed was meticulous and complete."

[71] She concludes her affidavit by stating that just prior to the city's representations being submitted to this office, she requested the Chief, By-law and Regulatory Services, to have staff verify whether the photographs were stored electronically elsewhere. She

states that she was informed that another search for records, including photographs, had been conducted and there "were no records involving [complaints addressing the appellant's property] on the shared drive and it was possible that they were either deleted or lost sometime within the past eight years."

[72] The appellant takes the position that not all responsive records have been provided to her. During mediation, the appellant advised that she was most concerned with 14 items that she specifically identified in section H of the appeal letter as not having been provided to her. These 14 items relate to an identified complaint number that is recorded in one of the four occurrence reports to which she was granted partial access. The 14 items that she states that she has not been provided include details that she believes should have been included, a copy of the original complaint, copies of any subsequent complaints, photos that were taken, "courtesy warning copies", descriptions of what action is to be taken and follow-up information regarding the results of these actions.

[73] In her representations, the appellant submits that she has not been provided with the documents that she is requested and believes that the city is withholding them. She submits that by her request she was seeking access to multiple complaints from 2000 on, and specifically everything attached to an identified complaint number and that this has not been provided to her. Additionally, the appellant submits that it absurd that not all officers file a report upon the verification of a complaint. She states that all of the copies of complaints that she has received over the years have comments from the investigating officer. Finally, the appellant states that prior to her request and appeal she was "assured by a city staff [member] that they hold on to all complaints indefinitely."

Analysis and findings

[74] As noted above, 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. 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. In the circumstances of this appeal, I accept that the city's search for responsive records was reasonable.

[75] I acknowledge that the appellant believes that not only should the city have additional responsive records relating to other complaints, but she also believes that records relating to the complaints to which she received partial access are incomplete and should contain additional information.

[76] The program and project management officer states that during mediation, she reviewed a list of information in the appellant's appeal that detailed the information that the appellant believed should exist and was not provided to her, and at that time another search through all relevant databases, internal files and files in storage was conducted for additional information. She states that it is her experienced opinion that some of the details sought by the appellant are not always recorded during an investigation of a possible by-law complaint. She also states that some of the information that the appellant seeks may be held by the Ottawa Police Services Board, as the city is aware that the police responded to some of the complaints relating to the requester and her property.

[77] As noted above, 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. In this appeal, although the appellant maintains her position that additional records should exist, I do not accept that she has established a reasonable basis for such a conclusion. In my view, I have not been provided with sufficient evidence to conclude that, other than the photographs which I will address below, additional records should exist. Additionally, I do not accept that I been provided with sufficient evidence to conclude that the types of information that she believes should exist would necessarily be included in the files relating to a by-law complaint.

[78] Regarding the photographs, the city acknowledges that some of the records refer to photographs that were taken, but despite several searches, no photographs could be located. As previously stated, in responding to access requests, the *Act* does not require the city to provide with absolute certainty that further records do not exist. The city must simply provide sufficient evidence to show that they have made a reasonable effort to identify and to locate responsive records reasonably related to the request.

[79] In the circumstances of this appeal, I find that the city has provided sufficient evidence to demonstrate that it has made a reasonable effort to identify and to locate records responsive to the appellant's request. In my view, the city has engaged experienced employees to conduct several thorough searches through electronic and hard-copy records with consideration to the records sought by the appellant and the information that she believes should be included amongst the responsive records. I accept that the city spent a considerable amount of time searching for records reasonably related to the appellant's request.

[80] In conclusion, I am satisfied that experienced city staff, knowledgeable in the record holdings of the city, expended reasonable efforts to identify and locate records which are reasonably related to the appellant's request. Consequently, I find that the city's search for responsive records was reasonable and I will uphold it.

ORDER:

1. I uphold the city's decision to withhold portions of the records from the appellant.

2. I uphold the city's search for responsive records.

3. I dismiss the appeal.

Original signed by: September 16, 2013
Catherine Corban
Adjudicator