

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3809

Appeal MA18-361

City of Toronto

July 31, 2019

Summary: The appellant made an access request to the City of Toronto (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* to view at the city's offices, and make a copy of, the city's copy of a plumber's report. The city allowed the appellant to view the report at the city and provided him with a copy of this report.

The appellant wanted to personally photocopy the report at the city's offices and also wanted to receive an affidavit from the city that the report is a true copy of the copy of the report received by the city's Public Health department.

In this order, the adjudicator dismisses the appeal as she finds that the city has complied with section 23 of the *Act* by allowing the appellant to view the record and providing him with a copy of the record.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M56, as amended, section 23.

OVERVIEW:

[1] The City of Toronto (the city) received an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA or the *Act*) for all information regarding the appellant's two complaints to the city's Public Health department related to:

1. the property owners of [address] planned application of a noxious substance (chemical sealant) on the concrete floor of the indoor garage, and
2. the raw sewage entering unit [number] through the bathroom exhaust vent.

[2] The appellant asked the city to include in its response all reports, inspection notes, written correspondence, and records containing the names and contact information of all representatives involved.

[3] The city issued a decision letter granting access to the records requested, only withholding some information from pages 102, 107, 110, and 120 on the basis that it was not responsive to the request.

[4] The appellant appealed the city's decision.

[5] In his appeal letter, the appellant stated that both the Manufacturer's Safety Data Sheets (MSDSs) at pages 50 to 96 of the records and the plumber's report at page 98 of the records were illegible and requested as follows:

Please direct the City of Toronto's Privacy Officer to:

1. Obtain unaltered clear copies of the relevant MSDSs to replace the corrupted copies so that the Public Health record, relating to the incident, is accurate and legible.
2. Advise the staff member responsible for the unlawful behaviour to cease such practice.
3. Provide access to the plumber's report, presumed to be represented on page 98 of the package, and the opportunity to examine and photocopy it (Section 23(2) and 23(3) of the Act)

[6] During the course of mediation, the appellant stated that he was seeking to view and to be provided with clean copies of the pages of the records that he found illegible, in whole or in part; namely, pages 50, 51, 62, 70, 72, 77, 83, 91, and 98.

[7] The mediator conveyed the appellant's concerns to the city. The city stated that the markings on the MSDSs were on the documents the city had been provided with. The city provided the appellant with copies of the MSDSs and the plumber's report. It had lightened these copies of the records via photocopying to increase clarity. The city advised it would not schedule an appointment with the appellant to view the records, advising that the original records were less legible than the lightened copies with which the requester had been provided.

[8] The appellant advised the mediator that he continued to seek legible copies of the records and to be provided with an opportunity to view the records. As such, copy of records and access to original records were added as issues to this appeal.

[9] The appellant stated that he was not seeking the information the city had severed on the basis that it was not responsive to the request.

[10] Further mediation was not possible, and the appellant advised the mediator that he would like to have this appeal proceed to adjudication, where an adjudicator conducts an inquiry. I sought the representations of the city and the appellant, which were exchanged between them in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[11] In his representations, the appellant indicated that all he was asking for in this appeal was the opportunity to examine the city's copy of the one-page plumber's report at the city and to make a copy of this report. The appellant then viewed the plumber's report at the city's offices.

[12] After the appellant viewed the plumber's report at page 98 of the records, the city made another copy of it and provided the appellant with a copy.

[13] The appellant was not satisfied with the manner in which the plumber's report was copied by the city; therefore, the only issue remaining in this appeal is whether the city has complied with section 23 of the *Act* concerning providing a copy of the plumber's report to the appellant.

[14] In this order, I dismiss the appeal as I have found that the city has complied with section 23 of the *Act* by allowing the appellant to view the record and providing him with a copy of the record.

RECORD:

[15] At issue is a one-page plumber's report found at page 98 of the records.

DISCUSSION:

Has the city complied with section 23 of the *Act* concerning the manner it provided a copy of the plumber's report to the appellant?

[16] Section 23 of the *Act* specifically addresses copies of records and access to original records, as follows:

1. Subject to subsection (2), a person who is given access to a record or a part of a record under this Act shall be given a copy of the record or part unless it would not be reasonably practicable to reproduce it by

reason of its length or nature, in which case the person shall be given an opportunity to examine the record or part.

2. If a person requests the opportunity to examine a record or part and it is reasonably practicable to give the person that opportunity, the head shall allow the person to examine the record or part.
3. A person who examines a record or a part and wishes to have portions of it copied shall be given a copy of those portions unless it would not be reasonably practicable to reproduce them by reason of their length or nature.

[17] Section 2 of Ontario Regulation 823 under the *Act* sets out specific requirements with respect to the security of an institution's records, as follows:

1. A head who provides access to an original record must ensure the security of the record. R.R.O. 1990, Reg. 823, s. 2 (1).
2. A head may require that a person who is granted access to an original record examine it at premises operated by the institution. R.R.O. 1990, Reg. 823, s. 2 (2).
3. A head shall verify the identity of a person seeking access to his or her own personal information before giving the person access to it. R.R.O. 1990, Reg. 823, s. 2 (3).

[18] Originally, the records at issue consisted of eight pages of Manufacturer's Safety Data Sheets and a one-page plumber's report. The appellant indicated in his representations that he was only interested in viewing and making a copy of the plumber's report. He viewed this record at the city's offices.

[19] As noted above, after viewing the record, the city made the appellant a copy of the plumber's report that he had just viewed. He had already received a copy of this report from the city in response to the request and at the mediation stage of the appeal.

[20] After the appellant viewed the record, the city advised the IPC that:

[The appellant] viewed the plumber's report yesterday. He wasn't happy that he was not allowed to photocopy [it] himself, which I noted to you he would not be able to do. Our Registrar made him another copy and advised him to contact Public Health if he has questions about the report. He claimed that this report should be accompanied by an affidavit to certify that [the report is] a true copy given to Public Health. That is not something we would provide.

[21] The appellant was then asked by the IPC about this. He confirmed that he was

not satisfied with the manner the city copied the plumber's report after he viewed it at the city. His position after viewing the record was that he does not believe the copy he received is a real copy. The appellant indicated that he wants an affidavit attesting that the report was received by the city's Public Health department on a specific date.

[22] The city's representations address the appeal as it was before the appellant narrowed the scope of his request to indicate that he only wanted to view and copy the plumber's report at the city's offices.

[23] The city states that the records then at issue, including the plumber's report, are copies of non-city records submitted to the city by third parties by fax. It states that the city did not create the records and it does not have the original records; thus, the original records are not in the city's custody or control and, therefore, cannot be examined by the appellant.

[24] The city states that the records served their purpose for its Public Health department during its investigation and that it is not its responsibility to obtain different or clearer documents from a non-city third party to respond to an access request.

[25] The city further states that at the mediation stage of the appeal, it provided the appellant with another copy of the records then at issue, including the plumber's report, in which it had lightened the pages at issue using a photocopier, thus making the appellant's copy more legible than the copy on file with the city. The city also advised the appellant to contact its Public Health department if he has questions about the contents of the report.

[26] As stated above, in response to the city's representations, the appellant indicates that he wants to "view and photocopy plumber's report."

Analysis/Findings

[27] The issues to be determined in this appeal are:

- whether the appellant has a right to personally photocopy the record after he has viewed it at the city, and
- whether the city must provide the appellant with an affidavit to certify that the report is a true copy of the copy of the report provided to the city's Public Health department.

[28] I have reviewed the copy of the record provided by the city to the appellant. This record is a photocopy of a report from a plumbing company about a specific residential address. The report indicates that work was done by the plumbing company to unplug a toilet in a specific apartment number at that address. Other than a specific purchase order number, this report is not addressed to anyone. The report does not contain any fees for the work done by the plumbing company. There is no indication on it that the

original would have been sent to the city.

[29] The city's evidence is that it only had a copy of this report, not the original. The city has provided a copy of the report to the IPC. I find that this copy is legible. In any event, the appellant has not indicated that the copy of the report he received after viewing it at the city was not legible.

[30] I accept the city's evidence that, at all times, it was only in possession of a photocopy of the record, not the original.

[31] Section 23(3) of the *Act* only requires the city to provide the appellant with copies of any of the responsive records that he wishes to obtain after viewing them.¹

[32] Therefore, all that the appellant was entitled to receive after he examined the report was a copy of this record. The appellant was not entitled, nor does the *Act* require the city to allow him to physically copy the record himself at the city's premises.

[33] Nor does the *Act* require the city, as the appellant demands, to provide him with an affidavit certifying that the record is a true copy of the copy of the record its Public Health department received.

[34] Accordingly, I am dismissing the appeal, as the city has complied with section 23 of the *Act* by allowing the appellant to view the record and providing him with a copy of the record.

ORDER:

I find that the city has complied with section 23 of the *Act* and I dismiss the appeal.

Original Signed By: _____
Diane Smith
Adjudicator

_____ July 31, 2019

¹ See Orders PO-2514 and PO-3480, which concern section 30(3) of the *Freedom of Information and Protection of Privacy Act*, the provincial equivalent to section 23(3) of *MFIPPA*.