

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-3843-F

Appeal MA18-328

City of Hamilton

September 30, 2019

**Summary:** This final order disposes of the only remaining issue in this appeal: whether the City of Hamilton (the city) conducted a reasonable search in response to two parts of a thirteen-part request made under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The request was for the records relating to parking enforcement issues. In Interim Order MO-3764-I, the adjudicator ordered disclosure of most portions of the records at issue, but did not uphold the city's search for records responsive to two out of the thirteen parts of the request, and ordered the city to conduct a further search. In response, the city conducted a further search, identified additional responsive records, and fully disclosed them to the appellant. The city and the appellant also provided representations following the city's further search. In this order, the adjudicator upholds the reasonableness of the city's further search, and dismisses the appeal.

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

**Order Considered:** Order MO-3764-I.

### OVERVIEW:

[1] In Interim Order MO-3764-I, I partially upheld the access decision of the City of Hamilton (the city) made in response to a thirteen-part request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), and ordered disclosure of most of the records at issue, for the reasons explained in that order.

[2] However, in Interim Order MO-3764-I, I also found that I could not uphold the

city's search for records responsive to Items IV and VIII of the appellant's thirteen-part request. As a result, I ordered the city to conduct a further search for responsive records relating to those parts of the request.

[3] Following the issuance of Interim Order MO-3764-I, the city conducted a further search and provided evidence of its search efforts. As a result of its further search, the city identified additional responsive records, and fully disclosed them to the appellant. The parties exchanged representations about the board's further search. The appellant addressed issues related to the timeliness of the city's further search, but that is outside the scope of the only remaining issue in this appeal – the reasonableness of the city's further search for records responsive to Items IV and VIII. Accordingly, this order will only address that remaining issue.

[4] For the reasons that follow, I uphold the reasonableness of the city's further search, and dismiss this appeal.

## **DISCUSSION:**

### **Did the city conduct a further search that was reasonable?**

[5] The only remaining issue to be resolved in this appeal is whether the city conducted a reasonable search for responsive records as required by section 17 of the *Act*.

[6] In Interim Order MO-3764-I, I explained that I had insufficient evidence about the city's search efforts, and I identified two parts of the request in relation to which I could not uphold the city's search as reasonable (Items IV and VIII). I stated that it was difficult to find that the city's search efforts were reasonable without sufficient information to help me understand what was searched (including any parameters searched), who conducted the search (and their experience and knowledge relevant to the subject matter of the request), and when and where the search was conducted. Order provision 2 says, in part: "I do not uphold the city's search for records responsive to the request. I order the city to conduct a further search for responsive records *in relation to Parts IV and VIII of the request*" (emphasis added).

[7] Items IV and VIII of the request say:

IV. Any and all documents, including but not limited to records, memos, or email communications, related to the new No Parking restrictions on [a specified street] in Stoney Creek, and other similar changes to parking regulations on City of Hamilton streets this winter.

VIII. Evidence/rational for restricting parking on [the street specified in the request] in Stoney Creek.

[8] Regarding Item IV, in Interim Order MO-3764-I, I found that the city had stated that this record would be disclosed to the appellant (upon a secondary search that was conducted). However, without evidence to date that it had been sent to the appellant, I could not find that this aspect of the city's search was reasonable.<sup>1</sup> The evidence of the city's disclosure of those records is now before me, resolving that concern. I will discuss the city's search for records relating to Item IV in more detail later in this order.

[9] Since I found that it did not appear that the city had responded to Item VIII of the request in Interim Order 3764-I, together with the insufficient details about the city's search efforts overall, I stated that it would be difficult to find that the city's attempts, if any, to locate responsive records to Part VIII, were reasonable.<sup>2</sup>

***Details of the city's further search for records responsive to Items IV and VIII provided***

[10] After Interim Order MO-3764-I was issued, the city provided representations and two affidavits from its Access and Privacy Officer (the officer) in the Freedom of Information section of the Clerk division of the City's Corporate Services department, describing its further search efforts relating to Items IV and VIII of the request.

[11] In her first affidavit, the officer attests that pursuant to the interim order, the city forwarded the details of the request to the following city departments and/or divisions for a record search and a response to the Freedom of Information office:

- Planning and Economic Development department;
- Public Works department;
- Hamilton Fire Department which is a division of the City's Healthy and Safe Communities department;
- Corporate Services department; and,
- Office of the City Clerk-a division of the City's Corporate Services department.

[12] The city described the response from each of the above departments and/or divisions.<sup>3</sup> The officer's affidavit describes the steps taken in detail, with supporting evidence, and the roles of the employees who were tasked to respond to the request.

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<sup>1</sup> Interim Order 3764-I, paragraph 40.

<sup>2</sup> *Ibid*, paragraph 39.

<sup>3</sup> Only the Planning and Economic Development department located additional responsive records; the 76 pages found were disclosed in full to the appellant.

Having reviewed this evidence, I find that it sufficiently shows who conducted the further searches (and that they are experienced employees under section 17), the scope and methods of the searches, and the reasons why some searches did not yield responsive records. As the appellant only raised concerns about the fire department's search, I will specifically expand my discussion of the city's search efforts as it pertains to the fire department.

[13] The city's initial representations about the fire department's search (in response to which the appellant raised concerns) state that the fire division staff did not locate records in addition to those already identified, and that the staff specifically told the Freedom of Information office that "there are no changes from the 2018 response." The city also identified which responsive records had been disclosed previously, in whole or in part.

[14] The appellant argued the following, in response:

Regarding the search conducted by the Hamilton Fire Department I do not see, in any of the documents or records provided, the steps that were taken in conducting their search. The interim order states "if no records are located, a detailed explanation for why no records are located." The Fire Department states that " ... there are no changes from the 2018 response". This statement is impossible to validate as there is no explanation of their search steps. I would expect there to be records, such as notes, vehicle logs, shift reports, etc., from [named individual's] assessment drive noted in his email of November 20, 2015 (disclosed as records 6-1/7-2). If another staff person from the Fire Department conducted this assessment drive, their notes/logs/etc. should be responsive to my request. Specifically the records of [another named individual] and Station 16 should be searched (as evidenced from an email dated October 24, 2016; disclosed as record 7).

[15] I asked the city to provide submissions in response, and it did. The city also provided a second affidavit. It explained that at the time the (first) affidavit detailing the city's further search had been sworn, the deponent of the affidavit had not yet received confirmation as to the name and position of the city employee who had conducted the search for the fire department, and the steps they took to do so. However, the city states that it later received an email from the city's named Deputy Fire Chief and Operations Support and Community Safety. In it, he explained that he conducted a further search of his emails for additional correspondence (and did not find any), and that he asked the Chief and Assistant Deputy Chief to check his emails for any additional correspondence, as well, but was advised there was none. The city explains that it then put written specified questions to the fire department, pursuant to the appellant's concerns, noted above.

[16] The city provided this office with a copy of the relevant email exchanges it had with the fire department. These were shared with the appellant, on consent.

[17] In response, the appellant challenged one aspect of the details described, so I will limit my discussion to that concern. The appellant argues that the Fire Chief should have made inquiries with specified fire crews, not only the captain. However, the appellant did not explain the basis of this belief that the fire crews would have further responsive records. I also find that the captain of a crew is an experienced employee for the purposes of conducting a search for records regarding the subject matter of the request.

[18] In light of these findings and the details provided by the city (which the appellant does not challenge), I am satisfied that the city has provided sufficient evidence of its search efforts in this regard. In doing so, I am also mindful that the *Act* does not require an institution to prove with absolute certainty that further records do not exist.

[19] Before concluding, I would like to explain why I do not accept the appellant's argument regarding the scope of a reasonable search relating to Item IV.

*The scope of Item IV*

[20] For ease of reference, Item IV says:

IV. Any and all documents, including but not limited to records, memos, or email communications, related to the new No Parking restrictions on [a specified street] in Stoney Creek, and other similar changes to parking regulations on City of Hamilton streets this winter.

[21] As mentioned, the city provided further disclosure to the appellant following the search ordered in Interim Order MO-3764-I. That disclosure included records relating to streets with proposed (now enacted) changes to parking as part of a specified by-law. The records include the names of twenty-three streets affected by parking changes.

[22] The appellant describes those records in his representations as "the exact type of information sought in item IV of my initial request."

[23] Despite taking this position, the appellant submits that a reasonable search would also involve an additional specified twenty-three streets, identified in the further disclosure made to him. He argues that Interim Order MO-3764-I recognized that "records that do not directly pertain to [the street specified in the request] may be responsive to my initial request."

[24] While Interim Order MO-3765-I did recognize that a plain reading of several parts of the thirteen-part request relate to parking issues on streets other than the one named in the request, it does not follow that searches for twenty-three named streets are within the scope of Item IV. The wording of Item IV (" . . . and other similar changes to parking regulations on City of Hamilton streets . . .") is quite broad. I find that this wording cannot reasonably be interpreted to be a request for the twenty-three additional streets listed in the appellant's representations, appreciating that he

presumably learned of these street names through the disclosure made to him.

[25] If the appellant would like records relating to parking issues on those twenty-three streets, he is free to make another request under the *Act* for them.

***Conclusion***

[26] Therefore, in light of the rest of the city's unchallenged evidence of the steps taken to conduct its search, the disclosure made to the appellant, and a reasonable reading of the scope of Item IV, I uphold the scope of the city's search for responsive records to Item IV as reasonable. Although an appellant will rarely be in a position to indicate precisely which records the institution has not identified, as mentioned, an appellant still must provide a reasonable basis for concluding that such records exist.<sup>4</sup> Here, the appellant's representations do not do so.

**ORDER:**

I uphold the reasonableness of the city's further search and dismiss this appeal.

Original Signed By: \_\_\_\_\_  
Marian Sami  
Adjudicator

September 30, 2019 \_\_\_\_\_

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<sup>4</sup> Order MO-2246.