

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3848

Appeal MA15-612

City of Vaughan

October 18, 2019

Summary: The appellant filed an access request under the *Act* with the city for records relating to her lawsuit against the city. The city granted the appellant partial access to the responsive records and advised her that it withheld portions of legal invoices from disclosure under section 38(a), read with section 12 (solicitor-client privilege), of the *Act*. The appellant appealed the city's decision. She also claimed that additional responsive records ought to exist, thereby raising the issue of reasonable search. In addition, the appellant identified certain additional information she believes the city should search for. However, the city took the position that these additional records are outside the scope of the appellant's request and she should file a new request for these records. In this order, the adjudicator upholds the city's decision and dismisses the appeal.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of *personal information*), 12, 17 and 38(a).

Orders and Investigation Reports Considered: Order MO-3419-I, MO-3455 and PO-2484.

Cases Considered: *Maranda v. Richer*, 2003 SCC 67; *Vaughan v. Information and Privacy Commissioner*, 2011 ONSC 7082.

OVERVIEW:

[1] The appellant submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the City of Vaughan (the city) for access to information relating to her lawsuit against the city. After consultations with the city, the appellant clarified that she seeks access to the following records created between

January 2009 and October 2015:

1. All invoices, correspondence attached to invoices and authorizations and copies of cancelled cheques for all payment of legal fees regarding the legal suit involving the appellant;
2. All invoices, correspondence attached to invoices, payment authorizations and cancelled cheques supporting the \$33,000 cost summary submitted to the Court by the city's lawyer regarding the contempt motion heard on October 7, 2015;
3. All correspondence relating to payments made directly from the city or from a named insurance provider (the insurance company) to three named law firms or lawyers regarding the legal suit involving the appellant;
4. Financial Services printout (general ledger) of Account(s) used to pay legal fees (either directly to identified lawyers or law firms, or through the insurance company to the identified lawyers or law firms) for the legal suit involving the appellant;
5. Correspondence from the insurance company to the city regarding "indemnification" of the legal suit involving the appellant;
6. Minutes or notes taken during a meeting the city claims took place in April 2015 between the mayor, the city clerk and the insurance company, including their lawyers, employees, external lawyers and representatives, regarding the legal suit involving the appellant; and
7. City responses to the following emails from the appellant:

DATE	SUBJECT LINE
March 7, 2015 – 2:04:55 PM	Insurance company and indemnification
March 23, 2015 – 6:16:10 PM	Out of the country
April 22, 2015 – 2:03:35 PM	Re: City of Vaughan ats. [appellant's name] – [named law firm and file number]
May 2, 2015 – 2:53:44 AM	RE: Motion date
May 11, 2015 – 9:33:03 AM	FW: City of Vaughan ats. [appellant's name named law firm]

	and file number]
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[2] After “consultations with a person outside the institution”, the city issued two access decisions to the appellant. The first decision related to parts 4 and 7 of the appellant’s request. Regarding part 4 of the appellant’s request, the city advised the appellant that it could not produce a print out for these payments because the payments were not made by the city either directly or indirectly to the companies or individuals listed in the request. Regarding part 7 of the request, the city informed the appellant that it did not locate any responses sent from the city to the appellant in response to the emails identified. In conclusion, the city advised the appellant that it did not locate any records in its custody or under its control that are responsive to parts 4 and 7 of the appellant’s request.

[3] The city’s second decision letter related to the remainder of the appellant’s request. The city located records responsive to parts 1 and 2 of the appellant’s request and granted her partial access to them. The city withheld portions of legal invoices under the discretionary exemption in section 12 (solicitor client privilege) of the *Act*. The city granted the appellant complete access to the records responsive to part 2 of her request. With regard to part 3, the city advised the appellant that it had disclosed these records to her in response to a previous request. Finally, with regard to parts 5 and 6, the city advised the appellant that no responsive records exist.

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

[5] During mediation, the appellant confirmed that she pursues access to the information withheld from disclosure. In addition, the appellant raised the issue of reasonable search in relation to parts 3 and 4 through 7 of her request. Finally, the appellant did not agree with the city’s assertion that part 3 of her request was dealt with in an earlier request. The appellant maintains that the city should respond to part 3 of her request.

[6] In response, the city maintained its section 12 claim for the legal invoices that are responsive to part 1 of the appellant’s request. The city confirmed that no additional records exist in response to parts 2, 5 and 6 of the appellant’s request. With regard to part 3, the city confirmed that this portion of the appellant’s request was dealt with in response to her previous access requests. In any case, the city disclosed additional copies of the records the appellant had received previously in response to these previous requests.

[7] However, with regard to part 4, the city confirmed that it dealt with this portion of the request in one of the appellant’s new requests and a review of that request is forthcoming. The appellant did not pursue part 4 of her request further, despite having an opportunity to respond to the Mediator’s Report and to file representations in response to the Notice of Inquiry.

[8] Finally, the city's position regarding part 7 of the request is that the appellant expanded the scope of her request by "clarifying" her request to include all emails, not only those sent to her in response to those identified in part 7 of her request. The city advised the appellant that she should now file a new request to capture this expanded scope.

[9] The appellant confirmed that she seeks access to the records withheld from disclosure and believes that additional responsive records in the custody or under the control of the city exist. The appellant also took the position that she should not have to file a new request in relation to part 7 of her request.

[10] Mediation could not resolve the issues and the appeal transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry. The adjudicator who originally had carriage over this appeal began the inquiry by inviting the appellant to submit representations. Specifically, the adjudicator asked the appellant to address: whether the information at issue is exempt under the solicitor-client privilege exemption, whether the city properly exercised its discretion in applying the exemption to the information at issue, whether the city conducted a reasonable search for records responsive to parts 1, 2, 5, 6, and 7 of the appellant's request, and what types of records are responsive to part 7 of the appellant's request. Despite receiving numerous extensions, the appellant did not submit representations.

[11] The appeal then transferred to me to continue the inquiry. I invited the city to submit representations in response to a Notice of Inquiry, which outlined the facts and issues under appeal. The city submitted representations. I then invited the appellant to submit representations in response to the city's representations, which were shared in accordance with Practice Direction Number 7 of the IPC's *Code of Procedure*. The appellant did not submit representations.

[12] Prior to issuing the order, I raised the possible application of section 38(a), read with section 12, to the records. I raised this additional issue because it appears that the records may contain personal information relating to the appellant. I invited the city to submit representations on this issue and its exercise of discretion to withhold records that may contain the appellant's personal information. The city submitted representations.

[13] I then invited the appellant to submit representations in response to the city's representations, which were shared in accordance with Practice Direction Number 7 of the IPC's *Code of Procedure*. I asked the appellant to address whether the records contain her personal information, the possible application of the exemption in section 38(a), read with section 12 of the *Act*, and the city's exercise of discretion in applying section 38(a), read with section 12. The appellant submitted representations.

[14] In her representations, the appellant maintained her position that all of the records should be disclosed to her and submitted that she had a right of access to her personal information. In addition, the appellant submitted that there is a "significant

public interest” in the records at issue. I confirm that the public interest override in section 16 of the *Act* does not apply to information exempt under the solicitor-client privilege exemption in section 12.

[15] The appellant also refers to a decision of the Ontario Divisional Court, *Vaughan v. Information and Privacy Commissioner*¹, to support her position that section 38(a), read with section 12 should not apply to the information at issue. *Vaughan v. Information and Privacy Commissioner* does not consider the application of the solicitor-client privilege exemption to records. Rather, this decision considers whether the IPC properly found that the exception in section 14(4)(a) to the personal privacy exemption in section 14(1) applied to an individual employee’s entry and exit points onto the paid 407 ETR highway.

[16] Finally, the appellant refers to the “general ledger” that appears to be responsive to part 4 of her request. The appellant states in her representations that she did not receive access to this ledger in the context of this request, but states that she received a copy of the ledger previously. As discussed above, part 4 of the appellant’s request was resolved during mediation and the issue of search was limited to parts 1, 2, 5, 6, and 7 during the inquiry. The appellant did not take issue with the scope of the inquiry either upon review of the Mediator’s Report or the Notice of Inquiry. Given the circumstances, particularly the fact that the appellant confirms that she received the “full ledger” previously, I will not consider the issue of part 4 of her request further in this order.

[17] In the discussion that follows, I uphold the city’s search as well as its access decision and find the records are exempt under section 38(a), read with section 12. I uphold the city’s exercise of discretion and dismiss the appeal.

RECORDS:

[18] The records at issue are legal invoices.

ISSUES:

- A. Do the records contain *personal information* within the meaning of section 2(1) of the *Act* and, if so, to whom does it relate?
- B. Does the discretionary exemption at section 38(a), read with section 12, apply to the records?

¹ 2011 ONSC 7082.

- C. Did the city exercise its discretion under section 38(a), read with section 12? If so, should this office uphold the exercise of discretion?
- D. Did the city conduct a reasonable search for records responsive to parts 1, 2, 5, 6 and 7 of the appellant's request?
- E. What is the scope of the request? Is the appellant required to file a new request to address her concerns regarding part 7 of her request?

DISCUSSION:

Issue A: Do the records contain *personal information* within the meaning of section 2(1) of the *Act* and, if so, to whom does it relate?

[19] In order to determine which sections of the *Act* may apply to the records, it is necessary to decide whether they contain *personal information* and, if so, to whom it relates. That term is defined in section 2(1) of the *Act*. The relevant portions of section 2(1) read,

“personal information” means recorded information about an identifiable individual, including,

...

(h) the individual's name if 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;

[20] 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.² To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.³

[21] 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.⁴ Even if the information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals

² Order 11.

³ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

⁴ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

something of a personal nature about the individual.⁵

[22] The city submits that the legal invoices at issue contain *personal information* relating to the appellant because they pertain to the appellant's own litigation against the city.

[23] The appellant submitted that the records contain her personal information.

[24] I have reviewed the records at issue. I find that all of the records contain personal information relating to the appellant that falls within the introductory wording of the definition of *personal information* in section 2(1) of the *Act*. Specifically, I find that the records reveal that the appellant was a party to a lawsuit against the city in her personal capacity. In addition, I find that the records contain the appellant's name as it appears with other personal information relating to her (paragraph (h) of the definition of *personal information*).

[25] Based on my review, I also find that the records do not contain personal information relating to any other identifiable individual.

[26] Therefore, I find that the records contain personal information relating to the appellant within the meaning of section 2(1) of the *Act*. Because the records contain personal information relating to the appellant, I will consider access to the records under Part II of the *Act* and determine whether the discretionary exemption at section 38(a), read with section 12, applies to them.

Issue B: Does the discretionary exemption at section 38(a), read with section 12, apply to the records?

[27] Section 38(a) provides a number of exemptions to an individual's general right of access to their own personal information found in section 36(1) of the *Act*. Section 38(a) reads,

A head may refuse to disclose to the individual to whom the information relates personal information,

if sections 6, 7, 8.1, 8.2, 9, 10, 12, 13 or 15 would apply to the disclosure of that personal information.

Section 12

[28] In this case, the city withheld portions of 49 pages of legal invoices under section 12 of the *Act*. The city disclosed the total amounts of the legal invoices, but withheld

⁵ Orders P-1409, R-980015, PO-2225 and MO-2344.

the dates, invoice numbers, and the breakdown of fees from disclosure. The appellant confirmed that she pursues access to the information withheld from disclosure. Section 12 of the *Act* states,

A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for legal counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation.

Section 12 contains two branches. Branch 1 ("subject to solicitor-client privilege") is based on the common law. Branch 2 ("prepared by or for counsel employed or retained by an institution...") is a statutory privilege. The institution must establish that one or the other (or both) branches apply. In this appeal, the city submits that Branch 1 applies to the information at issue.

[29] At common law, solicitor-client privilege encompasses two types of privilege: solicitor-client communication privilege and litigation privilege. The city claims the application of the solicitor-client communication privilege.

[30] Solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining or providing professional legal advice.⁶ The rationale for this privilege is to ensure a client feels free to confide in his or her lawyer on a legal matter.⁷ The privilege covers not only the document containing the legal advice, or the request for advice, but information passed between the solicitor and client aimed at keeping both informed so that advice can be sought and given.⁸ The privilege may also apply to the legal advisor's working papers directly related to seeking, formulating or giving legal advice.⁹

[31] Confidentiality is an essential component of the privilege. Therefore, the institution must demonstrate the communication was made in confidence, either expressly or by implication.¹⁰

[32] The city submits that the redacted portions of the records are subject to common law solicitor-client communication privilege. The city submits that the invoices at issue contain detailed breakdowns of specific activities that arose out of the solicitor-client relationship and relate directly to the seeking, formulating or giving of legal advice. The city refers to Order PO-2484, in which the adjudicator, applying the Supreme Court of

⁶ *Decôteaux v. Mierzwinski* [1982] 1 SCR 860, 1982 CanLII 22 (SCC).

⁷ Orders PO-2441, MO-2166 and MO-1925.

⁸ *Balabel v. Air India*, [1998] 2 WLR 1036 at 1046 (Eng. C.A.).

⁹ *Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27.

¹⁰ *General Accident Assurance Co. v. Chrusz* (1999) 45 OR (3d) 321 (CA); Order MO-2936.

Canada decision *Maranda v. Richer*¹¹, confirmed that the total figure in each of the nine legal invoices at issue should be disclosed because it is *neutral information*. However, the adjudicator found that the other information contained in the invoices (including the dates and details regarding the fees charged) was exempt under Branch 1 of section 12. Order PO-2484 was upheld by the Ontario Divisional Court in *Ontario (Ministry of the Attorney General) v. Ontario (Information and Privacy Commissioner)*.¹²

[33] The city also refers to Order MO-3419-I, in which the adjudicator found that legal billing information is presumptively privileged unless the information is *neutral* and does not directly or indirectly reveal privileged information.

[34] The city claims it has released the neutral information in the records, such as the final invoice amounts. The city submits that the remainder of the information in the legal invoices relates to specific dates, invoices numbers and details regarding the services rendered and qualifies for exemption under section 12.

[35] In addition, the city, referring to Orders PO-2484 and MO-3419-I, submits that the appellant is an *assiduous inquirer*. The city submits that the appellant is knowledgeable about the situation, including background information, because the request and records relate to her own litigation against the city. The city submits that full disclosure of the records, in combination with her direct knowledge of the matter, would reveal privileged information.

[36] The appellant submits that section 12 should not apply to the information that remains at issue.

[37] The records at issue are 49 pages of legal invoices. The information at issue is comprised of the dates, the invoice numbers, the details regarding the services rendered, the amount of time spent on each activity, and the billing summaries for each invoice. The information contained in these records is clearly legal billing information and relates to the legal suit involving the appellant.

[38] In Order MO-3455, the adjudicator considered whether legal billing information is exempt under section 12 and stated,

...[The] Supreme Court of Canada's decision in *Maranda v. Richer*,¹³ specifically found that information in legal invoices is presumptively privileged and, therefore, qualifies for exemption unless it can be established that the information is neutral. Accordingly, in these circumstances, the burden of proof does not rest with the town, and the

¹¹ 2003 SCC 67. (*Maranda*)

¹² [2007] OJ No. 2769.

¹³ *Maranda*, *supra* note 6.

information is exempt unless I find that the information (or any portions of the information) is “neutral.”

I adopt this analysis for the purpose of my review of the legal invoices at issue. Based on my review, I find that section 12 applies to the information that remains at issue. As the city submitted, the adjudicator in Order PO-2484 considered whether the total dollar figure in nine separate legal invoices, with all other information severed, qualified for exemption under the provincial equivalent to section 12 of the *Act*. Applying *Maranda*, the adjudicator found that the total dollar figure in each of the invoices was *neutral information* that ought to be disclosed, but that the other information in the invoices, including the dates of the invoices was exempt under the solicitor-client privilege exemption in the provincial *Act*. As stated above, the Divisional Court upheld the findings in Order PO-2484¹⁴ and the analysis in Order PO-2484 has been adopted by the IPC in a number of subsequent decisions.¹⁵

[39] Applying the principles in *Maranda* and Order PO-2484, I find that the presumption of privilege has not been rebutted with respect to the information at issue in the legal invoices. I agree with the city that the appellant is an *assiduous inquirer* who is a party to the lawsuit that is the subject of her request. In addition, from my examination of the information at issue, I find that its disclosure would reveal solicitor-client privileged information. The information at issue would, if disclosed, allow an individual to glean the communications and/or advice that was passed between the city and its legal counsel relating to the appellant’s legal suit against the city. Therefore, I find that the information at issue is not neutral and is exempt from disclosure under section 38(a), read with section 12, of the *Act*, subject to my review of the city’s exercise of discretion below.

Issue C: Did the city exercise its discretion under section 38(a), read with section 12? If so, should this office uphold the exercise of discretion?

[40] Where records or portions of records fall within the scope of a discretionary exemption, an institution is obliged to consider whether it would be appropriate to release the record, regardless of the fact that it qualifies for exemption. The exemption in section 38(a), read with section 12, is discretionary which means the city could choose to disclose the information at issue, despite the fact that it may be withheld under the *Act*.

[41] In applying section 38(a), read with section 12, to withhold portions of legal invoices, the city was required to exercise its discretion. On appeal, the Commissioner

¹⁴ *Ontario (Ministry of the Attorney General) v. Ontario (Information and Privacy Commissioner)*, *supra* note 7.

¹⁵ See Orders PO-3001, MO-3253-I, MO-2885 and others.

may determine whether the city failed to do so. In addition, the Commissioner may find that the city erred in exercising its discretion where it took into account irrelevant considerations or failed to take into account relevant considerations. In either case, I may send the matter back to the city for an exercise of discretion based on proper considerations.¹⁶ However, I may not substitute my own discretion for that of the city.¹⁷

[42] The city states that it chose not to disclose the information at issue because it contains communications which were produced as a direct result of an ongoing litigation process involving the appellant. The city also states that it chose not to disclose the information contained in the invoices that were not neutral or that would allow accurate inferences to be made about the solicitor-client relationship. The city submits it did not exercise its discretion in bad faith or for an improper purpose.

[43] The city submits that it considered all relevant factors in the release of the records at issue. The city submits that it also took into account the purpose of the section 12 exemption, which is to protect the solicitor-client relationship. Finally, the city submits that it considered similar orders relating to legal invoices and followed these orders.

[44] The city also submits that it was aware that the records contain the appellant's personal information. In light of this, the city submits that it chose to release information that qualified as neutral, such as the final invoice amounts. The city submits that the balance of the information relates to the specific dates, invoice numbers, and details of the services rendered, all of which qualify for exemption under section 12.

[45] The appellant submits that the invoices and amounts at issue are ultimately paid by taxpayer dollars and that these amounts should be disclosed to the public. The appellant submits that she seeks access to these records in her role as a "watchdog" and suggests that the city's refusal of access is prejudicial and politically motivated.

[46] I have considered the circumstances of this appeal and the parties' representations. Based on this review, I find the city properly exercised its discretion under section 38(a), read with section 12, of the *Act*. I am satisfied the city did not exercise its discretion in bad faith or for an improper purpose as there is no evidence before me this is the case. While the appellant suggests that the city has acted in bad faith, I find that she did not provide any evidence to demonstrate that the city done so in its exercise of discretion in applying section 12 to portions of the legal invoices. Based on my review of the records, it is clear the city disclosed the neutral information in the records and withheld only the information that would reveal solicitor-client privileged communications. The city has disclosed the amounts that were paid and I

¹⁶ Order MO-1573.

¹⁷ Section 43(2) of the *Act*.

find that the city properly considered the principles that information should be available to the public and that exemptions should be limited and specific. In addition, I am satisfied the city properly considered the purpose of section 12 in withholding the information at issue. Finally, I am satisfied the city considered the fact that the records contain personal information relating to the appellant and balanced that with the purpose of the solicitor-client privilege exemption. Accordingly, I find the city took relevant factors into account and did not take into account irrelevant factors. Therefore, I uphold the city's exercise of discretion to apply section 38(a), read with section 12, to withhold portions of the legal invoices at issue.

Issue D: Did the city conduct a reasonable search for records responsive to parts 1, 2, 5, 6 and 7 of the appellant's request?

[47] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution conducted a reasonable search for records as required by section 17 of the *Act*.¹⁸ If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the city's search. If I am not satisfied, I may order further searches.

[48] 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 it made a reasonable effort to identify and locate responsive records.¹⁹ To be responsive, a record must be *reasonably related* to the request.²⁰

[49] 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.²¹

[50] During mediation, the appellant claimed that records (or additional records where the city located records) responsive to Parts 1, 2, 5, and 6 ought to exist. The city advised the appellant that no additional records responsive to these portions of the appellant's request exist.

[51] The relevant portions of the appellant's request are as follows:

1. All invoices, correspondence attached to invoices and authorizations and copies of cancelled cheques for all payment of legal fees regarding the legal suit involving the appellant;

¹⁸ Orders P-85, P-221 and PO-1954-I.

¹⁹ Orders P-624 and PO-2559.

²⁰ Order PO-2254.

²¹ Order MO-2246.

2. All invoices, correspondence attached to invoices, payment authorizations and cancelled cheques supporting the \$33,000 cost summary submitted to the Court by the city's lawyer regarding the contempt motion heard on October 7, 2015;

5. Correspondence from the insurance company to the city regarding "indemnification" of the legal suit involving the appellant;

6. Minutes or notes taken during a meeting the city claims took place in April 2015 between the mayor, the city clerk and the insurance company, including their lawyers, employees, external lawyers and representatives, regarding the legal suit involving the appellant; and

7. City responses to the following emails from the appellant:

DATE	SUBJECT LINE
March 7, 2015 – 2:04:55 PM	Insurance company and indemnification
March 23, 2015 – 6:16:10 PM	Out of the country
April 22, 2015 – 2:03:35 PM	Re: City of Vaughan ats. [appellant's name] – [named law firm and file number]
May 2, 2015 – 2:53:44 AM	RE: Motion date
May 11, 2015 – 9:33:03 AM	FW: City of Vaughan ats. [appellant's name named law firm and file number]

[52] In its representations, the city submits that it conducted a reasonable search for responsive records. The city states that it spent "considerable time" clarifying the request with the appellant and she altered portions of her request in consultation with the city's previous Access and Privacy Officer. The city states that the appellant confirmed the details of her request by email prior to the city's search.

[53] The city submits that, once all of the details were confirmed, it produced a number of search memos identifying the information request and provided them to the appropriate departments. The city states that the offices of the mayor and members of council, the Office of the City Clerk, the Risk Management section of the City Clerk's Office and the Legal Services Department were asked to search for responsive records. In addition, the city sent a search request to the insurance company identified in the appellant's request because it might have responsive records.

[54] The city states that the offices of the mayor and members of council were provided with very specific details about the emails requested in part 7 of the appellant's request. The appellant provide these details in chart form and the chart is reproduced above. The city states that the appellant's request included the specific dates and times she sent the messages as well as the complete subject lines. As per the appellant's request, the city instructed the offices of the mayor and members of council to search for any responses to those emails. The city submits that these offices did not locate any responses to those emails. The city submits that these offices searched for all emails that showed a direct response to these emails. The city submits that part 7 of the request only identified responses to these specific emails. As a result, it only searched email accounts. The city states that it did not direct its staff to search any additional types of records or physical locations beyond email inboxes and outboxes.

[55] The city submits it requested the City Clerk's Office to conduct a search in response to parts 5, 6 and 7 of the appellant's request. The City Clerk at the time (now retired) searched emails in response to parts 5 and 7 but did not locate any records. The city submits that there are no records responsive to part 6 of the appellant's request because a meeting did not take place between the parties identified. The city states that it searched the City Clerk's calendar and did not locate any meeting requests relevant to part 6 of the appellant's request.

[56] The city submits that it requested the Risk Management section of the City Clerk's Office to conduct a search in response to parts 1, 2 and 5 of the request. The former Insurance Risk Manager (now retired) searched his paper and electronic files (including emails) for records responsive to these parts of the request. The city submits that he did not locate responsive records.

[57] The city submits that it directed the city's Legal Department to search all records relating to payments made by the city to an identified individual regarding the legal suit the appellant was involved in and any records responsive to part 5 of the appellant's request. The city submits that its Legal Department searched its paper and electronic files, including emails and paper invoices, but did not locate responsive records.

[58] Finally, the city submits that it asked the insurance provider identified in the appellant's request to search for records responsive to parts 1, 2, 3, 5 and 6 of the request. The insurance provider advised the city that it would not provide copies of any records in addition to what it provided the city in response to previous request for similar information. During mediation, the city disclosed additional copies of the records it had previously disclosed to the appellant in response to her previous requests.

[59] The city submits that previous orders of this office have placed a burden on the requester to provide reasons for their belief that additional records should exist. In the absence of representations from the appellant, the city submits that it conducted a reasonable search for responsive records.

[60] The appellant did not make any submissions during the inquiry on the issue of

reasonable search.

[61] Based on my review of the city's representations, I am satisfied that it conducted a reasonable search for responsive records. The city contacted the appropriate departments and parties to search for records responsive to the appellant's request and identified the locations and types of files searched. As set out above, the *Act* does not require the city to prove with absolute certainty that additional responsive records do not exist, but only to provide sufficient evidence to establish that it made a reasonable effort to locate responsive records. In my view, the city demonstrated that it expended a reasonable effort to identify and locate records responsive to the appellant's request.

[62] As stated above, the appellant did not address the city's search or its representations on search, even though she had the opportunity to do so. In the absence of any representations from the appellant, I find that she has not provided sufficient evidence to demonstrate there is a reasonable basis for her belief that additional responsive records should exist.

[63] In conclusion, I am satisfied the city conducted a reasonable search for records responsive to the appellant's request.

Issue E: What is the scope of the request? Is the appellant required to file a new request to address her concerns regarding part 7 of her request?

[64] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

(1) A person seeking access to a record shall,

(a) make a request in writing to the institution that the person believes has custody or control of the record;

(b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;

...

(2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[65] Institutions should adopt a liberal interpretation of a request, in order to best

serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.²²

[66] To be considered responsive to the request, records must *reasonably relate* to the request.²³

[67] The city takes the position that the appellant is expanding the scope of part 7 of her request. Part 7 of the appellant's initial request was for:

City responses to the following emails from the appellant:

DATE	SUBJECT LINE
March 7, 2015 – 2:04:55 PM	Insurance company and indemnification
March 23, 2015 – 6:16:10 PM	Out of the country
April 22, 2015 – 2:03:35 PM	Re: City of Vaughan ats. [appellant's name] – [named law firm and file number]
May 2, 2015 – 2:53:44 AM	RE: Motion date
May 11, 2015 – 9:33:03 AM	FW: City of Vaughan ats. [appellant's name named law firm and file number]

[68] In its access decision, the city advised the appellant that it did not locate any responses sent from the city to the appellant in response to the emails listed in part 7 of her request.

[69] During mediation, the appellant took the position that, as a result of the city's response, she "clarified" her request to include all emails, not only those sent to her in response to the emails identified in part 7 of her request.

[70] In its representations, the city submits that the appellant amended her request to include forwarded emails during mediation. The city concedes that if any such records did exist, specifically forwarded and copied emails, they would reasonably relate to the request because they would relate to the emails identified in part 7 of the

²² Orders P-134 and P-880.

²³ Orders P-880 and PO-2661.

appellant's request. However, the city submits that if the appellant actually meant all "actions" taken in relation to these emails, rather than simply direct replies or "responses", she should have made this clear during the original clarification of her request prior to the city's searches.

[71] The city states the appellant did not submit representations in response to the Notice of Inquiry. The city submits that the appellant had ample opportunity to clarify the appropriate interpretation of her request and the term "responses" but did not. The city submits that the appellant is an experienced requester who is aware of the importance of specificity in requests.

[72] Based on my review of the appellant's request and city's representations, I find that the scope of part 7 of the request is limited to the city's responses to the appellant to the emails listed from the appellant. As identified by the city, the appellant and the city engaged in consultations to clarify her request. The appellant also confirmed the wording of her request with the city through email during the clarification process. In addition, the appellant is an experienced and sophisticated participant in the freedom of information process and the wording of the other six parts of this request was precise and defined. Given these circumstances, I find that the city properly identified the scope of part 7 of the request to be for responses to the appellant's emails. Should the appellant wish to seek access to all actions made by the city in response to the emails she sent to the city, the appellant may file a new access request with the city.

[73] Therefore, I uphold the city's decision with respect to part 7 of the appellant's request.

ORDER:

I uphold the city's decision and dismiss the appeal.

Original signed by _____

Justine Wai
Adjudicator

October 18, 2019