

Information and Privacy Commissioner,  
Ontario, Canada



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

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## FINAL ORDER MO-4109-F

Appeal MA17-647

The Corporation of the City of Oshawa

October 14, 2021

**Summary:** This final order resolves the outstanding issue of the reasonableness of the city's search for responsive records following Interim Order MO-4009-I. In compliance with the interim order, the city conducted a further search for responsive records relating to an investigator's report regarding the city's purchase of property for its Consolidated Operations Depot. Following its additional search, the city located additional records and disclosed these records to the appellant. The adjudicator upholds the city's search as reasonable and dismisses the appeal.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c M56, as amended, section 17

**Order Considered:** Order MO-4009-I.

### OVERVIEW:

[1] This final order disposes of the remaining issue resulting from an access request the appellant made to the City of Oshawa under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The issue is the reasonableness of the city's search for records responsive to the appellant's request for access to the following information:

All communications between [the city] Clerk Services and [a named individual] between [two specified dates], relating to the submission of [the named individual's] draft final report, including his draft final report.

[2] By way of background, in 2013 the city purchased property to house its Consolidated Operations Depot. Following the purchase, the city's Auditor General issued a report, Report AG-13-09, in which he was critical of the process leading to the purchase and the price paid for the property. Report AG-13-09 was made public, as were some attachments to the report, but certain "confidential attachments" (designated as such by the Auditor General) were not.

[3] On May 21, 2013, the city appointed an investigator (the individual named in the access request cited above) to investigate the allegations contained in the Auditor General's report. The investigator conducted an investigation and issued a report on September 3, 2013. Following issuance of the investigator's report, the city's Auditor General subsequently issued a memorandum in response to it.

[4] In response to the appellant's request, the city issued a decision granting partial access to the responsive records with access to some of the records denied pursuant to various exemptions.

[5] The appellant appealed the city's decision to the Information and Privacy Commissioner of Ontario (the IPC). At the end of mediation, the only remaining issues on appeal were access to information withheld under the section 10(1) and 14(1) exemptions and the exclusion at section 52(3), and the reasonableness of the city's search for responsive records.

[6] As mediation did not resolve the issues, the appeal was moved to adjudication stage of the appeal process and I conducted an inquiry under the *Act*. In Interim Order MO-4009-I, I found that the exclusion at section 52(3) did not apply to the records at issue and further, sections 10(1) and 14(1) did not apply to certain withheld information. I also found that the city had not conducted a reasonable search for records relating to the request. I ordered the city to disclose information that I found not exempt and to conduct a further search for records.

[7] The city conducted a further search, found two additional records (emails) and disclosed them to the appellant. I asked for and received representations from the city and the appellant on the additional searches conducted by the city. The city's representations were shared with the appellant in accordance with the IPC's *Code of Procedure*.

[8] In this order, I find the city's search was reasonable and I dismiss the appeal.

## **DISCUSSION:**

[9] The only remaining issue is whether the city's search for records was reasonable. In order provision 3 of Interim Order MO-4009-I, I stated the following:

I order the city to conduct a further search in response to the appellant's request using the investigator's/affected party's email addresses, as well as the email addresses of other staff in the city clerk's services office. I also order the city to confirm when the search(es) were conducted.

[10] The city submits that it conducted a reasonable search and in compliance with Interim Order MO-4009-I, the Supervisor of Records and Information Management (the supervisor) conducted the searches ordered above. The city submits that the supervisor has direct access to the records of the original records holders and is considered by the city to be an experienced employee of the institution for the purposes of conducting the search. The city located an additional two records that were disclosed to the appellant in full. The city also submitted an affidavit describing the searches conducted by the supervisor.

[11] The supervisor states the following in the affidavit:

As such, I received a Secondary FOI Branch Request Form requesting that a search be conducted for the following:

"Copies of all communications between City Clerk Services and [named investigator] between August 15, 2013 and September 3, 2013 relating to the submission of his draft final report as well as a copy of the draft final report.

Specifically including the keywords "[Named investigator], "Report", "Draft Report" "Final Report" "Final Draft Report" "[named investigator's email address]".

In response, I searched the city's shared drives for any and all communications between city Clerk Services staff and [the named investigator] between August 15, 2013 and September 3, 2013 as related to the submission of his draft final report, as well as a copy of the draft final report, using the above keywords, or any variant thereof.

This process included searching for responsive records that were both "born electronic," as well as, records that were scanned from hard copies and saved electronically to city servers. During the secondary search I reviewed the contents of every related folder on the city Clerk Services shared drive and the city's corporate shared drive for all records that could be considered responsive as ordered in MO-4009-I.

As a result of the searches described above, I provided city clerk services staff with two records in addition to those that were previously provided to the appellant as a response to the initial searches on this file.

[12] The appellant submits that the subject line of both emails disclosed to him suggests that there should be additional records relating to a draft or draft number 1 of the investigator's report and he has not received such records. The appellant then notes that the request that is the subject of this appeal is "...a snapshot in time of an earlier request from 2015." The appellant submits that the two records disclosed to him as a result of the search are actually responsive to his earlier request.

[13] The appellant goes on to argue that the supervisor who swore the affidavit is not an experienced employee for the purposes of conducting a search. The appellant submits that the supervisor's search did not include a search of the investigator's computer.<sup>1</sup> Finally, the appellant submits that the city's records management is deficient and has been so for nearly a decade.

### **Analysis and finding**

[14] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.<sup>2</sup> 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.<sup>3</sup>

[15] For the reasons that follow, I now find that the city has conducted a reasonable search.

[16] I accept that the supervisor is an experienced employee, knowledgeable in the request and the record holdings of the city. I acknowledge that in Interim Order MO-4009-I, I found that the city had not provided me with sufficient information to conclude that its search was coordinated and carried out by an experienced employee. I further note that the employee who carried out the search was the same individual who provided the affidavit and conducted the city's search in compliance with the Interim Order.

[17] However, during my initial inquiry, that individual was a records information analyst. She is now the Supervisor of Records and Information Management for the city, and has provided me with additional evidence about the searches she conducted<sup>4</sup>.

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<sup>1</sup> The appellant references the "F drive".

<sup>2</sup> Orders P-624 and PO-2559

<sup>3</sup> Orders M-909, PO-2469 and PO-2592.

<sup>4</sup> This is not to say that, as a general proposition, a records information analyst is not an "experienced" employee for the purposes of a reasonable search. Whether a particular individual is an experienced

I now accept that this individual is knowledgeable and experienced in both the city's records holdings as well as the scope of this particular request. I also note that the supervisor used the key words that I ordered to be used to conduct her further search for responsive records.

[18] Given the specific additional search I ordered in Interim Order MO-4009-I, I find the scope and breadth of the supervisor's search to be reasonable.

[19] The appellant again challenges the adequacy of the knowledge and experience of the city employee who conducted the search. The appellant further submits that the additional records which were located during the further search for records appear to indicate that other responsive records exist. Finally, the appellant references an earlier request of his and references the need to search the named investigator's computer.

[20] As stated above, I am now satisfied that the city employee who conducted the additional search was knowledgeable in the subject matter of the request and I find this individual expended a reasonable effort to identify and locate responsive records. I make no comment on the city's search for records to the appellant's earlier or other requests. And finally, while I note that the records disclosed to the appellant appear to indicate the possibility of other additional records, I find that the city has now provided me with sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the appellant's request. The search terms used to conduct the additional search included the key words "report", "draft report", "final report" and "final draft report". I accept that if additional draft reports or records referring to draft reports existed they would have been captured by the city's further search. I am satisfied that a further search for draft reports would not yield additional responsive records.

[21] I appreciate the appellant's frustration in his attempts to gain access to records relating to his various requests relating to the investigation of property in to the city's Consolidated Operations Depot. However, based on the evidence before me I am satisfied that the city has now conducted a reasonable search for records responsive to the request before me. Moreover, I find that there would be no useful purpose in requiring a further search for responsive records.

**ORDER:**

I uphold the city's search as reasonable and I dismiss the appeal.

Original signed by: \_\_\_\_\_  
Stephanie Haly  
Adjudicator

October 14, 2021 \_\_\_\_\_

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employee for the purposes of a search is a contextual finding and is not solely dependent on an individual's title or function.