

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-4139

Appeal MA19-00531

City of Toronto

December 16, 2021

**Summary:** The City of Toronto received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for access to records relating to a specified property. The city issued a decision granting access to the responsive records. The requester, now the appellant, appealed the city's decision to the Information and Privacy Commissioner of Ontario, because he believes further records responsive to his request should exist. In this order, the adjudicator finds that the city conducted a reasonable search for responsive records and dismisses the appeal.

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

### OVERVIEW:

[1] This order determines whether the City of Toronto (the city) conducted a reasonable search for records relating to a specified property. The city received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

A copy of the inspection records for [a specified property], that resulted in the RentSafeTO Building Evaluation letter dated December 27, 2017. This request is for:

1. the name and title of the officer who inspected [the specified property] on December 15, 2017 and created the Evaluation Report.

2. the schedule of the officer who attended [at the specified property] on December 15, 2017.
3. all of the notes, records, and photographs made by the officer [regarding the specified property] on December 15, 2017.
4. all of the steps and records used to convert the December 15, 2017 inspection into the December 27, 2017 Evaluation report.
5. what is the significance of the "RAI" on the first page of the Evaluation report?

Time frame: Oct 1, 2017 to Jan 1, 2018.

[2] The city issued a decision granting full access to the records located and identified as responsive by staff of the Municipal Licensing & Standards Division (MLS).

[3] The requester, now the appellant, appealed the city's decision to the Information and Privacy Commissioner of Ontario (IPC), because he believes that further records responsive to his request should exist. The IPC appointed a mediator to explore resolution.

[4] During mediation, the city conducted a second search for responsive records, but it did not locate any additional records.

[5] As a mediated resolution was not possible, the appeal proceeded to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. I received representations from the city, which I shared with the appellant. I then invited and received representations from the appellant, which I shared with the city. I then sought and received reply representations from the city.

[6] In this order, I find that the city has conducted a reasonable search for responsive records and dismiss the appeal.

## **DISCUSSION:**

### **Did the city conduct a reasonable search for responsive records?**

[7] The appellant claims that further records responsive to his request about the specified property should exist. Where a requester claims 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.<sup>1</sup> If

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<sup>1</sup> Orders P-85, P-221 and PO-1954-I.

I am satisfied 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.

[8] 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 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 (responsive) to the request.<sup>3</sup>

[9] 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 such records exist.<sup>4</sup>

### ***Representations of the city***

[10] The city submits that it conducted a reasonable search for responsive records. The city submits that after its initial search, which produced responsive records, it spoke to the appellant to clarify what further records he was seeking. The city submits that the appellant advised the city that there was "missing information". The city states that the appellant was unable to list or explain what information was missing and, despite this, the city conducted another search. The city submits that no further information or records were found as a result of the second search.

[11] The city submits that it responded literally to the appellant's request, because the request was very specific. The city submits that experienced MLS staff, including two Municipal Standards Officers (MSO) and an administrative staff member, conducted all the searches. The city submits that the MLS staff searched in the identified staff members' email inboxes, files, and the MLS system called the Integrated Business Management System (IBMS). The city submits that experienced employees, who are knowledgeable about the subject matter and the location of the stored records, completed the searches; and they have expended reasonable efforts to locate the responsive records.

[12] The city submits that it is confident that it has searched all possible areas in the MLS office and located all the responsive records available. The city submits that the same MLS staff conducted both the initial and second searches.

[13] In support of its representations, the city provided the sworn affidavit of an Access and Privacy Officer, which outlines the same points as above with additional details, such as the dates and times of each step of the searches. I have considered this

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

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

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

affidavit.

***Representations of the appellant***

[14] The appellant submits that the city did not conduct a reasonable search for responsive records. From his representations, it appears that the appellant believes that, due to what he finds to be limited information and photographs included in the "Evaluation Report", information is missing and there must be further records the city has not yet located. The appellant provides a list of 11 individuals whose records he submits should be included as part of the search for responsive records. He also submits that "a sworn affidavit of the person who created the Evaluation Report" should have also been included as part of the search. The appellant alleges that the city is purposely withholding information from him.

[15] The appellant outlines the history of his interactions with MLS staff and their investigations into the operation of the specified property. The appellant also provided documents, such as inspection reports and emails, containing his handwritten notes commenting on the conduct of the MLS staff and their investigation. I find that these documents are not relevant to my determination of whether the city conducted a reasonable search for responsive records. The appellant's representations also contain accusations against the city and the identified MLS staff, which I find are similarly not relevant in my decision regarding whether the city conducted a reasonable search for records responsive to his request under the *Act*.

***The city's reply***

[16] The city submits that the appellant's representations do not explain or provide any relevant information about what he alleges are "missing records". The city submits that, instead, the appellant accuses the city, specifically the MLS staff, of criminal acts. The city states that the appellant appears to provide this background information to support his claim of alleged criminal activities, and it points to his references to investigations concerning the operations of the specified property, seeking information that would discredit MLS staff, and also his personal views about alleged city wrongdoings. The city submits that the information the appellant identifies is not relevant to the issue of reasonable search and argues that the issues he raises are new issues that are not within the scope of this appeal.

[17] The city submits that the scope of the appeal should not be expanded, and if the appellant seeks access to additional records pertaining to a different subject and from a specific staff member, then the appellant should submit a new access request.

***Analysis and findings***

[18] Based on the representations of the parties, I find that the city conducted a reasonable search for responsive records for the reasons that follow.

[19] The review of the issue of whether the city, as an institution under the *Act*, has

conducted a reasonable search for records as required by section 17 arises where a requester claims additional records exist beyond those identified by the institution.<sup>5</sup> As noted above, while 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 such records exist.

[20] The city has provided an affidavit in support of its search for records responsive to the appellant's request. The city has described the individuals involved in the search, where they searched, and the results of their search. Based on the city's representations and its affidavit, I am satisfied that experienced employees knowledgeable in the subject matter of the request conducted a reasonable search for responsive records.

[21] It is clear the appellant is dissatisfied with MLS's investigation with respect to the specified property and its decision. However, the appellant has not sufficiently explained why he believes that further records responsive to his request exist or why the city did not conduct a reasonable search. While the appellant has many concerns about the city's investigation into the specified property and the conduct of MLS staff, this is an area that is not within my authority under the *Act*. Simply put, there is insufficient evidence before me to establish a reasonable basis to conclude that additional records responsive to the appellant's request should exist.

[22] As noted above, the appellant provided a list of 11 individuals whose records he submits should have been included as part of the search for responsive records. The appellant explains who some of these individuals are, but not others, and I note that two of these individuals were already part of the city's two searches for responsive records, including the individual who prepared the evaluation report mentioned by the appellant. While the appellant argues that these additional individuals should have been involved as part of the city's search, his representations do not assist in understanding why these individuals should have been included. Based on the appellant's representations, I find that he has not provided a reasonable basis for his belief that these particular individuals might have located further responsive records that were not identified by the city in its two searches.

[23] The *Act* does not stipulate how a search should be undertaken or what information should be included in an affidavit. The *Act* also does not require the city to prove with absolute certainty that further records do not exist. I must only be satisfied sufficient evidence has been provided to establish that a reasonable search has been conducted. Based on the representations of the parties, I am satisfied that the city's search for responsive records was reasonable.

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<sup>5</sup> Orders P-85, P-221 and PO-1954-I.

**ORDER:**

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

Original signed by: \_\_\_\_\_

Anna Truong  
Adjudicator

December 16, 2021 \_\_\_\_\_