Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4150

Appeal MA19-00797

City of Greater Sudbury

January 19, 2022

Summary: The City of Greater Sudbury (the city) received an eight-part request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The city determined that each of the eight items of the request was a separate request and proceeded to process the first item, and advised the appellant that a separate fee and request would be needed for the other seven items. The appellant disagreed and appealed that decision, challenging the city's determination about the scope of the appeal and the responsiveness of the records it found responsive to the request that was processed. The appellant also alleged bias on the part of the city employee who processed his request, and later alleged bias on the part of the adjudicator previously assigned to this appeal. In this order, the adjudicator finds that the appellant has not established bias or a reasonable apprehension of bias on the part of the previous adjudicator or the city employee who processed the request. The adjudicator also upholds the city's determination about the responsiveness of the records and the scope of the request, 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, sections 16 and 17.

Orders Considered: Orders P-1267, PO-2381, MO-2227, MO-2459, MO-2946, MO-3784

Cases Considered: *Imperial Oil Ltd. v. Quebec (Minister of the Environment)* [2003] 2 SCR 624, 2003 SCC 58 (CanLII).

OVERVIEW:

[1] The City of Greater Sudbury (the city) received an access request for the following under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

- The City of Greater Sudbury's Treasurers, and Deputy Treasurers, written delegation of powers and duties from January 1, 2007 to September 1, 2019.
- Daily occurrence logs, security reports and requests from September 26, 2018 to October 31, 2018.
- Tender Opening Committee agendas, presentations, supporting documents, motions and resolutions from August 15, 2018 to October 31, 2018.
- Financial Information Systems journal entries, PeopleSoft documentation, and trial balance for September 26, 2018.
- Notices of Hire/Successful Applicant Notices, Termination, Resignation, Retirement, Change of Information, Job Evaluations, Performance Evaluations, Pension Records(OMERS), Certification, STD/LTD/WSIB Claims/Medical Records, Grievances, Job Descriptions and Job Evaluations, Complaints, Investigation Files and time sheets, where the Treasurer and Deputy Treasurer, by name or by title or both, directly and indirectly are referenced, referred to, the subject of any of the information herein requested from January 1, 2007 to September 1, 2019.
- All liability insurance policies in effect between September 26, 2018 to October 15, 2018.
- All interests in land and release of interest in land from January 1, 2007 to September 1, 2019.
- Bank deposits for the calendar months of October, 2018 and November, 2018.

[2] The city acknowledged receipt of the request and stated the following:

> Please note that your submission constitutes eight (8) separate requests each represented by a bullet point. As such, only the first item noted above will be processed.
>
> In reference to the remaining items, please submit a separate Freedom of Information request for each item, along with the applicable fee per request.

[3] The city then issued an access decision, withholding access to the responsive records to the first bullet on the basis of the discretionary exemption at section 15

(information published or available to the public) of the *Act*. In doing so, the city noted that the responsive records are municipal by-laws, which are publicly available through the Clerk's Service Department or online. The city provided the requester with a table containing the by-law numbers and their respective amending by-laws, in addition to the relevant sections of the current by-laws. The city also provided the contact information for the Clerk's Services Department.

[4] The requester, now the appellant, appealed the city's decision to the Information and Privacy Commissioner of Ontario (the IPC). The IPC appointed a mediator to explore resolution.

[5] During mediation, the appellant did not dispute the application of the section 15 exemption to the records identified as responsive, but stated that those records were not responsive to his request. The appellant advised that he was seeking the actual written delegations of powers and duties, and not the by-laws. The appellant also advised that the city failed to respond to the other seven parts of his request.

[6] The mediator conveyed the appellant's positions to the city. The city advised the mediator that no further responsive records exist. The city also advised that, "[m]unicipalities make decisions through the passage of by-laws. The authority to act as treasurer and deputy treasurer is delegated in the Appointments By-law."

[7] In addition, the city also advised that it was not willing to reconsider its decision to only process the first point of the request.

[8] Since no further mediation was possible, the appeal moved to the adjudication stage of the process, where an adjudicator may conduct a written inquiry under the *Act*.

[9] The adjudicator initially assigned to this appeal began an inquiry under the *Act* by sending a Notice of Inquiry, setting out the facts and issues on appeal, to the city. She asked the city for written representations on the issues of scope of the appeal/responsiveness of the records, and whether the city conducted a reasonable search. The city provided representations in response.

[10] The adjudicator then invited the appellant to provide representations in response to the Notice of Inquiry and the city's representations. In response, the appellant raised the issue of bias on the part of the city employee who processed his request. As a result, the adjudicator added the issue of bias to the appeal, and sent the city a supplementary Notice of Inquiry (by letter), asking for the city's representations on bias and in response to the appellant's other representations. The adjudicator sent a copy of that Notice of Inquiry letter to the appellant. The city provided representations in response, to which the appellant was given an opportunity to reply.

[11] After reviewing the copy of the Notice of Inquiry sent by letter to the city, the appellant raised an issue of bias on the part of the previous adjudicator. The appellant alleged that the adjudicator's citation of previous IPC orders in the supplementary

Notice of Inquiry regarding bias was itself evidence that the adjudicator was biased against the appellant, and in favour of the city. As a result, the appellant also brought forward a Notice of Constitutional Question (NCQ) about the bias issue.

[12] The parties' representations were shared between them in accordance with the *Practice Direction 7 of the IPC's Code of Procedure*, the IPC's practice direction on the sharing of representations. During the inquiry, the appellant raised the issue of "the public interest override" at section 16 of the *Act*. The appeal was later transferred to me to continue its adjudication.

[13] For the reasons that follow, I find that the appellant has not established bias, or a reasonable apprehension of bias, on the part of the previous adjudicator or the city employee who processed his request. I also uphold the city's decision with respect to the scope of the appeal and the responsiveness of the records, and the reasonableness of its search, and dismiss the appeal.

ISSUES:

A. Has a reasonable apprehension of bias on the part of the previous adjudicator been established?

B. Was there a reasonable apprehension of bias on the part of the employee who processed the appellant's access request?

C. What is the scope of the request for records? Which records are responsive to the request?

D. Did the institution conduct a reasonable search for records in relation to request 1 (the request)?

DISCUSSION:

Issue A: Has a reasonable apprehension of bias on the part of the previous adjudicator been established?

[14] The appellant alleges bias against him on the part of the adjudicator who was previously assigned to this appeal. The allegation arose after the adjudicator copied the appellant on a Notice of Inquiry letter that she sent the city, seeking written representations from the city in reply to the appellant's representations. Since the appellant had raised the issue of bias on the part of the employee who processed his request, the adjudicator asked the city for written representations in response to this allegation. In doing so, she included general information about the legal test for bias in her letter.

[15] At the outset, I note that the original adjudicator is no longer the decision-maker on this appeal, because the appeal was reassigned to me. The issue of any reasonable apprehension of bias on the part of the original adjudicator may therefore be moot, but for completeness I will address it.

[16] For the reasons that follow, I find that the appellant has not established that the previously assigned adjudicator had a bias, or a reasonable apprehension of bias, against the appellant.

Presumption of impartiality

[17] In administrative law, there is a presumption that, in the absence of evidence to the contrary, an administrative decision-maker will act fairly and impartially.[1]

Onus of proof

[18] The onus of demonstrating bias lies on the person who alleges it, and mere suspicion is not enough.[2] However, actual bias need not be proven.

The applicable test

[19] The test is whether there exists a "reasonable apprehension of bias." In Order MO-2227, the IPC cited a statement by the Supreme Court of Canada[3] about allegations of bias against an adjudicator, that in Canadian law, there is one standard as the criterion for disqualification: the reasonable apprehension of bias. The Supreme Court of Canada said that

> …the apprehension of bias must be a reasonable one, held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information. . . . that test is "what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision maker], whether consciously or unconsciously, would not decide fairly.
>
> …
>
> The grounds for this apprehension must, however, be substantial, and I … refuse to accept the suggestion that the test be related to the "very sensitive or scrupulous conscience". [Emphasis added.]

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[1] Orders MO-3513-I, MO-3642-R and MO-4003-R.

[2] See, for example, Blake, S., *Administrative Law in Canada*, (3rd. ed.), (Butterworth's, 2001), at page 106, cited in Order MO-1519.

[3] in *Wewaykum Indian Band v. Canada*, [2003] 2 S.C.R. 259.

The appellant's allegation of bias against the previous adjudicator and/or the IPC

The previous adjudicator's letter to the city, inviting a reply to the allegation of bias

[20] After reviewing the appellant's initial representations, the previous adjudicator determined that the representations raised issues to which the city should be given an opportunity to reply. One of those issues was the issue of bias on the part of the city employee, which the appellant had not previously raised.

[21] Below, I will set out the relevant portion of the previous adjudicator's letter to the city, inviting the city to provide written representations in response:

> Please find attached the complete representations of the appellant. In his representations, the appellant raises the issue that you are bias with respect to how you dealt with his access request.
>
> Previous orders have considered the issue of bias with respect to individuals who decide the issue of disclosure.[4] In determining whether there is bias, these orders posed the following questions:
>
> > Did the decision-maker have a personal or special interest in the records?
> >
> > Could a well-informed person, considering all of the circumstances, reasonably perceive a bias on the part of the decision-maker?
>
> These questions are not intended to provide a precise standard for measuring whether or not bias exists in a given situation. Rather, they reflect the kinds of issues which need to be considered in making such a determination.
>
> You are asked to respond to the questions on bias outlined above.

[22] As mentioned, the previous adjudicator sent the appellant a copy of that letter, which for clarity I will refer to as the "impugned letter."

The appellant's letter to the adjudicator about the impugned letter

[23] Upon his review of the impugned letter to the city, the appellant sent a letter to the adjudicator raising concerns about:

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[4] See, for example, Orders M-640, MO-1285, MO-2073, MO-2605, MO-2867, MO-3204, MO-3208 and PO-2381.

- the fact that the adjudicator addressed the letter to the city employee using the title of Legislative Compliance Coordinator, when he was disputing that very title; and

- the adjudicator's use of footnotes, citing past IPC orders dealing with bias, which the appellant described as "assistance" to the city that was not provided to him, and thus, evidence of bias on the part of the adjudicator and/or the IPC.

The previous adjudicator's response to the appellant's concerns

[24] The previous adjudicator explained the use of the city employee's title in a letter to the appellant, as follows:

> You note that I addressed [name of employee] as the Legislative Compliance Coordinator when the issue of her employment title is up for debate. Please note that her title as Legislative Compliance Coordinator is generated by this office's file management system. As such, her name, address and title (as with any party in an appeal) is automatically generated by the system when we create a letter. To be clear, I have not made a final decision regarding whether [the employee] is [biased].

[25] Regarding the use of footnotes in the impugned letter, the adjudicator stated the following:

> You submit that the footnote on the issue of bias in the reply notice of inquiry cited eight previous orders of this office. These orders are to provide guidance in answering the question on bias or conflict of interest and are to be of use to the parties. Again, I have not made a finding on the bias issue you have raised.
>
> Finally, you stated: "You have not provided me with the same assistance." I believe this is reference to the footnote citing this office's eight previous orders. As you are aware, you only recently raised the issue of bias in your representations. Prior to that, this was not an issue in the appeal. Once I receive reply representations from the city, you will be given an opportunity to respond to the city's reply representations.
>
> At the end of your letter, you wrote:
>
> > …I am making this request because the sharing of this letter may further jeopardize the outcome of this [inquiry] where the subject matter in question is the bias of [the city employee] and where the Commission itself has assisted the opposing party and not the Appellant, thus being a bias [inquiry] into bias of the opposing party.

> Earlier you cite sections 41, 42 and 43 of the *Act*, and argue that because the eight previous IPC orders were cited in that footnote, I/the Commissioner is assisting the city. Please note that any references to previous IPC orders in our guidance documents is to aid all parties. . . . [.] IPC adjudicators are not bound by them in their decisions.

The appellant's Notice of Constitutional Question

[26] The appellant later filed a Notice of Constitutional Question (NCQ) in relation to the impugned letter.

[27] In the NCQ, the appellant set out the test which the adjudicator had put to the city in her letter to the city. He also stated that the adjudicator referenced eight previous IPC orders, and that four of them resulted in partial disclosure to the appellant, three resulted in no disclosure, and one resulted in the records being disclosed to the appellant.

[28] The NCQ set out the constitutional question raised by the appellant as follows:

> Are previous IPC orders considered evidence and/or potential evidence available to a party in an IPC appeal and does the IPC adjudicator, have the power and/or authority to provide assistance to a party to the appeal by providing that party with previous IPC orders and not the opposing party, being the Appellant, for the purposes of the opposing party's reply representation submission to the same adjudicator?

[29] The NCQ states that the impugned letter "appears to favor the opposing party to the appeal, and thus appears to be biased." It states that the "decision that is being appealed is the decision of the Adjudicator to provide resource and/or evidence assistance to one party of the appeal and not the other party."

[30] The appellant submits that while the *Act* authorizes the IPC to conduct inquiries and receive evidence from parties to an appeal, and consider previous IPC orders, the *Act* does not specify and/or permit the IPC to provide this type of information to the parties. The appellant submits that the adjudicator provided "evidentiary materials" and direction to the city and not to him, and that she did so before he had a chance to provide reply representations.

[31] The appellant also states that seven of the eight IPC orders cited in the adjudicator's letter (in the footnote) were favourable to the opposing party (the city), or she should have given the appellant eight previous orders favourable to the appellant's case before he was asked for submissions. The appellant submits that there is an imbalance of experience as between him and the city that should have been considered.

[32] In addition, the NCQ sets out the wording of sections 12 (cruel and unusual

treatment), 15(1) (equal benefit of the law), and 24(1) (evidence obtained) of the *Canadian Charter of Rights and Freedoms* (the *Charter*).[5]

Analysis/finding

[33] Based on my review of adjudicator's impugned correspondence to the city and her correspondence to the appellant, and the appellant's representations and NCQ, I find that the appellant has not established a reasonable apprehension of bias on the part of the previous adjudicator or the IPC.

[34] I find the argument that the previous adjudicator's impugned letter was unfair to the appellant, to be without basis. In the IPC's written inquiry process, the parties take turns providing representations. In other words, after the IPC gives one party the opportunity to provide representations on an issue, it may give an opposing party an opportunity to do so, if it is necessary to do so for procedural fairness. I find that this occurred here. The appellant was clearly copied on the adjudicator's letter to the city, inviting representations about the issue of bias. He was, therefore, fully aware of what the adjudicator was providing to the city, including the test for bias. He was also given an opportunity to reply to the city's representations after the city provided a response to the adjudicator.

[35] Furthermore, by footnoting past IPC orders addressing a similar issue, the adjudicator was not providing "evidentiary materials" to the city. References to previous IPC orders in the IPC's guidance documents assist all parties because they provide any relevant legal tests and an opportunity to see how the IPC has addressed the same or similar issues in other circumstances - whether that information is in line with the desired outcomes of a party or not. When parties choose to cite past IPC orders in their representations in an appeal, this may be done as a way of trying to persuade the adjudicator to follow the reasoning of a case they believe to be similar to the one that the adjudicator is deciding. However, past IPC orders are not binding on adjudicators.

[36] The fact that most of the IPC orders that were listed in the footnote were ones where no bias was found to have been established on the part of the decision maker does not establish that the previous adjudicator was biased against the appellant. Rather, it is a reflection of the high bar that must be met in order to overcome the presumption of impartiality of a decision maker.

[37] With respect to the use of the city employee's title, I find that it was reasonable for the former adjudicator to use the one that was generated by the IPC's file management system for contacts with the city. I find that the use of employee titles generated by that system is not evidence of a reasonable apprehension of bias.

[38] Finally, by simply setting out the language of various sections of the Charter, the

[5] *Canadian Charter of Rights and Freedoms*, section 2(b), Part 1 of the *Constitution Act, 1982* , being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

appellant has not established that any of these provisions were violated, or that the previous adjudicator had a reasonable apprehension of bias against him. As a result, I will proceed to consider the other issues in this appeal.

Issue B: Was there a reasonable apprehension of bias on the part of the employee who processed the appellant's access request?

[39] The appellant disputes the title of the employee who processed his request, and alleges that she is biased against him and "exercised unreasonable discretion in her decision regarding my request for records." For the reasons that follow, I find that the appellant has not established a reasonable apprehension of bias on the part of the city employee who processed his access request.

Presumption of impartiality

[40] As discussed, in administrative law, there is a presumption, in the absence of evidence to the contrary, that an administrative decision-maker will act fairly and impartially.

[41] In *Imperial Oil Ltd. v. Quebec (Minister of the Environment)*,[6] the Supreme Court of Canada explained that, while all administrative decision-makers have a duty of impartiality, the content of that duty can vary depending upon the context of the decision-maker's activities and the nature of his or her functions.[7] The Supreme Court stated that the obligation of impartiality of a judge or an administrative decision-maker whose primary function is adjudication is "not equivalent" to that of a decision-maker whose primary function is not adjudication.[8]

[42] The IPC has applied the Supreme Court's reasoning in *Imperial Oil* to the question of whether an individual responding to a request for information under the *Act* was in a conflict of interest or biased in processing that request.[9] For example, in Order PO-2381, the adjudicator cited *Imperial Oil* and stated that the decision-maker responding to the access request, the CEO of the institution, was not required to be impartial in the way that would be expected of an independent adjudicator. In Order PO-2381, the adjudicator reviewed the CEO's compliance with the obligations under the *Act* and the exercise of his discretion in good faith, taking into account relevant considerations and disregarding irrelevant considerations. He found that the CEO was not in a conflict of interest in the processing of the appellant's request under the *Act* despite the CEO's personal involvement in the dealings with the requester that led to the requester's access request, and the fact that the parties were in litigation.

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[6] [2003] 2 SCR 624, 2003 SCC 58 (CanLII).
[7] *Ibid.*
[8] *Ibid.*
[9] See, for example, Orders PO-2381 and MO-3513-I.

Onus of proof

[43] The onus of demonstrating bias is on the person who alleges it, and mere suspicion is not enough.[10] While actual bias need not be proven, the Ontario Court of Appeal has noted that "the threshold for establishing a reasonable apprehension of bias is a high one." [11]

The test for reasonable apprehension of bias

[44] As mentioned under Issue A, the Supreme Court of Canada has said that, "the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information." The test stated by the Supreme Court for reasonable apprehension of bias is:

> 'what would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude. Would he think that it is more likely than not that [the decision maker], whether consciously or unconsciously, would not decide fairly.' [12]

Analysis/findings

[45] With these principles in mind, and as explained below, I find that the appellant has not established any conflict of interest or reasonable apprehension of bias on the part of the city's Legislative Compliance Coordinator who processed his request under the *Act*.

[46] The parties exchanged representations about the nature of the appellant's allegations of bias on the part of the employee who processed the request. Having considered the representations and supporting documentation of each party, I will refer to them in a general way in this public order.

[47] The appellant asserts that the employee who processed his access request is biased against him, and in support of this, he provided a transcript purporting to be of a recorded exchange he had with this employee before submitting his access request. He asserts that the employee has questionable motives and lacks credibility, and should not have been assigned to process his access request. The appellant submits that the employee's interpretation of his request was wrong, and confused the words "delegation" with "appointment," and that this was "misguided" due to a strained

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[10] See Blake, S., *Administrative Law in Canada*, (3rd. ed.), (Butterworth's, 2001), at page 106, cited in Order MO-1519.
[11] *Ontario Medical Association v. Ontario (Information and Privacy Commissioner)*, 2017 ONSC 4090 (Div. Ct.), appeal dismissed 2018 ONCA 673, citing *Martin v. Martin* (2015), 2015 ONCA 596 (CanLII) at para. 71.
[12] *Committee for Justice and Liberty et al. v. National Energy Board et al*. [1978] 1 SCR 369, 1976 CanLII 2 (SCC)

relationship with him, which he attributes to the exchange found in the transcript. The appellant also argues that the transcript shows that the employee presented herself as having a different name and different title, that of a purchasing assistant (not a Legislative Compliance Coordinator), thus diminishing her credibility.

[48] The city denies the appellant's allegations, including the reliability of the transcript as evidence of an interaction between the appellant and the employee (the Legislative Compliance Coordinator) who processed the request. As mentioned, the city provided evidence relating to this employee's title and responsibilities, and specifically denies that this employee ever held the position (purchasing assistant) that the appellant alleges was initially communicated to him.

[49] Having reviewed the parties' representations and the transcript upon which the appellant relies, I am not persuaded that a well-informed person, considering all of the circumstances, could reasonably perceive a bias, or apprehension of bias, in the processing of the appellant's request. First of all, based on my review of the transcript, I am not persuaded that there is sufficient evidence to conclude that it is in fact a transcript of a recorded exchange between the appellant and the employee who processed his access request.

[50] Apart from this document, the appellant makes what I find to be mere assertions about the title, and attitude and conduct towards him of the employee who processed his access request. I find that this evidence does not come close to meeting the high bar required to establish any conflict of interest or reasonable apprehension of bias on the part of the employee who processed the request.

[51] In addition, I note that the employee's name, title, and professional address, as claimed by her (Legislative Compliance Coordinator), match those generated by the IPC file management system that generates correspondence dealing with the city in this, and any, appeals with the city.

[52] I find no credible evidence that the employee who processed the appellant's access request had a special interest in the records at issue. The proper identification of responsive records and the scope of the request under the *Act* is neither unlawful nor evidence of bias, or a reasonable apprehension of bias.

[53] For these reasons, I do not find that the appellant has established that there was a bias, or reasonable apprehension of bias, on the part of the employee who processed his request under the *Act*.

Issue C: What is the scope of the request for records? Which records are responsive to the request?

[54] The city and the appellant disagree about whether the city identified responsive records to item 1 and whether the city should have processed all eight points listed in the appellant's request as part of one request. For the reasons set out below, I uphold

the city's decision on both counts.

[55] 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).

[56] To be considered responsive to the request, records must "reasonably relate" to the request.[13] Institutions should interpret requests liberally, in order to best serve the purpose and spirit of the *Act*. Generally, if there is ambiguity in the request, this should be resolved in the requester's favour.[14]

[57] Below, I will discuss the parties' disagreements about whether the records that were identified as responsive to item 1 are responsive to item 1, and whether items 2-8 are separate requests.

Item 1

[58] The city states that the records responsive to the first item listed in the request, which it refers to as request 1, are municipal by-laws, which are public documents. More specifically, the city says that the relevant by-law is 2018-121 - A By-law of the City of Greater Sudbury Respecting the Appointment of Officials of the City of Greater Sudbury (the appointments by-law).[15]

[59] The appellant states that he requested the city treasurer and deputy treasurer's

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[13] Orders P-880 and PO-2661.
[14] Orders P-134 and P-880.
[15] The city says that it provided the appellant with: instructions to the appellant on how to access the by-laws through the city's Clerk's Services, or online; a copy of the relevant page of the by-law (the currently applicable one), with highlighting of specific portions that address the functions of the Treasurer and Deputy Treasurer, for the appellant's ease of reference; and a table containing the reference numbers of previous by-laws, along with any amending by-laws, since request 1 was for records dating back to 2007.

written delegation of powers and duties, from January 1, 2007 to September 1, 2019, not by-laws.

[60] The city states[16] that the appellant has not provided any clarity regarding what type of record he believes is responsive, other than to say they are written records that are not by-laws.

[61] In addition, the city states the following:

> Municipalities make decisions through the passage of by-laws. The authority to act as Treasurer and Deputy Treasurer is delegated in the Appointments By-law. The Appointments By-law is a written document that delegates various powers and duties to different staff members including the Treasurer and Deputy Treasurer. The City therefore submits that the responsive records to the Appellant's Request #1 are publically available by-laws.

[62] The city also states that after the wording of item 1 was circulated to city staff in the Finance Department, they advised that the responsive records are the appointments by-laws that are available through Clerk's Services.

[63] Having considered the parties' representations, I find that the city has explained the basis of its identification of the by-laws as the records responsive to item 1, and that it is in a better position to provide evidence about its record holdings and its authority to appoint individuals to various positions than the appellant is. I accept the evidence that the authority to serve as the city's treasurer and deputy treasurer is delegated to individuals through the appointments by-law specified by the city. I accept the evidence provided by the city about why the by-laws are responsive to item 1.

[64] Therefore, I uphold the city's decision to identify the by-laws as responsive to item 1 of the request. The appellant also raises the issue of whether there are other records that could be responsive to item 1, and I address this under the issue of reasonable search at Issue D.

[65] As noted, the appellant did not appeal the city's claim of section 15 (publicly available) to deny access to these records.

Items 2-8

[66] In the Notice of Inquiry initially sent to the city, the previous adjudicator asked the city to provide representations in response to the standard questions asked about defining the scope of the appeal, as well as reasons that the city believes each of the eight bullet points in the request is a discrete category of information. The city was asked to review Orders MO-2459 and P-1267.

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[16] In the city's representations about its search for records responsive to item 1.

The city's position

[67] The city submits that the appellant submitted eight distinct items, each of which constitutes a separate request requiring a $5.00 application fee. As a result, the city submits that it appropriately processed only item 1.

[68] In support of its position, the city states that on the second page of its freedom of information request form, above the signature line for a requester, the city incorporated information about applicable fees, timelines and processes. This page says, in part: '[i]f multiple property addresses or distinct requests are involved, a $5.00 fee applies for each address and/or request."

[69] The city notes that the appellant signed the second page of the request.

[70] The city explains that when it received the appellant's request, it opened a file and sent the appellant a letter acknowledging receipt of the request. In the acknowledgement letter, the city advised the appellant that the request actually contained eight separate items, each of which was a separate request. Since only one $5.00 bill had been provided with the appellant's request, the city applied the $5.00 fee to the first item (request 1) listed and processed request 1 only.

[71] In the acknowledgement letter, the city also advised the appellant to submit a separate request and mandatory $5.00 application fee for each of the remaining seven items. The city states that the appellant did not submit additional requests. The city relies on IPC Order MO-2946 to support its position that separate unrelated items must be submitted in separate requests, each with its own $5.00 application fee.

[72] The city submits that the orders it was invited to comment on (Orders MO-2459 and P-1267) are distinguishable from this appeal because the facts are materially different.

[73] In Order MO-2459, the institution initially stated that the request was overly broad and could not be processed; then, after asking the appellant for a list of employees whose records should be searched, and the appellant doing so, the institution stated that it this was a separate request. In that appeal, the IPC did not accept that approach and decided that there was a commonality among each of the 361 items of the request (sign locations), and that these items should be processed as one request. In contrast, here, the city submits that unlike the circumstances in Order MO-2459, the city has always taken the position that the appellant submitted eight distinct requests, pointing to its acknowledgement letter, its Notice of Decision, and the wording on its freedom of information form. It also submits that each of the eight items listed in the request are distinct and do not share sufficient linkages to be considered as one request, unlike the 361 items in Order MO-2459.

[74] Regarding Order P-1267, the city submits that that order, too, is distinguishable from the current appeal. Although the 51-part request in Order P-1267 was not set out

in that order, the city submits that the adjudicator clearly indicates that there was a commonality between all but four of the 51 items (all but four related to the requester's experience of racial discrimination during a certain period). The city submits that, in contrast, in this appeal, each item listed in the request letter seeks access to "distinct, unrelated records from various timeframes and which are kept by different departments." In support of this submission, the city provides the table below, setting out the various subjects, timeframes, and departments for each of the eight items:

Item	Subject	Time frame	Department
1	Written delegations	January 1, 2007 to September 1, 2019	Publicly available through Clerk's Services
2	Security logs	September 26, 2018 to October 31, 2018	Security and By-law Services
3	Tender opening records[17]	August 15, 2018 to October 31, 2018	Purchasing
4	PeopleSoft entries/reports	September 26, 2018	Finance/Payroll/Purchasing
5	Employment related records	January 1, 2007 to September 1, 2019	Human Resources
6	Insurance policies	September 26, 2018 to October 15, 2018	Risk Management
7	Interests in land held by the City	January 1, 2007 to September 1, 2019	Real Estate Section and Legal Services
8	Bank Deposits	October, 2018 and November, 2018	Finance

[75] The city submits that most of the items have a unique timeframe and none of the items share a common subject matter. The city also points to its relevant retention by-law, showing that the retention period for the responsive records varies from record to record according to their classification.

[17] The city states that tender opening records, particularly the minutes of tender opening meetings, are currently the subject of appeal MA-00504. It also states that a number of tender related records are also publically available documents through the city's website.

[76] Of the three items that do share the same time frame (items 1, 5 and 7), the city submits that two of them (items 1 and 5) mention the treasurer and deputy treasurer. The city submits that the sharing of a timeframe and the use of two titles does not create sufficient linkages between items 1 and 5 to justify treating these two items as one request.

[77] In addition, the city states that delegation of authority records for the Treasurer and Deputy Treasurer are unrelated to these employees' retirement funds, medical records, or any other employment record listed by the appellant, and notes that the Act does not apply to most employment-related records.

[78] As mentioned, the city relies on Order MO-2946 to support its position that the appellant must submit separate requests for items 2 through 8. In Order MO-2946, three items were requested, all related to legal services: copies of retainer agreements and city processes regarding the use of external legal council, records related to drafting of zoning legislation by a named solicitor, and records related to legal fees. Despite the relationship to legal services of all the items, the institution determined that each item was sufficiently distinct to be a separate request. In determining that, the institution considered many factors, including the nature of the records, the relation of the requester to the records, and the institution's retention practices.

[79] The city submits that although the factors considered in Order MO-2946 are not determinative of the form in which a request must be made, they are indicative of the level of commonality, or lack thereof, among the items of a request. The city submits that in this appeal, the eight items requested by the appellant, like those in Order MO-2946, each target a discrete category of information. The city submits that there is not a single universal element linking each item listed in the request: there is no common subject matter, record type, or timeframe. The city submits that each of the eight items is a stand-alone request for which a separate application fee must be paid.

[80] In addition, the city submits that few shared elements between some of the items (time frame and the mention of the treasurer and deputy treasurer) are negligible and insufficient to constitute a "linkage in subject matter to justify treating this as a single access request," as in Order MO-2459.

[81] Furthermore, the city notes that none of the records responsive to items 2-8 can be considered as personal records of the appellant, but that some would contain personal information of other individuals.

[82] In conclusion, the city submits that the table it provided with its representations shows that each item of the request can easily be isolated from the other. Therefore, the city submits that the appellant should make separate requests for the remaining seven items (items 2 to 8) if he seeks that information.

The appellant's position

[83] The appellant submits that all of the items of the request are not separate and distinct, but are in fact, inter-related. He submits that the request is clear and is for specific records, all relating to tax sales – "the who, what, where, when and why."

[84] The appellant states that the inclusion of "only" eight points was his attempt at limiting the number of requests and lessening the burden on the city. The appellant states the he believes the records responsive to items 2-8 are, respectively: written records of delegation, written records of security, written records of city council, written employment records of the treasurer and deputy treasurer, records of insurance, property records and bank records.

[85] The appellant argues that in the IPC order that the city relies on, the appellant did not provide relevant representations, and that that, combined with the adjudicator's finding that the individual requests were not inter-related, resulted in an order that was not favourable to the appellant. The appellant contrasts that with the fact that he has submitted representations. He also argues that his request is clear and relates to discrete categories of information that are inter-related and should be considered as part of the same request.

[86] Furthermore, the appellant states that each item in the request is related to the treasurer and deputy treasurer. He states that these individuals are "statutorily required to conduct tax sales where a written delegation can occur," and that "security is assigned to the room where tax sales are conducted." In addition, the appellant states that the city prepares documents for: city council such as Minutes, agendas, presentations, etc.; employment records of treasurers and deputy treasurers; insurance policies; interests in land since a tax sale involves the sale of land; and bank statements representing the payment of such land which may have been sold by a treasurer in a tax sale, otherwise known as a sale of land for tax arrears.

[87] The appellant also relies on Order MO-3784, where he argues, the request closely resembled item 5 in his request. The request in Order MO-3784 was for "[...] all "legal fees" paid for Labour and Employment matters (not limited to retainer. Arbitrations, Proceedings, Negotiations, Settlements)" during a specified period and involving two named law firms.

[88] Finally, the appellant also raises the public interest override at section 16 of the Act in his representations. He submits that "[a]ll of the records will further prove" that the city's Tender Opening Committee unlawfully took away the powers and duties of the treasurer and/or deputy treasurer and assigned those powers and duties to a Committee for the purposes of conducting tax sales. The appellant alleges that the city "secretly and permanently, took away the private property and property rights of Canadians for the past 16 years," contrary to long-established property rights in Canada. The appellant also directed attention to the contents of a specified website for

further information in that vein. Therefore, the appellant argues that disclosure is in the public interest.

Analysis/findings

[89] Based on my review of the wording of the request and the parties' representations, including the past IPC orders discussed, I uphold the city's decision to consider items 2 to 8 as separate requests for the purposes of the application fee.

[90] I find that the IPC orders that the city was asked to comment on (Orders MO-2459 and P-1267) are distinguishable from the circumstances because I am satisfied that the eight items before me lack a sufficient common link between them. Similarly, Order MO-3784 is not helpful to the appellant simply because the request in that order is similar to one of the eight items listed in the request before me. On the other hand, Order MO-2946 is helpful to the city because it demonstrates that even if there is a general common link between various items in a request, that may not be sufficient to find that the items form part of the same request.

[91] Having reviewed each item of the request, I find that items 2 to 8 are distinct from each other, and from item 1. I agree with the city that the few shared elements between some of the items (time frame and the mention of the treasurer and deputy treasurer) are negligible and insufficient to constitute a "linkage in subject matter to justify treating this as a single access request." In addition, I find that the wording of the request does not clearly indicate that the request is for "tax sales – 'the who, what, where, when and why.'" It is worth noting that the words "tax sales" do not appear in request, that a wide variety of timeframes are involved, and that the subject matters listed are expansive. Furthermore, the fact that the city "prepares documents" in relation to the many subjects referenced by the appellant does not persuade me to accept that the eight items of the request are so inter-related to be a part of the same request.

[92] For these reasons, I find that in the circumstances of this appeal, the city was justified in treating each of the eight items as separate and distinct, and not processing items 2-8. As a result, I find that the appellant must file separate requests and pay the appropriate application fee for access if he continues to seek the information in items 2, 3, 4, 5, 6, 7, or 8.

[93] Given that the city did not make an access decision with respect to items 2-8, it is premature to consider the public interest override at section 16 of the *Act* in relation to these items. If the appellant files separate requests for these items and is denied access on the basis of one of the exemptions listed at section 16, he may choose to appeal and raise section 16 at that point.

[94] In light of my findings on the scope of this appeal, I will refer to request 1 as "the request" for the remainder of this order.

Issue D: Did the institution conduct a reasonable search for records in relation to request 1 (the request)?

[95] If a requester claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act*.[18] If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision. Otherwise, it may order the institution to conduct another search for records.

[96] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.[19]

[97] The *Act* does not require the institution to prove with certainty that further records do not exist. However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;[20] that is, records that are "reasonably related" to the request.[21]

[98] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are reasonably related to the request.[22] The IPC will order a further search if the institution does not provide enough evidence to show that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[23]

[99] If the requester failed to respond to the institution's attempts to clarify the access request, the IPC may decide that all steps taken by the institution to respond to the request were reasonable.[24]

The parties' positions

[100] In this appeal, as discussed, the parties disagree about whether the by-laws are responsive to the request. The city explained why the by-laws are responsive to the request, as set out above, in my assessment of whether the by-laws are responsive to the request. To the extent that the parties' representations about the reasonableness of the city's search were about whether the by-laws are responsive, I will not repeat those arguments because I have already found that the by-laws are responsive.

[101] The city states that the appellant made the request in writing and provided sufficient detail for an experienced employee to identify responsive records. As a result,

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[18] Orders P-85, P-221 and PO-1954-I.
[19] Order MO-2246.
[20] Orders P-624 and PO-2559.
[21] Order PO-2554.
[22] Orders M-909, PO-2469 and PO-2592.
[23] Order MO-2185.
[24] Order MO-2213.

the city submits that there was no need for the city to inform the appellant of a defect in the request from a lack of clarity.[25]

[102] Furthermore, the city explains that after it received the request, it circulated its wording (that is, the wording of item 1) to staff in the city's Finance Department. Those staff advised that the responsive records are the appointments by-laws, which are available through Clerk's Services.

[103] The city states that an institution is required to perform a reasonable search for records and is not required under the Act to prove with certainty that additional records do not exist. Furthermore, the city's position is that it employed an experienced employee knowledgeable in the subject matter of the request to do so. It provided affidavit evidence that the employee responsible was the Legislative Compliance Coordinator since 2016. The role of that individual, as evidenced by the job descriptions provided by the city, includes the responsibility of processing freedom of information requests.

[104] The appellant's view is that the city employee responsible to search for responsive records was actually a purchasing assistant employed by the city on a temporary basis, and was not really a Legislative Compliance Coordinator. As discussed, he provides a transcript of what he claims to be a discussion he recorded with this individual in support of this assertion. He also asserts that the city then changed the employee's title to suit the city's needs (presumably in support of the reasonableness of its search), and that this individual was not sufficiently experienced to process his request. In addition, the appellant submits that the employee misinterpreted his request because she was not experienced enough to conduct a search, in that she confused the words "delegation" with "appointment."

[105] The city denies the appellant's allegations and provided evidence of the employee's title and job description.

Analysis/findings

[106] Based on my review of the evidence before me, I find that the city provided sufficient evidence that the Legislative Compliance Coordinator was responsible for searching for responsive records, and that she is an experienced employee for the purposes of conducting that search, given her job responsibilities and years of experience in the role.

[107] In contrast, I find that the appellant did not provide reliable evidence challenging the role and experience level of this employee, relying mainly on his assertions and a transcript that he says reflects an interaction between himself and the employee who conducted the search. Based on my review of that transcript, I find it does not sufficiently establish the timeframe, individuals involved, or other such particulars such

[25] As it would have been under section 17(2) of the *Act*.

that I could be persuaded to accept it as reasonable, credible evidence of any of the appellant's allegations about the employee who conducted the search.

[108] In addition, for the reasons I have set out above, I accept the city's determination that the by-laws identified are responsive to the request and did not misinterpret the wording of the request. I find that the appellant has not established a basis for believing that further responsive records exist in response to the request (item 1 of his request).

[109] For these reasons, I find no reasonable basis to order a further search for these records, and I uphold the city's search as reasonable.

ORDER:

I uphold the city's decision and the reasonableness of its search, and dismiss the appeal.

Original Signed by: January 19, 2022

Marian Sami
Adjudicator