

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4195

Appeal MA20-00409

City of Hamilton

May 11, 2022

Summary: The City of Hamilton (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for access to records relating to a specified address. The city issued a decision stating that records responsive to the appellant's request do not exist. The appellant appealed the city's decision to the Information and Privacy Commissioner of Ontario, because she believes records responsive to her 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 Hamilton (the city) conducted a reasonable search for records relating to the building at a specified address. The city received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

[Specified address]

Hamilton Fire Dept.

All records in building file including all order, inspection notes, property information forms, plans, approvals, checklists, letters, inspection sheets, etc. from opening building file to present.

[2] The city issued a decision to the appellant stating that division staff completed a property record search and did not identify any responsive records.

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

[4] During mediation, the appellant advised that she was pursuing access to any records relating to the specified address, however, in particular, she was interested in records relating to a requirement that the building have a "secondary means of egress," an alternate means of leaving the building. The city maintained its decision that no records exist, but suggested that the appellant verify the specified address in case there was an error.

[5] The appellant provided a revised address. After a subsequent search, the city advised that no records exist for the revised address. The appellant believes that records exist relating to the original specified address.

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

[7] 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?

[8] The appellant claims that records responsive to her request about the specified address 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 17.¹ If 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.

[9] 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.² A reasonable search is one in which an experienced employee knowledgeable in the

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

subject matter of the request expends a reasonable effort to locate records which are reasonably related (responsive) to the request.³

[10] 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.⁴

Representations of the city

[11] The city submits that it conducted a reasonable search for responsive records. In support of its position, the city submitted the affidavit of its Access and Privacy Officer (access officer). The relevant portions of the access officer's affidavit are as follows:

- The access officer has personal knowledge of the facts as set out in the affidavit, because she has been directly involved with this file.
- The access officer was advised by the city's Chief Fire Prevention Officer (fire officer) that searches were conducted for responsive records related to the specified address.
- The fire officer advised that records were searched and nothing was found with respect to the specified address. The fire officer advised that the address was not recognized in the Tax Property database (property tax database) or on the city's GIS Property Lookup Maps (GIS system).
- The fire officer and the Fire Prevention Secretary (fire secretary) conducted the searches for records. They searched in the city's two Fire Department Records databases for fire prevention building inspection files and fire response records related to the specified address.
- The access officer states that as the specified address was not recognized in the city's GIS system or its property tax database, this would explain why the city's search for records did not find any information associated with the specified address. The access officer notes that it is possible that the address specified by the appellant is incorrect.

Representations of the appellant

[12] The appellant accepts the city's submission, and concedes, that the specified address is not recognized in the city's GIS system, but submits that it was deleted from the GIS system. The appellant submits that the specified address was an established municipal address that was recognized in the GIS system during the 1990s.

³ Orders M-909, PO-2469 and PO-2592.

⁴ Order MO-2246.

[13] The appellant also concedes that the specified address is not recognized in the city's property tax database, and states that it is because the property was not established for property tax purposes as it was deleted from the GIS system.

[14] The appellant submits that she reasonably believes that records exist for the specified address, because the city's Fire Safety Regulations in by-law 4797⁵ would have mandated that this property have a secondary means of egress. The appellant submits, therefore, that the city's Fire Prevention Department would have issued an Inspection Order to the owner of the specified address to erect and maintain a secondary means of egress.

[15] The appellant submits that the city's affidavit was sworn by the city's access officer, which does not conform to the requirement that "the affidavit should be signed by the person or persons who conducted the actual search" as per page 5 of the Notice of Inquiry. The appellant submits that the affidavit should have been made and signed by the fire officer or the fire secretary.

[16] The appellant submits that she does not know, and it is not clear from the city's representations, whether the city's Fire Department Records databases and the files searched contain all records for all periods for all municipal addresses, even those that have been deleted from the GIS system.

The city's reply

[17] The city submits that the appellant has had many opportunities to provide it with a corrected municipal address, and to date, she has not provided one. The city maintains that it conducted a reasonable search for responsive records.

Analysis and findings

[18] 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.⁶ 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.

[19] The appellant's request is for fire department records related to a specified address. The appellant concedes that the specified address is not currently part of the city's GIS system or property tax database. However, the appellant argues that it was an address recognized in the city's GIS system in the 1990s, but has since been deleted. The appellant further argues that since it was at one time a recognized address in the city's GIS system, records related to it should exist.

⁵ The appellant did not identify or elaborate further on this by-law.

⁶ Orders P-85, P-221 and PO-1954-I.

[20] While the appellant has provided reasons for her belief that records responsive to her request should exist, I find that these reasons do not establish a reasonable basis under the *Act* to conclude that records responsive to her request should exist. As stated, the appellant concedes that the specified address is not currently part of the city's GIS system or property tax database. Therefore, in my view, it is not unreasonable to conclude that the city would not have any records related to this address. While the appellant argues that the specified address was included in the city's GIS system in the 1990s, this alone is not sufficient to establish a reasonable basis for believing that records related to the specified address should exist 25-30 years later when the address is no longer in use. Furthermore, the appellant has previously provided the city with an alternative address, and although the city also searched that address, it did not locate any responsive records. Therefore, I find that the appellant has not established a reasonable basis to conclude that records responsive to her request should exist.

[21] The appellant also argued that the city did not conduct a reasonable search for responsive records, because the two fire department staff members that conducted the search should have signed the city's affidavit instead of the city's access officer. Although it would have been helpful for the city to have the two fire staff members swear their own affidavits, I am satisfied that the evidence of these two staff members regarding their search efforts was adequately conveyed in the access officer's affidavit. In the circumstances of this appeal, the appellant's concern about the form of the city's evidence in this regard does not provide a sufficient basis upon which to find that the city did not conduct a reasonable search for responsive records.

[22] I am not persuaded, based on the evidence before me, that ordering the city to conduct another search will locate records that the appellant claims should exist. 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,⁷ which I find that the city has done.

[23] 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. As noted above, 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.⁸ I am satisfied that the city has provided sufficient evidence to establish this to be the case here. Based on the representations of the city, and in the absence of persuasive evidence to the contrary, I am satisfied that the city's search for responsive records was reasonable.

⁷ Orders P-624 and PO-2559.

⁸ Orders M-909, PO-2469 and PO-2592.

ORDER:

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

Original Signed by: _____

Anna Truong
Adjudicator

_____ May 11, 2022