

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4215

Appeal MA20-00196

City of Toronto

June 21, 2022

Summary: The City of Toronto received a request for access to records relating to a permit issued to a specified address in 2013. The city granted partial access to the responsive records it identified. The requester appealed the city's decision on the basis that additional records should exist. In this order, the adjudicator finds that the city conducted a reasonable search for responsive records and dismisses the appeal.

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

OVERVIEW:

[1] This order considers the reasonableness of the search conducted by the City of Toronto (the city) after receiving a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following:

Copy of permit issued to [specified address] August 26, 2013 by [a Transportation Services staff member]. This permit existence is documented by [a named officer] in their Directive dated December 11, 2018 in the comments section. We received a copy this directive in our FOI request [specified number]. The permit number is not given. Please provide all supporting documents such as the permit, sketches, drawings, surveys, original application, photos, investigations, email correspondence of city staff.

[2] The city issued a decision granting partial access to responsive records and withholding some information on the basis of the personal privacy exemption in section 14(1) of the *Act*.

[3] The appellant appealed the city's decision to the Information and Privacy Commissioner of Ontario (IPC). During mediation, the appellant confirmed that they were not seeking access to the information withheld pursuant to section 14(1) and the application of the personal privacy exemption to the withheld portion of the records is therefore not an issue in this appeal.

[4] The appellant clarified the scope of their request and stated that they were seeking access to diagrams, drawings or surveys related to the fence permit issued in 2013 for the address specified in the request (the 2013 fence permit).

[5] The appellant stated that they believed that other responsive records exist, specifically drawings, in addition to those to which the city granted partial access.

[6] During mediation, the city explained its searches and that it had consulted with staff, including those involved with site visits regarding the 2013 permit and confirmed that there were no diagrams produced and therefore no further records exist.

[7] As a mediated resolution of the appeal was not achieved, the file was transferred to the adjudication stage of the appeal process, during which an adjudicator may conduct an inquiry.

[8] The adjudicator originally assigned to the appeal sought and received representations from the city and the appellant. Representations were shared in accordance with section 7 of the IPC's *Code of Procedure* and Practice Direction 7.

[9] The appeal was then transferred to me to continue the adjudication of the appeal. I have reviewed the complete file material, including the representations from the city and the appellant, and have concluded that I do not need any further information before rendering a decision. For the reasons that follow, I find that the city conducted a reasonable search for records responsive to the appellant's request and I dismiss the appeal.

DISCUSSION:

Did the city conduct a reasonable search for responsive records?

[10] Where a requester claims that 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 of the *Act*.¹ If I am satisfied

¹ Orders P-85, P-221 and PO-1954-I.

that the search carried out was reasonable in the circumstances, I will uphold the city's decision. Otherwise, I may order the city to conduct another search for records.

[11] The *Act* does not require an 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.² To be responsive, a record must be "reasonably related" to the request.³

[12] 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.⁴

[13] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they must provide a reasonable basis for concluding that such records exist.⁵ In the context of this appeal, the issue of reasonable search arises because the appellant believes that additional records, specifically drawings or surveys, exist in relation to the 2013 permit.

Representations

[14] The city states that following receipt of the appellant's request, it sought clarification from the appellant. On the basis of the clarification received, the city states that it conducted searches for responsive records specifically from Transportation Services, the department that issued the 2013 fence permit.

[15] In an affidavit, the city's Coordinator of Permits and Enforcement in Transportation Services explained that they conducted a search for and located the file pertaining to the 2013 fence permit. The file contents were scanned and forwarded to the city's records department. The city states that it then issued the access decision granting the appellant partial access to the responsive records.

[16] The city states that the appellant had also made an access request under the *Act* for records pertaining to the property adjacent to the address specified in the request giving rise to this appeal (the first access request). In responding to the first access request, the city established that surveys and diagrams had been generated as a result of an unresolved boundary dispute regarding the specified address and the adjacent property. The city states that the need for the drawings was driven by the occupier of the adjacent property and not the specified address in the request to which this appeal relates. Accordingly, any diagrams or drawings that were produced were subsequently placed in the file relating to the adjacent property.

² Orders P-624 and PO-2559.

³ Order PO-2554.

⁴ Orders M-909, PO-2469 and PO-2592.

⁵ Order MO-2246.

[17] The city explained that while diagrams and surveys may prove helpful in determining lot lines, they are not a requirement for fence permit applications and the comments regarding drawings that appeared in the directive for the 2013 fence permit and noted by the appellant in the request, only serve as guidelines for permit holders.

[18] The city submits that although the site drawing was not responsive to the first access request, it had been provided to the appellant in good faith as part of the city's response. The city also states that the same drawing has previously been provided to the appellant in response to a third access request he made.

[19] In response, the appellant states that there were two fence permits issued in relation to the specified address: the first was issued in 2013 and the second in 2018. The appellant notes that within the records relating to the fence permit issued in 2018, there is a notation referring to the earlier permit (the 2013 fence permit), which has given rise to this request.

[20] The appellant submits that the two fence permits are connected even though they were issued five years apart. The appellant bases this submission upon their review of the site drawing relating to the 2018 fence permit provided by the city. The appellant submits that this drawing shows a handwritten date of "Dec. 12th 2018", which the appellant believes to have been altered from an original handwritten date of August 2013. It is the appellant's belief that a drawing from the permit issued in 2013 was moved to the file relating to the 2018 fence permit.

[21] The appellant argues that the city has not conducted a reasonable search for records responsive to their request because the city did not interview bylaw officers to establish a "chain of custody" of the 2013 fence permit drawing.

[22] In reply representations, the city submits that searches conducted in respect of all the appellant's requests have identified the same site drawing, which although not responsive to the requests was provided to the appellant in good faith. The city submits that during the mediation of the first access request, Transportation Services was asked to search for a diagram, drawing or survey produced as part of the 2013 fence permit process and they confirmed that there is no such record in relation to the 2013 permit.

[23] The city submits that there is no reasonable basis for the appellant's belief that a drawing exists in relation to the 2013 fence permit and that the handwritten markings on the 2018 drawings are an inadequate basis on which to reach the conclusions drawn by the appellant. The city states that it does not conduct interviews as part of its access and disclosure process and its searches are carried out by experienced and diligent staff, which is attested to in the affidavit evidence submitted.

[24] In sur-reply representations, the appellant submits that the city has not provided any evidence that a drawing did not exist in relation to the 2013 fence permit, including any evidence that an exemption for the drawing requirement was granted. The

appellant reasserts their position that the evidence points to a drawing having existed in the 2013 fence permit file and being moved to the file relating to the 2018 fence permit.

Analysis and findings

[25] For the reasons that I set out below, I find that the city expended reasonable efforts to locate records that are reasonably related to the appellant's request. I also find that the appellant has not demonstrated a reasonable basis for concluding that additional records exist that are responsive to their request.

[26] The appellant believes that additional records exist beyond those disclosed by the city in response to the request, specifically in the form of a drawing or survey that was generated in connection with the 2013 fence permit relating to the specified address. The basis for the appellant's belief is an apparent alteration of a handwritten date on a site drawing pertaining to a fence permit issued in 2018. The appellant believes that this drawing, or a version of it, originated in the file pertaining to the 2013 fence permit and is therefore responsive to the request.

[27] As I have noted above, a requester will rarely be in a position to indicate precisely which records an institution has failed to identify in response to a request, however, a requester must still provide a reasonable basis for concluding that such records exist.⁶

[28] The appellant provided me with a copy of the records disclosed by the city in response to the first access request. I have reviewed these records and note the reference to the 2013 fence permit in the comments section on the 2018 permit directive, where it is written:

*as per previous construction permit issued on August 26, 2013 by [Transportation Services]. No fee or encroachment agreement is required.

[29] I note that as part of the appeal process relating to the first access request, a site drawing of the adjacent property was provided to the appellant. This drawing includes the address specified in the request giving rise to this appeal. The appellant has provided a copy of this site drawing, which I note has a handwritten date of "Dec. 12th 2018."

[30] The city submits that this site drawing was not responsive to the first access request but was provided in good faith. However, it appears that the disclosure of this site drawing may have contributed to the appellant's belief that records pertaining to fence permits granted by the city should include drawings, diagrams or surveys relating to the permit process.

⁶ Order MO-2246.

[31] In light of the city's representations, however, I am not satisfied that there is a reasonable basis for the appellant's continued belief that additional responsive records exist in respect of their request for records pertaining to the 2013 fence permit.

[32] I accept the city's explanation that while drawings may sometimes be helpful in determining lot lines, they are not a prerequisite for fence permit applications. I am therefore satisfied that there is a reasonable explanation for why the 2013 fence permit application might not have included a drawing and why additional records have not been identified in relation to the appellant's request.

[33] I find that the city's explanation together with the evidence before me suggest that the record being sought by the appellant does not exist. In particular, I note the evidence of the city staff who conducted site visits in relation to the 2013 permit application that no drawings were produced as part of that process. This evidence is consistent with the explanation that the site drawing provided to the appellant in response to the first access request was generated as a result of an unresolved boundary dispute between the specified address and the adjacent property.

[34] In addition, the possible alteration to the handwritten date on the site drawing provided to me by the appellant does not establish a reasonable basis for concluding that additional responsive records in the form of drawings or surveys relating to the 2013 fence permit exist but have not been located by the city.

[35] I find that the city has conducted a reasonable search for records responsive to the appellant's request, including any records consisting of drawings, diagrams or surveys generated in relation to the 2013 fence permit pertaining to the specified address.

[36] I am satisfied, based on the evidence of the city set out in the affidavit of the city's Coordinator of Permits and Enforcement, that the city has expended reasonable efforts to locate responsive records by asking an experienced employee knowledgeable in the subject matter of the request to locate the file relating to the 2013 fence permit. These efforts included searches by staff in the permit files held by the relevant city department, Transportation Services, and consultation with staff involved in the site visits related to the 2013 permit to establish whether diagrams were produced as part of that fence permit process.

[37] I do not agree with the appellant's submission that a reasonable search for responsive records should include conducting interviews with bylaw officers to establish a "chain of custody" in relation to a permit drawing. As already noted, the *Act* does not require the city to prove with absolute certainty that further records do not exist. I must only be satisfied that a reasonable search has been conducted. I have accepted the city's explanation for why a drawing, diagram or survey in relation to the 2013 fence permit application may not exist. I therefore find that expending effort to establish a "chain of custody" in respect of a record that may not exist goes beyond the reasonable

effort that is contemplated by section 17 of the *Act*.

[38] Accordingly, I find that the city's search for records responsive to the appellant's request was reasonable and I uphold it.

ORDER:

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

Original Signed by _____
Katherine Ball
Adjudicator

_____ June 21, 2022