

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4214

Appeal MA20-00277

The Corporation of the City of London

June 20, 2022

Summary: The appellant sought access to records related to an order by the Corporation of the City of London (the city) to remove a dying tree from the boulevard in front of his property. The city issued an access decision disclosing responsive records in part, withholding portions on the basis of the mandatory personal privacy exemption in section 14(1) or because it was non-responsive to the request.

The appellant appealed the city's decision and raised the reasonableness of the city's search for records as an issue on appeal. Following mediation of the appeal, only the issue of the city's search for responsive records was left to be decided, as the appellant did not pursue access to the information withheld by the city from the records.

In this order, the adjudicator upholds the city's search for responsive records as reasonable and dismisses the appeal.

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

OVERVIEW:

[1] The appellant sought access to records related to an order by the Corporation of the City of London (the city) to remove a dying tree (the tree) from the boulevard in front of his property.

[2] Specifically, the appellant made a request to the city for records about the tree for the date range of "1900-01-01 to 2020-06-22" under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA or the Act)* that stated:

1. All related records associated with the tree located on the boulevard at [the appellant's address (the address)], London, ON.
 - The tree info can be located in the Tree Inventory using the "Unique Tree ID" [#].
 - Tree inspections Reports (All).
2. All written and email communications between the appellant and [four named] Forestry Services personnel.
3. City order [#] (Date issued: January 10, 2020).

[3] The city issued an access decision to the appellant disclosing the responsive records in part, severing portions of eight pages under the mandatory personal privacy exemption in section 14(1) of the *Act*. A portion of one page of the records was also severed as being not responsive to the request.

[4] The city also advised that, under its record retention bylaws, records relating to tree removals and inspections are disposed of after 5 years, as are all emails.

[5] The appellant appealed the city's decision to the Information and Privacy Commissioner of Ontario (the IPC). A mediator was appointed to attempt resolution of this appeal.

[6] During mediation, the appellant confirmed with the mediator that he did not take issue with the severances applied to the records under section 14(1). He also confirmed he is not seeking access to the information that was severed as not responsive to the request.

[7] The appellant raised the issue of reasonable search, in that he believed additional records responsive to his request should exist. He clarified that he was seeking access to a tree inspection report that he believed would have been created on June 13, 2019. The appellant also wanted any records indicating the history of the transition of the tree from public to private tree. The city conducted the searches and advised it could not locate any additional records.

[8] During mediation, the appellant sought access to the audit trails of the databases in relation to the tree. The city advised that it was unable to produce the audit information he was seeking. No further mediation could be conducted and the appellant confirmed with the mediator that he wished to proceed with the appeal to adjudication, where an adjudicator may conduct an inquiry, on the sole issue as to whether the city

conducted a reasonable search.

[9] I decided to conduct an inquiry and sought the representations of the city initially, which were sent to the appellant. The appellant provided representations in response. I shared the appellant's representations with the city and received reply representations. This was shared with the appellant who provided sur-reply representations. The city was given an opportunity to respond to the appellant's sur-reply representations, but declined to do so.

[10] In this order, I uphold the city's search for responsive records as reasonable and dismiss the appeal.

DISCUSSION:

Did the city conduct a reasonable search for records?

[11] 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 17.¹ If I am satisfied that 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.

[12] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.² To be responsive, a record must be "reasonably related" to the request.³

[13] 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

[14] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.⁵

[15] 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 that such records exist.⁶

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Order PO-2554.

⁴ Orders M-909, PO-2469 and PO-2592.

⁵ Order MO-2185.

⁶ Order MO-2246.

[16] A requester's lack of diligence in pursuing a request by not responding to requests from the institution for clarification may result in a finding that all steps taken by the institution to respond to the request were reasonable.⁷

[17] The city was required to provide a written summary of all steps taken in response to the request. In particular:

1. Did the institution contact the requester for additional clarification of the request? If so, please provide details including a summary of any further information the requester provided.
2. If the institution did not contact the requester to clarify the request, did it:
 - a. choose to respond literally to the request?
 - b. choose to define the scope of the request unilaterally? If so, did the institution outline the limits of the scope of the request to the requester? If yes, for what reasons was the scope of the request defined this way? When and how did the institution inform the requester of this decision? Did the institution explain to the requester why it was narrowing the scope of the request?
3. Please provide details of any searches carried out including: by whom were they conducted, what places were searched, who was contacted in the course of the search, what types of files were searched and finally, what were the results of the searches? Please include details of any searches carried out to respond to the request.
4. Is it possible that such records existed but no longer exist? If so please provide details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.
5. Do responsive records exist which are not in the institution's possession? Did the institution search for those records? Please explain.

Representations

[18] The city states that the appellant sought access to "all tree inspection reports" and emails related to the tree for the period of "1900-01-01 to 2020-06-22." It states that the appellant was advised that any emails and records of tree removals, inspections and orders are maintained for 5 years in accordance with the city's records retention bylaw and, therefore, it was unlikely that any records dating back to the 1900s were in existence.

⁷ Order MO-2213.

[19] The city states that it had advised the appellant that its Information and Technology Service (ITS) department would conduct an email search using the names of staff members whose email correspondence he wished to receive, as well as using the appellant's address and email as keywords in its search for responsive records.

[20] According to the city, the appellant then advised that he was seeking copies of any paper letters mailed by Forestry Services, and any record "that showed the reason(s)/additional info surrounding a letter being sent." The city states:

The email search component of the request was executed in accordance with City Council's Access and Privacy Policy. The request was forwarded directly to the Director of IT, Finance & Corporate Services. The search was conducted by [name], Manager, Messaging and Mobility, who is experienced in conducting email searches in response to MFIPPA requests. A search was conducted of each of the email accounts in question using the keywords specified by the requester within the provided time-frame...

...By-law Enforcement was contacted inquiring if they were in the possession of records related to the [requested city] order. By-law Enforcement conducted a search of their records and advised that they did not have any records related to this request...

[The Manager, Urban Forestry] searched through records in the control of Urban Forestry and responded by sending the requested ...order. The Records Retrieval form completed by [the Manager, Urban Forestry] detailed that a search was conducted for both electronic and physical records by searching the file cabinet at the Urban Forestry Office; the shared drive titled "Property Standards"; their SharePoint library; the Amanda⁸ application under "Property Standards"; the CRM⁹ application; and emails.

Records were also requested [and] were received from [the Manager, Forestry Operations]. A completed Records Retrieval Form was returned on July 6, 2020. The Records Retrieval Form indicated that [he] and [name], Forestry Clerk, conducted a search of ... the CRM database that staff use to maintain Forestry Operations records. [They] advised that physical records are not maintained by Forestry Operations [and] did not exist elsewhere (i.e. shared drives, SharePoint, Amanda application) and was advised that Forestry Operations only keeps records in the CRM database...

⁸ Advanced Maryland Automatic Network Disk Archiver.

⁹ Customer Relationship Management.

[A]fter receiving records in response to his request, [the appellant] emailed ... advising that there was a "missing" record related to a tree inspection that occurred on June 13, 2019.

[21] The city further states that a search was then conducted for this missing record by the four Forestry employees named in the request in the:

- CRM database,
- file cabinet at the Urban Forestry Office,
- shared drive titled "Property Standards",
- SharePoint library,
- Amanda application under "Property Standards",
- CRM application, and
- emails.

[22] The city states that these four Forestry employees did not find any responsive records to a tree inspection which occurred on June 13, 2019.

[23] As set out above, the city states that during the mediation stage of the appeal, the four Forestry employees were asked again to search for a tree inspection report that occurred on June 13, 2019 and, also, as specified by the appellant, for any "records indicating the history of the transition of the tree from public to private, including any records related to the reasons for the change." They repeated these searches through the locations mentioned above and again did not locate these records.

[24] The city states that the Manager, Service London also searched the CRM database and advised that no records related to a tree inspection report on June 13, 2019 for the address exists on this database.

[25] The city states that its Manager, Forestry Operations has advised that there were no responsive records related to the part of the request regarding the transition of the tree from public to private as the tree in question was never deemed "a public tree." The city states that its Geomatics¹⁰ Division confirmed that the tree in question was a private tree. Accordingly, no records "indicating the history of the transition of the tree from public to private" were found.

¹⁰ Geomatics is defined as the modern discipline which integrates the tasks of gathering, storing, processing, modeling, analyzing, and delivering spatially referenced or location information. See <https://www.nrcan.gc.ca/science-and-data/science-and-research/geomatics/10776>

[26] The city states that the Manager, Forestry Operations explained that the appellant may be assuming that the tree is a public tree because it was originally included in the tree inventory map database, similar to many other private trees that are located close to property lines. It states that staff will input locations of all trees near property lines in the tree inventory map database, and later verify ownership via Geomatic measurements; privately owned trees are removed from the tree inventory map database once Geomatics confirms that they are located on private property.

[27] The city states that a record of an email communication that confirmed that the tree was located on private property (and was therefore a private tree) was provided to the appellant.

[28] The city states that during mediation of this appeal, the appellant made an additional request for the audit trail for the data inputted in the tree inventory map database. A search by the city's ITS was done and responsive records were not located responsive to this additional request made by the appellant.

[29] The city concludes by stating that the tree named in the request was never deemed a public tree and that:

Staff are not aware of or have been able to find an inspection report related to a tree inspection at [the address] from June 13, 2019. It is not likely that such record existed but no longer exists because staff conducted a reasonable search on three different occasions; this type of record would be maintained by the city in accordance with its Records Retention By-law until June 13, 2024. Further, [the Manager, Records and Information Services] confirmed with [Manager, Service London] no such record existed on the CRM database, and staff conducting the search confirmed that no responsive records were located elsewhere (shared drives, SharePoint, physical records, Amanda, file cabinets).

[30] The appellant states that he only agreed to narrow his request regarding the order mentioned in his request to the order only and not all records associated with the order. He specifically states that he requested all tree inspection reports about the tree.

[31] The appellant submits that the city appears to have improperly narrowed the search criteria based on whether or not the tree was ever deemed a public tree.

[32] The appellant agrees with the city that the city removed the tree from the tree inventory map database following Geomatics' determination of the tree's physical location. However, he submits that the city should have addressed the retention of records under its Records Management Policy about the removal of the tree from the tree inventory map.

[33] The appellant refers to the city's Records Management Policy that facilitates records retrieval. He submits that the city should not need to do a "deep-dive" into any

system, including the tree inventory map database, to retrieve "removed" records, or to determine what activities have taken place.

[34] The appellant states that, during the mediation stage of this appeal, the city's Forestry Operations Manager advised him that the Notice letter he received about dying trees near his address did not actually indicate which specific tree(s) the letter was referring to, and that the letter did not refer specifically to the tree at issue at his address. He also states that the city's Forestry Operations Manager told him that the tree was added to the Tree Inventory in 2002, and this record was removed by the Forestry Clerk on December 13, 2019 following Geomatics' findings that the tree was on private property.

[35] The appellant concludes that the IPC should order the city to locate and provide all records related to:

- Historical revisions associated with the tree that was removed from the tree inventory map database by Forestry Operations, and
- The Notice letter sent by Forestry Operations to the appellant.

[36] In reply, the city states that it did not narrow the scope of the appellant's request, which was for all records relating to the tree located on the boulevard at the appellant's address, and, as later clarified, to include all tree inspection reports for this address. The city confirms that it searched for all of these records.

[37] The city states that it is clear from the records provided to the appellant that the city did not narrow the scope of the appellant's request. In response to the appellant's request, the city states that the appellant received the file for the appellant's address that was listed in the request containing:

1. Order Issued to [the appellant], including schedule of required repairs,
2. Handwritten Inspection Note,
3. CRM Service Request Report,
4. Inspection photos,
5. Complaint Inspection Request,
6. Distinctive Tree Permit to destroy distinctive tree at [the address],
7. Memo to File ...for January 9th, 2020 tree inspection,
8. Site Visit Notes ...for January 9th, 2020 tree inspection,
9. Tree Work Order Report showing data for May 12, 1998 tree trimming,

10. Notice Letter to [the appellant] regarding [the address] informing that trees that are in poor condition will be removed,
11. Registered mail receipt [to the appellant], and
12. Eight emails containing various attachments related to [the address] (e.g. aerial photos showing property lines, CRM reports).

[38] The city also refers to its previous representations that detailed a secondary search that was conducted after the appellant alleged there was a missing record related to a tree inspection report that occurred on June 13, 2019.

[39] In sur-reply, the appellant states that the city has not conducted a reasonable search for responsive records. Specifically, the appellant states that the city has not addressed its records retention policy regarding the details as to when the city's Forestry Operations removed the tree from the tree inventory database.

[40] The appellant also states that he should have received records showing the reason for sending the Notice letter. He states:

Given the city's repeated claims that the Notice Letter positively does not refer to the tree, the record(s) showing which specific tree(s) the letter does refer to should have been easily located and released.

[41] The city was given the opportunity to respond to the appellant's sur-reply representations, but did not do so.

Findings

[42] The issue to be decided by me in this appeal is whether the city has conducted a reasonable search for records as required by section 17.

[43] In making my determination as to the reasonableness of the city's search for responsive records, I must consider whether the city has provided sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records. I also must consider whether the appellant has provided a reasonable basis for me to conclude that additional responsive records exist.

[44] In this appeal, the appellant sought access in his request to records associated with a dying tree located on the boulevard at his address. His request included any tree inspections reports about this tree. In addition, the appellant wanted emails between himself and four Forestry Services personnel and a copy of a specific city order.

[45] Based on my review of the parties' representations, including the city's very detailed representations on the search it undertook to locate responsive records, and the records disclosed to the appellant, I find that the city undertook a reasonable

search for responsive records.

[46] The city disclosed the 12 different items noted above to the appellant. These items were all related to the tree identified in the request.

[47] Upon review of the city's description of the searches undertaken to locate responsive records and the list of the 12 different types of records it had located, the appellant indicated in his sur-reply representations that he believes that the city had not provided him with the following information about two different items:

1. the details as to when the city's Forestry Operations removed the tree from the tree inventory database because it was a private tree, not a public tree, in the context of its records retention policy; and,
2. the reason the Notice letter was sent to him.

[48] Concerning the responsive records the appellant asserts were not located by the city, the appellant must provide a reasonable basis for concluding that such records exist. The appellant has identified two types of records that he believes have not been located by the city.

[49] The first item sought by the appellant are details as to when the city's Forestry Operations removed the tree from the tree inventory database because it was a private tree, not a public tree, in the context of its records retention policy.

[50] The city already provided this information to the appellant. In his representations, the appellant indicates that he was advised during the mediation of this appeal that the tree was added to the tree inventory map database in 2002 and was removed from this database on December 3, 2019 following Geomatics' findings that the tree was not a city public tree but a private tree on private property.

[51] The appellant was also provided details of the city's records retention policy in the decision letter, which advised the appellant that:

...all records related to tree removals and inspections ... are disposed of after a retention period of 5 years. The Records Retention Bylaw also stipulates that emails are automatically disposed of 5 years after their date of creation.

[52] This information was also reiterated in the city's representations. I find that the city was required to determine whether responsive records exist that would contain the information requested by the appellant. I find that the city has provided the appellant with the information about the first item he believes the city has not yet located.

[53] Regarding the second item, the appellant seeks information about which tree or trees the Notice letter refers to. The Notice letter is addressed to the appellant and the

"re: line" lists his address. This letter reads:

Dear Neighbour,

You may have noticed a number of maple trees around the City of London which are declining or dying. We have assessed all the Norway maples on City Road Allowances in London this summer.

To manage Maple decline, trees will be pruned to reduce the infected material. Trees that are in poor condition will be removed. Once the trees are removed, the City will remove the stump, restore the area, and re-plant new trees. Stump removal and re-planting are seasonal operations; there may be a delay before the stump removal occurs.

You are receiving this letter because a City tree near your property has been identified in poor condition.

For more information on Maple decline and updates, please see the City's Web Site at London.ca/mapledecline.

[54] The Notice letter appears to be a form letter about infected trees. This letter discusses city trees. As acknowledged by the appellant in his representations, the Notice letter does not refer to the appellant's tree, which is not a city tree (also referred to as a public tree), but a private tree located on private property. This letter indicates that a city tree near the appellant's property is declining or dying.

[55] As I stated above, to be responsive, a record must be "reasonably related" to the request.¹¹ The Notice letter is about trees on public property and, although disclosed to the appellant by the city, is not responsive to the appellant's request which is about the tree on his property and the city's order about that tree. Therefore, given my conclusion that records about which trees the Notice letter refers to are not reasonably related to his request, I do not accept the appellant's submission that the city ought to have located records related to the letter.

[56] Therefore, based on my review of the parties' representations, including the city's very detailed representations on the search it undertook to locate responsive records, and the records disclosed to the appellant, together with the fact that the appellant has not provided a reasonable basis for concluding that additional responsive records exist, I find that the city conducted a reasonable search for responsive records.

[57] Accordingly, I am upholding the city's search for responsive records as reasonable and dismissing the appeal.

¹¹ Order PO-2554.

ORDER:

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

Original Signed by: _____

Diane Smith
Adjudicator

_____ June 20, 2022