

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-4256

Appeal MA21-00409

City of Toronto

September 28, 2022

**Summary:** The City of Toronto (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information about permits issued in relation to an asphalt plant and other structures at a specified municipal address. The city located responsive records, which it disclosed to the requester in full. The requester appealed the city's decision stating that they believed records existed in addition to those disclosed by the city. 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 disposes of the issue in an appeal arising from a request submitted to the City of Toronto (the city) pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The requester sought access to the following:

We need the information about [specified address]:

When the applications were made and when the permits were issued for each one of:

1. The Asphalt Plant;

2. The small building near the plant also known as a weigh scale house;
3. The retaining wall along Sheffield Street, also the fence and/or wall between this property and its neighbours' properties;
4. Any other application or/and other permit for this property.

Are there any of the permits that remain as an open file? In other words, have all relevant and required permits been issued?

How many access points or driveway entrances and exits are there on the site?

[2] The request was made to the city's building division and specified a time period from January 1, 1998 to May 5, 2021 (the date of the request). The city conducted a search and located responsive records then issued a decision granting the requester full access to the responsive records, which consisted of 67 pages.

[3] The requester contacted the city stating that they believed that additional records exist. Specifically, the requester stated that there were three building permits which had not been produced in the disclosed records, two from 1999 and one from 2010.

[4] The city identified the three building permit numbers from the disclosed records and initiated further searches for responsive records. Before the city issued a decision on the additional searches, the requester, now appellant, appealed the city's initial decision to the Information and Privacy Commissioner of Ontario (the IPC). A mediator was appointed to explore possible resolution.

[5] The mediator communicated with the appellant and the city. The appellant advised that they were pursuing access to "copies of the building permits" identified in the disclosed records. The city advised that no copies were kept of permits but the information within the disclosed records indicated that the referenced permits had been issued and closed.

[6] After conducting the additional searches, the city issued a supplemental decision on October 25, 2021 stating that staff had been unable to locate any responsive records.

[7] The appellant maintains that they believe additional records exist. Accordingly, the issue in this appeal is the reasonableness of the city's searches.

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

[9] I decided to conduct an inquiry and invited the parties to submit representations addressing the issues to be decided in the appeal. The parties submitted representations, which were shared in accordance with the IPC *Code of Procedure* and Practice Direction 7.

[10] From my review of the file, it was unclear whether the scope of the request had been narrowed on appeal to the three building permits referenced in the records disclosed by the city. Accordingly, I asked the parties to address the issue of the scope of the request in their representations. The appellant's position is that the scope of the request was not narrowed and it remained as it was originally submitted to the city by the appellant on May 5, 2021. The city's position is that all its searches were conducted to locate records responsive to the request as it was originally submitted. Accordingly, the scope of the request is not an issue in this appeal.

[11] In this order, I find that the city conducted a reasonable search for responsive records. Accordingly, the appeal is dismissed.

## **DISCUSSION:**

[12] The sole issue to be determined in this appeal is whether the city conducted a reasonable search for records responsive to the appellant's request.

[13] If a requester claims that additional records exist beyond those found by an institution, the issue is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act*.<sup>1</sup> If I am satisfied that the search carried out by the city was reasonable in the circumstances, I will uphold its decision. Otherwise, I may order the city to conduct another search for records.

[14] 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;<sup>2</sup> that is, records that are "reasonably related" to the request.<sup>3</sup>

[15] 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 that are reasonably related to the request.<sup>4</sup>

[16] A requester who believes that additional records exist will rarely be in a position to indicate precisely which records an institution has not identified, however they still

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

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

<sup>3</sup> Order PO-2554.

<sup>4</sup> Orders M-909, PO-2469 and PO-2592.

must provide a reasonable basis for concluding that such records exist.<sup>5</sup> In the context of this appeal, the issue of reasonable search arises because the appellant believes that additional records exist that have not been produced by the city, specifically additional records relating to permits for the asphalt plant and other structures at the address specified in their request.

## **Representations**

[17] The city states that its initial searches for records included both the Etobicoke York District and the North York District to locate any responsive records held by the two offices prior to Toronto's amalgamation. The city states that the North York District advised that no responsive records were located.

[18] As noted above, in its initial searches, the city located 67 pages of records responsive to the appellant's request that were disclosed to the appellant in full. The city states that thereafter the appellant contacted the city concerning possible additional records and referred to three building permits referenced in the disclosed records.

[19] The city states that staff at its building division conducted a second search for additional records and advised that there were no further records. The staff confirmed that all records relating to three building permits were included in the records already disclosed but that the appellant maintained that the three building permits and/or land use permits were missing from the disclosed records.

[20] The city states that staff in the building division explained that all records relating to the building permits for the asphalt plant and the weigh scale house (the first two items listed in the appellant's request) have been disclosed. The city identified the building permits for the appellant with reference to the permit numbers that appeared in the disclosed records.

[21] The building staff explained that it was possible that records relating to permits for the retaining wall and the driveway (the second two items listed in the appellant's request) may not be part of the building division but may be located with the city's municipal licensing and standards or transportation services divisions. The city states that it initiated additional searches in these two divisions. Neither division's searches located any responsive records.

[22] The city states that it then issued its supplemental decision stating that no responsive records existed. The city submits that its decision indicated that its searches related to the full scope of the appellant's original request that included a request for access to all "building permit applications and open or closed permits" and the decision indicates that staff in the municipal licensing and standards and transportation services divisions had also conducted searches for responsive records.

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<sup>5</sup> Order MO-2246.

[23] The city states that the appellant then asked for "copies" of the three building permits referenced in the disclosed records. The city states that it explained to the appellant the process for issuing and closing building permits with reference to the information contained in the disclosed records. The city submits that in its correspondence with the appellant, staff indicated the relevant pages in the records where the permit information could be found. In addition, the city states that it provided the dates when the permits had been closed, which were drawn from its electronic database.

[24] The city submits that despite city staff emailing the appellant and speaking to them on the telephone to explain how the requested information could be discerned from the disclosed records, the appellant maintained their belief that additional records exist. The city states that the appellant then began to raise concerns about environmental issues relating to the asphalt plant and the effect of dust emissions from the plant on their health.

[25] The city's evidence is contained in an affidavit from the staff member in its building division who contacted the appellant and explained the permit processes and helped to review the disclosed records.

[26] The city submitted with its representations, the email correspondence between the parties in which the appellant raises their belief that additional records exist, referring to the building permits by their numbers, and the city's responses.

[27] The appellant submits that the disclosed records do not contain copies of the three building permits and that they believe that there should also be additional permits, which the city has not disclosed. The appellant states that they believe there are other applications and/or permits for the wall/fence between the specified address and other properties.

[28] The appellant submits that they have reason to believe that additional records exist. The appellant states that the city's building staff provided the dates that the three building permits were closed and this is information that was not within the disclosed records.

[29] The appellant also states that the fence or retaining wall to one side of the asphalt plant, which they know was built in 2000, was rebuilt in 2016. The appellant therefore questions why there are no records relating to this building work or similar work that was also carried out to the other side of the plant.

[30] The appellant states that there are a number of addresses associated with the asphalt plant and raises the possibility that the city conducted its searches using an incorrect address.

[31] The appellant states that there is concern in the community about the asphalt plant being close to residential property and they believe there should be records

relating to the community's correspondence with the city on this subject.

[32] The appellant provided additional documentation with their representations: data from Google Earth relating to residential land use in the vicinity of the asphalt plant, 1998 Zoning Bylaw M3, Ontario Land Use Guideline D-6 1995 and correspondence from the appellant to the mayor and city councillor raising concerns regarding the asphalt plant.

[33] In reply representations, the city states that the address associated with the asphalt plant appears in the disclosed records and submits that it is the correct address for the plant. In addition, the city conducted property searches for the alternate addresses suggested by the appellant as being associated with the plant. The city submits that these alternate addresses, when entered into the city's electronic database, produced messages indicating "Invalid input address." Screenshots of these messages and the alternate addresses were submitted with the city's reply representations.

### **Analysis and finding**

[34] For the reasons that follow, I find that the city has expended reasonable efforts to locate records responsive to the appellant's request.

[35] I have considered the city's representations, including the affidavit from the city's staff member, about the searches it conducted in response to the appellant's request. I note that the city conducted searches across two districts and, in its initial searches located 67 pages of responsive records, which it disclosed to the appellant in full. I have reviewed these records, copies of which the appellant provided to this office. I note that the disclosed records consist of three files with each file corresponding to one of three specified permits.

[36] The city's evidence is provided by an inspections manager in the city's building division. The manager's explanation of the permit issuing and closure process, which is provided in the affidavit and in the email correspondence between the city and the appellant, demonstrates their understanding of the subject matter to which the appellant's request relates.

[37] I note that it was a staff member in the buildings division who suggested that records relating to permits for the retaining wall/fence and the driveway may be located in different city divisions so that additional searches in those divisions were initiated. I am therefore satisfied that an experienced employee knowledgeable in the subject matter of the request directed how and where the city conducted its searches and I find this to be reasonable.

[38] I accept the city's explanation about the additional searches that were carried out beyond the boundaries of the current district in which the specified address is located to identify any responsive records from the period before Toronto's

amalgamation. I also accept the city's explanation for conducting additional searches in different city divisions for records relating to building and other permits for work the appellant submits has been done to the retaining walls and the driveway. I note that the city also conducted address searches for the alternate addresses that the appellant suggested might be associated with the asphalt plant to confirm the correct address.

[39] The appellant acknowledges that the disclosed records relate to the building permits but believes that additional records identifiable as the "building permits" exist. Through various staff members, the city states that it has provided the appellant with an explanation for why documents matching this description do not exist. In email correspondence with the appellant, the manager explained that permits are not kept after they are closed. The manager explained the inspection stages and permit closing procedure in the Ontario Building Code and that delay between stages does not affect a permit's validity. The manager states that after a permit is issued, property owners or builders report to the city when specified stages in the building process are reached and inspections are performed. The manager explained to the appellant that in relation to one of the permits in the disclosed records, notification occurred ten years after the permit was issued. The manager explained that permits remain open until they are revoked or closed.

[40] I have reviewed the disclosed records and I accept the city's explanation that the dates of the permit applications and the dates the permits are issued are apparent from the information contained within the records.

[41] I acknowledge the appellant's submission that the disclosed records do not contain information relating to the date the permits are closed and note that these dates were provided to the appellant in correspondence from the manager. While the appellant states that this leads them to believe that additional records exist, I accept the city's explanation that these dates were taken from its electronic database.

[42] The appellant does not accept the city's explanations about the permit procedure. In expressing their disagreement, the appellant raises their broader concerns regarding the asphalt plant and states that these concerns have been raised by the community in correspondence with the city. My role in this appeal is to determine the reasonableness of the city's searches in response to the appellant's request submitted under the *Act*. While the appellant's broader concerns provide the context for the access request, these submissions do not assist me in reaching my determination.

[43] The appellant's representations do not provide a reasonable basis for concluding that responsive records exist in addition to those already disclosed to them by the city.

[44] Based on the evidence before me, I am satisfied that an experienced city employee knowledgeable in the subject matter of the appellant's request conducted reasonable searches for records relating to permits for the specified address for the

indicated time period. I am also satisfied that the city has provided a reasonable explanation for why additional records do not exist.

[45] I find that the city conducted a reasonable search as required by section 17 of the *Act* and dismiss the appeal.

**ORDER:**

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

Original Signed by: \_\_\_\_\_  
Katherine Ball  
Adjudicator

\_\_\_\_\_ September 28, 2022