

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER MO-4273-R

Appeal MA20-00246

Corporation of the City of Belleville

Order MO-4216-I

November 16, 2022

Summary: This reconsideration order denies the city's request for reconsideration of Interim Order MO-4216-I, in which the adjudicator found that the city did not conduct a reasonable search for records that would respond to the appellant's access request under the *Act*. The adjudicator finds that the city failed to file its reconsideration request within the timelines set out in the IPC's *Code of Procedure* to reconsider Interim Order MO-4216-I and denies the city's request on that basis. The adjudicator also exercises her discretion to not initiate a reconsideration in response to the city's evidence that the order provisions in Interim Order MO-4216-I inadvertently expanded the search area identified in the request.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 17; *IPC Code of Procedure*, sections 18.01(c) and 18.04(b).

OVERVIEW:

[1] This order addresses the city's request for reconsideration of Interim Order MO-4216-I.

[2] In the appeal which led to the issuance of Interim Order MO-4216-I, the appellant submitted a request to the City of Belleville in which I found that the city did not conduct a reasonable search in response to the appellant's request, which stated:

For the period 2009 to the present, please provide a copy of all records, plans, emails, minutes of meetings and any other documents available regarding any and all plans for development or changes to the [name] block framed by [name] Street on the west side, [name] Street on the north side, [name] Street on the east side and [name] Street West on the south side.

[3] In Interim Order MO-4216-I, I found that the city's search for responsive records was not reasonable in the circumstances. In paragraphs 28-30 of Interim Order MO-4216- I, I provided my reasons in support of my finding the city's evidence showed that it did not direct staff members to use consistent search terms. In paragraphs 28 and 29, I stated:

There is no rule requiring that, in co-ordinating a search, search terms be identified. However, the lack of consistent search terms can provide inconsistent results, and this is what appears to have happened here.

Based on my review of the information before me, the search methodology used varied greatly from department to department. For instance, there is variation between the departments as to how many street names or addresses were used to identify the city block in question. Some departments limited the search to just street names and/or addresses while others also included some of the following terms: development, non-conforming, non-compliance, duplex, second unit, converted dwelling, semi-detached, and planning. Curiously, the Engineering department reported that "no files were searched" given its view that the request did not seek access to information regarding a specific road, road allowance or capital project in which that department was involved. The Fire & Emergency Services department's response indicated that two hours of search time was expended to review paper and electronic files, but that no "searches using key words" were conducted. The Fire & Emergency Services department indicates that it "repeated" the search conducted related to one of the appellant's previous requests and no records were located, other than a file "currently involved with legal issues."

[4] In paragraphs 31 to 34 I provided my reasons in support of my finding that the city acknowledged that additional responsive records were located but not identified in its access decision. The background of the appeal is that the city and the appellant had been involved in litigation and the city says that it provided 1598 pages of documents to the appellant as a result of that litigation. In Interim Order MO-4216-I, I found that the city was obligated under the *Act* to locate and identify records that are responsive to the request, regardless of whether an exemption under the *Act* applies or the record was previously provided to the appellant outside the *Act*.

[5] In paragraph 36 of the Interim Order MO-4216-I, I summarize my findings as follows:

Accordingly, I order the city to conduct a further search for responsive records that would direct individuals in the various departments to use the search terms specified in the order provisions below to locate responsive records in its electronic and paper record holdings, including email records. In addition, the city's further search must identify records which respond to the present request but were not identified in its July 14, 2020 access decision to the appellant.

[6] In order provision 1 in Interim Order MO-4216-I ordered the city to:

... conduct a further search for records responsive to the appellant's request filed under the *Act*, using, at a minimum, the following search terms: development(s), development issue(s), change(s), project(s), planning, land use, non-conforming, non-compliance, duplex, second unit, converted dwelling, and semi-detached, along with the street names stated in the request to identify a specified city block.

[7] Initially, the city appeared to work towards complying with the order provisions and conducted further searches and submitted 24 affidavits to me on August 10, 2022 and August 19, 2022. Upon my review of the affidavits I asked the city for an index or chart to organize the affidavits. I also requested that the index/chart indicate in each case if further records were located. I asked for this information as I had noted that in two instances, the affidavits were signed but the affiant did not indicate whether the further search had located records.

[8] In response, I received a request to reconsider Interim Order MO-4216-I on September 16, 2022. The city's reconsideration request alleges that Interim Order MO-4216-I "both extended the search timeline to June 22, 2022, some two and a half years past the original request, and significantly expanded the search area beyond that of the original request." The city's reconsideration request did not address my finding that the city was obligated under the *Act* to locate and identify records that are responsive to the request, regardless of whether an exemption under the *Act* applies or the record was previously provided to the appellant outside the *Act*.

[9] I wrote to the city on September 29, 2022 and declined its request that I reconsider Interim Order MO-4216-I on the basis that its request was sent outside the 21-day time frame required by section 18.04(b)¹ of the *Code*. In my letter, I also told

¹ Section 18.04(b) of the *Code* states:

A reconsideration request shall be made in writing to the individual who made the decision in question. The request must be received by the IPC:

(b) where decision does not require any action within any specified time period or periods, within 21 days after the date of the decision.

the city that the wording in order provision 2 “treating the date of this order as the date of the request for administrative purposes” does not extend the search timeline to June 22, 2022. The reference relates to the time the city has to issue an access decision under sections 19(a) and (b).² I told the city in my September 29, 2022 letter that the search timeline remains from 2009 to the date of the request.

[10] Though the time for the city to request a reconsideration had expired, I told the city that I have the discretion to reconsider Interim Order MO-4216-I on my own initiative and I may be inclined to do so if there is evidence that the order provisions contain an error or another mistake that does not reflect my intent in the decision. Section 18.01(c) of the *Code* provides that:

The IPC may reconsider an order or other decision where it is established that there is:

(c) a clerical error, accidental error or omission or similar error in the decision.

[11] Accordingly, I granted an interim stay of orders provisions 1, 2 and 3 of Interim Order MO-4216-I to allow me time to review the city’s allegation that order provision 1 extended the boundaries of the search area identified in the request. Though the city provided maps with its September 16, 2022 request for reconsideration, I told the city I had difficulty reading the maps and understanding its position. Accordingly, I asked the city to provide additional submissions and to ensure that any maps provided, which illustrate the differences in boundaries, have the same page orientation.

[12] The city’s additional submissions were received on November 3, 2022.³

[13] For the reasons set out below, I decline to exercise my discretion to reconsider Interim Order MO-4216-I on the basis that there is an accidental error in the decision. Accordingly, the interim stay is lifted and the city is ordered to comply with the order provisions set out in Interim Order MO-4216-I.

² Section 19 states:

Where a person requests access to a record, the head of the institution to which the request is made or if a request is forwarded or transferred under section 18, the head of the institution to which it is forwarded or transferred, shall, subject to sections 20, 21 and 45, within thirty days after the request is received,

(a) give written notice to the person who made the request as to whether or not access to the record or a part of it will be given; and

(b) if access is to be given, give the person who made the request access to the record or part, and if necessary for the purpose cause the record to be produced.

³ Initially, the time set for the receipt of the city’s additional submissions was set for October 21, 2022. The city requested and was granted an extension of time as the staff member responsible for submitting the representations had an unexpected departure from the office.

DISCUSSION:

Does order provision 1 contain an accidental error which expands the search area?

[14] Previous IPC orders have held that an error under section 18.01(c) may include an error or another mistake that does not reflect the adjudicator's intent in the decision.⁴ In its additional submissions, the city states:

In its original search, City staff used its knowledge of this historical area to identify only one document in the original search boundary. City staff knew then, and now, that there has not been any development in the original search area, and certainly not to the extent alleged by the appellant that "the whole city block" was being redeveloped.

The issue with the reframed search, as ordered, is that conducting an electronic search using, for example, [street name] West and development, returns hundreds of documents that are outside the original search area. There has been a significant amount of development on [street name] West in an area that is zoned commercial and which is not near the original boundary, particularly in the area shown in Figure 2 and [name of a park] (the green shaded area shown north of [street name] West. Since there is no way to conduct an electronic search for records relating to all of the defined terms, plus [street name] West, but only between [two different street names], thousands of documents have resulted, all of which are irrelevant to the request.

[15] Along with its additional submissions, the city provided two diagrams labelled Figure 1 and Figure 2.

Decision and analysis

[16] I have reviewed the city's additional submissions and am satisfied that the wording of order provision 1 does not contain an error or other mistake which has the effect of inadvertently expanding the search area.

[17] The city's evidence is that it has "no way to conduct an electronic search for records relating to all of the defined terms" within the city block identified in the request. The city says that when it enters a street name in a search field, it can only enter the street name, which yields results outside the city block. In other words, the city says that it does not have the ability to enter cross-streets or intersections when it enters a street name in a field to conduct an electronic search. The city argues that the electronic searches it conducted to search for responsive records after the issuance of Interim Order MO-4216-I had the effect of locating thousands of non-responsive

⁴ Order M-938.

records.

[18] However, I did not order the city to confine itself to electronic searches. Instead, in Interim Order MO-4216-I outlined deficiencies in the city's manual and electronic search for responsive records. One of the deficiencies set out in Interim Order MO-4216- I is my finding that the city's memorandum to staff directing them to conduct the search did not direct recipients to use specified search terms.

[19] Having regard to the above, I am satisfied that the wording of order provision 1 did not inadvertently expand the search area outside the city block identified in the request. There is no dispute that the confines of the search area is the city block identified in the request itself. Order provision 1 also contains the term "city block":

I order the city to conduct a further search for records responsive to the appellant's request filed under the Act, using, at a minimum, the following search terms: development(s), development issue(s), change(s), project(s), planning, land use, non-conforming, non-compliance, duplex, second unit, converted dwelling, and semi-detached, along with the street names stated in the request to ***identify a specified city block.***
[Emphasis mine]

[20] In my view, the city's evidence reveals an issue in its search methodology in that there may be limitations in its present ability to remove non-responsive records from the results of electronic records.

[21] For the reasons stated above, I have satisfied myself that order provision 1 does not contain an error or another mistake that does not reflect my intent. As a result, I will not be exercising my discretion to reconsider Interim Order MO-4216-I on my own initiative and the interim stay is lifted.

ORDER:

1. I lift the interim stay of Interim Order MO-4216-I and order the city to conduct a further search for records responsive to the appellant's request filed under the *Act*, using, at a minimum, the following search terms: development(s), development issue(s), change(s), project(s), planning, land use, non-conforming, non-compliance, duplex, second unit, converted dwelling, and semi-detached, along with the street names stated in the request to identify a specified city block.
2. I order the city to issue an access decision to the appellant regarding any additional records (or no records) located as a result of the search(es) ordered in order provision 1, including those identified by city departments through past searches in accordance with the *Act*, treating the date of this order as the date of the request for administrative purposes.

3. I order the city to provide me with an affidavit sworn by the individual(s) who coordinated or conducted the searches by **December 16, 2022**, describing their search efforts. At a minimum, the affidavit should include the following information:
 - a. The names and positions of the individuals who conducted the searches;
 - b. Information about the types of files searched, the nature and location of the searches, and the steps taken in conducting the searches;
 - c. The results of the search; and
 - d. Details of whether additional records could have been destroyed, including information about record maintenance policies, practices and retention schedules.

The city's affidavit(s) and any accompanying representations may be shared with the appellant, unless there is an overriding confidentiality concern. The procedure for submitting and sharing representations is set out in the IPC's Practice Direction Number 7, which is available on the IPC's website. The city should indicate whether it consents to the sharing of its representations and affidavits with the appellant.

4. I remain seized of this appeal in order to deal with any outstanding issues arising from order provisions 1 and 3.
5. I reserve the right to require the city to provide me with a copy of the access decision referred to in order provision 2.

Original Signed by: _____
Jennifer James
Adjudicator

November 16, 2022 _____