

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-4278

Appeal MA20-00447

City of Mississauga

November 23, 2022

**Summary:** The City of Mississauga (the city) received a request relating to a specific airport municipal transportation vehicle (AMTV) licence number that had not been cancelled despite the owner's death. The city identified responsive records and issued a decision that granted full access to some records and partial access to the records at issue in this appeal. The city relied on section 14(1) (personal privacy) to deny access to the withheld information. The withheld information, included an affected party's driver's licence number, address, date of birth, and general questions about any past convictions and bankruptcies. At mediation, the appellant took the position that the withheld information was not personal information and also challenged the city's search claiming further records should exist. In this order, the adjudicator finds that the withheld information is personal information and upholds the city's section 14(1) claim. He also finds that the city's search was reasonable. The appeal is dismissed.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, C. M.56, as amended, sections 2(1) (personal information), 14(1), 17, 54(a) (exercise of rights of deceased).

**Orders and Investigation Reports Considered:** Orders MO-1450, MO-2197, MO-2234, P-11, PO-2063-R and PO-4290.

### OVERVIEW:

[1] The requester is a partner in a business that was issued an Airport Municipal Transportation Vehicle (AMTV) licence from the City of Mississauga (the city). He requested information concerning a specified AMTV licence number that belonged to an

individual who is now deceased, in order to determine if the licence was cancelled and if not, why.

[2] The city received the following request under the *Municipal Freedom of Information Act* (the *Act*):

1. All material regarding the following Airport Municipal Transportation Vehicle (AMTV) Driver's business Licences held by AMTV owner of [a specified license number].
2. Complete copy of the AMTV driver's business licence file held by current and any previous owner of the following [a specified license number].
3. All material including complete copy of the owner's file, business licence, of AMTV Owner's [a specified license number].
4. A copy of all files and material held by the City regarding current and previous owners or permit holders of [a specified license number]. A copy of all other business licences and their associated business licence, of any type, files held by current or past owners of [a specified license number].
5. All material related to addition, deletion or change of owners of [a specified license number], including but limited to correspondence, meeting notes, emails, between City of Mississauga and Greater Toronto Airport Authority or any other entity or individual.
6. Any and all material, such as correspondence, emails, notes of meetings between the City of Mississauga and Greater Toronto Airport Authority, GTAA, or any notes of any City of Mississauga employee or contractor regarding [a specified license number].
7. All material, including, but not limited to, all emails, notes of meetings, notes of phone calls, letters internal or external received by City or generated by City, relating to any changes to [a specified license number] Owner's or Driver's Licence.
8. Any all material relating the death of any owners or cancellation or changes to business licences of [a specified license number].
9. Copy of the original contract signed by [a specified license number] with GTAA or City of Mississauga and any all amendments to such contract. In the event a signed contract is not available any contracts draft or actual for AMTV's in general in possession of City of Mississauga.

[3] The city conducted a search and identified the responsive records relating to the request. The city subsequently issued a decision that granted partial access to the

records. Access to the withheld information was denied pursuant to the mandatory personal privacy exemption at section 14(1) of the *Act*.

[4] The requester, now the appellant, appealed the city's decision to the Information and Privacy Commissioner of Ontario (the IPC)

[5] During the course of mediation, the mediator communicated with the appellant and the city in order to discuss the issues in the appeal. The appellant advised the mediator that he was pursuing access to the withheld information in the responsive records and that he believed the city was withholding additional responsive records, specifically regarding discussions between the city and the Greater Toronto Airport Authority (GTAA) about the specified licence number, thereby raising the issue of reasonable search.

[6] The city indicated that it did not have any further records responsive to the appellant's request. The city also confirmed that it would not change its decision with respect to the withheld information under section 14(1).

[7] Accordingly, the appeal was transferred to the adjudication stage of the appeal process. The adjudicator originally assigned to this appeal invited representations of the city and the appellant which were shared in accordance with IPC's *Code of Procedure*. The file was then assigned to me to continue with the adjudication of the appeal.<sup>1</sup>

[8] In this order, I find that the withheld information is exempt from disclosure under section 14(1). I also find that the city's search was reasonable and dismiss the appeal.

## **RECORDS:**

[9] The records consist of information contained in the mobile licensing enforcement files. The city disclosed 204 pages of records as described in its index of records.

[10] Information relating to the individual AMTV owner, was withheld from the following pages, in part: 99-103, 110, 112, 116, 123, 130, 132, 136, 150, 157, 160 and 177.

## **ISSUES:**

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

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<sup>1</sup> I reviewed the representations submitted by the parties and have decided that I do not require further representations to decide the issues before me.

- B. Does the mandatory exemption at section 14(1) apply to the personal information at issue?
- C. Did the city conduct a reasonable search for records?

## **DISCUSSION:**

### **Issue A: Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?**

[11] The city withholds some information on the basis of the mandatory personal privacy exemption at section 14(1) of the *Act*. It is therefore necessary to decide whether the record contains "personal information" and, if so, to whom it relates.

[12] That term is defined in section 2(1) as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and

(h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

[13] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.<sup>2</sup>

[14] Sections 2(2), (2.1) and (2.2) also relate to the definition of personal information. These sections state:

(2) Personal information does not include information about an individual who has been dead for more than thirty years.

(2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[15] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.<sup>3</sup>

[16] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.<sup>4</sup>

[17] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>5</sup>

### ***Representations***

[18] The city submits that the information it redacted from the records includes:

- the address and phone number of individuals in their personal capacity

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<sup>2</sup> Order 11.

<sup>3</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>4</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>5</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

- Ontario driver's licence numbers
- two images of an individual's face
- personal history of an affected party (general questions about any past convictions and bankruptcies) (record 112)

[19] It submits that all of this information relates to identifiable individuals, both individually and in tandem with others.

[20] The city addresses each of the severances in the records which I set out below.<sup>6</sup>

*Records 99, 100, 110, 116, 123, 130, 136, & 177*

[21] The city submits that as part of the licensing process under its Public Vehicle Licensing bylaw 0420-2004, vehicle permits (permits) were collected in the course of licensing, regulating and governing owners and drivers of taxicabs and the business of taxicab brokers.<sup>7</sup> The city submits that while the information in the permits may be collected from a person in their business capacity, the withheld information (including the Ontario Driver's Licence number) is still personal information (as defined under paragraphs (c) and (d) of the definition of personal information in section 2(1)) which was collected by the Ministry of Transportation (MOT) under the authority of section 205 of the *Highway Traffic Act*. The city submits that individuals who applied for the permits (and the driver's licence) from MOT would have received the notice of collection of personal information and thus provided their information accordingly.

*Records 101, 102 and 103*

[22] The city submits that the severances to these records (relating to vehicle purchases and repairs) contain addresses, phone numbers and a driver's licence number of an identifiable individual, and were the results of transactions carried out in that individual's personal capacity as the purchaser and the owner of the vehicle(s) (as defined under paragraphs (c) and (d) of the section 2(1) definition of personal information).

*Record 112*

[23] The city submits that this record is a copy of the Licence Renewal Application form and its severances contain an address, telephone numbers, date of birth, a driver's licence number and other applicant's history such as general questions about any past criminal convictions and bankruptcies.

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<sup>6</sup> The city did not directly address record 132, which is identical to record 160.

<sup>7</sup> The city referenced the bylaw at:

<https://www.mississauga.ca/wpcontent/uploads/2018/11/21142802/Public-Vehicle-Licensing-By-law-0420-2004.pdf>

[24] The city submits that except for the address and the phone number associated with the vehicle licence issued, all information found on the form is personal information as defined in paragraphs (c) and (d) of the section 2(1) definition of that term.

*Record 160*

[25] The city submits that the severance, a provincial driver's licence number contained in the AMTV Inspection Report, is an identifying number assigned to an identifiable individual as personal information defined under paragraph (c) of the section 2(1) definition of that term.

*Records 150 & 157*

[26] The city submits that photographs in these records contain the faces of individuals that constitute their personal information as it is recorded information about identifiable individuals as defined under paragraph (a) of the section 2(1) definition of that term. It submits that this analysis is also consistent with the IPC's Guidelines for the Use of Video Surveillance.

[27] The appellant provided representations in this appeal. With regard to whether the records contain personal information, the appellant submits that the city holds out that AMTV licences are business licences but when an access request is filed, it treats them as personal licences. He submits that the information does not relate to an affected party's health, which is more personal. He also submits that the affected party was a friend of his.

[28] The appellant submits that the city's bylaw pertaining to AMTVs directly states that the licence is only valid for the life of the individual receiving the licence.

***Analysis and finding***

[29] I have reviewed the severances made to the records which the city claims contain personal information. I find that this information qualifies as personal information under paragraphs (b), (c), and (d) of the section 2(1) definition of that term.

[30] The appellant provided an order at mediation, Order MO-2234, and although he did not refer to it in his representations at adjudication, he suggested to the mediator that it was on point with regard to this appeal. However, after I reviewed this order, it is clear that the appellant in Order MO-2234 was not seeking personal information, "such as the addresses, home telephone numbers, postal codes, provincial driver's licence numbers, dates of birth." Since this is the exact type of information at issue in this appeal, I find that Order MO-2234 is not relevant to my consideration.

[31] The information in this appeal consists of recorded information of an identifiable individual including a personal driver's licence number, address, phone number, images

of an individual's face and general questions about an affected party's past criminal convictions and bankruptcies. Specifically, I find the following:

*Records 99, 100, 110, 116, 123, 130, 136, & 177*

[32] Although the personal information was collected in the course of licencing, regulating and governing owners and drivers of taxicabs, the severed information, being a personal driver's licence number, mailing address and phone number is the personal information of an identifiable individual.

*Records 101, 102 and 103*

[33] The severances in these records (relating to vehicle purchases and repairs) contain the affected party's address, phone number and personal driver's licence number, and appear to relate to transactions carried out in the affected party's personal capacity as the purchaser and owner of the vehicle. The city disclosed all other information in this application to the appellant. I find that the remaining withheld information is personal information as defined under paragraphs (c) and (d) of the section 2(1) definition of that term.

*Record 112*

[34] The withheld information in this public licence renewal application contains an affected party's address, telephone numbers, date of birth, a personal driver's licence number and general questions about the affected party's past convictions and bankruptcies. The city disclosed all other information in this application to the appellant. I find that the remaining withheld information is personal information as defined under paragraphs (b), (c) and (d) of the section 2(1) definition of that term.

*Records 132 and 160*

[35] The AMTV Inspection reports were disclosed to the appellant, however, the city withheld an affected party's personal driver's licence number which is an identifying number assigned to an identifiable individual as personal information defined under paragraph (c) of the section 2(1) definition of that term.

*Records 150 & 157*

[36] These records are photographs of an affected party in his vehicle. While I acknowledge that personal information is not defined in any paragraph of section 2(1) to mean photographs, I am mindful of the comments of the former Commissioner in Order P-11 on the subject:

It is clear from the wording of the statute that the list of examples of personal information under subsection 2(1) is not exhaustive. This leaves it open for [the adjudicator] to decide whether or not information



contained in the records which does not fall under subsections (a) to (h) ... constitutes personal information.

[37] In Order MO-2197, the adjudicator, referencing Order P-11, found that photographs where individuals were readily identifiable qualifies as personal information pursuant to section 2(1). I agree with this finding and as a result, I find that these photographs constitute the personal information of an affected party.

[38] Although it is apparent from, the appellant's representations, that the affected party is now deceased, subsection (2) of the definition of personal information in section 2(1) states that:

(2) Personal information does not include information about an individual who has been dead for more than thirty years.

[39] There is no evidence before me that the affected party has been deceased for more than thirty years.

[40] As a result, I find that the withheld information constitutes the personal information of an affected party under paragraph (b), (c), and (d) of the section 2(1) definition of that term. I will now determine if section 14(1) applies to this information.

**Issue B: Does the mandatory exemption at section 14(1) apply to the information at issue?**

[41] One of the purposes of the *Act* is to protect the privacy of individuals with respect to personal information about themselves held by institutions.

[42] Section 14(1) of the *Act* creates a general rule that an institution cannot disclose personal information about another individual to a requester. This general rule is subject to a number of exceptions.

[43] The section 14(1)(a) to (e) exceptions are relatively straightforward. If any of the five exceptions covered in sections 14(1)(a) to (e) exist, the institution must disclose the information.

[44] The city submits that none of the exceptions in section 14(1) applies.

[45] The appellant submits that he was a friend of the affected party and also that the IPC should contact the affected party's estate in order to obtain consent for him to obtain the personal information of the deceased. Therefore, he submits that section 14(1)(a) is relevant in this appeal.

[46] However, section 54(a) of the *Act* provides as follows:

Any right or power conferred on an individual by this *Act* may be exercised,

if the individual is deceased, by the individual's personal representative if exercise of the right or power relates to the administration of the individual's estate;

[47] In Order PO-2063-R, the adjudicator found that section 66(a) (the provincial equivalent of section 54(a)) did not apply because the requester was not the "personal representative." While the adjudicator found that section 66(a) entitled the appointed administrator certain estate-based rights on behalf of the deceased, she stated the following:

However, this section does not give the administrator broad rights to stand in the place of the deceased for the purposes of providing consent under section 21(1)(a) [the provincial equivalent to section 14(1)] of the *Act*. As section 2(2) makes clear, a deceased individual retains privacy rights until 30 years following death. Although it has been determined in past orders of this office that the passage of time following death can serve to diminish the weight accorded to these privacy rights when balanced, in certain appropriate circumstances, against other competing interests under section 21(2) of the *Act*, there is no statutory authority that would enable anyone, including an estate administrator, to consent on behalf of a deceased individual to disclosure of personal information outside the narrow context of section 66(a).

[48] I adopt the reasoning in the above order. The personal information at issue in this appeal relates to the AMTV licence of the deceased. The records were partially disclosed with the city severing only the affected party's personal information, as found above. It is apparent that the information does not relate to the administration of the affected party's estate and no submissions were made to that effect. Also, it is apparent that the appellant is not the "personal representative" of the deceased, given that he requested that the original adjudicator contact the deceased's estate. Therefore, I find that section 14(1)(a) is not relevant in this appeal and the exceptions at sections 14(1)(b) to (e) do not apply.

[49] The section 14(1)(f) exception is more complicated. It requires the institution to disclose another individual's personal information to a requester only if this would not be an "unjustified invasion of personal privacy." Other parts of section 14 must be looked at to decide whether disclosure of the other individual's personal information would be an unjustified invasion of personal privacy.

[50] The factors and presumptions at sections 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 14(1)(f). Additionally, if any of paragraphs (a) to (c) of section 14(4) apply,

disclosure is not an unjustified invasion of personal privacy. None of the section 14(4) paragraphs are relevant in this appeal.

[51] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 14. The city submits that none of these presumptions applies.

[52] Section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.<sup>8</sup> The factors listed at paragraphs 14(2)(a) through (d), if present, generally weigh in favour of disclosure, while the factors listed at paragraphs 14(2)(e) through (i), if present, generally weigh in favour of non-disclosure.

[53] The list of factors under section 14(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2).<sup>9</sup>

[54] The city submits that the factors at section 14(2)(g) (information unlikely to be reliable) and 14(2)(h) (supplied in confidence) are relevant to the withheld information. It also submits that the factor at section 14(2)(f) (highly sensitive) applies to the withheld information in record 112 which is the public renewal licence application containing general questions about the affected party's past criminal convictions and bankruptcies.

[55] The appellant suggests that the factor at section 14(2)(a) (public scrutiny) is relevant and also refers to "a fair determination of rights" as being relevant. Therefore, sections 14(2)(a) and (d) are factors I will consider.

[56] Sections 14(2)(a), (d), (f), (g) and (h) state:

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;

(d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

(f) the personal information is highly sensitive;

(g) the personal information is unlikely to be accurate or reliable;

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<sup>8</sup> Order P-239.

<sup>9</sup> Order P-99.

(h) the personal information has been supplied by the individual to whom the information relates in confidence;

[57] *Factors that weigh in favour of non-disclosure*

[58] As noted, the city relies on sections 14(2)(f), (g) and (h) to withhold the personal information. The city has not explained how section 14(2)(g) applies in the context of this appeal. This section weighs against disclosure when the evidence shows that the personal information is unlikely to be accurate or reliable. However, the mailing address, driver's licence number and other withheld information are likely to be accurate and reliable when provided to the city by the affected party. Therefore, I give section 14(2)(g) no weight. I also find that section 14(2)(f) does not apply to the general questions concerning any past criminal convictions or bankruptcies in record 112 because disclosure of that information would not result in a reasonable expectation of significant personal distress.

[59] However, I find that when providing the personal information to the city, the affected party would have a reasonable expectation that the information would be treated confidentially and section 14(2)(h) applies to all of the withheld personal information.

***Factors that weigh in favour of disclosure***

[60] In his representations, the appellant suggests that I examine all of the evidence and refers to a public interest to ensure that the city is more transparent and," thereby subject to more public scrutiny." However, the personal information at issue, if disclosed, would not subject the activities of the city to public scrutiny because the information is the personal information of an affected party. I give this factor no weight.

[61] The appellant also refers to section 14(2)(d) (fair determination of rights). This section weighs in favour of allowing requesters to obtain someone else's personal information where the information is needed to allow them to participate in a court or tribunal process. The IPC uses a four-part test to decide whether this factor applies. For the factor to apply, all four parts of the test must be met:

1. Is the right in question a right existing in the law, as opposed to a non-legal right based solely on moral or ethical grounds?
2. Is the right related to a legal proceeding that is ongoing or might be brought, as opposed to one that has already been completed?
3. Is the personal information significant to the determination of the right in question?

4. Is the personal information required in order to prepare for the proceeding or to ensure an impartial hearing?<sup>10</sup>

[62] The appellant submits that in order for “a fair determination of rights to be made it is incumbent that all the relevant evidence be scrutinized by the decision maker.” The appellant then refers to court documents he is seeking, which are not a part of this appeal.<sup>11</sup> The appellant does not explain how the affected party’s personal information withheld in this appeal, is relevant to a fair determination of the appellant’s rights. After considering this submission, I find that this factor has no relevance to whether disclosure of the withheld personal information of the affected party would be an unjustified invasion of his personal privacy and I give this factor no weight

[63] The appellant also refers to information that the city disclosed in previous access requests and submits that it has not taken issue with releasing this kind of information in the past but is now relying on the *Act* to withhold information. However, in my view, how the city responded in another access request is not relevant to my consideration of whether disclosure of the withheld personal information in this appeal would be an unjustified invasion of the affected party’s personal privacy.

[64] In conclusion, given that the appellant has not established that any factors favouring disclosure of the withheld information apply in the circumstances, I find that disclosure of the withheld personal information would be an unjustified invasion of the affected party’s personal privacy and I find it is exempt from disclosure under section 14(1).

[65] In his representations, the appellant refers to the public interest in disclosure of the withheld information and then submits that it is important that I examine all of the evidence. Section 16 of the *Act* requires the city to disclose the information that I have found exempt under section 14(1) where there is a compelling public interest in disclosure of the record that clearly outweighs the purpose of the section 14(1) exemption. In the present case, the information I have found exempt under section 14(1) is the personal information of an affected party. The appellant has provided insufficient evidence to establish that there is a compelling public interest that would outweigh the purpose of the section 14(1) exemption. Nor has the appellant established that there is a public interest in the disclosure of the personal information relating to the affected party. Accordingly, I find that section 16 does not apply.

[66] The appellant suggests that the city’s narrowing of the request to one owner is

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<sup>10</sup> See Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).

<sup>11</sup> During the inquiry, the appellant seemed to expand the scope of his request to include court documents in the city’s possession concerning any prior or current litigation “in regards to AMTV Owners that have passed away.”

not supported by the original request.<sup>12</sup> However, as I discuss below, the request is clear and relates to a specific AMTV licence number, and the appellant's request made during the inquiry, for court documents, is not reasonably relevant.

### **Issue C: Did the city conduct a reasonable search for records?**

#### ***Preliminary Issue***

[67] In the course of providing his representations, the appellant requested that the city provide copies of all documents in its possession concerning any prior or current litigation "in regards to AMTV Owners that have passed away." In his representations he refers to AMTV drivers' attempt to get the city to allow them transfer rights for these taxicabs, in order to benefit their families upon passing. The appellant submits that the city revoked the AMTV license of at least three drivers and there was litigation by at least one of the deceased drivers' wives as the plaintiff. The appellant suggests that the city took the position in court that it will do as the GTAA advises them. He is requesting that the city provide him all of the documents it has related to this or any similar litigation. He submits that this request for information is relevant because it goes to the issue of a reasonable search. He submits that the information will demonstrate a high level of coordination between the city and the GTAA. He submits that this information goes to "the very heart of the appeal", being why the AMTV vehicle is still operating. He is seeking this information in the context of this appeal.

[68] In reply, the city submits that after reviewing the appellant's representations it searched and located two court file numbers. The city suggests that the appellant would be able to access publicly available court records of the files it located through the court system. Alternatively, the city submits that the appellant can make an access request to it for the same information.

[69] In my view, the request made by the appellant during the inquiry, while it may be related to the reason for his request in this appeal, is a broadening of the request that is the subject of this appeal. The appellant's nine-part request in this appeal is for specific information related to a specific driver and a specific AMTV licence number. Each part of the request references information relating to a specified licence number. I find the request made in the appellant's representations, for court documents from the city involving other AMTV licenced drivers who are deceased, is not relevant to the search for the records in this appeal as it does not reasonably relate to his actual request. Therefore, I will not discuss this expanded request in my discussion concerning the city's search.

#### ***Did the city conduct a reasonable search?***

[70] If a requester claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for

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<sup>12</sup> See the preliminary issue discussion below.

records as required by section 17 of the *Act*.<sup>13</sup> If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision. Otherwise, it may order the institution to conduct another search for records.

[71] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.<sup>14</sup>

[72] 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>15</sup> that is, records that are "reasonably related" to the request.<sup>16</sup>

[73] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are reasonably related to the request.<sup>17</sup> The IPC will order a further search if the institution does not provide enough evidence to show that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.<sup>18</sup>

### *Representations*

[74] The city submits that upon receiving the request, its access and privacy officer (APO) reached out to the mobile licensing manager and the supervisor requesting the responsive records, providing the list of nine requested items.

[75] After receiving the records, the APO reached out again to staff at mobile licensing to clarify if any other responsive records exist, particularly with item 9 of the request. The city submits that a further search was conducted with the mobile licensing supervisor, along with the assistance of the records management staff. The city submits that as a result of this search, its records clerk confirmed there are no files in storage and that a copy of the original signed contract with the GTAA or the city (item 9 of request) and any amendments to such contract, do not exist.

[76] The city submits that during mediation the appellant did not provide any further information or clarification that may assist it to conduct a further search. The city submits that its searches were reasonable as carried out in response to the request.

[77] The appellant provides his representations in a series of emails. In his first email, after reviewing the city's representations, he refers to the considerable details with respect to the records he has already provided.

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<sup>13</sup> Orders P-85, P-221 and PO-1954-I.

<sup>14</sup> Order MO-2246.

<sup>15</sup> Orders P-624 and PO-2559.

<sup>16</sup> Order PO-2554.

<sup>17</sup> Orders M-909, PO-2469 and PO-2592.

<sup>18</sup> Order MO-2185.

[78] In an email to the mediator, the appellant addressed his belief that more records exist. He submits that the city has a special taxicab licence for taxicabs to operate at the airport. He submits that this licence was issued to the named individual at the direction of the Greater Toronto Airport Authority (GTAA). The appellant submits that the licence, for all purposes, is administered by the GTAA which provides direction to the city as to how to proceed. He submits that his father was issued one of these licences and has since added him to the licence.

[79] The appellant submits that in the past, the AMTV licence issued by the city was taken back by the city when the person who was issued the licence passed away, at the direction of GTAA. He submits that the specified individual, was his friend, who was issued an AMTV licence number (licence number as specified in the request). He submits that in the case of this specified AMTV licence, it continues to be operational after his friend's death, and the city has not taken it back, to the best of his knowledge. The appellant submits that the city would not have done this except at the direction of the GTAA. He submits that other AMTV owners, like his father, have been trying to have the licence converted to a regular taxicab licence or have the right to sell it.

[80] The appellant submits that what is missing from the already disclosed information, are the documents that reveal the discussions with the GTAA as to what to do with the specified individual's licence. He submits that he was unable to obtain this information from the GTAA, so he filed this FOI request with the city. The appellant submits that the GTAA does not want those communications released.

[81] The appellant submits that he is certain that the city is being misleading by stating there are no further documents. He submits that if there are no other documents, then why is the city reluctant to offer an affidavit stating exactly that there are no other documents with the list of documents it is releasing.

[82] In his representations made during the adjudication, the appellant submits that he surmises that what the city is trying to hide is why the specified licence is still operating when the bylaw says it should not. The appellant clarifies that he is happy that the licence is still active but he wants to know why.

[83] The appellant submits that if city staff spoke to GTAA regarding how to handle the issue of the specified licence but did not take any notes or record the call, this is still a record that should be disclosed, even though there is no physical record. The appellant submits that the city qualified its search with "no further files exist in storage" and suggests that the city may have received verbal instruction from the GTAA and acted upon it. He questions if this is a record.

#### *Analysis and finding*

[84] For the following reasons I find that the city's search for responsive information is reasonable.



[85] As noted, although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist. In my view, the appellant has not provided any basis to conclude that further responsive records should exist.

[86] The appellant suggests that there was a possible conversation between the GTAA and the city that was not recorded and that the city was still required to identify this phone call or conversation as possible responsive records. While a conversation may have occurred, if there is no record of the conversation, it cannot be accessible under the *Act*. It is also possible that no discussion between the city and the GTAA occurred at all as the appellant assumes.

[87] The appellant takes issue with the fact that the city did not provide an affidavit concerning its search with its representations. While the IPC asks an institution to put the information regarding its search on an affidavit, it has been found that this is not required. In Order PO-4290, the adjudicator was prepared to accept the ministry's representations without an affidavit, as sufficient evidence to establish the reasonableness of its search.

The adjudicator referred to Order MO-1450, where the necessity of evidence being provided in affidavit form was addressed:

As the parties are aware, the adjudicative process of this office ordinarily involves the review of written submissions rather than an oral hearing. Generally, parties to an appeal are not required to and do not submit affidavit evidence with their submissions. There may be cases where the submission of affidavit evidence is preferable and even essential to the fact-finding process, but in many appeals, including those in which section 10(1) of the *Act* is raised, written representations have been found to contain the evidence required to support the application of the exemption under consideration.

[88] I agree with this approach and will apply it in this appeal. In certain circumstances, affidavit evidence may be preferable; however, in consideration of the evidence that was provided by the city and the efforts it took to undertake its searches, I have no reasonable basis to disregard the representations made by it about the search.

[89] The city's search was conducted by an experienced employee working in the city's access and privacy office. The city's search included its initial request to the mobile licensing manager and after receiving records, the city again reached out to mobile licensing to conduct a further search for records responsive to item nine of the request. No further records were located. The city also submits, and I accept, that it was willing to conduct a further search from information that it received during

mediation. However, reviewing the appellant's email to the mediator, he does not provide any basis to conclude that further responsive records should exist, except for a possible discussion between GTAA and the city with regard to the specified individual's AMTV licence. As stated, this is not a reasonable basis to order a further search.

As a result, I find the city's search for responsive records was reasonable.

**ORDER:**

The appeal is dismissed.

Original Signed by: \_\_\_\_\_

Alec Fadel  
Adjudicator

\_\_\_\_\_  
November 23, 2022