

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-4355

Appeals MA20-00221 and MA21-00011

City of Greater Sudbury

March 29, 2023

**Summary:** This order deals with appeals relating to two access requests made under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to the city's road conditions. In response to the first access request, the city issued a decision letter to the requester, claiming that no records exist in response to the request. In response to the second access request, the city issued an access decision to the requester, identifying two records as being responsive to the request, but denied access to them, claiming the discretionary exemption in section 15(a) (information available to the public). The city also provided the requester with a link to these records. The requester appealed both access decisions to the IPC because he believes that further records exist. The issues are whether the city was required to create a record in response to the requests, and whether its searches for records in response to both requests were reasonable.

In this order, the adjudicator finds that the information requested by the appellant is not a "record" within the meaning of the *Act* because it cannot be produced from machine readable records, by means of computer hardware and software and technical expertise normally used by the city. She upholds the city's searches for both access requests as being reasonable, and dismisses both appeals.

**Statutes Considered:** The *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1)(b) (definition of a record); Regulation 823 R.R.O. 1990, section 1.

**Orders Considered:** Orders P-50, P-99, MO-4166-I, PO-2237 and PO-4283.

## **OVERVIEW:**

[1] The requester made two access requests to the City of Greater Sudbury (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for information about the quality of all of the roads within the city.

[2] The requester seeks access to summary information about the conditions of all roads in the city for the specified years. The city has referred to the records being sought as the Pavement Condition Indexes, also referred to as "PCI's" or "PCI summaries." In particular, the information that the appellant seeks is a summary of road conditions describing the number of kilometres of road classified as being either in excellent, good, fair, poor or very poor condition. I will refer to these as the PCI's, PCI summaries or the summaries below. However, as also explained below, summaries for most of the years requested do not exist.

[3] The first access request was for the PCI summaries for all roads in the city for the years 2011, 2013, 2015, 2017 and 2019.

[4] In response, the city issued an access decision to the requester, advising that no records sought by the requester exist.

[5] The requester (now the appellant) appealed the city's decision to the Information and Privacy Commissioner of Ontario (the IPC) and appeal file MA20-00221 was opened.

[6] The second access request was for PCI summaries for all of the years from 2009 through 2020.

[7] In response to the second access request, the city identified two responsive records but issued a decision denying access to them,<sup>1</sup> claiming that the exemption in section 15(a) (information published or available to the public) applied to them. In the access decision, the city provided the appellant with the URL where these records could be located online. The two records included PCI summaries for 2009, 2012 and 2016.

[8] The appellant then appealed the city's second access decision to the IPC and appeal file MA21-00011 was opened. The IPC processed the appeals together.

[9] During the mediation of the appeals, the appellant advised the mediator that he believes that records responsive to request number one exist and that further records exist in regard to request number two. At the conclusion of mediation, the issue remaining in dispute with respect to both appeals was whether the city had conducted a reasonable search.

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<sup>1</sup> The two records the city claims are responsive to the second access request are entitled "*Municipal Asset Management Plan*" and "*Financial Planning for Municipal Roads, Structures and Related Infrastructure*."

[10] The appeals then moved to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry. I decided to add as an issue what constitutes a “record” under the *Act* and whether the city was required to create a record in response to the appellant’s access requests. I then provided the parties with the opportunity to make representations on the issue of whether the city was obligated to create a record and on reasonable search.

[11] I received representations from both the city and the appellant which were shared in accordance with the IPC’s *Practice Direction 7*.

[12] Subsequently, I requested and received further representations from the city and the appellant on the issue of whether the information requested by the appellant qualifies as a “record” within the definition of a record in section 2(1) of the *Act*, taking into consideration Orders MO-4166-I and PO-4283, which were issued by the IPC after the city and the appellant had made their initial representations.

[13] For the reasons that follow, I find that the requested information is not a “record” as defined in paragraph (b) of section 2(1) of the *Act*. As a result, there is no right of access to the information requested in the appellant’s requests.<sup>2</sup> I also uphold the city’s searches for records responsive to both access requests. The appeals are dismissed.

## **ISSUES:**

- A. Is the requested information a “record” under the definition of a “record” in the *Act*?
- B. Did the city conduct a reasonable search for records in response to both access requests?

## **DISCUSSION:**

### **Issue A: Is the requested information a “record” within the meaning of the *Act*?**

[14] As explained above, the appellant sought access to what he referred to as “PCI summaries” for all roads located within the city from 2009 through 2020. While the city maintains a large amount of data about the condition of its roads, it says that it does not regularly create or maintain a PCI Index, a PCI summary or any other similar summary of this information and it argues that it is not required to create a record in response to the appellant’s request. At Issue B, I have accepted that other than for the years 2009, 2012 and 2016, the city does not create or maintain these types of records

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<sup>2</sup> Leaving aside the PCI summaries in two existing records, which are publicly available.

and have upheld its search as reasonable, in part, on that basis.

[15] The city has explained that it maintains the raw data necessary to create the summary information that the appellant seeks. In these circumstances, it is necessary to consider whether the summary requested by the appellant is a "record" under the *Act*. For the reasons that follow, I am satisfied that the city cannot produce a responsive record from its electronic databases by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the city.

[16] Section 4(1) of the *Act* sets out an individual's right to access a record. It states:

Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless,

(a) the record or the part of the record falls within one of the exemptions under sections 6 to 15; or

(b) the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.

[17] The term "record" is defined in section 2(1) of the *Act*, as follows:

"record" means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,

(a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and [emphasis added]

(b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution *by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution;* (my emphasis)

[18] The opening words of paragraph (b) confirm that it must be considered with the relevant regulation, which in this case, is section 1 of Regulation 823 of the *Act*, which states:

A record capable of being produced from machine readable records is not included in the definition of "record" for the purposes of the *Act* if the

process of producing it would unreasonably interfere with the operations of an institution.

[19] For the reasons below, I find that the information the appellant seeks is not a “record” within the meaning of paragraph (b) of the definition. Given my finding, it is not necessary for me to decide whether producing the information would unreasonably interfere with the city’s operations.

### ***Representations***

[20] The city first acknowledges that it understands what the appellant seeks. It points to the summaries of road conditions that it referred to in its decision in response to the second access request: attachments contained in two reports that were prepared by a third party consultant for the city (see Footnote 1 for the titles of the reports). The first report was presented to the Finance and Administration Committee in 2012, which included a summary of 2009 information. The second report was presented to City Council in 2016, which included summaries for 2012 and 2016.

[21] Concerning whether the city had an obligation to create PCI summaries for the years identified by the appellant, the city argues that it is well established that an institution is not required to create a record where one does not already exist, unless the record is capable of being produced from an existing machine readable record by using computer hardware, software or equipment and technical expertise normally used by the institution, and where doing so would not unreasonably interfere with the operations of the institution.<sup>3</sup>

[22] The city also provides context about the summaries that do exist (i.e. for 2009, 2012 and 2016). It says that they were prepared by a third party consultant in the course of preparing reports for the city and provide an extremely simplistic overview of the state of the city’s road network; they are not nearly as detailed as the PCI summaries the appellant seeks. Further, the city explains that it does not create or rely on PCI summaries, but on information maintained in its asset management system and the expertise of its engineers to guide the allocation of resources for funding road works. It further submits that creating summaries requested by the appellant would be of little value to the city, as they do not inform road work decisions. As a result, the city argues that staff duties do not include the responsibility of refining and compiling thousands of data points to create the summaries that the appellant seeks.

[23] The city goes on to explain that its asset management system *does* have the capacity to export raw data organized by predefined segments of roads to a spreadsheet but that it understands the appellant does not want the information in that format. The city provided the third party consultant with its raw data from its asset management system, which the third party used to create the PCI summaries referred

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<sup>3</sup> The city relies on Order MO-2129.

to, above. I note that the named consultant is a large multinational company.

[24] The city states:

Although data regarding pavement assets conditions is contained in a spreadsheet, the system does not have the capacity to produce PCI summaries. To be clear, the data is not sufficiently refined to allow it to simply be reorganized or filtered to produce the request[ed] records. The creation of PCI summaries would be a complex process requiring a number of hours of staff time. Staff would have to further refine the data by applying a number of formulas to each line item of the spreadsheet, then summarize the results in a new record.

The City submits that the PCI summaries requested are not records that are "capable of being created from a machine readable record" as manual processes are required to create the desired records. Furthermore, calculating PCI summaries is not part of the normal functions of staff in the Traffic and Transportation Department which is supported by the fact that all PCI summaries [the three provided to the appellant] were created by a third party.

[25] The appellant submits that he found a convenient and easy-to-understand table in the two reports authored by the third party consultant, and that his access request is for similar records covering an extended period of time in order to gauge how the city's road conditions have progressed over time. The appellant suggests that the city had an obligation to respond to this access request in a more open and forthcoming manner. For example, the appellant's position is that the city could have offered to provide information on the condition of its roads in the format it uses to inform internal decision-makers, and that there must be some summary documents that senior staff are presented with from time to time about the condition of its road network.

[26] The appellant goes on to argue that PCI summaries are an important tool in communicating with the public and with Council about the condition of its roads, which are a key municipal asset. Further, he disputes the city's evidence, speculating that PCI summaries must be routinely produced for public and internal reporting. The appellant is of the view that the work of preparing these summaries is a normal function of internal staff. The appellant submits that the city cannot now argue that producing PCI summaries would unreasonably interfere with its operations when a normal function of the city is to produce reports similar to the record being sought. (Other than the three PCI summaries that have already been disclosed to the appellant – and which were prepared by the third party consultant – the appellant has not provided me with any other examples or evidence in support of his belief that the city produces PCI summaries on a routine basis.)

[27] The appellant states:

The City seems to suggest that no one in authority, whether at the supervisory level, manager level, executive level or at Council, has any interest in knowing what condition its largest asset is in, and how those conditions have changed year to year. It is simply not believable that no one in authority would have at least the intellectual curiosity to know the condition of the assets. Yet, if someone has, and asked for a report, then the Record must exist.

The Records requested do exist. They may have a different title, but they do exist. In an organization as large as the City's, with numerous staff and management employed to collect and analyse the condition of its roads, it would be a normal management requirement to prepare and present summary reports every year outlining the current conditions (as measured by PCI), how those conditions have changed year over year and the projected budget requirements.

[28] The appellant then refers to a city 2020 budget document.<sup>4</sup> In this document, the appellant states, there is a graph showing PCI totals under the heading of Key Performance Indicators, which show how road conditions have progressed for the years 2016, 2017 and 2018.

[29] In reply, the city argues again that the data generated by its asset management program is not sufficiently refined to generate PCI summaries. To create PCI summaries, the city submits, staff would have to undertake a complex process that requires manual processes. The city says that "PCI summaries" are simply not created in the intervals or with the frequency desired by the appellant.

[30] The city further submits that the graph the appellant refers to in the 2020 budget document was derived from the city's MBNCan reporting system.<sup>5</sup> It explains that it provided the raw data to MBNCAN, which compiled it into its annual report.

[31] In sur-reply, the appellant submits that if the PCI summaries in the third party reports were used to convey information to city Council, it would be logical to conclude that the PCI summaries were the preferred manner by which city administrators monitor and manage the city's road network. As a result, it would also seem logical for

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<sup>4</sup> The appellant states in his representations that he has a copy of this budget document. This document is not at issue in these appeals.

<sup>5</sup> During the inquiry, I obtained further information about the MBNCan reporting system from the city. The city explained that MBNCan is the Municipal Benchmarking Network of Canada, which is comprised of Canadian municipalities who work together to identify, collect and compare data on their respective municipal services. It is a separate entity from the city and has its own database. The data from each municipality is compiled and shared with municipalities who use the data to evaluate their progress, inform policy decisions and identify trends. The city advises that municipalities, including the city, report specific data points which are compiled into an annual report, which can be found at <http://mbncanada.ca/resources/>. One of the data sets focuses on roads, and contains general information only.

an access request to be made to the city for PSI data over a ten-year period, in alternating years, as the appellant has done.

[32] The appellant submits that the city made “no offer” to provide any record in response to either his first or second access request, although he concedes that the city offered to provide “thousands of pages of raw data.” He says he took the offer to be a deflection tactic and he therefore rejected it.

[33] As noted, I invited further representations from the parties about Orders MO-4166- I and PO-4283, orders issued after the parties in the present appeal had submitted their representations. These orders are relevant because they discuss the obligations of an institution to create a record from a machine-readable record (i.e., a database). In both those appeals the IPC found that the requested information could be produced from existing databases and was, therefore, a “record”.

[34] In its supplementary representations, the city reiterates that the process for creating PCI summary tables is complex and would require a great deal of specialized knowledge, involving a number of steps, including the following:

- Exporting the inventory table from its pavement management system to an excel sheet for each collection year, which contains the pavement condition data,<sup>6</sup>
- Staff would need to “comb through” completed capital work project documents and development driven project documents in order to determine historic road geometry for each year of pavement condition data collection. This process would require qualified staff to filter through contracts, RFP submissions, change orders and other project documents, and
- Staff would need to create two formulas; one to populate a field which labels the condition of each road segment and then a second formula to “sum the lane kilometres of each road segment.”

[35] The city further submits that producing PCI summaries as requested by the appellant would require the dedicated work of one of its staff members in the traffic department for 16 weeks. There are only four staff members in this department.

[36] The city also submits that the process to produce PCI summary sheets can be distinguished from the processes addressed in Orders MO-4166-I and PO-4283. For example, in both of these orders, the city argues, the institutions had previously produced similar records, whereas in this case city has never itself created PCI summary sheets – the only summary information available was prepared by third parties using the city’s raw data. Further, the city submits that in the above-referenced orders, the information at issue was contained in one database/system, whereas the

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<sup>6</sup> Pavement condition data is organized into 10 metre segments for the approximately 3,560 kilometres of the city’s roads.



data required to create PCI summary sheets is partially contained in the pavement management system, but the historic road geometry information is not. The road geometry information, the city submits, must be pieced together by reviewing various records and then keyed into a spreadsheet.

[37] The city goes on to submit that both orders discuss the possibility of developing a software or automated process to facilitate the creation of the requested records, but argues that its situation is different, stating:

The City uses proprietary software developed by a private company that made a specialized program for pavement management. This software has limitations, and the City does not have the capacity or authority to change the software in order to create functionalities capable of producing the requested PCI summary sheets. Additionally, the task of reconstituting historic road geometry from capital project and development driven documents requires knowledge of City capital projects which cannot be automated.

[38] In response, the appellant provided a copy of a 2021 local newspaper article, which refers to a report prepared by city staff containing a chart that shows how PCI values for the city's roads will change over the following ten years. This chart, the appellant argues, confirms that PCI summaries exist.

### ***Analysis and findings***

[39] The appellant seeks PCI summaries about the condition of the city's roads over a number of years. The city's position is that it does not create such summaries, but it can produce the raw data from its asset management system and/or the MBNCan system. The appellant continues to pursue the information in summary form.

[40] In previous IPC orders, it was established and recognized that an institution is generally not obligated to create a record where one does not currently exist.<sup>7</sup> For example, in Order 50, former Commissioner Sidney Linden stated that:

...the *Act* gives requesters a right (subject to the exemptions contained in the *Act*) to the "raw material" which would answer all or part of a request, but, ... the institution is not required to organize the information into a particular format before disclosing it to the requester.

[41] However, in Order 99, the former Commissioner also found that the creation of a record from existing information in another form is, in some circumstances, consistent with the spirit of the *Act* and required. In that case, the access request was for records relating to a job competition at the Human Rights Commission (the Commission). One of the issues in the appeal was whether records existed that would be responsive to the

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<sup>7</sup> Orders P-50, MO-1381, MO-1442, MO-2129, MO-2130, PO-2237, PO-2256 and MO-2829.

appellant's request. The Commission submitted that records responsive to parts of the access request did not exist and that in the absence of a record relating to the appellant's request, it had no legal obligation to create a record. While the former Commissioner found that the Commission did not have an obligation to create a record in that circumstance, he found that the Commission should have taken a broad approach to the appellant's request and noted that the creation of a record from existing information in another form is, in some circumstances, consistent with the spirit of the *Act*.

[42] In Order PO-2237, Adjudicator Frank DeVries addressed a situation in which a requester asked that an institution create a record from existing information. He distinguished the circumstances in the appeal from those in Order 99, stating:

It has been established and recognized in a number of previous orders that section 24 [the provincial equivalent of section 17] of the *Act* does not, as a rule, oblige an institution to create a record where one does not currently exist. However, in Order 99, former Commissioner Sidney Linden made the following observation with respect to the obligations of an institution to create a record from existing information which exists in some other form:

While it is generally correct that institutions are not obliged to "create" a record in response to a request, and a requester's right under the *Act* is to information contained in a record existing at the time of his request, in my view the creation of a record in some circumstances is not only consistent with the spirit of the *Act* it also enhances one of the major purposes of the *Act* i.e. to provide a right of access to information under the control of institutions.

Although I accept the appellant's position that the ministry could calculate the specific amounts requested, I find that the ministry is not required to do so in the circumstances, and that it has met its obligations under the *Act*. As identified above, an institution is not, as a rule, obliged to create a record where one does not currently exist, and I find that the circumstances present in this appeal are not such as to warrant the creation of a record. In my view, this is not the type of situation described by former Commissioner Linden in Order 99 . . .

[43] More recently, the issue has been examined in more detail in Interim Order MO-4166-I and in Order PO-4283. As outlined in those orders, the approach is guided by paragraph (b) of the definition of a "record" in section 2(1), read with section 1 of Regulation 823, both of which are set out above. As outlined in Interim Order MO-4166-I and PO-4283, a requested record – here, a PCI summary or any other summary regarding road conditions – will qualify as a "record" under the *Act* if two conditions are

met. First, if it can be produced using computer hardware and software or any other information storage equipment and technical expertise normally used by the city. Second, if the process of producing it would not unreasonably interfere with the city's operations.

[44] I agree with the reasoning expressed by the adjudicators in recent orders Interim Order MO-4166-I and Order PO-4283, referenced above, and apply it in this appeal.

[45] In my view, by requesting the particular information that he seeks, the appellant is indeed requesting that the city create PCI records by compiling information from the asset management system and/or the MBNCan system into summary form. While the third party consultant was able to create PCI summaries from the raw data provided by the city from its asset management system, and the Municipal Benchmarking Network of Canada (MBNCan) was able to produce summary data from the city's raw data, I accept the city's argument that the creation of PCI summaries for it would be a complex process that does not involve computer hardware and software and technical expertise normally used by the city. In other words, I accept the city's argument that the PCI summaries requested are not records that are capable of being created from a machine readable record, as manual processes and skills that are not normally used by the city would be required to create the desired records. I also accept that the city does not have the capability to readily modify its software or create an algorithm to manipulate the data into the requested format.

[46] I agree with the city that Interim Order MO-4166-I and Order PO-4283 can be distinguished from the facts in this case, because in the circumstances of those appeals, the institutions had previously produced similar records, demonstrating that they possessed the technology and software do so, whereas in this case city has never itself created PCI summary sheets. In addition, in those appeals the information at issue was contained in one database/system, whereas the data required to create PCI summaries, as previously stated, involves several steps, including staff filtering through contracts, RFP submissions, change orders and other project documents.

[47] As a result, I conclude that the information the appellant has requested does not qualify as a "record" for the purposes of the definition of a record in section 2(1)(b) of the *Act* because I find that the PCI summaries the appellant seeks are not capable of being produced from a machine readable record under the control of the city by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the city.

[48] I also note that the city has already advised the appellant that it has the capacity to export raw data regarding predefined segments of roads into a spreadsheet, and offered to provide this raw data to the appellant, who declined it.

**Issue B: Did the city conduct a reasonable search for records in response to both access requests?**

[49] The appellant's position is that there are other PCI summaries created by the city that exist and that the city did not conduct a reasonable search for them. Where a requester claims that additional records exist beyond those identified by an institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.<sup>8</sup> If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. Otherwise, I may order the institution to conduct another search for records.

[50] The *Act* does not require an institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.<sup>9</sup> To be responsive, a record must be "reasonably related" to the request.<sup>10</sup>

[51] 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.<sup>11</sup> 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.<sup>12</sup>

[52] Although a requester will rarely be in a position to indicate precisely which records an institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.<sup>13</sup>

[53] The city was required to provide a written summary of all steps taken in response to the request. In particular, I asked the city the following questions:

1. Did the city 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 city 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 city 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

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<sup>8</sup> Orders P-85, P-221 and PO-1954-I.

<sup>9</sup> Orders P-624 and PO-2559.

<sup>10</sup> Order PO-2554.

<sup>11</sup> Orders M-909, PO-2469 and PO-2592.

<sup>12</sup> Order MO-2185.

<sup>13</sup> Order MO-2246.

how did the city inform the requester of this decision? Did the city 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.

### ***Representations***

[54] The city submits that it conducted a reasonable search for records that respond to the appellant's access requests. It further submits that the appellant's requests were sufficiently clear to enable staff to identify the desired records and that no further clarification was required. The city advises that the searches for records were conducted by two staff members, namely its Traffic and Asset Management Supervisor (the supervisor) and its Traffic and Transportation Engineering Analyst (the analyst).

[55] The supervisor conducted the search for records in response to the first access request and provided affidavit evidence to the IPC. The supervisor submits that his team is responsible for the maintenance of the pavement management system and, therefore, he has knowledge of the type of records the appellant is seeking. The supervisor further submits that he consulted with a number of colleagues in the Infrastructure Capital Planning Department and the Linear Infrastructure Services Department and confirmed with them that the city does not create PCI summaries and that the few PCI summaries it has were created by a third party for the city. The supervisor also advises that he participated in a conference call during the mediation of both appeals and performed another search for records with respect to both appeals in preparation for the call. The supervisor submits that he searched his email account, an electronic folder on the city's J: drive, where reports are stored, as well as an external hard drive that contains reports compiled prior to the supervisor's direct involvement with the pavement management system. He advises that no additional responsive records were found.

[56] The analyst who conducted the search for records in response to both access requests also provided affidavit evidence. He submits that he is directly responsible for maintaining the pavement management system and has knowledge of the type of records the appellant is seeking. The analyst submits that he searched his emails, an electronic folder on the J: drive and an external hard drive used to store older reports. He further submits that he also searched the city's management system called "AgendasOnline," where he found two responsive records, and that he provided a link

to both of these records, as explained above.<sup>14</sup>

[57] The appellant did not provide representations on this issue.

***Analysis and findings***

[58] I am satisfied that the city conducted a reasonable search for existing records responsive to the appellant’s access requests. To locate summaries that may have been created and which are maintained by the city, I accept that the city conducted searches in email accounts, its J:/ drive, an external hard drive and its management system called AgendasOnline. In addition, I find that the city conducted a further search for records during the mediation of the appeals. Through these searches, the appellant was provided access to the few responsive records that exist – those reports that were prepared on the city’s behalf by third parties.

[59] The *Act* does not require the city to prove with absolute certainty that further records do not exist. However, the city must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records. In this case, I find that two experienced employees knowledgeable in the subject matter of the requests expended a reasonable effort to locate records that were responsive to the requests, and that the appellant was provided with the URL to access the records that were responsive to the second access request.

[60] As a result, I find that the city has made a reasonable effort to identify and locate existing responsive records and I uphold its searches for records as being reasonable.

**ORDER:**

1. I find that, with three exceptions, which are publicly available, the summaries the appellant has requested are not “records” within the meaning of the *Act*.
2. I uphold the city’s searches for existing summaries responsive to the appellant’s two access requests.
3. I dismiss both of the appeals.

Original signed by: \_\_\_\_\_  
Cathy Hamilton  
Adjudicator

\_\_\_\_\_ March 29, 2023

<sup>14</sup> See footnote 1 for the title of these records.