

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4361

Appeal MA20-00571

City of Mississauga

March 31, 2023

Summary: The sole issue in this appeal is whether the City of Mississauga (the city) conducted a reasonable search for records relating to the city's compliance with the National Fire Prevention Association. In this order, the adjudicator finds that the city has not conducted a reasonable search and orders the city to request a copy of any responsive records from its consultant.

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

Orders Considered: Orders M-583, MO-1989, MO-2129, MO-4091 and PO-4283.

OVERVIEW:

[1] The appellant made a multi-part access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the City of Mississauga (the city). Remaining at issue is the following part of the access request:

- a copy of the entire Excel file used by Mississauga Fire and Emergency Services (MFES) to confirm the percentile compliance with the National Fire Prevention Association (NFPA)

[2] In response to the access request, the city issued a decision granting full access to the records, as follows:

- 2016 Emergency Calls (an Excel file containing raw data)
- Risk Worksheets (a PDF file)

[3] The appellant appealed the city's decision to the Office of the Information and Privacy Commissioner of Ontario (the IPC) on the basis that additional responsive records should exist relating to the 2016 Emergency Calls. Specifically, the appellant seeks a copy of the record that calculates the then current average response time.

[4] During mediation, the city provided information relating to the searches it conducted for the records and advised that no further records responsive to the appellant's request exist. The appellant remained dissatisfied with the city's response.

[5] As further mediation was not possible, the appeal was transferred to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry under the *Act*.

[6] The adjudicator initially assigned to this appeal invited the city and the appellant to provide representations on the issues in this appeal. She received representations from both parties. This appeal was subsequently transferred to me to continue the adjudication. I reviewed the parties' representations and decided that I did not require further submissions before making my decision.

[7] In this order, I find that the city has not conducted a reasonable search and order the city to request a copy of any responsive records under the city's control from the consultant who used the city's raw data to determine whether the city was in compliance with the NFPA standards.

DISCUSSION:

[8] The sole issue in this appeal is whether the city conducted a reasonable search for responsive records. The appellant claims that further records responsive to his request exist.

[9] Where a requester claims additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.¹ If I am satisfied the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[10] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to

¹ Orders P-85, P-221 and PO-1954-I.

show it has made a reasonable effort to identify and locate responsive records.² 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 (responsive) to the request.³

[11] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding such records exist.⁴

Representations of the parties

[12] The city submits that it conducted a reasonable search for responsive records and that it has disclosed the responsive records in full to the appellant. In support of its position, the city submitted an affidavit from its Access and Privacy Officer and an affidavit from the Executive Officer of MFES. Both affidavits described the individuals involved in the search, where they searched, and the results of their search.

[13] The city explains that it does not have a record containing a subset of the data contained in the 2016 and 2017 response times data, namely the data that was included in the calculations for the purpose of measuring fire operations against the NFPA standards or conversely the data that was excluded.

[14] The city further explains that it retained a consultant to use the raw data provided by the city to perform the modelling and calculations required to determine compliance with NFPA standards. It submits that it did not receive a record of included/excluded call data from the consultant but only the final results indicating that it was in compliances. As such, the city submits that there is no record missing from its record holdings.

[15] The appellant explains that more records must exist. He explains that at a meeting with the Councilor, the Fire Chief and the Chief Financial Officer, he was presented with a screen highlighting over 30,000 individual response records from which MFES asserted it had calculated the statistics. The appellant questions how, if the city/MFES insist that these documents don't exist, the MFES is able to populate its statistical charts.

[16] The appellant submits that since the city has a 10-year retention policy, it is required to re-create this record, if it is truly missing. He submits that if the city states that it cannot find this record then it has violated its retention policy by not re-creating it.

[17] Alternatively, the appellant submits that the type of record he seeks can be

² Orders P-624 and PO-2559.

³ Orders M-909, PO-2469 and PO-2592.

⁴ Order MO-2246.

created automatically on Excel from the raw data to create the statistics for that year.

Analysis and findings

[18] Based on my review of the parties' representations, I find that the city has not conducted a reasonable search for all responsive records in its custody or control.

[19] As stated above, the *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show it has made a reasonable effort to identify and locate responsive records.⁵

[20] The city submits that its raw data was used by its consultant to determine whether the city was in compliance with the NFPA standards. The appellant seeks the analysis that was used by the consultant in making its determination, which includes its analysis of the 2016 included/excluded call data. Specifically, he wants the record that calculates the then current average response time.

[21] The city has already provided the 2016 call data to the appellant in raw form, but this is not what the appellant seeks. As the appellant seeks the record that calculates the then current average response time, I find that a reasonable search would entail the city requesting this information from its consultant. I find that it is reasonable to expect that the consultant would provide it to the city, given that the records relate to a city matter and the records sought are summaries, not the consultant's working papers. In my view, a reasonable search would require the city to request this information from its consultant.

[22] Alternatively, the city could itself produce the calculation of the then current average response time.

[23] Therefore, I find that the city has not conducted a reasonable search and will order the city to either request a copy of any responsive records from its consultant, or produce a responsive record from its own record holding.

ORDER:

1. I do not uphold the city's search for responsive records.
2. I order the city to request a copy of the records supporting the average response time calculation (2016 included/excluded call data) from its consultant by **May 2, 2023**.

⁵ Orders P-624 and PO-2559.

3. I order the city to issue an access decision for any responsive records provided to it by the consultant, without claiming that the request is frivolous or vexatious and without recourse to a time extension, in accordance with the requirements of sections 19, 21, 22 and 45 of the *Act*, as applicable, and to send me a copy of the decision letter when it is sent to the appellant. The city is to treat the date of the receipt of the responsive records as the date of the request.
4. I remain seized of any compliance issues that may arise from this order and any new appeal that the appellant may file with respect to the access decision that the city is required to issue under Order Provision 3.

(Original Signed by) _____

Lan An
Adjudicator

March 31, 2023 _____