

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4399

Appeal MA21-00151

City of Toronto

June 22, 2023

Summary: The appellant sought records from the City of Toronto (the city) under the *Act* that contain information about conditions accompanying natural garden exemptions imposed on 83 properties. The city provided the appellant with a link to a city by-law setting out the standard conditions for natural garden exemptions and denied access to this information on the basis that it was publicly available under section 15(a) (information is published or available to the public). The appellant disputed the city's determination of the scope of the request, indicating that he seeks access to conditions imposed that are in addition to the standard conditions.

In this order, the adjudicator determines that the city improperly interpreted the scope of the request and that the information requested is not publicly available and therefore not exempt from disclosure under the *Act*. She also orders the city to process the appellant's request as a single request and issue an access decision to the appellant on this request.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, sections 15(a), and 17.

OVERVIEW:

[1] In this order, at issue is the scope of a request for information about unique conditions accompany natural garden exemptions imposed by the city on certain specified properties and also whether the responsive information is publicly available. A natural garden exemption allows property owners to have gardens with environmental benefits that may create a habitat for birds, butterflies and other wildlife. These

gardens are not allowed to contain overgrown plants or invasive weeds.¹

[2] The City of Toronto (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA or the *Act*) for records from its Municipal Licensing and Standards (MLS) Department that relate to any conditions accompanying natural garden exemptions (NGE) granted from January 1, 2004, to December 7, 2020 (the date of the request). The full request is repeated below.

[3] The city issued an access decision letter denying access in full to the requested records under section 15(a) (information is published or available to the public) of the *Act*. With its decision letter, the city provided the appellant with a copy of its Natural Gardens Factsheet,² as well as links to:

- Toronto Municipal Code Chapter 489 on "Grass and Weeds"³ (also referred to in this order as by-law 489) relating to exemptions to a natural garden.
- The MLS district offices that could provide assistance.
- The approved requests for natural gardens (a list of 83 addresses that had received an NGE).

[4] The appellant appealed the city's decision to the Information and Privacy Commissioner of Ontario (the IPC) and a mediator was assigned to attempt a resolution of this appeal.

[5] During the course of mediation, the appellant advised the mediator that he reviewed the links provided by the city and that the information contained in the links was not the information that he was seeking. He provided examples of the types of records he sought.

[6] The mediator conveyed the appellant's concerns to the city. The city confirmed that as of July 2021, the natural garden exemption process in the Grass and Weeds by-law had been suspended and the city was no longer accepting applications for natural garden exemptions. The appellant in response indicated that the city should be able to produce the records for the 83 properties that were on the natural garden exemptions list as of the December 2020 request date.

[7] The city took the position that one address is one request and the appellant should file a new request for each address noted. The appellant disagreed and noted that his request was a request for any and all records that related to natural garden exemptions. The issue of responsiveness of the records and scope of the request

¹ See Natural Gardens Factsheet at: https://www.toronto.ca/wp-content/uploads/2017/12/87f4-natural_gardens_fact_sheet.pdf

² Referred to above.

³ Now referred to as "Turfgrass And Prohibited Plants" in Toronto Municipal Code Chapter 489 at https://www.toronto.ca/legdocs/municode/1184_489.pdf

pursuant to section 17 of the *Act* was added as an issue in the appeal, in addition to the original issue as to whether the responsive information was publicly available under section 15(a).

[8] As no further mediation was possible, the file proceeded to adjudication where an adjudicator may conduct an inquiry. I decided to conduct an inquiry and I sought the city's representations initially, which were provided to the appellant. The appellant provided representations in response.

[9] In this order, I determine that the city misinterpreted the scope of the appellant's request and that the information that he seeks is not publicly available and therefore not exempt from disclosure under the *Act*. I order the city to treat the appellant's request as a single request and to issue an access decision on this request.

DISCUSSION:

What is the scope of the request for records? Which records are responsive to the request?

[10] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

(1) A person seeking access to a record shall,

(a) make a request in writing to the institution that the person believes has custody or control of the record, and specify that the request is being made under this Act;

(b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;

...

(2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[11] To be considered responsive to the request, records must "reasonably relate" to the request.⁴ Institutions should interpret requests liberally, in order to best serve the purpose and spirit of the *Act*. Generally, if there is ambiguity in the request, this should

⁴ Orders P-880 and PO-2661.

be resolved in the requester's favour.⁵

Overview of the positions of the parties

[12] The city states that it responded in full to the request, which it says was for all records from its MLS department that relate to any and all conditions where a natural garden exemption would be granted, from January 1, 2004 to December 7, 2020.

[13] The city states that it provided the appellant with a copy of the Toronto Municipal Code Chapter 489 (by-law 489) which contains the standard conditions for an exemption to a natural garden. Additionally, the city provided the appellant with contact information for each district office in MLS, as those district staff could answer any questions regarding conditions for a natural garden exemption.

[14] The city acknowledges that it could have granted a natural garden exemption with conditions in addition to the standard conditions set out in by-law 489 (unique conditions), but it states that its MLS staff cannot ascertain which, if any, individual address has unique conditions because there is no consolidated record of such conditions; they are not noted in a database or other such "list" that can be easily searched. Therefore, the only way to obtain access to unique conditions is to obtain a copy of the letter granting the exemption for each of these addresses.

[15] Regarding the appellant's position that he should receive access to records regarding each individual address with unique conditions, the city submits that these records are not within the scope of the request. However, the city concedes that these "unique" conditions may be contained in the records of individual addresses, and that the appellant is free to file freedom of information (FOI) requests for each address.

[16] The city states that its bulk user policy, as noted on its webpage,⁶ is that a requester is entitled to make one FOI request per municipal address. It is the city's position that there is nothing stopping the appellant from making separate access requests for each of the 83 addresses with NGE's so that he could ascertain which of these NGE's were accompanied by unique conditions. The city also states that it will not deviate from its policy of permitting only one municipal address per request, a policy set out in its bulk user policy that also stipulates that it will process only 5 requests per person at a time.

[17] The city concedes that if the appellant made access requests for each of the 83 addresses, as described above, those records would not be subject to the section 15(a) exemption.

[18] The appellant states that his request is for information related to natural garden

⁵ Orders P-134 and P-880.

⁶ <https://www.toronto.ca/city-government/accountability-operations-customer-service/access-city-information-or-records/freedom-of-information/>

exemptions actually issued, not a list of conditions under which natural garden exemptions would be issued. He states that by-law 489 does not prescribe any single form that contains a natural garden exemption and allows for multiple records to contain NGE conditions for any given property.

[19] He objects to the city's imposition of its bulk user requirement of one access request per property, with a limit of 5 requests being processed at a time, which he says does not provide any justification or precedent.

[20] The appellant states that requiring one request per property could lead to unnecessary repetitive appeals to the IPC and significantly more work for both parties. As well, by imposing the bulk user requirement on him, he would not be permitted to make 83 requests at a time, being one request per address.

[21] The parties made additional representations, which I will refer to in my discussion below.

Findings

[22] The appellant's request was directed to MLS and specifically sought:

The most recent by-law 489 on natural garden exemption conditions imposed on the [83] properties listed at the following internet link [same link as provided by the city in its decision letter] ...

A number of different types of records containing exemption conditions can result from bylaw § 489-3, including:

(4)(d) The growth has been inspected by a City horticulturalist who has recommended approval of the exemption.

(5)(a) The natural garden will be restricted to the location set out in the exemption authorization letter;

(5)(c) Any other conditions respecting health, safety and nuisance as the Executive Director considers advisable.

Depending on the case, the exemption conditions may be recorded in one or more of:

- an inspection letter or memo from Parks, Forestry, and Recreation [PFR], most likely addressed to MLS
- a natural garden exemption authorization letter or memo from MLS that may or may not be sent to the property owner
- some other similar kind of document.

The expectation is that the exemption conditions will usually be in an inspection letter or memo from Parks, Forestry and Recreation to MLS, possibly augmented with additional conditions in a letter from MLS to the property owner...⁷

Scope of the request

[23] The appellant's view is that his request is clear; his objective is to receive access to natural garden exemption unique conditions which can be found in authorization letters or memos from MLS concerning each property that received a natural garden exemption from January 1, 2004, to December 7, 2020. Specifically, he has described the types of individual records per address that contain information about unique conditions for the address that the record pertains to. He does not seek access to the standard conditions, as set out in the by-law 489.

[24] The appellant listed the type of unique conditions that may be present in an NGE in his request, such as conditions respecting health, safety and nuisance.

[25] The city does not keep consolidated records listing any unique conditions under which an NGE was granted. The city's position is that the appellant should make a separate request for each of the 83 addresses that have a natural garden exemption during this time period in order to receive information that provides unique condition information related to an NGE.

[26] By way of background, prior to issuing its access decision, the city asked the appellant to clarify the request.

[27] The city and the appellant engaged in a significant back and forth about the

⁷ The appellant specifically stated in his request that he did not want access to:

- complaints
- Grass and Weeds Advisories, Notices of Violation
- Natural Garden Exemption Applications
- pictures and media
- inspection results not setting conditions for the current exemption
- City of Toronto internal communication not setting conditions for the current exemption
- MLS Investigation tracking system records
- communications to and from the property owner except to send the current exemption conditions
- communications to and from the complainant(s).

meaning of the request. The city attempted to clarify the request by referring to a previous access request made by the appellant; the appellant took the position that the new request was unique and unrelated to that request. The appellant and the city also discussed whether the appellant could identify specific time frames or geographic areas to search. The appellant explained why he could not because of the nature of the information that he sought. He pointed out to the city that he had identified a specific geographic area and he maintained his position that his request was sufficiently clear.

[28] The city then issued its access decision letter dated February 1, 2021, which indicated that the appellant had requested access to records from MLS that related to any and all conditions where a natural garden exemption would be granted and provided him with a copy of links to by-law 489, the MLS district offices and the list of 83 addresses that had received an NGE, the same list previously provided by the appellant in his request, as well as the Natural Gardens Factsheet.

[29] This decision letter did not address whether any of the 83 addresses in fact had unique conditions attached to their NGE. Rather, the 83 addresses are those for which an NGE was granted. It tells the appellant nothing about whether these addresses had unique conditions attached to the exemption and what these conditions were. In this letter, the city denied access to the records in full to the requested records under section 15(a) of the *Act*.

[30] As indicated above, the appellant sought in his request access to "... [natural garden] exemption [unique] conditions⁸ [in] an inspection letter or memo from Parks, Forestry, and Recreation..., an authorization letter or memo from MLS that may or may not be sent to the property owner, [and] some other similar kind of document...".

[31] Based on my review of the wording of the appellant's request, and the clarification emails between him and the city, I conclude that the request is one request for specified records for the 83 properties that obtained an NGE and that contain unique conditions during the time frame of the request. In my view, the fact that the city does not maintain a central list or repository of unique conditions does not absolve it of its obligation to search and identify these records.

[32] The city has interpreted the appellant's request as seeking only the addresses for which an NGE was granted and for the standard conditions set out in by-law 489. I disagree with the city about this. It is clear from the appellant's request and subsequent clarification that he seeks access to letters, memo, or other records for each address that has unique NGE conditions.

[33] Although the city and the appellant engaged in discussions to clarify the request, the appellant was steadfast in his position about the scope of the request. In my view, the appellant acted reasonably in these discussions when I consider the objective of his

⁸ The appellant referred to these NGE conditions in his request, including, as set out in by-law 489: "...conditions respecting health, safety and nuisance as the Executive Director considers advisable...".

access request. He is seeking information in the city's possession and he is entitled to rely on the knowledge of the city staff tasked with searching for the requested records as to how the requested information can be located by the city. The responsive information in the records is about which addresses have unique NGE conditions imposed on them by the city, reasonably relates to the appellant's request.⁹

[34] As indicated above, the city has advised that the requested information about unique NGE conditions property are found in the records of each property address. Each address would need to be searched individually to locate this the information about unique conditions imposed by the city for an NGE.

[35] I find that the city has not searched for the records requested by the appellant and I will order it to do so.

[36] Having decided the scope of the request, I will consider the city's position that the appellant should be required to file a request for each of the 83 address separately. The city's position is that because the request pertains to 83 different addresses, the appellant must file a separate request for each of these addresses and it will only process 5 requests at a time.¹⁰ Essentially, this would prevent the appellant from obtaining most of the requested information in a timely manner as the processing time of 83 requests at 5 requests at a time would be many years.

[37] In this appeal, the appellant submitted a single request and wants his request to be treated as one request.

[38] *MFIPPA* does not stipulate that a requester must only make one access request per property address, as the city asserts in this appeal. As set about above, section 17 of *MFIPPA* requires a request to be clear and contain sufficient detail to enable the institution to search for records. Section 17 also contemplates that the appellant and the institution will engage in discussions to clarify the scope of any given request. As I have concluded above, the request was sufficiently clear and, in my view, the appellant engaged properly with the city's attempts to clarify the request.

[39] While the *Act* requires that a request be for specific records, as noted in section 17(1)(b), I find that the appellant has made such a request in this case. The city does not point to any other sections of the *Act* to support its preferred approach to respond to access requests involving a number of properties.¹¹

[40] I determined above that the information responsive to the appellant's request,

⁹ Orders P-880 and PO-2661.

¹⁰ The city referred to the following link in its representations. In particular it relies on, "3. How to Submit an FOI Request," as requiring separate requests for each address and only 5 requests being processed at a time. See <https://www.toronto.ca/city-government/accountability-operations-customer-service/access-city-information-or-records/freedom-of-information/>

¹¹ See also Order MO-2459.

namely records that contain any unique conditions for the granting of an NGE, requires the city to search 83 properties to locate this information. This is because the information about unique conditions would be located by property address and the records for each property are stored separately in the city's record holdings.

[41] The appellant's request is for the same information for each address at issue. The appellant's request should be treated as a single request for the information responsive to this request.

[42] Specifically, in this appeal, the appellant has made a request for records relating to unique conditions imposed by the city in granting an NGE for 83 properties in the city. In response, the city may do some or all of the following prior to providing access to any of the requested records: extend the 30 day time limit prescribed by the *Act* under section 20; charge fees as permitted by the *Act*; and provide a fee estimate to the appellant, together with an interim access decision.

Conclusion

[43] In conclusion, I find that the appellant's request, as clarified with the city prior to its access decision being issued, provided enough detail for the city to identify the records responsive to the request.

[44] As set out above, I have determined that the scope of his request is for records that contain unique conditions for the granting of an NGE for 83 properties. I have also determined that the scope of the request is a single request for this information and that this request should be dealt with by the city as one request. In processing this one request, the city is able to, if it wants to, seek a time extension and provide an interim access and fee estimate decision.

[45] Accordingly, I will order the city to process the appellant's request as one request and search for records that contain information about unique conditions imposed on the 83 properties that obtained an NGE during the time period of the request (from January 1, 2004, to December 7, 2020).

[46] As both parties agree that this responsive information is not publicly available, and I also find that to be the case, there is no need for me to consider whether the discretionary exemption at section 15(a) for published information or information available to the public applies to the records.

ORDER:

1. I order the city to treat the appellant's request as one request and search for records responsive to the scope of this request, being for records that contain information about unique conditions imposed on the 83 properties that obtained an NGE from January 1, 2004, to December 7, 2020.

2. I order the city to issue the appellant with an access decision or interim access decision and fee estimate, treating the date of this order as the date of the request, in accordance with all applicable provisions of the *Act*.
3. I further order the city to provide me with a copy of the decision issued pursuant to order provision 2, above.

Original signed by: _____

Diane Smith
Adjudicator

June 22, 2023 _____