

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-4452

Appeal MA22-00245

City of Ottawa

October 19, 2023

**Summary:** The City of Ottawa (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act*. The city asked for clarification about what was meant by the wording in the request, but did not receive clarification from the requester. On appeal, during mediation, the city offered a re-formulation of the request, based on what it believed the requester could be asking for. The requester rejected this offer, and asked that his file be moved to adjudication. In this order, the adjudicator finds that the appellant's representations do not establish that he assisted the city with clarifying or confirming the scope of his request. As a result, she dismisses the appeal.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 17(1) and 17(2).

**Orders Considered:** Orders P1308, PO-2948, MO-2821, MO-3031, and Order MO-4364.

### OVERVIEW:

[1] This order deals with circumstances where a requester did not sufficiently clarify the wording of a request for records made under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), either at the request stage, or at the mediation stage of an appeal at the Information and Privacy Commissioner of Ontario (IPC).

[2] The City of Ottawa received a five-part request under the *Act*, two of which are at issue in this appeal:

Please email a copy of any systems, computer, paper, data, information that are related in any way to [requester's name], unless someone made handwritten notes on a document originating from me, please do not send any document that originated from me. My interested information includes, but is not limited to records relating to;

....

3. Any systems, computer, paper, data, information that are related in any way to complaints from [requester's name] to the office of the Mayor or Ottawa City Council or the office of the Ottawa chief of police or Police Services Board or Police Professional Standards Office or Ottawa Police Community Equity Council from 2017 to 2020 date of disclosure.

....

5. Any systems, computer, paper, data, information that are related in any way to any Ottawa City Clerk or Legal Department records leading to any decisions or lack of decision relating to [requester's name] from 2017 to 2020 date of disclosure.

[3] The city asked for clarification regarding parts 3 and 5 of the request, and gave the requester 30 days to reply to its request for clarification, or his request would be considered abandoned and would close. The requester sent a response to the city,<sup>1</sup> but in the city's final access decision, it stated that this response failed to provide enough clarification in order to allow for processing the request. As a result, the city deemed the appellant's request abandoned and closed.

[4] The requester (now the appellant) appealed the city's final access decision to the IPC.

[5] The IPC appointed a mediator to explore possible resolution.<sup>2</sup> The appellant objected to the city's position regarding the clarification of his request, so section 17 (scope of the request) of the *Act* was added as an issue on appeal.<sup>3</sup> In addition, during

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<sup>1</sup> He later filed a deemed refusal appeal with the Information and Privacy Commissioner of Ontario; that appeal was later closed after the city issued a final access decision.

<sup>2</sup> The mediator had discussions with the parties about the issues on appeal, and clarified that only parts 3 and 5 of the request are at issue in this appeal.

<sup>3</sup> The appellant also raised other issues, which did not end up needing to be adjudicated, due to the nature of the threshold issues in this appeal. He claimed that the city violated both the *Criminal Code* and Rule 14.01 of the IPC's *Code of Procedure*, and has acted in bad faith. The appellant sent the IPC a Notice of Constitutional Question (NCQ). The NCQ raised the constitutional validity of the city's actions and interpretation of the *Act*, and several constitutional issues. More specifically, the NCQ raises sections 7-10, 12, 15, and 24 of the *Canadian Charter of Rights and Freedoms*, section 52(1) of the *Constitution Act, 1867*, and "constitutional rule of law against," respectively, "arbitrary application of statutory power," "overbroad or over narrow application of statutory power," "grossly disproportionate application of statutory power," and "abuse of process application of statutory power."

mediation, the city suggested wording for a reformulated request, which the mediator relayed to the appellant.<sup>4</sup> After reviewing the reformulated request, the appellant advised the mediator that he wished to proceed to adjudication.

[6] Since the parties were unable to resolve the issues under appeal through the process of mediation, the file was referred to adjudication, where an adjudicator may conduct an inquiry.

[7] As the adjudicator of this appeal, I began a written inquiry under the *Act* by sending a Notice of Inquiry, setting out the facts and issues on appeal, to the appellant. I sought and received written representations in response. In the Notice of Inquiry, I stated that, having reviewed the Mediator's Report, there are issues that need to be addressed first, as threshold issues, before considering a constitutional question that the appellant had raised. The threshold issues were: the scope of the appeal (and specifically, what efforts, if any, the appellant made to clarify his request to the city), and the custody or control of city councillor records. Therefore, I stated that I would not be addressing the constitutional question raised at this time.

[8] The appellant responded with bias allegations against both the IPC as an institution, and myself as an adjudicator.<sup>5</sup> He also stated that he "cannot participate in the Notice of Inquiry," for several reasons, which I addressed in my letter to him denying his request that I recuse myself. In that letter, I advised that if he chooses to participate in this appeal, he should provide written representations in response to the Notice of Inquiry by a certain date. He did so, and I later provided the city with an opportunity to respond to the Notice of Inquiry and the appellant's representations. The city provided representations, and the appellant provided a reply.

[9] For the reasons that follow, I dismiss the appeal. In this order, I find that the appellant has not provided sufficient evidence that he clarified the scope of his request.

## **DISCUSSION:**

### **What is the scope of the request for records?**

[10] The only issue that is necessary to discuss in this order is whether the appellant sufficiently assisted the city with clarifying the scope of his request. For the reasons that follow, I find that the evidence does not lead me to the conclusion that he did. As a result, no further issues need to be adjudicated.

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<sup>4</sup> The city also advised that, while it reformulated the request by identifying individuals whom the appellant corresponded with, it was the city's position that, "based on case law, Councillor records subject to section (1) of the above reformulated request would be considered constituency records and fall outside of the custody and control of the City of Ottawa." The city indicated that as a result, it would only be proceeding with retrieving "from Mayor [named person] for that portion of the request."

<sup>5</sup> I denied his request that I recuse myself by way of letter, with reasons.

### ***Obligations on requesters and institutions***

[11] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records.

[12] Section 17(1)(b) states that a requester “shall . . . provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record[.]”

[13] Section 17(2)

. . .

(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).

[14] To be considered responsive to the request, records must “reasonably relate” to the request.<sup>6</sup>

### ***Pre-mediation processing history***

[15] As noted, the city’s initial response to the request was a letter advising that the information provided in the request does not provide adequate detail to identify any responsive records. The city then asked the appellant to review his request and provide the city with certain details to enable the city to identify the records. In that letter, the city also advised that if sufficient details were not provided within 30 days, the file would be closed 30 days from the date of the letter.

[16] The requester sent a response to the city and later filed a deemed refusal appeal with the IPC. That appeal was later closed after the city issued a final access decision.

[17] Furthermore, as noted, the city’s final access decision reiterated that the city had previously advised the appellant that there was inadequate detail in his request in order for the city to identify responsive records. The city stated while the appellant did respond to the city, his correspondence failed to provide enough clarification to allow the city to process the request. As a result, the city closed the file.

### ***The city’s suggested reformulation of the request at IPC mediation***

[18] It is not in dispute that during mediation, the city suggested the following reformulation of the request:

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<sup>6</sup> Orders P-880 and PO-2661. 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 be resolved in the requester’s favour (Orders P-134 and P-880).

(1) All records sent and received by:

- Mayor [named person]
- Councillor [22 named persons]

(a) Relating to a request from [requester's name] to develop a policy to prevent City of Ottawa employees from violating 2, 7, 9, 10, 12, 15 Charter of Rights of Electors, from January 1, 2017 to January 17, 2020 and;

(b) Relating to a request from [requester's name] to develop and implement an anti-discrimination policy from January 1, 2017 to January 17, 2020.

(c) Relating to a request from [requester's name] for a Canada Victims Bill of Rights section 12 and section 15 Charter of Rights Criminal Code By-Law, from January 1, 2017 to January 17, 2020.

(2) All records sent and received from [named person], municipal prosecutor, relating to a request for disclosure on PON #[specified certificate number] (a certificate of offence that was issued to [requester's name] on November 10, 2017 for a red light offence) from January 1, 2017 to January 17, 2020.

Please exclude original emails and attachments sent by [requester's name].

[19] As well, at mediation, the city advised that:

...while we have formulated the above request by identifying individuals who he corresponded with, it is our position that, based on case law, Councillor records subject to section (1) of the above reformulated request would be considered constituency records and fall outside of the custody and control of the City of Ottawa. As a result, we would only proceed with retrieving from Mayor [named person] for that portion of the request.

***How did the appellant respond to the city's offer of re-formulation?***

[20] As mentioned, after reviewing the reformulated request, the appellant advised the mediator that he wished to proceed to adjudication.

[21] In the circumstances, I began the inquiry by seeking representations from the appellant. I asked him to provide answers to the following questions:

1. What is the scope of your request? Please explain.
2. What efforts, if any, did you make to assist the city with clarifying your request, after the city asked for clarification (before Appeal MA22-00245 was opened)? Please explain.
3. What efforts did you make, if any, to clarify the scope of your request to the city during IPC mediation of this appeal (MA22-00245)? Please explain.
4. At mediation, the city provided a suggested reformulation of your request. In doing so, do you believe the city has unilaterally narrowed your request? Please explain. Is there any other reason that you did not accept the city's suggested reformulation of your request? Please explain.
5. In IPC Order P-1308, the adjudicator found that the institution in question had made reasonable efforts to assist the appellant in reformulating his request, and that the appellant had "refused to assist in narrowing or focusing the scope of his request." As a result, the IPC dismissed the appeal. Please comment on the relevance of this precedent to the present appeal, if any.

[22] The appellant's initial and reply representations are convoluted, drawing in references to unrelated court cases and repeated unsubstantiated assertions about various individuals or institutions.<sup>7</sup> In my view, this is similar to a situation that was before the adjudicator in Order PO-2948, where she described the representations before her this way:

The appellant provided me with copious documents in support of his position that the OLG has somehow altered both records to prevent him from claiming his winnings. The majority of these documents are confusing, repetitive and difficult to understand. Consequently, I have given little weight to most of what the appellant has argued and instead focused on the arguments that I was able to discern.

[23] I agree with this approach and I adopt it here.

[24] The appellant objects to the questions, submitting that they are a waste of my time, and stating that he has already addressed much of the information sought in mediation. He also insists that there underlying constitutional matters that are involved in the circumstances of his request, the city's response, and/or his appeal. Regarding the adjudicator's assessment in Order P-1308 that the appellant had not assisted in narrowing or focussing the scope of his request, and thus the appeal was dismissed, the appellant tries to distinguish that case. He also expresses his views about where records would be and with respect to the city's statement that councillors' records would not be in its custody or control.

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<sup>7</sup> I have already considered and dismissed his bias allegations against the IPC and myself by letter.

[25] With respect to the appellant's objection to the city's position that it would not process the request as it pertains to city councillors' records due to a lack of custody or control, I find that this is in keeping with a long line of IPC orders.<sup>8</sup>

[26] Having considered the parties' representations, in the circumstances, I am unable to conclude that the appellant made reasonable efforts to assist the city in clarifying the scope of his request. I accept that the city had difficulty understanding what the appellant was initially requesting, having reviewed the language of the request myself. It is undisputed that the city made efforts during mediation to pro-actively try to discern what the appellant was requesting and offered a re-formulation of his request. The evidence before me does not establish that the appellant made efforts to engage with this. Rather, he rejected the offer and asked that his appeal go to the adjudication stage of the process. In the circumstances, similar to the reasoning of the adjudicator in Order P-1308, I find that the appellant refused to assist the city in clarifying or confirming the scope of his request. As a result, I will dismiss the appeal.

**ORDER:**

The appeal is dismissed.

Original Signed By: \_\_\_\_\_  
Marian Sami  
Adjudicator

\_\_\_\_\_ October 19, 2023

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<sup>8</sup> See, for example, Orders MO-2821 and MO-3031, and more recently, Order MO-4364.