

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4483

Appeal MA22-00122

City of Ottawa

January 25, 2024

Summary: The appellant submitted a request to the City of Ottawa (the city) for access to records relating to a specific by-law complaint. The city located responsive records and provided the appellant with access to them. The appellant appealed the city's decision because he believes additional responsive records should exist. In this order, the adjudicator finds that the city conducted a reasonable search for responsive records. The appeal is dismissed.

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

OVERVIEW:

[1] In July 2021, the appellant made a by-law complaint about damages to an apartment building to the City of Ottawa (the city).

[2] Subsequently, the appellant submitted a request, pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), to the city for access to the following information:

“all correspondence between [named by-law officer] and/or [named city staff] and any staff members of [identified property management company] between August 17, 2021, and January 5, 2022.

In addition, I want to request all attachments associated with those emails, such as receipts, etc.

The records are held with the Bylaw department. Ticket number – [specified ticket number].”

[3] The city issued a decision granting full access to the responsive records.

[4] The appellant appealed the city’s decision to the Information and Privacy Commissioner of Ontario (the IPC) on the basis that additional records responsive to his request should exist.

[5] During mediation, the appellant advised that he believes that the city should have located further electronic communications with the city by-law officer and a receipt for the purchase of a window (the receipt).

[6] The city advised that it contacted the named by-law officer who advised that he did not have additional emails or receipts responsive to the request. The city confirmed that it was satisfied that its search was thorough, and no further records existed. It shared with the appellant the email correspondence between the city and the by-law officer confirming that no further records existed.

[7] As further mediation was not possible, the appeal was transferred to the adjudication stage of the appeal process, where I decided to conduct an inquiry under the *Act*. I invited and received representations from the city and the appellant.¹

[8] For the reasons that follow, I find that the city conducted a reasonable search for records. The appeal is dismissed.

DISCUSSION:

[9] The sole issue to be determined in this appeal is whether the city conducted a reasonable search for responsive records. In particular, the appellant claims that further records should exist, specifically emails between a named by-law officer and the property management company and the receipt.

[10] 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 17.² If I am satisfied the search carried out was reasonable in the circumstances, I will uphold the city’s decision. If I am not satisfied, I may order further searches.

¹ The parties’ representations were shared in accordance with the confidentiality criteria in the IPC’s *Practice Direction 7* and section 7.07 of the IPC’s *Code of Procedure*.

² Orders P-85, P-221 and PO-1954-I.

[11] 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 it has made a reasonable effort to identify and locate responsive records.³ 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.⁴

[12] 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.⁵

Parties' representations

[13] The city submits that it conducted a reasonable search for responsive records. In support of its position, the city submitted representations, an affidavit from a named by-law officer and an affidavit from a named analyst with the city's access to information and privacy office. The affidavits described the individuals involved in the search, where they searched, and the results of their search.

[14] In his affidavit, the named analyst states that he emailed the named by-law officer in June 2023 and asked him to respond to the appellant's allegation that the by-law officer verbally stated that he (the by-law officer) had exchanged a series of emails with the property management company. The analyst states that the by-law officer provided the following explanations for why emails were not located in the searches for records responsive to the request: (1) he exchanged emails with the property management company regarding other properties but not the property in question; and (2) he may have exchanged texts, but they were not attached to the file (as he did not issue a charge).⁶

[15] In his affidavit, the named by-law officer states that he may have been shown a receipt or someone may have offered to provide a copy of a receipt, but he did not retain either the receipt or a copy of the receipt. He also confirmed that although he no longer has access to phone text messages that may have existed with respect to the apartment building in question, he does not recall receiving a copy of a receipt via text message.

[16] In support of his position that further responsive records, the appellant submits that the named by-law officer verbally stated that he had exchanged emails with the property management company when the appellant met with the named by-law officer

³ Orders P-624 and PO-2559.

⁴ Orders M-909, PO-2469 and PO-2592.

⁵ Order MO-2246.

⁶ In his affidavit, the named by-law officer confirmed that he provided these explanations to the named analyst.

for a joint inspection of the apartment building on January 5, 2022.

[17] The appellant also submits that a receipt exists as he has an email from the named by-law officer in which a receipt was mentioned.⁷

Analysis and findings

[18] I am satisfied that the city conducted a reasonable search for records responsive to the appellant's request for the following reasons.

[19] The city has described the individuals involved in the search, where they searched, and the results of their searches. In my view, the city's search was logical and comprehensive and conducted by experienced employees familiar with the types of records sought by the appellant. I also note that the city conducted a total of three searches.

[20] As noted above, 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.⁸ I am satisfied that the city has provided sufficient evidence to establish this.

[21] I have reviewed the appellant's representations, and I am not persuaded that he has established a reasonable basis for concluding that email chains between the named by-law officer and the property management company exist. Although the appellant submits that the by-law officer verbally stated that he had exchanged emails with the property management company, I accept the named by-law officer's explanation, as set out in his affidavit, that he did not exchange any emails with the property management company with respect to the complaint involving the apartment building in question. I accept his evidence that rather than send an email he spoke to the property management company over the phone or may have sent text messages. I also accept that the explanations provided by the by-law officer in his affidavit are logical explanations for why the city has not located any emails between the named by-law officer and the property management company in its three searches. The appellant has not provided any evidence to refute these explanations.

[22] I am also not persuaded that the appellant has established a reasonable basis for concluding that the receipt exists. While I note that a receipt is mentioned by the by-law officer in an email⁹ to the appellant, this email states that the property management company, not the by-law officer, is in possession of a receipt for the purchase of a

⁷ The appellant provided a copy of the email in his representations.

⁸ Orders M-909, PO-2469 and PO-2592.

⁹ Sent by the named by-law officer on November 19, 2021 to the appellant.

window. I also note that the bylaw services occurrence report¹⁰ indicates the property management company could be required to provide the receipt to the named by-law officer if the work was not completed by December 2021. However, the evidence¹¹ before me suggests that all the repairs were made by the time the named by-law officer and the appellant jointly inspected the apartment building on January 5, 2022, I find that there is no reasonable basis to conclude that the named by-law officer sought or received a copy of the receipt from the property management company.

[23] As mentioned above, the *Act* does not require the city to prove with absolute certainty that further records do not exist, only that the city provide sufficient evidence to show it has made a reasonable effort to identify and locate responsive records. For the reasons above, I find that the city conducted a reasonable search for responsive records.

ORDER:

I uphold the city's search as reasonable and dismiss the appeal.

Original Signed by: _____
Lan An
Adjudicator

_____ January 25, 2024

¹⁰ This record has been disclosed to the appellant.

¹¹ As indicated in the bylaw services occurrence report by the named by-law officer. This notation was made on January 13, 2022.