

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-4509-F

Appeal MA21-00624

City of Stratford

April 15, 2024

**Summary:** In Interim Order MO-4426-I, the adjudicator found that there was a reasonable basis for the appellant's belief that additional records exist pertaining to the City of Stratford's arrangement with a named company or its affiliates. The adjudicator found the city's search for responsive records unreasonable and ordered it to conduct further searches.

Pursuant to Interim Order MO-4426-I, the city conducted further searches, located additional records and issued an access decision to the appellant.

In this final order, the adjudicator finds that the city's further searches were reasonable as required by section 17 of the *Act* and dismisses the appeal.

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

**Related Order:** MO-4426-I.

### OVERVIEW:

[1] This final order disposes of the remaining issue from Interim Order MO-4426-I, namely whether the City of Stratford (the city) conducted a reasonable search for records as required by section 17 of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] The appellant made a request under the *Act* for records of the city's engagement

of a specified corporate entity or its affiliates in relation to the annexation of land for use by a named glass manufacturer.

[3] The city conducted an initial search and notified the appellant that no responsive records had been identified. The appellant appealed the city's decision to the Information and Privacy Commissioner of Ontario (IPC) stating that he believes that records pertaining to the city's arrangement with the named company ought to exist.

[4] During my inquiry, the city stated that its searches had located records but that they were not responsive to the appellant's request. In Interim Order MO-4426-I, I found that three invoices located by the city are responsive to the request and that the appellant had established a reasonable basis for believing that additional responsive records ought to exist. Accordingly, I ordered the city to conduct a further search, including taking steps to locate responsive records in the possession of the city's former Chief Administrative Officer (CAO). I also ordered the city to provide me with an affidavit sworn by the individual(s) who conducted the further search. If additional records were located, I ordered the city to issue an access decision to the appellant in relation to those records.

[5] The city conducted further searches, identified five additional responsive records and issued an access decision to the appellant. The city provided me with an affidavit sworn by the individual responsible for responding to requests made under the *Act* describing the further searches and the records it had located. I asked the city to provide affidavit evidence from the individual(s) who had conducted the further searches, in accordance with the provisions of Interim Order MO-4426-I.<sup>1</sup>

[6] The city provided me with two additional affidavits from the employees who conducted the ordered searches. I shared the affidavits with the appellant and invited him to respond. The appellant commented on the affidavit evidence but raised no issues with the city's searches.

[7] In this final order, I find that the city has met the provisions of Interim Order MO-4426-I and has conducted a reasonable search for responsive records as required by section 17 of the *Act*. I dismiss the appeal.

## **DISCUSSION:**

[8] The only remaining issue in this final order is whether the city conducted a reasonable search for responsive records pursuant to Interim Order MO-4426-I.

[9] In Interim Order MO-4426-I, I found that there is a reasonable basis for the appellant's belief that additional records relating to the city's engagement of the named company or its affiliates ought to exist. As I noted in Interim Order MO-4426-I, the city

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<sup>1</sup> For reasons that I explain below, I requested and was provided with copies of the records located in the city's further searches. These records were not shared with the appellant.

acknowledges that the company named in the appellant's request prepared a draft planning justification report for the city. The invoices located in the city's initial search provided support for the appellant's submission that an arrangement between the city and the corporate entity exists, or existed at one time, and that work was done pursuant to that arrangement. I found that there is a reasonable basis for the appellant's belief that additional records of the type described in the request ought to exist.

[10] Notwithstanding the reasonableness of the appellant's position, where a requester claims additional responsive records exist beyond those found by an institution, the issue is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act*.<sup>2</sup>

[11] The *Act* does not require an institution to prove with certainty that further records do not exist. However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;<sup>3</sup> that is, records that are "reasonably related" to the request.<sup>4</sup>

### **City's affidavits**

[12] The city provided an affidavit from the clerk responsible for responding to access requests made under the *Act*. The clerk states that, as required by Interim Order MO-4426-I, she asked the current CAO to complete further searches for responsive records, in both electronic and physical formats in their office. The clerk explained that in the further searches conducted by the CAO, five additional records were located. The additional records consist of invoices. The clerk states that she subsequently issued an access decision to the appellant regarding the additional records.

[13] The clerk states that she requested that the city's Chief Technology and Security Officer complete a further search of the former CAO's email using key words to identify records and to provide any identified records to the city's solicitor for review. In the affidavit, the clerk lists the key words used in the search of the former CAO's email.

[14] In addition, the clerk states that she requested that the city's solicitor contact the former CAO to seek any "contracts, letters of understanding, letters of agreement, letters of intent and the like"<sup>5</sup> between the city and the specified company relating to the request. The clerk states that the former CAO has not responded to the city solicitor's request.

[15] The clerk states that the city solicitor advised that records that were identified containing key words were not responsive to the appellant's request.

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<sup>2</sup> Orders P-85, P-221 and PO-1954-I.

<sup>3</sup> Orders P-624 and PO-2559.

<sup>4</sup> Order MO-2554.

<sup>5</sup> This wording is taken directly from the appellant's request.

[16] The clerk's evidence also includes an explanation of the city's record retention schedules. The clerk states that the city's By-law 192-2000 (the By-law) establishes its record retention schedules, which provides that copies of records may be destroyed at any time provided that the original is preserved for the retention period specified in the By-law. The clerk also refers to the provisions in the By-law that state that prior to the destruction of records, a Certificate of Destruction identifying the record must be approved and retained after the destruction of records has been completed.

[17] A copy of the By-law is exhibited to the clerk's affidavit. The clerk's evidence is that the retention period for an agreement or contract is "until the expiration of the agreement or contract, unless there is a further reason to retain the document" for a longer period. The clerk states that she conducted a search of the Certificates of Destruction and she confirms that "no additional records in response to the request were destroyed."

[18] In addition, the city provided an affidavit sworn by the current CAO who conducted the search of the CAO's office. The CAO confirms that she searched both physical and electronic records in the CAO office looking for records related to "contracts, letters of understanding, letters of agreement, letters of intent, [the named company], term sheets, request for proposal, annexation, Employment Land Justification and Ministerial Zoning Order." The CAO confirms that she located five additional invoices.

[19] The city also provided an affidavit sworn by the Chief Technology and Security Officer who conducted the search for responsive electronic records in the city's IT system. The Chief Technology and Security Officer confirms that they searched for electronic records containing key words.

[20] The city provided me with copies of the records that were identified in the searches conducted by the Chief Technology and Security Officer containing key words. These records comprised over 700 electronic files in which key words appeared. The key words used in the search are the name of the company and the glass manufacturer specified in the appellant's request and the affiliated named individual and the words "letter of understanding," "letter of agreement," "annexation," and "ministerial zoning order."

### **Appellant's response**

[21] I invited the appellant to respond to the city's affidavits. In his response, the appellant stated that it is odd that there is no record of a contract that "appears to have been for over \$25,000." The appellant states that the invoices confirm that the work was in fact done and paid for. The appellant did not raise any issues regarding the searches conducted by the city pursuant to Interim Order MO-4426-I.

### **Analysis and finding**

[22] For the reasons that follow, I find that the city has conducted a reasonable search for records responsive to the appellant's request. The city's further searches satisfy

Interim Order MO-4426-I.

[23] Having reviewed the city's affidavit evidence, I am satisfied that it has addressed the shortcomings of its initial searches that were the subject of my findings in Interim Order MO-4426-I. I find that experienced employees knowledgeable in the subject matter of the appellant's request expended reasonable efforts to locate responsive records.

[24] I have reviewed the key words and phrases used in the searches and am satisfied that they encapsulate the subject matter of the appellant's request. I note that the city's key words included the named company that has completed the work for the city, the name of the individual affiliated with the company and identified by the appellant in his representations, and a description of the type of record that the appellant seeks to access.

[25] I note that the eight responsive records identified by the city are all invoices (three in the original searches and five in the further searches pursuant to Interim Order MO-4426-I). To address any concerns that the city had limited the scope of its searches to records of this type, I asked the city to provide me with copies of the records it had located containing the key words. From my review of the records provided by the city, which consisted of over 700 emails and attachments, I am satisfied that it did not unreasonably limit the scope of its searches.

[26] Finally, I accept the city's evidence that it has taken steps to locate responsive records in the possession of its former CAO. I am satisfied that it was reasonable for the city to instruct its solicitor to request the former CAO to provide copies of any records related to the arrangement with the named company or its affiliates for the work carried out concerning the annexation of the specified land.

[27] I acknowledge the appellant's observation that it is unusual that no responsive records exist relating to the city's engagement of the named company. The disposal of the issue in this appeal may be considered an unsatisfactory outcome. However, the *Act* does not require an institution to prove that records do not exist. For the reasons that I have set out above, I find that the city has conducted a reasonable search for records, as required by section 17 of the *Act*.

[28] Notwithstanding my finding that the city has discharged its search obligation in response to the appellant's request, I will make a recommendation to the city based on my review of By-law 192-2000. I note that the retention schedules in the By-law are organised for different types of records specific to the city's different mandates and functions. In particular, there is a specific retention period for records associated with the city's planning and development functions. The By-law schedule provides for a 10-year retention period,<sup>6</sup> in respect of:

Records associated with the planning and development of the economic, urban, environment, regions, waterfront, and transportation. This record

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<sup>6</sup> The retention period is expressed as "C+10", where C=current year.

series may include engineering drawings, proposals, reviews, applications, agreements and contracts, studies, policies and research development.

[29] In light of the city's affidavit evidence that the retention period for agreements and contracts is "until the expiration of the agreement or contract, unless there is a further reason to retain the document" for a longer period, I recommend that the city's staff review the record retention schedule set out in By-law 192-2000.

**ORDER:**

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

Original signed by: \_\_\_\_\_  
Katherine Ball  
Adjudicator

\_\_\_\_\_ April 15 2024