

Information and Privacy Commissioner,
Ontario, Canada



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

FINAL ORDER MO-4515-F

Appeals MA22-00148 and MA22-00149

City of Hamilton

April 24, 2024

Summary: This final order resolves the outstanding issue of the reasonableness of the City of Hamilton's (the city's) search following Interim Order MO-4443-I. In compliance with the interim order, the city conducted a further search for responsive records to the appellant's requests and provided an affidavit describing its search. In this final order, the adjudicator finds that the city has provided sufficient evidence to demonstrate that it has 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] This final order disposes of the remaining issue arising from Interim Order MO-4443-I – whether the City of Hamilton (the city) conducted a reasonable search for records responsive to the appellant's requests, as required under section 17 of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] Interim Order MO-4443-I addressed two appeals relating to requests made by the appellant under the *Act*. In Appeal MA22-00148, the request was for city approved plans for retaining walls for a specified address while in MA22-00149 the request was for records relating to city approved tree protection plans for a specified address.

[3] The city issued separate decisions, denying access to the responsive records for

both requests pursuant to section 15(a) (information published or available to the public) of the *Act*. The appellant appealed both of the city's decisions to the Information and Privacy Commissioner of Ontario (IPC) on the basis that the city should have located additional records responsive to his requests.

[4] As neither appeal was resolved during mediation, they were transferred to the adjudication stage of the appeal process, where I conducted an inquiry.

[5] In Interim Order MO-4443-I, I determined that the city had not met its search obligations under section 17 of the *Act* and ordered it to conduct a further search for records responsive to both of the appellant's requests.

[6] The city conducted a further search and submitted a response and an affidavit describing its search, which were shared with the appellant in accordance with the IPC's *Code of Procedure*.

[7] In this final order, I find that the city has now conducted a reasonable search as required by section 17 of the *Act*. I uphold its search and dismiss the appeal.

DISCUSSION:

[8] The sole remaining issue to be determined in this final order is whether the city conducted a reasonable search in response to the appellant's requests.

[9] In Interim Order MO-4443-I, I ordered the city to conduct a further search for records responsive to the appellant's requests and ordered it to provide affidavit evidence supporting its search.

[10] For the following reasons, I am satisfied that the city has now conducted a reasonable search for records responsive to the appellant's requests.

[11] As indicated above, in compliance with Interim Order MO-4443-I, the city submitted an affidavit describing its search. In her affidavit, the city's Access and Privacy Officer states that she was responsible for responding to the two requests.

[12] The Access and Privacy Officer states that the municipal law enforcement by-law clerk, the building division assistant, and the growth management development coordinator conducted the searches for records responsive to the request in Appeal MA22-00148. She also states that the coordinator for the business facilitation – development planning and the administrative secretary for public works conducted the search for records responsive to the request in Appeal MA22-00149. She describes the searches that were conducted and the responsive records that were found.

[13] In her affidavit, the Access and Privacy Officer also reiterates the city's position that all responsive records to the appellant are publicly available.

[14] In his representations in response to the city's affidavit, the appellant states that he continues to be concerned about the trees and water drainage on the west side of his property. He states therefore that he continues to seek access to information pertaining to the retaining walls for the west side of his property, including water drainage and trees that were to be planted on that side. The appellant notes that the records that were disclosed to him indicate that retaining walls were built on the south side of his property.

[15] From my review of the evidence, I find that experienced employees, knowledgeable in the subject matter of the requests undertook the searches for records responsive to the appellant's requests. In making this finding, I have also considered the Access and Privacy Officer's history with these requests and knowledge of the city's records holdings.

[16] I also find that the evidence before me demonstrates that those experienced employees made reasonable efforts to locate records responsive to the appellant's requests. In her affidavit, the Access and Privacy Officer cites the dates of the searches, where and how employees searched, and the results of their searches.

[17] I understand that the appellant continues to seek information about retaining walls, tree protection plans and water drainage on the west side of his property and that he is not satisfied with the disclosure provided to him. However, I note that his requests for information are broad and capture his entire property. In other words, the scope of his requests included the west side of his property. I note that the city conducted searches for his entire property and did not locate records relating to the west side of his property.

[18] As stated in Interim Order MO-4443-I, the *Act* does not require the city to prove with *certainty* that further records do not exist. The city is simply required to provide enough evidence to show that an experienced employee, knowledgeable in the subject matter of the request¹ has made a reasonable effort to identify and locate responsive records within their custody or control.² I find that they have done so.

[19] Additionally, as stated in Interim Order MO-4443-I, the appellant must provide a reasonable basis for concluding that such records exist. Having considered his representations, I find that the appellant has not established such reasonable basis.

[20] For the reasons set out above, I uphold the city's search for responsive records as reasonable and dismiss the appeal.

ORDER:

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

¹ Orders M-909, PO-2469 and PO-2592.

² Orders P-624 and PO-2559.

Original signed by: _____

Lan An
Adjudicator

April 24, 2024