

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: May 13, 2022

CASE: 2021-00416R

Citation: Petrovic v. York Condominium Corporation No. 60, 2022 ONCAT 49

Order under section 1.44 of the *Condominium Act, 1998*.

Member: Ian Darling, Chair

The Applicant,
Maja Petrovic
Self-Represented

The Respondent,
York Condominium Corporation No. 60
Represented by Mark Cianfarani, Agent

Hearing: Written Online Hearing – March 22, 2022 to May 11, 2022

REASONS FOR DECISION

A. INTRODUCTION

- [1] This case is about how much information a condominium corporation may obscure from records through the process referred to as redaction, while complying with the provisions of the Condominium Act, 1998 (the “Act”). In this case I decide that the redactions are appropriate but find that the Respondent condominium corporation did not explain the basis for each redaction, as the Act requires. The result is that I find that the Applicant has received the records they requested, and that the records are adequate, but that the Respondent is ordered to provide the statements that explain the redactions.
- [2] Maja Petrovic (the Applicant) experienced a series of floods and water damage affecting a condominium she owns in York Condominium Corporation No. 60 (the Respondent). In October 2021, she submitted a records request to gather information about the situation.
- [3] The Respondent responded to the request and provided some of the records. The Applicant brought this case to the Tribunal because they did not receive all the records they requested, and they were concerned about the scope of the reactions. When the case moved to Stage 3 - Tribunal Decision, the remaining issues to be decided were whether the Respondent had fully satisfied the Applicant’s request, and whether the redactions were appropriate.

- [4] During the prehearing stage of this case, the Respondent provided some additional records to the Applicant that were not located when they originally responded to the Request. Additionally, the parties consented to expanding the case to include both the original Requests for Records submitted on October 25, 2021, and an additional request submitted March 1, 2022.

B. ISSUES & ANALYSIS

- [5] The parties confirmed the issues to be decided:
1. Did YCC60 provide all requested records?
 2. Did YCC60 redact the records in excess of the requirements of s. 55(4) of the Act? & Were the records provided adequate within the meaning of s.55(1) of the Act?
 3. Is YCC60 liable to pay a penalty for refusing to provide access to the requested records without a reasonable excuse?

Did YCC60 provide all requested records?

- [6] The Applicant stated that not all requested records were provided. In particular, she stated the Respondent failed to provide requested minutes for April, June, and August 2021, any Mutual Use Agreements, and that the Record of Owners and Mortgagees was missing mortgagee information.
- [7] The Respondent confirmed there were no meetings during the months in question, that the condominium has no Mutual Use Agreements, and that they have not received information from mortgagees to be included in the Record of Owners and Mortgagees. Accordingly, I find that the Respondent has provided all the requested records.
- [8] The only remaining concern about incomplete records was about the Record of Owners and Mortgagees. The Applicant asserted that it was incomplete because the version provided by the Respondent did not include any information about mortgagees. The Respondent confirmed in the hearing that it did not have any record of Mortgagees.
- [9] Previous CAT decisions¹ have established that under section 46.1(3)(c) the Record of Owners and Mortgagees must contain the mortgagee's name, the identification of the unit and the mortgagee's address for service, if:
- (i) a mortgagee, at any time, gives notice to the corporation in writing, setting out the mortgagee's name and, in accordance with the regulations, identifying the unit that is the

¹ McLaughlin v. Brant Standard Condominium Corporation No. 75, 2022 ONCAT 16

subject of the mortgage,

- [10] Since the Respondent confirmed that the corporation has not received written notice from any mortgagee, the record is complete. I accept this as accurate, and not a refusal to provide a record.

Did YCC60 redact the records in excess of the requirements of s. 55(4) of the Act? & Were the records provided adequate within the meaning of s.55(1) of the Act?

- [11] The Applicant objected to the extent of the redactions of the meeting minutes. From the Applicant's perspective the redactions were so extensive that they rendered the records inadequate for their purposes. The Applicant indicated that the Respondent did not explain why information was redacted.
- [12] The Applicant provided copies of the redacted records and explained her concerns with them. In most cases the redactions appear to cover a few words. In a limited number of instances one or two paragraphs are redacted.
- [13] The Applicant spoke to the intent of their request. While it is not a requirement to disclose why the records are requested, it does provide context for why the Applicant finds the redactions too broad. The Applicant believes that the Respondent is not dealing with the underlying flooding issue and seeks the identity of the people and units who have caused damage to her unit. While I understand the Applicant's motivation, this is not consistent with the intent of the Act. Section 55(4) of the Act establishes exceptions to an owner's right to access records, stating that:
- (4) The right to examine or obtain copies of records under subsection (3) does not apply to,
 - (a) records relating to employees of the corporation, except for contracts of employment between any of the employees and the corporation;
 - (b) records relating to actual or contemplated litigation, as determined by the regulations, or insurance investigations involving the corporation;
 - (c) subject to subsection (5), records relating to specific units or owners; or
 - (d) any prescribed records. 1998, c. 19, s. 55 (4); 2015, c. 28, Sched. 1, s. 51 (5-7).

It is appropriate for the Respondent to redact records that relate to specific units or owners.

- [14] The redacted records do not provide the information the Applicant seeks. As a result, she asserts that they are inadequate for her purposes. In deciding this issue, I am guided by *McKay v. Waterloo North Condominium Corp. No. 23*, 1992 CanLII 7501 (ON SC), the leading decision on the question of adequacy of condominium records. Cavarzan, J. set out the principle that condominium records be considered an "open book":

. . The Act embodies a legislative scheme of individual rights and mutual obligations whereby condominium units are separately owned and the common elements of the

condominium complex are co-operatively owned, managed and financed. In the interest of administrative efficiency an elected board of directors is authorized to make decisions on behalf of the collectively organized as a condominium corporation, on condition that the affairs and dealings of the corporation and its board of directors are an open book to the members of the corporation, the unit owners.

...

The Act obliges the corporation to keep adequate records. One is impelled to ask – adequate for what? An examination of the Act provides some answers. The objects of the corporation are to manage the property and any assets of the corporation (s. 12 (1)). It has a duty to control, manage and administer the common elements and the assets of the corporation (s. 12 (2)). It has a duty to effect compliance by the owners with the Act, the declaration, the by-laws and the rules (s. 12 (3)). Each owner enjoys the correlative right to the performance of any duty of the corporation specified by the Act, the declaration, the by-laws and the rules. The records of the corporation must be adequate, therefore, to permit it to fulfil its duties and obligations. . .

[15] Previous Tribunal decisions² have established that the assessment of adequacy is based on the requirements of the Act rather than on whether an owner finds the records adequate for their own purposes. I agree that the redacted records do not provide the Applicant with the information they want. However, this does not render them inadequate as records of the corporation. The records provided are adequate for the purposes outlined in the Act.

[16] Nevertheless, I note that the Respondent did not comply with subsection 13.8(1)(b) of Ontario Regulation 48/01 which stipulates that the Respondent provide a statement that explains the reason for each redaction and an indication of the provisions of section 55 of the Act or the Regulation being relied on as the basis for the redactions.

[17] In most circumstances it is possible through context clues to guess the basis for the redaction – like where the minutes discuss a specific unit, and the unit number is blacked out. But, for the longer redactions it is not possible to understand the basis for the redaction. Owners should not have to guess the basis for the redactions. I will therefore order that the Respondent provide an updated accompanying statement document that explains the basis of each redaction.

Is YCC60 liable to pay a penalty for refusing to provide access to the requested records without a reasonable excuse?

[18] The evidence before me is that the Respondent has provided the requested records. Some of the records were not provided until after this hearing started. The Respondent stated that the additional records were sent to the Applicant via e-mail on March 24, 2022. They indicated that these records were found in a separate unit file while investigating a different matter. This delay can be characterized as

² Ravells v. Metropolitan Toronto Condominium Corporation No. 564, 2020 ONCAT 44

an administrative error, that was corrected as soon as it was discovered. The evidence before me supports the conclusion that the Respondent responded to the request and corrected the error as soon as it was discovered. Since I have found that the Respondent has provided the records, I cannot conclude that the Respondent has refused to provide the records without a reasonable excuse.

Should the Tribunal award any costs?

[19] Rule 48.1 of this Tribunal's Rules of Practice establish that filing fees are generally recoverable by a successful party. The Applicant has paid \$200 in Tribunal fees to bring this to Stage 3. Since some of the records were not provided until after the Applicant paid the fee to move the case into Stage 3, I find it appropriate to order the Respondent to reimburse the fees.

C. ORDER

[20] The Tribunal Orders that:

1. Within 30 days of the release of this decision, the Respondent shall provide the Applicant with the statements that comply with subsection 13.8(1)(b) of Ontario Regulation 48/01 with respect to each redaction in the records that were provided to the Applicant. The statement must explain the reason for each redaction and indicate the provisions of the Act or the Regulation being relied on as the basis for the redactions.
2. The Respondent shall pay costs of \$200 to the Applicant within 30 days of the date of this decision.

Ian Darling
Chair, Condominium Authority Tribunal

Released on: May 13, 2022