



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER M-388**

**Appeal M-9400287**

**Township of Emily**



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télééc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Township of Emily (the Township) received a request for access to all records relating to a dispute concerning a Township road allowance in which the appellant was involved.

The Township provided access to a number of records which were identified as responsive to the request. The Township, however, refused to disclose one remaining record under the solicitor-client exemption found in section 12 of the Act. The requester appealed the decision of the Township and also claimed that further records should exist.

During the mediation stage of the appeal, the appellant was granted access to additional records including the one to which access had been previously denied. The appellant maintained, however, that further records should exist and, in addition, challenged whether the Township's Clerk Treasurer held the proper delegated authority to make a decision concerning access to records under the Act.

A Notice of Inquiry was sent to the Township and the appellant. Representations were received from the Township only.

## **PRELIMINARY ISSUE**

As noted above, the appellant has challenged the authority of the Township's Clerk Treasurer to make a decision regarding access under the Act. Specifically, she submits that the Clerk Treasurer does not hold the proper delegated authority pursuant to section 49(1) of the Act.

In discussions with the Appeals Officer, the Township agreed that, at the time that the initial decision was made, the Clerk Treasurer had not received the appropriate delegation from the Township. Consequently, at its meeting of March 28, 1994, the Township Council, which is the "head" of the institution under section 3(1) of the Act, delegated certain decision-making authority to the Clerk Treasurer pursuant to section 49(1) of the Act. The Clerk Treasurer subsequently issued a further decision letter to the appellant confirming the decision which is the subject of this appeal.

The Township has also provided a copy of the delegation of authority to this office. I have reviewed this delegation and I am satisfied that it is valid and proper.

Based on these considerations, I find that the previous deficiency in the decision letter has now been rectified and the Clerk Treasurer has acquired the delegated authority to determine whether the records in question should be released.

## **DISCUSSION:**

### **REASONABLENESS OF SEARCH**

The sole remaining issue in this appeal is whether the Township conducted a reasonable search for records which are responsive to the appellant's request.

The documents which have been located by the Township and to which the appellant has been granted access cover a time period of over thirty years. The appellant has not provided me with any representations stating her reasons for believing that further records should exist.

The Act does not require that a Township prove with absolute certainty that further responsive records do not exist. However, in order to properly discharge its obligations under the Act, the Township must provide the Commissioner's office with sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate records responsive to the request.

The representations of the Township include the sworn affidavit of the Clerk Treasurer who conducted the search for relevant records outlining the steps which she took to locate records which are responsive to the appellant's request.

The Clerk Treasurer states that all Township files, including those containing correspondence with the Township's solicitor, were personally searched by her. In addition, where necessary, copies of relevant documents were obtained from the Land Registry Office for Victoria County. To ensure that the search was complete, the Clerk Treasurer also reviewed the responsive records which were located in order to determine if additional documents may have been destroyed in accordance with the Township's records retention schedule. Finally, pursuant to section 17(2) of the Act, clarification was sought from the appellant regarding the nature and extent of her request.

I have carefully reviewed the representations and the affidavit provided by the Township, and I am satisfied that the Township has taken all reasonable steps to locate any records which may be responsive to the appellant's request.

**ORDER:**

I uphold the decision of the Township.

Original signed by: \_\_\_\_\_ September 14, 1994

[IPC Order M-388/September 14,1994]

Donald Hale  
Inquiry Officer