



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-487

Appeal M-9400590

The Corporation of the Townships of Belmont and Methuen



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 Corporation of the Townships of Belmont and Methuen (the Townships) received a request for a number of records, one of them a severance permit to divide a particular lot.

The Townships responded to the request, but did not provide access to the severance permit. The Townships indicated that the record was being withheld pursuant to section 14 of the Act (personal privacy), as the request was filled out on a form designed for requests for access to personal information but was signed by the requester, who is not the owner of the identified lot.

The requester appealed the Townships' decision. During mediation of the appeal, the Townships indicated that no severance permit exists for the property in question. The appellant believes that the severance permit does exist. The sole issue to be determined in this order is, therefore, whether the search conducted by the Townships for the severance permit was reasonable in the circumstances.

A Notice of Inquiry was sent to the appellant and the Townships. Representations were received from both parties.

DISCUSSION:

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records which he or she is seeking and the Townships indicate that such records do not exist, it is my responsibility to ensure that the Townships have made a reasonable search to identify any records which are responsive to the request. The Act does not require the Townships to prove with absolute certainty that the requested records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the Townships must provide me with sufficient evidence to show that they have made a reasonable effort to identify and locate records responsive to the request.

The only reference in the Townships representations to the efforts made to identify and locate records responsive to the request is "upon completion of a search, no document was found to exist". The Townships suggest that the appellant contact either the Peterborough County Lands Division Committee (which decides whether a severance is approved) or the Land Registry Office (which maintains all deeds). The Townships refused to provide an affidavit detailing the extent of the search despite being requested to do so in the Notice of Inquiry.

The appellant states that the lot has been severed, therefore a permit must exist. The appellant submits that he contacted the Peterborough County Lands Division Committee, which informed him that "it was up to the township which he lives in". Similarly, the Land Registry Office informed the appellant to request the record from the Townships as applications for a severance permit had to be made there.

Section 18 of the Act places an obligation on the Townships to make reasonable inquiries to determine whether another institution has custody or control of a record in order to decide whether a request should

be transferred. However, in this case the appellant was directed to make such inquiries, which proved fruitless and actually resulted in his being referred right back to where he started.

Members of the public cannot be expected to be intimately familiar with the web of government. For that government to be truly open and accessible, institutions must make a reasonable effort to correct the misdirection of a request in order that the rights of the requester to access information are not prejudiced.

The Townships provided no evidence to show that they made a reasonable effort to identify and locate records responsive to the request and I cannot find in their favour in this appeal.

ORDER:

1. I order the Townships to conduct a further search for records responsive to the appellant's request, including making inquiries to determine whether another institution has custody or control of the record(s), and to advise the appellant in writing of the results of this search within fifteen (15) days of the date of this order.
2. In the event that responsive records are located within the custody or control of the Townships in the search referred to in Provision 1, I order the Townships to render a final decision on access to the records in accordance with the provisions of sections 19 and 22 of the Act, treating the date of this order as the date of the request, without recourse to a time extension under section 20 of the Act.
3. In the event that responsive records are found to be within the custody or control of another institution in the search referred to in Provision 1, I order the Townships to transfer this part of the appellant's request to that institution within fifteen (15) days of the date of this order.
4. I order the Townships to provide me with a copy of the correspondence referred to in Provisions 1, 2 and 3 (if applicable), within thirty-five (35) days of the date of this order. This should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

March 14, 1995

POSTSCRIPT:

The institution has indicated that it considers both the appellant's decision to pursue an appeal of its decision and this office's processing of the appeal, including the request for an affidavit, to be a direct attack on its integrity.

Consistent with the principle that decisions on the disclosure of government information should be reviewed independently of government, the Commissioner must be satisfied of the reasonableness of the search conducted by an institution upon receipt of such an appeal. In order to bring finality to an appeal of this nature in the most efficient way, it is the practice of this office to request details of the searches conducted in affidavit form in every appeal of this nature which reaches the inquiry stage. It is the integrity of the Act which is at stake, not the integrity of any particular institution.