



Information and Privacy  
Commissioner/Ontario  
Commissaire à l'information  
et à la protection de la vie privée/Ontario

# **Reconsideration Order R\_970001**

**Appeals M\_9600263 and M\_9600300**

**Order M\_994**

**Townships of Belmont and Methuen**



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This order sets out my decision on the reconsideration of Order M-994, issued August 29, 1997. To place this order in context, I will briefly set out the history of the matter.

### **The Appeals and Order M-994**

The appellant submitted a request to the Townships of Belmont and Methuen (the Township) under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to its general accounts and budget status reports for two specific months. The Township denied access to some of the records and the appellant appealed this decision. His appeal was subsequently resolved by Order M-784, in which I ordered the Townships to disclose the records to him. The Township then issued a fee estimate of \$30 which the appellant appealed. Appeal M-9600263 was opened.

The appellant also filed a request for copies of submissions pertaining to the passage of By-law 1995-42 and copies of the Budget Status Reports for the six month period between February and July, 1996. The Township provided the appellant with a summary of the Budget Status Report for July, 1996 and a two-page letter relating to the by-law. The Township also issued a fee estimate of \$25.75 in respect of these records. The Township did not provide the remaining records requested. The appellant appealed the fee estimate and indicated his belief that additional records exist.

Because the parties in both Appeals M-9600263 and M-9600300 were the same and the issues were similar, I decided to dispose of the issues in both appeals in one order. A Notice of Inquiry was sent to the appellant and the Township. Due to the nature of the issues, Management Board Secretariat was also invited to make representations. Representations were received from the Township only.

The following issues were addressed:

- (1) whether the Township was entitled to charge fees under its by-law rather than the fee scheme in the Act and the Regulations;
- (2) whether the fees charged in the two appeals were in accordance with the applicable provisions of the Act and the Regulations; and
- (3) whether the search for additional records in Appeal Number M-9600300 was reasonable.

In Order M-994, I found that the Township was not entitled to charge fees under its by-law and I upheld fees in the amounts of \$7.00 and \$8.10. I ordered the Township to refund any fees it had received from the appellant in excess of these amounts. I also found that the Township's search for records was reasonable.

### **The Reconsideration Request**

Subsequent to the issuance of Order M-994, I received a letter from the appellant requesting reconsideration of the order. The appellant stated that while the search for other records was covered in the order, the Township's search for oral submissions made with respect to the zoning

by-law was not included. The appellant submitted that the issue of access to copies of submissions received by the Township, as described on page 2 of its September 5, 1996 letter, was also not resolved in the order.

The IPC's Reconsideration Policy, describing the threshold for proceeding with a reconsideration, reads as follows:

- 1.1 A decision maker may reconsider a decision where it is established that:
  - (a) there is a fundamental defect in the adjudication process;
  - (b) there is some other jurisdictional defect in the adjudication process; or
  - (c) there is a clerical error, accidental error or omission or other similar error in the decision.
- 1.2 A decision maker will not reconsider a decision simply on the basis that new evidence is provided, whether or not that evidence was obtainable at the time of the decision.

This office notified the appellant and the Township, inviting representations on both the threshold and substantive issues relating to the reconsideration request. Representations were received from the Township only.

## **PRELIMINARY ISSUE:**

### **Should Order M-994 be reconsidered?**

As noted above, an order may be reconsidered if there is an accidental error or omission or other similar error in the decision. In my view, the objective of an order is to finally dispose of **all** the issues in an appeal. Two issues were omitted in Order M-994 and I have accordingly concluded that Order M-994 must be reconsidered, but only to the extent of the two issues identified above. Therefore, my findings in Order M-994 will stand with respect to the **other issues** addressed therein and I will reconsider the order **only** to address the two issues set out above.

## **DISCUSSION:**

The Township states that the records requested pertain to changes in the zoning by-law and requests for such changes from certain property owners. In its letter dated September 5, 1996 to the appellant, the Township states that "... letters were received by the municipality from the owners of the following [three] properties... The two remaining property owners made verbal presentations to Council for [two described properties]".

The three letters referred to in the Township's decision letter were written requests by the owners for changes to the zoning of their properties. In its initial submissions, the Township had indicated that the appellant should attend at the Township offices to review the file and indicate

the records which he wished to have photocopied. The Township has now identified the three letters referred to above and has indicated that it is now prepared to disclose them to the appellant. Copies have been provided to this office. I order the Township to provide copies of these letters (with the personal identifiers removed) to the appellant in final resolution of this issue.

### **REASONABLENESS OF SEARCH FOR ORAL SUBMISSIONS ON ZONING BY-LAW**

The appellant submits that if oral presentations were made to Council, they would have been duly recorded in the minutes of the Council meeting. The appellant submits that such records must exist.

The Township submits that it has conducted a further search of its file. The Township acknowledges that the reference to "verbal presentations to the Council" was misleading as there were no verbal presentations made to the Council at its meetings by the two property owners. The Township explains that in one case, the party spoke directly with the Building Inspector to request a re-zoning of their property. The Township states that no record was made of this and its searches have not located any record.

In the other case, the property owner did speak with the Town Planner and then followed up with a written request. A copy of this letter has been provided to this office and the Township has indicated that it is prepared to disclose a copy to the appellant. I will order the Township to disclose a copy of this record (with personal identifiers removed) to the appellant.

In order to meet its obligations under the Act, the Township must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request. The Act does not require the Township to show with absolute certainty that a record does not exist nor does it require the Township to create a record where none exists.

I have reviewed the submissions of the Township together with all the circumstances of this appeal. I am satisfied that the Township's search for records responsive to the request was reasonable.

### **ORDER:**

1. I find that the Township's search for responsive records was reasonable.
2. I order the Township to disclose the four records referred to above (with personal identifiers removed) to the appellant by **February 19, 1998**.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Township to provide me with a copy of the records disclosed to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_  
Mumtaz Jiwan

February 4, 1998

Inquiry Officer