



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-1152**

**Appeal MA-980134-1**

**Town of Renfrew**



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## **NATURE OF THE APPEAL:**

The Town of Renfrew (the Town) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for access to “complete minutes of [a specified] meeting, the names of all present, a copy of their statements and any documents etc used to substantiate their arguments.” The requester also sought access to “a copy of the survey studies made by the Town on this lot at my request.” The requester and the Town have been embroiled in a dispute for the past ten years regarding responsibility for problems which the requester is experiencing with flooding in the basement of his home, constructed in 1984. The Town located records responsive to the first part of the request and denied access to them, claiming the application of the solicitor-client privilege exemption in section 12 of the Act.

The requester, now the appellant, appealed the Town's decision.

A Notice of Inquiry was provided to the Town and the appellant. A further Notice was provided to the parties seeking their submissions on the issue of whether the section 12 exemption also applied to any records responsive to the second part of the request. The parties were also asked to address the question of whether the Town's search for records responsive to the second part of the request was reasonable.

Submissions were received from both parties. In its representations, the Town agreed to disclose the records which it identified as responsive to the first part of the appellant's request. In addition, the Town disclosed to the appellant the entire contents of the files which it and its' solicitor maintained with respect to the appellant's property. The Town also provided an explanation as to the search which it undertook for records responsive to the second part of the appellant's request.

In further representations following the disclosure of the Town's files to him, the appellant asks for sworn confirmation that these documents represent all of the records in the Town's possession and that no additional records pertaining to his property have been destroyed since his initial contact with the Town on this issue. I find that this proposed action falls outside the scope of the appellant's request and that I have no jurisdiction to make the order requested by the appellant. The sole issue which I have been asked to determine in this appeal is whether the Town's search for records responsive to the second part of the request was reasonable.

## **DISCUSSION:**

### **REASONABLENESS OF SEARCH**

Where an appellant provides sufficient details about the records which he or she is seeking and the Town indicates that such records do not exist, it is my responsibility to ensure that the Town has made a reasonable search to identify any records which are responsive to the request. The Act does not require the Town 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 Town must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records may, in fact, exist.

The appellant refers to several occasions in correspondence between himself and the Town where reference is made to a grading report made in 1987 and to a "final grade control plan which was established by a competent engineering firm and approved by council." The appellant maintains that additional records respecting a survey which he requested must also exist. It is clear that the appellant has been pursuing a remedy to the flooding problems which affect his property for some time. He has made a number of requests for this information over the past six years and has yet to obtain the information he seeks regarding a survey or other, similar studies of his property.

The Town advises that it has conducted a search of all of its files relating to the appellant's property, as well as those in the custody of its solicitor. It states that its Department of Development and Works has no record of any such survey studies. The information provided by the Town also includes an explanation with respect to a visit made to the appellant's property in 1987 at which time certain elevation measurements were taken by the Chief Building Official and a Technical Assistant. The Town indicates that notes may have been taken by the Assistant but that this individual left the Town's employ in 1992, taking with him any notes he may have made.

The Town also submits that it has disclosed to the appellant all of the records which it and its solicitor maintain with respect to the appellant's property.

I have reviewed all of the materials provided to me by the parties to this appeal. In my view, the searches undertaken by the Town for survey information relating to the appellant's property were reasonable in the circumstances. Accordingly, I am satisfied that the efforts made by the Town to identify and locate records responsive to the second part of the appellant's request were reasonable.

**ORDER:**

I find that the Town's search for records responsive to the second part of the appellant's request was reasonable and I dismiss the appeal.

Original signed by: \_\_\_\_\_

Donald Hale  
Adjudicator

\_\_\_\_\_ October 8, 1998