



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-1142

Appeal MA-980124-1

Regional Municipality of Haldimand-Norfolk



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NATURE OF THE APPEAL:

The Regional Municipality of Haldimand-Norfolk (the Municipality) received the following request under the Municipal Freedom of Information and Protection of Privacy Act (the Act):

I am requesting a copy of the planning report documents passed by council for section 3.6 (Repeal of Existing By-laws) of the 1-NA-86. I am also requesting copies of any other documents that interpret section 3.6 of the 1-NA-86...

The Municipality responded by informing the requester that records responsive to the request do not exist. The requester (now the appellant) appealed the Municipality's decision.

This office provided the appellant and the Municipality with a Notice of Inquiry informing them that an oral inquiry will be held to determine whether the Municipality conducted a reasonable search for records which respond to the request. A mutually convenient date for the oral inquiry was set. The inquiry was conducted via teleconference. Both the appellant and the Municipality provided oral representations. The Municipality was represented by the Acting Freedom of Information Co-ordinator/Acting Regional Clerk.

DISCUSSION:

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records which he or she is seeking and the institution indicates that records do not exist, it is my responsibility to ensure that the institution has made a reasonable search to identify all responsive records. The Act does not require the institution to prove with absolute certainty that records do not exist. However, in my view, in order to properly discharge its statutory obligations, the institution must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate responsive records.

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.

In the present appeal, the appellant's request clearly describes the type of information he is seeking. The information sought relates to a specific section (3.6) of an identified zoning by-law (1- NA 86).

Section 3.6, entitled "Repeal of Existing By-laws", contains three subsections: two which describe the types of zoning by-laws which are repealed and one which describes a by-law which is not intended to be repealed. Subsection 3.6.1 refers to previous zoning by-laws which had been approved by the Ontario Municipal Board (the OMB) and which are repealed by By-law 1- NA 86, subject to approval by the OMB. Subsection 3.6.2 refers to previous zoning by-laws which were not approved by the OMB and makes no reference to repeal being subject to OMB approval.

The appellant states that records responsive to his request should exist, based at least in part on subsection 3.6.1 requiring OMB approval. He states that because this subsection is "conditional", section 3.6 is not a standard repeal clause and records should therefore have been generated. He further asks whether a public notice distributed in 1986 or any drafts of By-law 1- NA 86 and documentation related to the drafts help to explain the repeal clause found in the final version.

The Municipality states that planning reports or documents which interpret section 3.6 of By-law 1- NA 86 do not exist. According to the Municipality, section 3.6 is a standard clause used to repeal earlier by-laws. Once a new by-law is enacted, previous related by-laws are amended or repealed. The new by-law contains all the amendments that are to come into effect. In this case, By-law 1- NA 86 became the one comprehensive zoning by-law for the City of Nanticoke, which is located within the Municipality.

The Municipality states that records do exist which reflect internal discussions regarding the interpretation and implications of other provisions within the by-law, but not for the specific repeal section at issue in this appeal.

According to the Municipality, drafts of the by-law may have differed from the final version, but the repeal clause remained the same throughout. The OMB provided the approval referred to in subsection 3.6.1 and the by-law came into effect in 1986.

The Municipality's representative states that she personally conducted a search to confirm whether responsive records exist. The search included indexes of resolutions for the years 1984, 1985 and 1986; indexes of by-laws for the years 1984, 1985 and 1986; discussions with by-law enforcement officers employed at the time of the enactment of By-law 1- NA 86; agendas and minutes of committee and Regional Council meetings for 1986; discussions with the Regional Clerk and discussions with staff from the City of Nanticoke who were involved in public meetings at the time of the passing of By-law 1- NA 86.

During the oral inquiry, the Municipality's representative offered to conduct an additional search for responsive records which may have existed but were destroyed. The representative subsequently informed this office that the additional search had been conducted and that no records responsive to the request had been destroyed.

The Municipality has conducted an extensive search for responsive records and has provided a persuasive explanation of why records do not exist. Having reviewed all of the circumstances of this appeal and considered the representations of the parties, I am satisfied that the search by the Municipality for records responsive to the appellant's request was reasonable.

ORDER:

I uphold the decision of the Municipality and dismiss the appeal.

Original signed by: _____

Alex Kulynych
Acting Adjudicator

_____ August 6, 1998