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

ORDER MO-1540

Appeal MA-010077-2

Township of Stone Mills

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NATURE OF THE APPEAL:

The Township of Stone Mills (the Township) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records of communications, made within a specified time period, between the Township and Hydro One in connection with the removal of trees, and the names and qualifications of Hydro One staff who had identified trees for removal.

The Township advised the appellant that it was unable to identify any responsive records. More specifically, in response to the second part of the request, the Township provided the name of a Township employee (implying that this individual was the person who had identified trees for removal), and further stated that the Township does "not have any record of the names of others who assisted in the decisions resulting in the assessment." The appellant appealed the Township's decision to this office.

The appellant subsequently asked the Township for other information related to his original request. In response, the Township issued a supplementary decision letter agreeing to disclose relevant portions of a daybook belonging to the Township's road superintendent and provided a signed statement from the Clerk of the Township that there were no written records of the Township's discussions with Hydro One relating to the removal of trees. The appellant, however, re-iterated his position that there should be additional records.

During mediation, the Township sent the appellant three affidavits that were sworn by a Township Reeve, the Clerk of the Township and the road superintendent stating that the Township had conducted a reasonable search for records and that all relevant documents had been disclosed.

No further mediation was possible and the appeal was moved into the inquiry process.

I initially sent a Notice of Inquiry that sets out the facts and issues in this appeal to the Township, but it did not provide representations. However, the Township indicated that it intends to rely on its decision letters and the three sworn affidavits confirming that each person had conducted a reasonable search for records and had released "all documents in [his/her] possession". I then sent a Notice to the appellant who made submissions.

DISCUSSION:

REASONABLENESS OF SEARCH

Introduction

In cases where a requester provides sufficient detail about the records he is seeking and the institution indicates that further records do not exist, it is my responsibility to ensure that the institution has made a reasonable search to identify any records responsive to the request. The *Act* does not require the Township to prove with absolute certainty that further records do not exist. To properly discharge its obligations under the *Act*, the Township must provide sufficient evidence to show that it has made a reasonable effort to identify and locate all responsive records (Orders M-282, P-458 and P-535).

A reasonable search would be one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request (Order M-909).

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

In his representations, the appellant submits:

> Hydro One showed up in front of [a named address] in Newburgh, and limbed the marked tree adjacent, down to a fifteen-foot stump . . . Hydro One then left [the named address] and proceeded to the marked tree adjacent to [another named address]. Finding the tree blockaded, Hydro soon after, retired from the village, and, as it turned out, from the entire controversy.
>
> . . . . .
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> The fact of repeated contacts between the [Township] and Hydro One during this period cannot be in question. In this regard, I would direct the Adjudicator's attention to the [Hydro One employee's] email of 14 Dec. '00, . . . in which [the Hydro One employee] goes on to stipulate the three preconditions which it was understood, the Township was to meet, before Hydro One would act . . . to remove trees "at no charge". [The Hydro One employee] reiterates… again in his e-email of 21 Dec '00 . . .
>
> > We indicated to the Reeve that we would not cut down any trees unless we received a **formal request (in writing)** to do so, and then we would evaluate the situation (emphasis mine). [And again:] Hydro One will not remove any trees until we receive a **formal request from the Reeve** at which time we will evaluate the situation. (emphasis mine).
>
> . . . . .
>
> Further, the fact that Hydro One attempted to proceed with the tree removals three days after the 15th January 2001 council meeting, indicates that the Reeve made "a formal request (in writing)" to Hydro One, "to complet[e] the job as originally planned.

To substantiate his claim that correspondence between the Township and Hydro exists, the appellant relies on an e-mail sent by a Hydro One employee to the Township stipulating that Hydro One will not remove any trees unless the Township makes a formal request in writing. According to the appellant's representations, Hydro One trimmed one marked tree and, then in the appellant's words, retired "from the entire controversy". It therefore appears that Hydro One did not remove any trees in the Township. On this basis, I am not persuaded that it is likely that Hydro One had received "a formal request (in writing) . . . from the Reeve" to remove any trees or that it is likely correspondence exists during the relevant time period between the Township and Hydro One on the subject of the removal of trees. Therefore, I find that the appellant has not established a reasonable basis for concluding that records responsive to his request exist.

In his submissions, the appellant refers to his requests for a signed dated statement from the road superintendent confirming statements made to the mediator, written confirmation by the

mediator of the same information, and a signed dated statement from the Reeve clarifying a public statement he had made. These requests are beyond the scope of the issue in this appeal, and I do not intend to address them.

The appellant also contends that the Township has committed offences that fall within the provisions of sections 48(1)(d), (e) and/or (f) of the *Act*. All of these require a wilful act by the offending party, and need the consent of the Attorney General to commence a prosecution. The *Provincial Offences Act* permits any member of the public to lay a charge under section 48(1) of the Act, and the appellant is free to attend on a Justice of the Peace and lay an information (see Orders M-777, P-1311 and P-1534).

In the circumstances, I am satisfied that in providing the relevant pages of the road superintendent's daybook, in requiring the Reeve and two employees to conduct a search for records, and by providing their respective affidavits, the Township has taken reasonable steps in searching for responsive records. Accordingly, I am not persuaded that the Township should be required to conduct a search for additional records.

ORDER:

I uphold the decision of the Township that it has made reasonable efforts to identify all records responsive to the appellant's request.

Original signed by: May 16, 2002
Dawn Maruno
Adjudicator