



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1662**

**Appeal MA-010112-2**

**Township of Stone Mills**



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## **NATURE OF THE APPEAL:**

This appeal concerns a decision made by the Township of Stone Mills (the Township) made pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The requester (now the appellant) had requested “a copy of the record of the council members present at the meeting on the afternoon/evening of January 22, 2001 and for a copy of the minutes/record of that meeting.”

The Township issued a decision in which it provided a list of names in response to the first part of the request, but denied access to the second part of the request. No exemptions were claimed in the decision letter.

The appellant appealed this decision.

During the mediation stage of the appeal process, the Township agreed to reconsider its decision, and issued a new decision letter providing partial access to the minutes of the meeting held on January 22, 2001, with the information severed under section 14 of the *Act*.

The appellant indicated that he did not have an issue with the severances that were made under section 14 of the *Act*, but he did question whether the Township had provided him with a complete record of the business transacted at this meeting.

After further communication between the mediator and the parties without further progress, the appeal was moved to the adjudication stage. The sole issue that remains to be determined is whether the Township has conducted a reasonable search for responsive records.

I first sought representations from the Township. The Township submitted representations and the non-confidential portions were shared with the appellant. I then sought representations from the appellant who submitted representations in response. The appellant’s representations raised issues in response to the Township’s representations. The appellant’s representations were shared with the Township and I then sought and received reply representations from the Township.

## **DISCUSSION:**

### **REASONABLE SEARCH**

#### **Introduction**

In appeals involving a claim that responsive records exist, as is the case in this appeal, the issue to be decided is whether the Township has conducted a reasonable search for the records as required by section 17 of the *Act*. If I am satisfied that the search carried out was reasonable in the circumstances, the decision of the Township will be upheld. If I am not satisfied, further searches may be ordered.

A number of previous orders have identified the requirements in reasonable search appeals (see, for example, Orders M-282, P-458, P-535, M-909, PO-1744 and PO-1920). In Order PO-1744,

acting-Adjudicator Muntaz Jiwan made the following statements with respect to the requirements of reasonable search appeals:

... the *Act* does not require the Ministry to prove with absolute certainty that records do not exist. The Ministry must, however, provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate responsive records. A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request (Order M-909).

I agree with acting-Adjudicator Jiwan's statements.

Where a requester provides sufficient detail about the records that he/she is seeking and the institution indicates that records or further records do not exist, it is my responsibility to ensure that the institution has made a reasonable search to identify any records that are responsive to the request. The *Act* does not require the institution to prove with absolute certainty that records or further records do not exist. However, in my view, in order to properly discharge its obligations under the *Act*, the institution 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, the appellant must, nevertheless, provide a reasonable basis for concluding that such records exist.

## **Representations**

### ***The Appellant***

The appellant contends that the copy of the minutes of the council meeting disclosed in part to him "is **not** a true and complete record" of the meeting. The appellant asserts that during the course of the council meeting there was a discussion and decision pertaining to the Township's policy for responding to access to information requests under the *Act*.

The appellant states that in accordance with section 4 of the Township's By-law No. 98-02 the minutes shall record:

- (a) The place, date and time of meeting,
- (b) The names of the Presiding Officer and Officers and record the attendance of the Member and note of early arrival and early departure of members,
- (c) The reading, if requested, correction and adoption of the minutes of prior meetings,
- (d) All other proceedings of the meeting.

Since the minutes do not make reference to the Township's policy for responding to access to information requests, the appellant concludes that any discussion and/or decisions relating to this item have been removed from the minutes.

***The Township***

The Chief Administrative Officer/Clerk for the Township kept the minutes at the January 22, 2001 meeting. She submits:

In many instances, informal discussion takes place which is not recorded. If such discussion does not require action, it is not usually recorded unless it is to be placed on as a future agenda item.

. . . . .

When we hold these [...] meetings, most of the matters are dealt with verbally, they are more of a discussion format where the members use dialog rather than written records to come to the conclusions, then any recommendations go to Council.

. . . . .

Since there was no record in the minutes concerning access to information, no direction was given and no action taken. In all likelihood if this topic came up it was to let the Committee know that a request had been received.

. . . . .

I do not understand why [the appellant] feels that I would "remove [...] any information". [...] I, in no way, have tampered with any information.

. . . . .

I feel that I have completed a reasonable search of the documents and they have been released as requested.

. . . . .

I provided [the appellant] with all of the documentation that exists concerning this particular meeting.

**Conclusions**

I find that the Township has adequately discharged its responsibilities under section 17 of the *Act* to conduct a reasonable search for all responsive records.

The appellant suggests that he was given access to an incomplete version of the minutes of a Township meeting held on January 22, 2001. The appellant points to the requirements of section 4 of the Township's By-law No. 98-02 to support his position.

The Township has indicated that generally only matters that require action are recorded in the minutes. The Township asserts that if its policy regarding the processing of access to information requests were discussed at its January 22nd meeting, it would have been addressed informally and, in all likelihood, to let the Committee know that an access request had been made.

I find the evidence and explanation of the Township's Chief Administrative Officer/Clerk credible and persuasive. I am satisfied that this matter was not recorded in the minutes and that the Township has provided the appellant with disclosure of all responsive records, subject to exemption, in accordance with the *Act*.

**ORDER:**

I uphold the Township's search for responsive records and dismiss the appeal.

Original Signed By: \_\_\_\_\_ June 26, 2003 \_\_\_\_\_  
Bernard Morrow  
Adjudicator