



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

ORDER MO-1725

Appeal MA-010077-4

Township of Stone Mills



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NATURE OF THE APPEAL:

The appellant made a request to the Township of Stone Mills (the Township) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records of contacts between the Township and Hydro One between mid-November 2000 and mid-February 2001, in connection with the removal of trees.

The Township indicated that it had no such records. The appellant appealed the Township's decision to this office (Appeal MA-010077-2). During the mediation stage of Appeal MA-010077-2, the Township disclosed to the appellant two photocopied pages of handwriting, with severances. The Township advised the appellant that these were the relevant excerpts from the daybook of the Township's road superintendent (the daybook), and that the severed portions related to other matters.

The appellant believed that further relevant records existed and wished to continue with his appeal. In Order MO-1540 dated May 16, 2002, Adjudicator Dawn Maruno dismissed Appeal MA-010077-2, ruling that the Township had conducted a reasonable search for responsive records.

On July 12, 2002, the appellant wrote to the Township seeking access to the original daybook. The appellant cited section 23(2) as his basis for this request. That section reads:

If a person requests the opportunity to examine a record or part and it is reasonably practicable to give the person that opportunity, the head shall allow the person to examine the record or part.

On November 5, 2002, the Township denied the request, stating that it had already provided the appellant with all information responsive to his original request.

The appellant appealed this decision and this office opened Appeal MA-010077-4. In his letter of appeal, the appellant explained that he wished to have access to the original daybook, to prove his allegation that the excerpt from the daybook is "a fabrication".

By letter dated March 21, 2003, during the mediation stage of the appeal, the Township issued a revised decision in which it stated:

Unfortunately the [daybook] does not have to be kept for this long a period of time so it has been destroyed.

Mediation was not successful in resolving all of the issues in the appeal, and the appeal was streamed to the adjudication stage of the process.

I sent a Notice of Inquiry setting out the issues in the appeal to the Township, which provided representations in response. I then sent the Notice, together with a copy of the Township's representations, to the appellant, who provided representations in response.

DISCUSSION:

The Township submits:

The daybook is . . . used by the Road Superintendent for organizational purposes and reference log to assist him. There are no stipulations in our retention by-law which governs this material.

Storage space limitations have forced [the] Road Superintendent . . . to dispose of material such as this when it serves no further purpose.

The Township later advised this office that the destruction took place between March and May of 2003.

The appellant submits:

Why should the IPC credit the Clerk's assertion that "the original daybook" has been destroyed? The Clerk, in her representations, appears to impute the destruction of the daybook to the Road Superintendent. But she does not say when the destruction took place, or on whose authority. Nor does she address the issue of this *particular* document being the subject of IPC inquiry since the 12th July 2002, an issue which, *prima facie*, should have taken precedence over issues of "house-cleaning".

The use of the term "forced" . . . is as self-serving as the assertion itself, that the daybook has been destroyed. The phrase "when it serves no further purpose", as applied to this particular document, is telling, indeed!

And with regard to the Clerk's statement: "There was no reason for [the] Road Superintendent to maintain this material any further": Aside from "this material" continuing to be the subject of IPC inquiry, the decision to destroy it was clearly not for either the Clerk or the Road Superintendent to have made.

In the circumstances, I am satisfied that the Township has indeed destroyed the record, and I also accept the Township's submission that the destruction took place sometime between March and May 2003. Since the appellant requested access to the original record in July 2002, it is clear that this issue was the subject of an inquiry before this office at the time the Township destroyed the record. As a result, the subject matter of the inquiry no longer exists and the appeal has been rendered moot.

By destroying the record when it knew the record was the subject of an appeal, the Township committed a serious breach of its obligation under the *Act* to preserve records subject to an access request until such time as the request process, and any subsequent appeal process before this office or the courts, have been completed (see Order M-1053). The lack of a record

retention by-law, or the Township's "storage space limitations", are not sufficient to relieve the Township of its legal duty under the statute. In these circumstances, the Township's destruction of the record is inexcusable and has compromised the integrity of the access process under the *Act*.

Because the appeal has been rendered moot, no useful purpose would be served by making a determination on the issue of whether the appellant should be granted access to the original record. However, this office will be communicating with the Township for the purpose of ensuring that in future it understands and meets its record retention obligations under the *Act*.

ORDER:

I dismiss the appeal on the basis that it is moot.

Original signed by: _____
David Goodis
Senior Adjudicator

_____ December 10, 2003