



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2127

Appeal MA-060107-1

Haldimand County



Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

Haldimand County (the County) received the following request under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act):

1. A copy of the report from staff which recommended to Council acceptance of bids as per quotation OP-6-003 for supply of aggregate to Haldimand County for 2006.
2. A copy of Council's resolution accepting bids as recommended by staff as per quotation OP-6-003.
3. A copy of all billing invoices from [a named] Quarry for granular "A" hauled to various roads in Old Walpole Twp including Cranston and Yule Roads between Jan 2/2006 to inclusive to Feb 1/06.
4. A copy of the calculation for cost of haulage rate for truck and driver for Haldimand County trucks for: 2002, 2003, 2004, 2005 and 2006, to haul aggregate for roads, hourly and per kilometre.

In its original decision, the County applied section 15(a) (information published or available) of the *Act* to records identified as responsive to items 1 and 2 of the request. With respect to items 3 and 4, the County informed the requester that it is not in possession of records that respond to these parts of the request.

The requester (now the appellant) appealed the County's decision.

The County amended its decision with respect to items 1 and 2 of the request and informed this office that records do not exist in response to these items. Accordingly, the application of section 15(a) of the *Act* is no longer an issue in the appeal. The County's position is that no records exist with respect to all four items of the request.

The County wrote to the appellant to confirm the above and to provide further explanations for its position.

As mediation was not possible, the file was moved to the adjudication stage of the appeal process. I sent a Notice of Inquiry to the County outlining the facts and issues in this appeal. I invited the County to provide representations in response to the Notice, which it did. I then sent a Notice of Inquiry and a complete copy of the County's representations to the appellant and invited his representations. The appellant did not provide representations in response to the Notice.

DISCUSSION:

SEARCH FOR RESPONSIVE RECORDS

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as

required by section 17 [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

Section 17 states in part:

- (1) A person seeking access to a record shall,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;
 - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;
- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

The County was asked to provide a written summary of all steps taken in response to the request. In particular, the County was asked to respond to the following:

1. Did the County contact the requester for additional clarification of the request? If so, please provide details including a summary of any further information the requester provided.
2. If the County did not contact the requester to clarify the request, did it:
 - (a) choose to respond literally to the request?
 - (b) choose to define the scope of the request unilaterally? If so, did the County outline the limits of the scope of the request to the requester? If yes, for what reasons was the scope of the request defined this way? When and how did the County inform the requester of this decision? Did the County explain to the requester why it was narrowing the scope of the request?
3. Please provide details of any searches carried out including: by whom were they conducted, what places were searched, who was contacted in the course of the search, what types of files were searched and finally, what were the results

of the searches? Please include details of any searches carried out to respond to the request.

4. Is it possible that such records existed but no longer exist? If so please provide details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.

Representations of the County

The County states that this appeal is a verbatim re-iteration of a prior request received from the appellant. The County outlined in its representations the searches it undertook to locate records that are responsive to the initial request and the additional searches it performed in response to the request which is the subject of this appeal.

Part 1: A copy of the report from staff and Part 2: A copy of Council's resolution

The County states that it:

...conducted an extensive search of the publicly available records (all Council minutes and Divisional reports subsequent to the closing of Tender/Quote No. OP-06-003) to confirm that no records responsive to items #1 and #2 exist. The F.O.I. Co-ordinator then consulted with the County's Operations Contract Administration Technician who further indicated that a report to Council was neither required nor prepared in response to Tender/Quote OP-6-003.

Part 3: A copy of all billing invoices

[The County] conducted [two] manual search[es] of its invoices filed firstly according to vendor name and then subsequently undertook to review its chronological files cataloguing all invoices received by the County for 2006 according to date. ... [T]he Finance Division reviewed the electronic records containing the County's General Ledger.

...[The County] apprised the appellant that it had not requisitioned granular "A" for the subject roads during the specified time period and that as such, no invoices for gravel or other such responsive records were anticipated by the municipality to be forthcoming.

Additionally, the Roads Supervisor was contacted and verified for Finance staff through the Operations Division Clerk that the County had neither requested nor purchased gravel for application to any roads within Walpole Township or on Yule and Cranston Roads during or around the specified time period...

Part 4: A copy of the calculation for cost of haulage rate

The County F.O.I. Co-ordinator ... contacted the municipality's Manager of Operations with respect to an excerpt from a 2004 report to Council (apparently supplied to the I.P.C. mediator by the appellant) wherein a particular rate of

haulage for granular material was presented. In responding to the F.O.I. Co-ordinator, the Manager of Operations cautioned that any aggregate haulage figures appearing within County reports were very rudimentary estimates using general assumptions, were for illustrative purposes only and that as such, the resultant figures could not be deemed sufficiently accurate to any significant degree. In short, any aggregate haulage figures within the context of a given report are simplified and generalized calculations using approximations for distance, labour, fuel costs, time inputs, etc. As noted previously to the appellant, the County does not track specific inputs as would be required to provide a detailed assessment of aggregate haulage costs as requested by the appellant and does undertake to perform such comprehensive calculations. Nonetheless, on July 6, 2006, in attempt to resolve the matter, the F.O.I. Co-ordinator furnished the appellant with two general and basic formulae employed by County staff in the past to provide a general estimate of haulage costs.

Contacting appellant to reformulate request

With respect to its obligations under section 17(2) of the *Act*, the County stated that it did not contact the appellant for clarification of his request as the scope and description of the records sought were sufficiently detailed and defined to enable the County to conduct the requisite search. The County also provided, with its representations, a copy of its records retention by-law and amendments thereto. I note, however, that the by-law does not provide for the destruction of records responsive to the request, had they existed.

I asked the appellant to provide representations, making reference to the County's submissions, setting forth his reasons for believing that records responsive to his request exist. The appellant failed to respond to my request for representations.

Analysis/Findings

The *Act* does not require the County to prove with absolute certainty that further records do not exist. However, the County must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records within its custody or control [Order P-624].

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

I find that the County has provided me with a comprehensive description of the steps it undertook to locate records responsive to the appellant's request. In my view, the appellant has not provided a reasonable basis for concluding that additional records exist. Based on the submissions of the County, I am satisfied that the County conducted a reasonable search for records responsive to the appellant's request.

ORDER:

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

Original signed by: _____
Diane Smith
Adjudicator

November 28, 2006