



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2096

Appeal MA-060064-1

Municipality of Greenstone



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NATURE OF THE APPEAL:

The requester (now appellant) submitted a request to the Municipality of Greenstone (the Municipality) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

1. A copy of the By-Law relating to Mayor and Council members opportunity to buy back pension years.
2. Any and all correspondence relating to the \$37,000 OMERS expenditure executed by and for Mayor [named individual].

The Municipality located some responsive records and granted access to them.

The appellant appealed the Municipality's decision on the basis that more records should exist.

During the course of mediation, the appellant clarified that she was of the view that additional records exist such as a letter requesting the pension buy back and further letters or documents that speak to the cost, procedure, etc. As a result of communications between the appellant and the Municipality, 24 additional records were disclosed to the appellant. Severances were made to some of these records.

Following receipt and review of the additional records, the appellant advised the mediator that she feels additional responsive records should exist. The appellant clarified that she is not pursuing access to the severed portions of the 24 additional records.

The Municipality advised that all responsive records have been disclosed to the appellant. Mediation did not resolve this issue, and the file was transferred to the inquiry stage of the process, with reasonable search as the sole issue.

I sought representations from the Municipality, initially. The Municipality provided representations with an attached affidavit and consented to sharing them with the appellant in their entirety. The appellant was subsequently asked to review the Municipality's submissions and to provide representations on the issue as it was set out in the Notice of Inquiry. The appellant submitted representations in response.

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.

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

one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request (see Order M-909).

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.

It should be noted that during the mediation stage, the appellant sent an e-mail to the Municipality in which she asked a number of questions arising from the records that had been disclosed to her. While there is no requirement under the *Act* that the Municipality provide answers to questions, if there are documents within the Municipality's custody or control that would address these questions, they should be considered to be responsive to the request and the Municipality was asked to turn its mind to whether there are records of this nature. The Municipality was also asked to provide a written summary of all steps taken in response to the request.

In responding to the notice, the Clerk and Freedom of Information Officer for the Municipality outlined her understanding of the request and the Municipality's obligations under the *Act*. She stated in her representations that on receipt of the request, she contacted the Chief Administrative Officer (CAO), as well as the Director of Corporate Services (Director). She then conducted a search for the records "specifically requested" by the appellant. In doing so, she stated that she did not consider it necessary to contact the appellant for additional clarification of the request as she felt that the request was quite specific, that is, the request was asking for "any and all correspondence".

In her initial decision, the Clerk identified only one item of correspondence as being responsive to the request. She acknowledged that although three letters of concern had also been located, she did not include these in the package as she assumed that the appellant was seeking information regarding Municipal records only.

During mediation of this appeal however, and after speaking with a mediator, she indicated that her understanding of the request was clarified, in that the appellant was seeking "anything and everything" related to the OMERS matter, including a copy of the cheque issued to OMERS, copies of correspondence written by the Mayor and to the Mayor, copies of all correspondence written by the Municipality and copies of all correspondence addressed to the Municipality. She also explained that she understood that "correspondence" in this case should be interpreted as meaning any form of communication.

Following this clarification of the request, the Clerk indicated that she conducted a further search for additional records. She indicated that she, working with the CAO, the Director and the Office Manager conducted a search of the files at the administration office which included the Accounts Payable Department, the Clerk's Office and the Office of the Director of Corporate Services. As a result of this further search, she located 26 records relating to the OMERS matter (two of which had been disclosed with the initial decision). She indicated further that she

provided the appellant with a list of the identified documents along with copies of the severed records and advised her at that time that no additional records exist.

The Clerk indicated that she subsequently received an e-mail from the appellant in which she asked a number of questions. The Clerk stated that she forwarded this e-mail to the CAO, Director and Office Manager for direction and information. She then attempted to answer some of the questions. However, she indicated that many of the questions were directed at Council and/or specific individuals, and she was not able to answer those questions. She also noted in her representations that a number of the questions asked in the e-mail were answered by the information that was sent to the appellant in the records. She concluded that some of the questions could only be answered by the response that no further records exist.

In response to the Municipality's submissions, the appellant asserted that the Clerk of the Municipality was responsible for providing answers to her questions under the *Act*. She stated:

Because [the Clerk] is the Freedom of Information Officer of the Municipality, I believe that she should be able to provide the answers to my list of Inquiry questions...All the questions were relevant to the documents that [the Clerk] provided me...[The Clerk] suggests that I arrange to have my inquiry answered "by some members of the Council or specific individuals". Again, I believe that [the Clerk] is the person responsible to attend to my inquiry.

Although the documents that the appellant received may raise questions in her mind to which she thinks there should be answers, this does not necessarily mean that answers exist in the documents that she received or in other documents. As I indicated above, there is no requirement under the *Act* that an institution answer the questions that the contents of records might raise. The issue is whether there are records in existence that might provide an answer to these questions. As I noted in Order PO-1655:

Previous orders of this office have considered the circumstances in which requests for information are set out in the form of questions (Orders M-493, M-530 and P-995). In two of these cases, it was determined that the questions could be interpreted as requests for records. In my view, this is not the case here. Based on my reading of part 7 and the Ministry's explanation, I agree that the appellant has asked a question of the Ministry and is seeking an answer rather than seeking information or records which would respond to it.

In PO-1655, I concluded that the institution had no obligation to simply answer questions or provide explanations of information contained in the records.

The reasoning and conclusions in these previous orders is relevant to the current appeal. The Municipality has clearly turned its mind to whether records might exist that are responsive to the questions the appellant asked and has indicated that some of her questions are addressed by the records, some are not and some must be answered by individuals rather than by records. The

appellant has provided insufficient basis, other than her own queries, for concluding that such documents should or do exist. Moreover, as I noted above, the Municipality does not need to prove with absolute certainty that further records do not exist. Rather, I must be satisfied that it has made a reasonable effort to identify and locate responsive records.

It was apparent that the Municipality's initial search was inadequate and that it was based on the Clerk's misunderstanding of the request. However, the scope of the request was clarified during mediation, an additional search for responsive records was conducted and records were located. The Clerk explained her understanding of the scope of the request, as clarified, which I find to reasonably describe the request, and the search was conducted for records that fell within the parameters of that clarified request. I am satisfied based on the submissions made by the Clerk, that the Municipality has taken all reasonable steps to locate records in the area in which records would reasonably be expected to be located and that the search was conducted by staff who would likely know or be in a position to determine whether such records do or would likely exist. I am therefore satisfied that the Municipality's search for responsive records was reasonable in the circumstances.

ORDER:

I dismiss the appeal.

Laurel Cropley
Adjudicator

October 6, 2006