



**Information and Privacy
Commissioner/Ontario**

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

FINAL ORDER MO-2340

Appeal MA-060149-1

The Corporation of the Town of Kingsville



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NATURE OF THE APPEAL:

This order disposes of the remaining issues arising from my interim decision in Order MO-2316-I.

This appeal arises from a sixteen-part request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to a tax sale and tendering process. The requester was an unsuccessful bidder who had commenced a civil proceeding against the Town. The Town denied the requester access to the responsive records pursuant to the mandatory personal privacy exemption at section 14(1) and the discretionary solicitor-client privilege exemption at section 12 of the *Act*. The requester (now the appellant) appealed the Town's decision to this office.

The parties participated in mediation and the remaining issues in dispute were transferred to the adjudication stage of the appeals process.

After obtaining representations from the parties, I issued Order MO-2316-I, which resolved the issues relating to the application of the exemptions at section 12 and 14(1) and the possible application of the public interest override at section 16 of the *Act*. However, I found that the Town had not conducted a reasonable search for records responsive to parts 1, 5, 6, 7, 8, 10(f) and (g), 14 and 16 of the appellant's request.

The following order provisions were made in Order MO-2316-I:

1. I uphold the Town's decision to withhold access to the portions of the records I found exempt under section 12 and 14(1) of the *Act*.
2. I order the Town to disclose the remaining portions of the records to the appellant no later than **July 2, 2008**. For the sake of clarity, I have highlighted the portions of these records that should **not** be disclosed in the copy of the records enclosed with this Order to the Town.
3. I order the Town to conduct a search for records responsive to parts 1, 5, 6, 7, 8, 10(f) and (g), 14 and 16 of the request and to issue an access decision to the appellant, with a copy to me, in accordance with sections 19, 21 and 22 of the *Act*, treating the date of this Order as the date of the request.
4. In order to verify compliance with this Order, I reserve the right to require a copy of the information disclosed by the Town pursuant to order provision 2.

Subsequent to the issuance of Order MO-2316-I, the Town wrote to this office on June 30, 2008 to confirm that it had conducted a further search for records responsive to parts 1, 5, 6, 7, 8, 10(f) and (g), 14 and 16 of the request. The Town provided an Affidavit setting out the details of its further search efforts, along with its letter to this office dated June 30, 2008.

The Town also issued a revised access decision to the appellant. The revised decision granted the appellant access to the additional records located as a result of the Town's further search.

I subsequently issued a Notice of Inquiry to the appellant seeking his representations as to whether or not the Town's search was reasonable. The appellant was asked to provide his representations by August 13, 2008. To date, the appellant has not submitted representations in response to the Notice of Inquiry.

DISCUSSION:

As I have already ordered the Town to conduct further searches, the issue to be determined is whether the Town's subsequent search was reasonable, as required by section 17 of the *Act*.

The Town was ordered to conduct further searches to locate records responsive to parts 1, 5, 8, 10(f) and (g) and 16 of the appellant's request. The relevant parts of the request seek access to:

- "... letters that have been sent to the other tenderers rejecting their tenders." (Part 1 of the Request)
- "...all communication between [the successful bidder] and Kingsville, whether by fax, letter or email." (Part 5 of the Request)
- "... a copy of the land transfer cheque for [an identified amount]." (Part 8 of the Request)
- "... Form 4" (Part 10(f) of the Request)
- "... Form 5" (Part 10(g) of the Request)
- "...all communication between Kingsville's lawyer and [the successful bidder] regarding the property transfer." (Part 16 of the request)

The Town was also ordered to conduct a search to locate records responsive to the following questions contained in the appellant's original request:

- "Please advise as to who the signature belongs on [the successful bidder's] Notice to higher tenderer" (Part 6 of the request)
- "Please advise as to who the handwriting on both [the successful bidder's] deposit cheque for [an identified amount] and for [the successful bidder's] final cheque for [an identified amount] with regard to the Realtax file 02-12 is." (Part 7 of the request)
- "Please ask [a named individual] to provide the name and contact details of the person at the ministry he spoke with who advised [a named individual] he was under no obligation to show the winning tender." (Part 14 of the request)

Representations of the parties

As noted above, the Town provided an Affidavit to this office. The Town also provided a copy of its revised decision letter to the appellant which attached copies of the additional records located and provided to the appellant.

The Affidavit was prepared by the Town's Chief Administrative Officer (CAO). The CAO states that following his review of Order MO-2316-I, he directed an individual in the Clerk's Department to conduct a general search for relevant records and to co-ordinate specific searches by the Tax Collector, Director of Financial Services and the Town's lawyer retained to complete the transfer of land subject to the tax sale.

With respect to the search conducted by the individual in the Clerk's Department, the CAO advises that no additional records were located as a result of searches of the Town's paper and electronic general files, including the electronic files of the former Tax Collector.

The CAO states that the Town's current Tax Collector conducted a search for electronic and paper records and located four letters responsive to part 1 of the appellant's request.

The CAO also states that the Town's lawyer retained to complete the transfer of land conducted a search of his files and located a form responsive to part 10(g), and two letters responsive to part 16 of the request. The CAO's affidavit also advises that the Town was not provided with a copy of the record responsive to part 8 of the request.

Finally, the CAO's affidavit states the answers to the appellant's questions forming parts 6, 7 and 14 of his request.

As stated above, the appellant was provided with an opportunity to make representations in response to the Town's affidavit, which he declined.

Analysis and Decision

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].

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.

I have carefully considered the evidence set out in the Town's affidavit along with the contents of the Town's revised decision and am satisfied that the Town has now conducted a reasonable search for records responsive to parts 1, 5, 6, 7, 10(f) and (g), 14 and 16 of the request. The Affidavit provided by the Town sets out in detail the nature of the paper and electronic searches conducted by individuals, retained or employed by the Town, having knowledge about the circumstances of this appeal. Though the Town did not locate further records responsive to parts 5, 8, and 10(f) of the appellant's request, I am satisfied that reasonable searches for records responsive to these parts of the request were conducted. Further, I am satisfied that the Town has now adequately responded to parts 6, 7 and 14 of the appellant's request which sought answers to specific questions.

Accordingly, I find that the Town has conducted a reasonable search for records responsive to the appellant's request and find that there is no basis to order the Town to conduct further searches.

ORDER:

I find that the Town has complied with order provision 3 of Order MO-2316-I and dismiss this appeal.

Jennifer James
Adjudicator

August 27 2008