

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

FINAL ORDER MO-2912-F

Appeal MA12-72

Nottawasaga Valley Conservation Authority

July 11, 2013

Summary: The appellant submitted a request for information related to an identified property. Interim Order MO-2868-I, found that the Nottawasaga Valley Conservation Authority did not conduct a reasonable search for responsive records, and as a result, the conservation authority was ordered to conduct a further search for additional records. The conservation authority conducted a further search. No additional records were located. In this order the adjudicator finds that the conservation authority conducted a reasonable search for additional records responsive to the original request and dismisses the appeal.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 17.

Orders Considered: Order MO-2868-I.

OVERVIEW:

[1] The Nottawasaga Valley Conservation Authority (the conservation authority) received an access request under the *Municipal Freedom of Information and Protection of Privacy act* (the *Act*) for all records relating to a specific address in the Town of New Tecumseth.

[2] The conservation authority located responsive records and issued a decision letter granting partial access, claiming the application of the mandatory exemption at section 14(1) (personal privacy) of the *Act* to withhold portions of them.

[3] The appellant appealed the conservation authority's decision to this office because she believed that additional records responsive to her request should exist. She provided this office and the conservation authority with a list of 26 concerns and questions she had with its search for responsive records.

[4] The parties were unable to resolve the issue of whether the conservation authority's search was reasonable through the process of mediation. The file was transferred to the adjudication stage and an adjudicator with this office conducted an inquiry. The file was then transferred to me to prepare a decision.

[5] On April 16, 2013, I issued Interim Order MO-2868-I, in which I ordered the conservation authority to conduct a further search for any permits relating to the property identified in the original request. I also ordered the conservation authority to provide me with an affidavit sworn by the individual(s) who performed the search, confirming the nature and extent of the search conducted for responsive records. The order stated that at a minimum, the affidavit should include information relating to the following:

- (a) Information about the employee(s) swearing the affidavit describing his or her qualifications and responsibilities;
- (b) the date(s) the person conducted the search and the names and positions of any individuals who were consulted;
- (c) information about the type of files searched, the search term used, or the nature and location of the search and the steps taken in conducting the search; and
- (d) the result of the search(s).

[6] As a result of this further search, the conservation authority did not identify any additional records responsive to the request. However, as required by Interim Order MO-2868-I, it did provide me with an affidavit sworn by the individual who conducted the additional search for any permits relating to the property identified in the original request.

[7] I sent a copy of the conservation authority's affidavit to the appellant and sought her representations on the issue as to whether it had conducted a reasonable search for records in response to Interim Order MO-2868-I. The appellant provided me with representations on the issue.

[8] The sole issue that remains to be decided in this appeal is whether the conservation authority conducted a reasonable search for permits related to the property identified in the original request, as required by Interim Order MO-2868-I. This order constitutes my ruling on that issue.

[9] For the reasons that follow, I find that the conservation authority's search was reasonable, and I dismiss the appeal.

DISCUSSION:

SEARCH FOR RESPONSIVE RECORDS

[10] 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 17.¹ 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.

[11] Although a requester will rarely be in a position to indicate precisely which records that the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.²

[12] 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.³

[13] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.⁴

[14] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.⁵

[15] In Interim Order MO-2868-I, I found that the appellant provided a reasonable basis to conclude that permits relating to her property might exist. As a result, I ordered the conservation authority to conduct a further search pertaining specifically to permits relating to the property identified in the original request. I ordered the

¹ Orders P-85, P-221 and PO-1954-I.

² Order MO-2246.

³ Orders P-624 and PO-2559.

⁴ Orders M-909, PO-2469, PO-2592.

⁵ Order MO-2185.

conservation authority to provide me with an affidavit from the individual(s) who conducted the search, confirming the nature and extent of the search.

[16] In response to Interim Order MO-2868-I, the conservation authority conducted a search specifically for permits related to the appellant's property and provided me with an affidavit outlining the details of that search. The affidavit was sworn by the Executive Assistant/Corporate Services who also serves as the FOI Assistant. In her affidavit, she submits that she is very familiar with the conservation authority's records and requests pertaining to them. She advises that she reviewed the file relating to the property identified in the request and found no permits. She submits that she consulted with a Senior Officer and was advised that no further permits had been applied for or issued. As a result, the conservation authority's position remains that no additional records responsive to the original request, including permits relating to the appellant's property, exist.

[17] The appellant was provided with an opportunity to comment on the conservation authority's affidavit. Her primary concern, as identified in her representations, appears to be whether the conservation authority conducted a reasonable search for permits relating to the property identified in the original request or whether the search was conducted amongst records relating to another property. Her concern is based on the fact that, in its affidavit, each time that the conservation authority refers to the legal description of the property named in the request, it has also identified the property colloquially in brackets as "[Surname] Property" and that the surname identified is not that of the appellant. The appellant submits that the "[Surname] Property" is a different property altogether.

[18] Subsequently, the conservation authority confirmed that the search conducted for permits pertaining to the property identified in the original request as a result of my finding in Interim Order MO-2868-I was indeed for records related to 1610 Sideroad 10, R.R. 2, Town of New Tecumseth and that any references to "[Surname] Property" were made in error. It submits that the confusion resulted from the fact that the appellant submitted a number of requests for information related to different properties and all references to 1610 Sideroad 10, R.R. 2, Town of New Tecumseth in the affidavit should have been colloquially identified as "[appellant's surname] property" instead.

Analysis and finding

[19] Although the conservation authority was unsuccessful in locating additional records, specifically permits relating to the appellant's property, I accept that it has provided me with sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate responsive records within their custody and control. I accept that the search was conducted by an experienced employee who is knowledgeable in the subject matter of the request and that she expended a

reasonable effort to locate any permits relating to the property identified in the original request as required by Interim Order MO-2686-I.

[20] I acknowledge that it seems unusual that no permits relating to the property identified in the request exist despite the "permanent held" status for permits as dictated by the conservation authority's record retention schedule (as discussed in greater detail in Interim Order MO-2868-I) and I urge the conservation authority to take care in ensuring that its records are appropriately filed and retained in accordance with that schedule. However, the *Act* does not require the conservation authority to prove with absolute certainty that further records do not exist. I accept that I have been provided with sufficient evidence to show that the conservation authority has made a reasonable effort to identify and locate any permits related to the property identified in the original request, as required by Interim Order MO-2868-I. Accordingly, I find that the conservation authority has performed a reasonable search for responsive records and I dismiss the appeal.

ORDER:

I find that the search conducted by the conservation authority, for permits related to the property identified in the original request, was reasonable and I dismiss the appeal.

Original signed by: _____
Catherine Corban
Adjudicator

_____ July 11, 2013