

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2886

Appeal MA12-222

Town of Gravenhurst

May 28, 2013

Summary: The appellant sought access to information pertaining to an identified property. The Town of Gravenhurst (the town) disclosed some information to the appellant, with certain information being withheld as exempt under the *Act*. The appellant claimed that other records ought to exist. After mediation the reasonableness of the town's search for records became the sole issue in the appeal. This order finds that the town's search for responsive records was reasonable 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.

BACKGROUND:

[1] The Town of Gravenhurst (the town) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information relating to an identified property:

- the name of the reserve fund used by the town to pay for the remedial work completed on [the identified property]

- the minutes of “any general council meeting or in camera (closed) meeting of council that dealt with either remedial work (decision), or expenditure approval for remedial work on [the identified property]”

[2] The town identified records responsive to the request and, in its initial decision letter, granted partial access to them. The town relied on section 14(1) of the *Act* (invasion of privacy) to deny access to the portion it withheld.

[3] The requester, now the appellant, appealed the town’s decision.

[4] In a letter to this office that accompanied a copy of the responsive records, the town advised that it should have indicated that it was relying on section 6(1)(b) of the *Act* (closed meeting) to deny access to the withheld responsive portions of the records at issue that pertained to the appellant.

[5] At mediation, the town took the further position that certain portions of the records were not responsive to the request. In response, the appellant advised the mediator that he was not interested in pursuing access to the information the town identified as being non-responsive to the request or to the information that the town withheld under section 14(1) of the *Act*. As a result, the information that the town identified as non-responsive, the information that the town withheld under section 14(1) and the application of section 14(1) are no longer at issue in the appeal.

[6] After further discussions with the mediator, the town then decided to disclose the responsive redacted information from the July 7, 2009 and September 1, 2009 closed Council meeting minutes that it sought to withhold under section 6(1)(b), and issued a supplementary decision letter. Accordingly, that information and the application of section 6(1)(b) of the *Act* are also no longer at issue in the appeal.

[7] However, after reviewing the disclosed information, the appellant took the position that additional records should exist and challenged the reasonableness of the town’s search for responsive records. This is the only issue remaining at issue in the appeal.

[8] Mediation did not fully resolve the matter and it was moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*.

[9] I sought representations from the town and the appellant. I received their representations and shared them in accordance with section 7 of the IPC’s *Code of Procedure and Practice Direction 7*.

DISCUSSION:

The town's representations

[10] The town asserts that it conducted a reasonable search for responsive records. In response to the Notice of Inquiry in this appeal, the town provided an affidavit of its Deputy Clerk describing in detail other access requests submitted by the appellant and the town's responses. The town also enclosed a copy of a previous affidavit of the Deputy Clerk sent to the appellant in the course of an earlier appeal arising from one of the requests, which was subsequently withdrawn.

[11] With respect to the request at issue in the appeal before me, the Deputy Clerk explains in her affidavit provided in response to the Notice of Inquiry in this appeal that the town takes the following general steps when an access to information request is received:

- an electronic search is conducted of the current records for files associated with the request. For older files the town also conducts an electronic search of its "inactive index".
- an email is sent to everyone who is associated with the request, "for example the request for the Property Standards minutes – an email was sent to the Property Standards Officer, the recording secretary and Chief Building Official that I have received a request and require all documents/correspondence/emails, etc. that relate to this issue".
- the files are reviewed and the documents are prepared to respond to the request.

[12] The Deputy Clerk deposes that she searched the following files in response to the appellant's access request at issue before me:

- the agendas, minutes, resolutions and by-laws for Council, Committee of the Whole and Property Standards "both electronically and the hard copy that is kept in the binders and files"
- Muskoka Wharf Board Minutes
- a specified property file
- a specified complaint file – Property Standards
- Muskoka Wharf correspondence

- Litigation
- Financial – General Ledger, Accounts Payable and Tax files

[13] The Deputy Clerk further deposes that:

This matter was not discussed in open session as it related to “litigation or potential litigation, including matters before administrative tribunals affecting the municipality or local board”

In the Closed Session minutes of July 7th, 2009 the Chief Building Official verbally provided the members of Council with the work that was required to be carried out at this site, the cost of the work and the fact that the costs would be charged against taxes.

The appellant’s representations

[14] In his representations, the appellant sets out his various interactions with the town and litigation pertaining to his former property and sets out his concerns about the steps the town took that led up to the remedial work being done on the property.

[15] With respect to the reasonableness of the town’s search for responsive records, the appellant submits in particular:

Prior to releasing the previously redacted minutes of the July 7th Council meeting [the Deputy Clerk], signed an affidavit disclosing that no further relevant information existed concerning our issue. It was only after our refusal to accept [the Deputy Clerk’s] affidavit statements suggesting there was no further relevant information, the town released those minutes which disclosed that council was receiving an “update” at the July 7th meeting. Please keep in mind that this “update” was only one month prior to when the town officials actually took physical remedial action against our property.

There has to be some Council discussion or decision between the time that [the then Mayor] met with Evanco [a local development company] representatives and MP Tony Clement, in November 2008, and the time that the town issued the Property Standards Violation Notice on [specified date]. It also seems plausible that town Council would have received several “updates” concerning this significant issue between February 9th and July 7th, 2009.

The town seems to be attempting to withhold evidence by relying on section 6(1)(b) of [the *Act*], in order for the town to further insulate itself from being held accountable for an act of civil fraud.

... we respectfully remind you that the July 7th, 2009 council minutes were also redacted pursuant to section 6(1)(b) of the *Act*, when in fact all it really exposed is that [the Deputy Clerk's] prior affidavit was meant to discourage us from believing any further information existed. The town officials knew the reference to a Council "update" would suggest otherwise. There has to be some other meetings or discussions that dealt with our property issue.

The town's reply representations

[16] In its reply representations, the town submits that Council was provided updates on the property issue through closed meetings on July 7, 2009 and September 9, 2009 and the appellant received redacted copies of those minutes, from which non-responsive portions were severed.

Analysis and Finding

[17] 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.

[18] 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.²

[19] To be responsive, a record must be "reasonably related" to the request.³

[20] 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.⁴

[21] I am satisfied that the materials the town provided in support of its position demonstrate that it made a reasonable effort to address the appellant's request and

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Order PO-2554.

⁴ Order MO-2246.

provides a thorough explanation as to why no further responsive records exist within its custody or under its control.

[22] As set out above, although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the appellant still must provide a reasonable basis for concluding that such records exist. In my view, the appellant has not provided a reasonable basis for concluding that responsive records exist. Accordingly, I am satisfied that the town's search for responsive records within its custody or under its control, is in compliance with its obligations under the *Act*.

ORDER:

I uphold the reasonableness of the town's search for responsive records and dismiss the appeal.

Original signed by: _____
Steven Faughnan
Adjudicator

_____ May 28, 2013