

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-2915

Appeal MA12-456

Grand River Conservation Authority

July 18, 2013

**Summary:** The appellant sought records related to his properties dated between 1987 and 2012. The Grand River Conservation Authority located responsive records and provided the appellant with access to them. The appellant believes that additional responsive records exist. This order upholds the GRCA's search for responsive records.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 17(1).

### OVERVIEW:

[1] The Grand River Conservation Authority (the GRCA) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for access to the following information:

All records of my properties [named addresses]. All communications, all permits and applications, all information on [file] since 1987 [until] July 2012.

[2] The GRCA located responsive records and issued a decision, with a fee, to the requester granting partial access to the records. Access was denied to a portion of one page out of 235 pages of responsive records pursuant to the mandatory personal privacy exemption in section 14(1) of the *Act*.

[3] After receiving the decision, the requester advised the GRCA that it was his belief that more records should exist and provided examples of such records.

[4] As a result, the GRCA conducted a further search and issued a supplementary decision granting partial access to an additional 78 pages. Access was denied to certain parts of the records pursuant to section 14(1) of the *Act*.

[5] One week after issuing the supplementary decision, the GRCA issued a second supplementary decision granting partial access to an additional 229 pages found in its archived email records. In addition 51 responsive voice mail messages were discovered. The GRCA invited the requester to attend its offices to listen to the messages at his convenience.

[6] The requester (now the appellant) appealed the GRCA's decision to deny access to the withheld portions of the records and raised his concern that more responsive records should exist.

[7] During mediation, the GRCA explained that, with the exception of the name of a resident that was concerned about the appellant's property, the information withheld related to other individuals' matters and did not relate to the request. In addition the withheld information contained the personal information of these individuals.

[8] During mediation, the appellant confirmed that he was not interested in pursuing access to the portions of the records the GRCA claimed were subject to the section 14(1) exemption but that he continues to believe that additional responsive records should exist. Specifically, the appellant indicated that in February, 2011, three named employees of the GRCA attended his property. The appellant, therefore, believes that the GRCA should have a copy of a particular survey that he asserts was conducted that day.

[9] In addition, the appellant advised the mediator that he believes that records should exist of a GRCA Board Meeting decision where it was decided that existing permits for the appellant's property would be "grandfathered" or continued.

[10] The mediator discussed the appellant's concerns with the GRCA. The GRCA indicated that it had provided the appellant with all the documents relating to the wetland on his property, including a survey and a memo that outlined that the wetland was originally flagged as a natural wetland and subsequently identified as an anthropogenic wetland.

[11] With regard to the "grandfathered" permits, the GRCA indicated that it had conducted a further search for these records and in addition to the records already provided, the minutes for several meetings and a report were located. The GRCA sent

these records to the appellant. The GRCA maintained that it did not have any records that include information about the appellant's permits being "grandfathered."

[12] The appellant did not accept the GRCA's position that these additional records do not exist. As a result, the file was transferred to the adjudication stage of the appeals process where an adjudicator conducts an inquiry. I sent a Notice of Inquiry to the GRCA and the appellant scheduling an oral inquiry on May 14, 2013 into the issue as to whether the GRCA had conducted a reasonable search for responsive records under section 17(1) of the *Act*.

[13] On May 14, 2013 an oral hearing into this appeal was held by teleconference. Present for the GRCA were its Freedom of information Co-ordinator (the FOIC), the Supervisor of Resource Planning – Central, the Resource Planner – Central, and the GRCA's Senior Accountant. The appellant represented himself.

[14] During the hearing of May 14, 2013, the appellant agreed that the GRCA had already provided him with the responsive survey relating to an attendance on his property in February 2011. The parties also agreed that the GRCA would conduct another search for responsive records. In particular, the GRCA agreed to:

- search for documents associated with a specific April 2012 GRCA Executive Board meeting; and
- review GRCA Board Meeting records dated between 1987 and 2005, to ensure that the appellant had received all records responsive to his request, including any documents about a meeting where "grandfathering" or continuing the permits for his property was discussed.

[15] As a result of these further searches, the GRCA located additional responsive records and issued another supplementary decision to the appellant dated May 27, 2013, disclosing additional records. In this letter, the GRCA's Senior Accountant stated that:

Further to the oral inquiry on May 14, 2013 and [the mediator's] email of the same date, we have conducted a search for documents related to GRCA board meetings from 1987 to 2005 and April 12, 2012. I have also included documents related to a board meeting held on [date] as you spoke at this meeting. We have discovered the following records, which consist of 186 pages. Beside each meeting date, I have noted the page number(s) which contain reference to you, your property or any permits related to your property.

[List of 10 dates with page numbers]

Please note that our board meetings are not taped (either audio or video). The only records of these meetings are the approved minutes. During the meeting, a recording secretary makes notes (either written or typed). If handwritten, these notes are then typed. The typed minutes are then presented to the Board for approval and become the official record of the meeting. We do not have a policy for the destruction of the recording secretary's notes. However, these notes are destroyed after the minutes have been approved. In our search we did find the recording secretary's notes for the 2012 meetings and we have included these records. However, we have not located the recording secretary's notes from meetings prior to 2012 and believe that they have been destroyed. While we recognize that anyone attending a board meeting might make a note of an item being discussed, we have no control over any such notes made by board members or others.

As you will notice, the minutes often do not capture discussions that took place during the meeting, but rather reflect a summary of the discussion and the decision only. While you might remember a particular discussion, this does not mean that the discussion was captured in the minutes and, therefore, is part of a record.

[16] In response, the appellant maintained that additional responsive records still exist that had not been located by the GRCA. He provided a copy of a letter to him of June 10, 1994 from a planner from the Township of North Dumfries (the township) wherein the township's staff suggested that the appellant's property should be "grandfathered" and allowed to be built on.

[17] As a result, the oral inquiry was reconvened on July 17, 2013, with all the same individuals participating. In advance of this hearing date, the GRCA provided both the appellant and me with 32 pages of written documentation that it intended to rely on at the hearing. This documentation included a covering memorandum with supporting documents from the Supervisor of Resource Planning to the FOIC contesting the appellant's statement from the May 14, 2013 hearing that the appellant's previous permit approval(s) on his property are "grandfathered" in perpetuity.

[18] On July 17, 2013, the appellant testified first. He was asked to identify what responsive records he believed still exist that had not been located by the GRCA. He stated that he believed that the following five records have not been located by the GRCA:

1. Minutes of a GRCA Executive Board Meeting that took place in May or June 1994;
2. Board member notes of this meeting;

3. Recordings of this meeting;
4. The appellant's 40-page written submission filed at this meeting; and,
5. A refusal letter from the GRCA concerning a 1991 permit application.

[19] In reply, the FOIC testified that the GRCA had already provided the minutes of the specific 1994 meetings, which took place on May 13 and June 10, 1994, within its May 27, 2013 decision letter sent to the appellant. The FOIC stated that as the Board members at this meeting were not employees of the GRCA, but appointees of the township, their personal notes of the meeting would have belonged to them and would not have been in the custody or control of the GRCA.

[20] Concerning the availability of recordings from that meeting, the FOIC reiterated the information about these items set out in the May 27, 2013 decision letter that the meetings are not recorded, either by video or audio. In addition, the FOIC advised the appellant where his 40-page submission was located in the records that had already been provided. Finally, the FOIC directed the appellant to the records that had already been disclosed to him concerning the processing and disposition of the specific 1991 permit application.<sup>1</sup>

### ***Analysis/Findings***

[21] In appeals where the only issue remaining is that the appellant believes that additional records exist, as is the case in this appeal, the sole issue to be decided is whether the GRCA has conducted a reasonable search for the records as required by section 17 of the *Act*. If I am satisfied that the search carried out was reasonable in the circumstances, the decision of the GRCA will be upheld. If I am not satisfied, further searches may be ordered.

[22] Important factors in assessing the reasonableness of the search will be whether the appellant has provided sufficient identifying information to assist the institution in its search and has provided a reasonable basis for concluding that additional records exist.

[23] 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.<sup>2</sup> To be responsive, a records must be "reasonably related" to the request.<sup>3</sup>

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<sup>1</sup> The appellant agreed with the FOIC that this permit application was made and disposed of in 1990, not 1991.

<sup>2</sup> Orders P-624 and PO-2559.

<sup>3</sup> Order PO-2554.

[24] 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.<sup>4</sup>

[25] 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.<sup>5</sup>

[26] Although the appellant claims that a specific permit for his property was "grandfathered" in 1994, my jurisdiction is not to determine whether or not the appellant's permits were "grandfathered" in perpetuity. My jurisdiction in this inquiry is to determine whether the GRCA has conducted a reasonable search for responsive records under the *Act*.

[27] Based on a careful review and consideration of the oral testimony provided by both parties on both hearing dates, along with the documents the parties provided in support, I find that the GRCA has conducted a reasonable search for responsive records. In particular, I find that the GRCA has either provided responsive records or has provided other evidence demonstrating the efforts it has made to locate the records that the appellant believes still exist.

[28] I find that the appellant has not provided a reasonable basis for me to conclude that additional responsive records exist. Accordingly, I am upholding the reasonableness of the GRCA's search for responsive records and dismissing this appeal.

**ORDER:**

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

Original Signed By: \_\_\_\_\_  
Diane Smith  
Adjudicator

July 18, 2013 \_\_\_\_\_

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<sup>4</sup> Orders M-909, PO-2469 and PO-2592.

<sup>5</sup> MO-2185.