

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-3232

Appeal MA13-566

Ausable Bayfield Conservation Authority

August 19, 2015

**Summary:** The appellant made a request to the conservation authority for access to records related to a named subdivision. Following clarification of the request, the conservation authority conducted a search, located the responsive records and granted access to the requested information. The appellant's initial request was followed by subsequent access requests for information about the subdivision. In each case, the conservation authority issued a fee estimate, received a deposit payment and conducted searches for records. Moreover, the appellant was granted access to the information in each case. The appellant alleges that additional responsive records should exist respecting his requests and that the conservation authority had improperly narrowed its scope. The adjudicator finds that the appellant's request was properly narrowed and upholds the institution's search as reasonable.

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

### OVERVIEW:

[1] The appellant made a request to the Ausable Bayfield Conservation Authority (the conservation authority) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for information relating to the "Riverview Estates" subdivision.

[2] The conservation authority contacted the appellant to clarify his request, which was confirmed to be general in nature, seeking all documents and information pertaining to the development.

[3] On April 11, 2013, the conservation authority issued a fee decision and requested a deposit in order to continue processing the request. The appellant paid the deposit. On May 8, 2013, the appellant contacted the conservation authority to discuss its decision and requested the following:

...a copy of all permits and related property correspondence to today's date relating to the properties within this subdivision (Riverview Estates) as well as the new Riverview Meadows development adjacent to Riverview Estates. I would also like to be periodically updated on any new or outstanding permits for a period of 2 years.

[4] On July 8, 2013, the conservation authority provided the appellant with a fee estimate for processing this new, revised request. It also asked him to pay a deposit before it would initiate further work on his request. The appellant paid the deposit once again.

[5] Over the course of several months, the appellant and the conservation authority discussed the records responsive to the appellant's requests. Following these discussions, the conservation authority issued a further fee estimate, stating the following:

The Authority has received your email request for information pertaining to the 'Riverview Estates' development. From your email it is understood that you are now requesting the Authority to undertake a more intensive manual search of its regulation files.

Similar to your previous request, your request is general in nature and that you are unable to [narrow the scope of] your request to any specific topic.

...

Authority staff have met to consider your request. The following is a cost estimate to undertake a manual search of the following Authority files dated between 1998 to the current date:

- Permit Index files
- Inquiries files
- Minor work files
- Permit files

[6] The appellant appealed the fees charged by the conservation authority. The appellant also expressed concern that a final access decision had not been issued for his requests and took issue with the number of records identified as responsive to his

request. He believes that the conservation authority should have identified further responsive records.

[7] During mediation, the conservation authority issued two final access decisions.

[8] With regard to the April 11, 2013 request for records related to the Riverview Estates subdivision, the conservation authority granted access to the responsive records and advised that the final fee for processing this request was \$264.25. As the appellant had already paid \$339.00 to process the request, the conservation authority applied the balance owed to the appellant to his other request regarding the Riverview Meadows subdivision.

[9] With regard to the May 8, 2013 request for records related to the Riverview Meadows subdivision, the conservation authority granted access to the responsive records, and advised that the final fee for processing the request was \$337.99. As the appellant had already paid \$450.00 to process this request, the conservation authority returned \$186.70 to the appellant.

[10] The appellant informed the mediator that he believed that the fees charged for processing the requests were excessive. The mediator discussed the appellant's concerns with the conservation authority. As a result, the conservation authority refunded \$187.28 to the appellant. The appellant confirmed his concerns with the amount of the fee charged by the conservation authority were satisfied and this issue was removed from the scope of the appeal.

[11] The appellant was also concerned that the conservation authority did not conduct a reasonable search. In particular, the appellant believes that more records should exist that relate to a permit lapse for the Riverview Estates subdivision. The appellant explained that an extension to the subdivision was reviewed by the conservation authority after the lapse of the permit. The appellant expected the records he received that relate to the extension of the subdivision to note the reason the permit was allowed to lapse, and/or to mention the incomplete portion of the subdivision.

[12] During the inquiry into this appeal, the adjudicator sought and received representations from the conservation authority and the appellant. Representations were shared in accordance with section 7 of the IPC's Code of Procedure and Practice Direction 7. The file was then assigned to me to dispose of the issues in this appeal.

[13] In this order, I uphold the conservation authority's search as reasonable.

## **ISSUES:**

A. What is the scope of the request?

B. Did the conservation authority conduct a reasonable search for the records?

## **DISCUSSION:**

### **Issue A: What is the scope of the request?**

[14] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
  - (a) make a request in writing to the institution that the person believes has custody or control of the record;
  - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;

. . .
- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[15] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.<sup>1</sup>

[16] To be considered responsive to the request, records must "reasonably relate" to the request.<sup>2</sup>

[17] The appellant submits that his request for "records pertaining to the Riverview Estates Subdivision in its entirety" was improperly narrowed by the conservation authority. He states:

The [conservation authority] has attempted to narrow the search. I have repeatedly stated that I am interested in all records...None of my requests were limited to their database or any specific file number. The [conservation authority] currently claims that they tried to "define" my request. What they were attempting to do is limit my request.

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<sup>1</sup> Orders P-134 and P-880.

<sup>2</sup> Orders P-880 and PO-2661.

[18] The conservation authority submits that the appellant's initial request for "a copy of file S-231 in its entirety" was clarified to mean "records pertaining to the review and approval of the 'Riverview Estates Subdivision'". The conservation authority provided the appellant with a fee estimate and conducted the search for records.

[19] The conservation authority notes that the appellant subsequently requested access to files pertaining to the approval of the Riverview Meadows condominium development. The conservation authority states:

As this is a different development than addressed under Authority File Reference number [Specified number for earlier request], the [conservation authority] assigned it File Reference [specified number] and prepared a fee quote.

[20] The conservation authority finally notes that the appellant contacted the conservation authority a third time for copies of files pertaining to its approval of houses on Hazelton Lane in the Riverview Estates subdivision. The conservation authority states:

These files represent the regulations files for individual houses which require a permit from this [conservation authority] under its Conservation Authorities Act – Section 28 regulations.

[21] The conservation authority submits that a search was conducted and access was granted in full to the records responsive to his third request, with the personal information contained in various applications withheld under section 14(1).

[22] However, following receipt of these records, the appellant questioned the completeness of the records provided. The conservation authority submits that it outlined the details of its search and requested direction from the appellant on what records were being sought. The appellant then indicated, "I am looking for all related records relating to the Riverview Estates subdivision, please proceed with thorough search."

### **Analysis and finding**

[23] Based on my review of the parties' submissions, the main question about the scope of the appellant's request is whether the appellant's initial request for records, related to the Riverview Estates Subdivision, would have included the Riverview Meadows development and the houses on Hazelton Lane.

[24] The appellant submits that the Riverview Meadows Development is part of the Riverview Estates Subdivision and states:

See attachment HC1 (3 pages). Please note file S-231 on top of page 1 of HC1 which was the subject of the initial request which was clarified. The mobile home area discussed in this letter was changed to the development known as Riverview Meadows.

[25] I note from the April 11, 2013 letter from the conservation authority to the appellant that it did not understand the S-231 designation in the appellant's request and states:

On April 09, 2013 the Authority received your fax request for information pertaining to 'File S-231'. File S-231 is not a reference number familiar to Authority staff. From our subsequent telephone discussion, it is my understanding that you are seeking a release of information regarding the 'Riverview Estates' subdivision. Also, from your discussion with staff, it is understood that your search is general in nature – that you are seeking all documents and information pertaining to the development.

[26] In Order P-880, Adjudicator Anita Fineberg determined that records must "reasonably relate" to the request in order to be considered "responsive." She went on to state:

... the purpose and spirit of freedom of information legislation is best served when government institutions adopt a liberal interpretation of a request. If an institution has any doubts about the interpretation to be given to a request, it has an obligation pursuant to section 24(2) of the Act to assist the requester in reformulating it. As stated in Order 38, an institution may in no way unilaterally limit the scope of its search for records.

[27] In Order P-134, former Commissioner Sidney B. Linden also commented on the proper interpretation of section 24(2), stating, among other things:

...the appellant and the institution had different interpretations as to what this meant: the institution felt that the files were outside the scope of the original request and should be the subject of a new one; and the appellant thought he was seeking information which he expected to receive in response to his initial request. While I can appreciate that there is some ambiguity on this point, in my view, the spirit of the *Act* compels me to resolve this ambiguity in favour of the appellant. The institution has an obligation to seek clarification regarding the scope of the request and, if it fails to discharge this responsibility, in my view, it cannot rely on a narrow interpretation of the scope of the request on appeal.

[28] I find that a liberal interpretation of the appellant's request would have been one which encompassed the Riverview Estates Subdivision, the Riverview Meadows Development and the records relating to the houses on Hazelton Lane. The conservation authority did not take a liberal interpretation of the appellant's initial request and instead sought clarification from the appellant which it is permitted to do under section 17(2). Circumstances suggest that the conservation authority found the appellant's initial request did not provide sufficient detail and it then sought clarification to either locate responsive records or to reduce any fee that a broad request would entail.

[29] I find that from the sequence of events, including the appellant's requests for information, the discussions between the parties that followed the requests and the subsequent fee estimates and searches, it appears that the appellant understood that his request was being clarified and narrowed. While the appellant appealed the fees charged, the appellant did not raise any objections to the manner in which his request was being narrowed at that time. I find that the conservation authority did not act unilaterally to narrow the request and thus limit its search for responsive records.

[30] I find that the conservation authority properly identified the scope of the appellant's request, in the circumstances of this appeal. My finding on the scope of the appellant's request does not preclude the appellant from making a new request for any further information he is still seeking.

**Issue B: Did the conservation authority conduct reasonable search for responsive records?**

[31] 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.<sup>3</sup> 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.

[32] 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>4</sup> To be responsive, a record must be "reasonably related" to the request.<sup>5</sup>

[33] 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>6</sup>

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<sup>3</sup> Orders P-85, P-221 and PO-1954-I.

<sup>4</sup> Orders P-624 and PO-2559.

<sup>5</sup> Order PO-2554.

<sup>6</sup> Orders M-909, PO-2469 and PO-2592.

[34] 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>7</sup>

[35] 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.<sup>8</sup>

[36] The appellant suggested during mediation that his reasonable basis for concluding that additional responsive records should exist was the fact that the conservation authority did not identify records relating to the subdivision's permit lapse.

[37] As I have found that the conservation authority did not unilaterally narrow the scope of the appellant's request, I will consider whether, based on the clarified requests, the conservation authority's search for responsive records was reasonable.

[38] The conservation authority was asked to provide an affidavit to this office describing, among other things, details of any searches carried out including: by whom were they conducted, what places were searched, who was contacted in the course of the search, what types of files were searched and finally, what were the results of the searches.

[39] The conservation authority, in its representations, submitted that in response to the appellant's request for records pertaining to the review and approval of the 'Riverview Estates Subdivision', staff searched the following:

- Email records of the regulations co-ordinator
- Handwritten telephone records of the regulations co-ordinator
- The authority's planning and regulations database

[40] The conservation authority explained that its planning and regulation database is its sole means to log and track planning and regulations files and activities. It contains references to such files as:

- Property, regulations and planning inquiries
- Permit files under section 28 of the *Conservation Authorities Act*
- Violations to section 28 of *Conservation Authorities Act*
- Planning Act files (plans of subdivision, severances, zoning by-law amendments etc.)

[41] In response to the appellant's second request, the conservation authority staff searched:

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<sup>7</sup> Order MO-2185.

<sup>8</sup> Order MO-2246.



- The authority's planning and regulations database
- Email records of the regulations co-ordinator
- Handwritten telephone records of the regulations coordinator

[42] Furthermore, in regard to the first two searches, the appellant was permitted to photograph several large plans.

[43] Regarding the appellant's third request for the approval of houses on Hazelton Lane in Riverview Estates subdivision, the conservation authority states it searched the planning and regulations database.

[44] Finally, when the appellant requested "all related records related to the Riverview Estates subdivision" in October of 2013, the authority provided a final fee quote but did not receive authority to proceed from him.

[45] The conservation authority also provided affidavits from two employees: the Supervisor of Water and Planning and the Regulations Coordinator.

[46] The Supervisor of Water and Planning swore the following:

- He oversaw and aided in searching the [conservation authority's] planning and regulation files for records pertaining to the Riverview Estates and Riverview Meadows developments in order to fulfill the requests.
- The appellant made three requests; two requests were fulfilled and no authorization was received to proceed with third.
- Requests were general in nature and, although, asked on multiple occasions, they were not clarified.
- He personally performed multiple searches of the conservation authority's planning and regulations database using numerous search criteria. The database is the sole means by which the conservation authority logs and tracks its planning and regulations files.
- He retrieved the identified files from the authority's on-site vault, compiled, photocopied and presented the information to the appellant.

[47] The Regulations Coordinator swore the following:

- He undertook a detailed search of the conservation authority's regulations files and records related to the request for information.

- He searched for records and files dating back to 1998,
- His search included review of his phone records, review of authority database records, review of authority permit related records, inquiry related records and subdivision related files.
- He conducted his search having a general understanding that the records of interest are records pertaining to the area of Hazelton Lane and Riverside Drive in the Town of Exeter.
- He used the following search terms to conduct the search: name of appellant, Riverview Meadows and name of contracting firm.
- The search of the inquiries and permit files and database records associated with geographical location being area of Hazelton Lane and Riverside Drive in the Town of Exeter.

[48] The appellant submits that he has not received any records that involve the Regulations Coordinator's activities with Hazelton Lane and states:

The Riverview Estates subdivision has been the subject of a comprehensive storm water drainage plan. Just because the [conservation authority] decided to put different parts of the development in different files does not change the fact that they are all related to the Riverview Estates Subdivision which would include soil, tree removal, fill placement as well as other activities deemed related by the [conservation authority's] interest in them. I am not interested in a discussion or disclosure of the [conservation authority's] filing practices. I am simply interested in the whole package of information related to Riverview Estates and its associated developments even if the documents in it numbers in the thousands.

[49] The conservation authority was given the opportunity to respond to the appellant's representations. It chose to respond to the appellant's earlier allegation that additional records should exist relating to the "permit lapse" and the Hazelton Lane records. The conservation authority states:

It is not the Authority's practice to contact an individual and notify them of a lapse in their permit and perhaps the appellant has been misinformed.

...

It has been indicated that there should be additional records regarding the Hazelton Lane portion of the subdivision. Regulations have changed over

the years and portions of that subdivision are no longer regulated and therefore we would have no records as such.

[50] The appellant submits that that the final search for records was never done by the conservation authority and clarifies that he is looking for all records, and not just those in the Regulations Coordinator's files.

[51] The basis for the appellant's belief that additional responsive records should exist consists of the following:

- The fact that permit lapse records were not included in the record already disclosed.
- That different file numbers were assigned to his various requests.
- The fact that he did not receive records from the Regulation coordinator.
- The fact that the search for his last request was never completed.
- The fact that he has not received storm water drainage records including information pertaining to soil, tree removal, and fill placement.

[52] As stated above, the conservation authority must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records. The *Act* does not require the conservation authority to prove with absolute certainty that further records do not exist.

[53] Based on my review of the parties' representations, I find that the conservation authority has provided sufficient evidence to establish that it made a reasonable effort to identify and locate responsive records. Some of the issues raised by the appellant relate to the scope of his request. As I stated above, the appellant can make a new request for any information which was not part of his clarified and narrowed request.

[54] I find no evidence to suggest that the conservation authority's file numbering system resulted in an unreasonable search or that responsive records were not located because of a search done by file number. I further find that the conservation properly searched its databases for the requested information and I accept its explanation about the lack of responsive records regarding the permit lapse.

[55] Accordingly, I find that the conservation authority conducted a reasonable search for responsive records.

**ORDER:**

I uphold the conservation authority's search for responsive records and dismiss the appeal.

Original signed by:  
Stephanie Haly  
Adjudicator

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August 19, 2015