

Information and Privacy Commissioner,  
Ontario, Canada



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

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## FINAL ORDER MO-3483-F

Appeal MA16-408

Township of Uxbridge

August 16, 2017

**Summary:** The township received a three-part request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for information about an identified property. In Order MO-3436-I, the township was ordered to conduct a further search for records in response to part 2 of the request. The adjudicator finds that the township's further search is 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 Township of Uxbridge (the township) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for information for a specified period relating to an identified property in Stouffville. Part 2 of the request states:

All records relating to the planning process followed by the township which resulted in approval of the permit and initiation of construction on the property.

[2] The township advised that there were no records responsive to parts 2 and 3 of the request.

[3] During mediation, the appellant stated that he believes records responsive to parts 2 and 3 of his request should exist. The township took the position that it had conducted a reasonable search for records responsive to these parts of the request.

[4] In Interim Order MO-3436-I, I ordered the township to conduct a new search for records responsive to part 2 of the request.

[5] In compliance with the order, the township conducted a further search and submitted representations along with an affidavit detailing its further search efforts.

[6] I invited and received the appellant's representations in response.

[7] In this order, I find that the township's further search is reasonable.

## **DISCUSSION:**

[8] The sole issue remaining in this appeal is whether the township's further search for responsive records pertaining to part 2 is reasonable.

[9] In Interim Order MO-3436-I, I ordered the township to conduct a further search for records relating to the planning process followed by the township which resulted in approval of the permit and initiation of construction on the identified property.

[10] Accordingly, my review of the township's further search is restricted to this category of records. Following the issuance of Interim Order MO-3436-I, the township conducted a further search for records and provided representations detailing its search efforts to this office. The township also submitted an affidavit in support of its position that the further search was reasonable.

[11] The affidavit submitted by the township was prepared by the Director of Legislative Services/Clerk. This individual advises that the additional searches were conducted by four named township staff. She advises that these township staff searched the following:

- Emails
- Property file
- Daily notes
- Minor Variance File for the property in question
- Phone logs
- By-law complaint tracking software

- Meeting notes

[12] The further searches did not result in further records being identified.

[13] In the appellant's representations, he states that he continues to believe the township has not conducted a reasonable search. The appellant submits that the affidavit needs to be expanded to include those who have "direct first-hand knowledge of particular facts or events" which includes a named councillor, three township staff, and the mayor.

### **Decision and Analysis**

[14] 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>1</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.

[15] 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 record must be "reasonably related" to the request.<sup>3</sup>

[16] 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>

[17] 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>

[18] 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>6</sup>

[19] In Order MO-3436-I I found that the township did not establish that the efforts made by its staff to identify and locate responsive records were reasonable. For example, the township did not state where staff had searched for records, or describe the township's record holdings. I also found that the township did not provide

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<sup>1</sup> Orders P-85, P-221 and PO-1954-I.

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

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

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

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

<sup>6</sup> Order MO-2246.

information about the position(s) held by the original township staff members who conducted the initial search.

[20] I have reviewed the township's submissions, along with its supporting affidavit, and am satisfied that the township's further search was conducted by experienced employees knowledgeable about the subject-matter of the request and a reasonable effort to locate responsive records was expended.

[21] Although the appellant maintains his position that a reasonable search was not conducted, he has not provided a reasonable basis for concluding that such records exist. He states that the affidavit needs to be expanded to include township staff members who has "direct first-hand knowledge of particular facts or events". However, three of the five staff members he listed are named in the affidavit. In other words, they were involved in conducting further searches.

[22] Accordingly, I find that the township's further search was reasonable.

**ORDER:**

I find that the township's further search for responsive records pertaining to part 2 was reasonable, and dismiss this appeal.

Original Signed by: \_\_\_\_\_  
Lan An  
Adjudicator

\_\_\_\_\_ August 16, 2017