

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-3637

Appeal MA16-353-2

The Corporation of the Town of Essex

July 20, 2018

**Summary:** The Corporation of the Town of Essex (the town) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for Building and Drainage Department records relating to certain addresses. The town located responsive records, however, the appellant claimed that additional responsive records should exist. This order upholds the town's search for responsive records as 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(1).

### OVERVIEW:

[1] The Corporation of the Town of Essex (the town) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for the following:

Letters of ERCA [the Essex Region Conservation Authority] Approval to Building Department. Copy of Complete building permit application for houses at [two addresses]. Date that Town of Essex hired [name] and copy of contract. Contract for repair [named] drain inside [name] Farm in 1988/89 after the 1988 Flood.

[2] The town issued a final decision letter granting partial access to some of the requested records. The town also advised in its decision that it does not have the

following requested records: "Letter of ERCA Approval to Building Department" and "Date that the Town of Essex hired [name] and a copy of contract." As to the latter, the town stated that the named individual was not hired by the town in relation to the requested information and "accordingly there is no contract to provide."

[3] The requester (now the appellant) appealed the town's decision.

[4] During the course of mediation, the town, subsequent to a secondary search for responsive records, issued a supplementary decision letter stating that its Drainage Department located a report that may be responsive to part of the request. The town disclosed that document in full to the appellant.

[5] The appellant then advised the mediator that he believed additional records exist and confirmed that he would like to move the file to adjudication on the sole issue of reasonable search. As such, this appeal proceeded to adjudication, where an adjudicator conducts an inquiry.

[6] Representations were sought and exchanged between the parties in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[7] In this order, I uphold the town's search and dismiss the appeal.

## **DISCUSSION:**

### **Did the town conduct a reasonable search for records?**

[8] 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.

[9] 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>

[10] 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

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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.

are reasonably related to the request.<sup>4</sup>

[11] 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>

[12] 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>

[13] The appellant states that the town told him that the Drainage Department deals with contracts awarded to a specific engineering firm. He states that the town has failed to provide him with a copy of those documents. He states:

For the drain work and report related to [a specific] drain spill in 1988/89, ERCA [provided] a report from [another engineering company] file: [#], dated 1991]. I am positive that the Town of Essex with [the] ERCA did work on the said drain to prevent future spill. That is the document I requested.

Letter of approval from ERCA, complete building application permit from owners, at those two addresses not received yet.

The Town of Essex has not adhered to [an Ontario Municipal Board] final decision. This is contrary to the municipal law.

This is how come I need all those information for the court.

[14] In reply, the town states that inquiries have been made of and searches were conducted by both its Building and Drainage Department officials and that upon secondary search after clarification of the request, it found and disclosed a further report. It states that this further report was from the drainage department. Concerning the searches, it states:

Two of the Towns employees, our Building Clerk and our Drainage Clerk performed these searches and as these employees are experienced and knowledgeable in these subject areas and have performed similar searches in the past...

[15] The town states that it is not familiar with the 1991 document referred to by the appellant in his representations, nor is it aware of its significance or relevance to his original request. Nor is the town aware of the document that the appellant refers to as

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

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

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

an "OMB Final Decision" nor is it aware of the significance/relevance of this document to his original request.

[16] In response, the appellant stated that the following responsive records have not been located by the town:

1. The report regarding the Richmond drain and the contract to fix the berm of the said drain.
2. The complete building application from the properties owners to the Town of Essex Building Department for the two houses listed in the request.

[17] Concerning the first item, the town states that the 1988/1989 report requested by the appellant is not in the town's current possession nor does it have a record of it having been destroyed or even having been received by the town. It states that it did locate a report dated July 25, 1978 concerning the drain and this was provided previously to the appellant.

[18] Concerning the second item, the town states that it previously sent these records to the appellant (the permits and the building applications). The town also resent to the appellant copies of the complete building permit applications for the two addresses listed in the appellant's request.

[19] In response, the appellant merely states that the town is misleading in its response.

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

[20] The appellant sought in his request:

Letters of ERCA Approval to Building Department. Copy of Complete building permit application for houses at [two addresses]. Date that Town of Essex hire [name] and copy of contract. Contract for repair [named] drain inside [name] Farm in 1988/89 after the 1988 Flood.

[21] As noted above, at the adjudication stage of the appeal, the appellant maintains that two records have not been located:

1. The report regarding the drain and the contract to fix the berm of the said drain.
2. The complete building application from the properties owners to the Town of Essex Building Department for the two houses listed in the request.

[22] With respect to these two items, the town has provided information that the requested 1988/1989 report of the drain does not exist. It also advised the appellant that the named individual in his request was not hired by the town in relation to the

requested information and "accordingly there is no contract to provide." The town also provided the appellant with the responsive building applications.

[23] The appellant has not specified that any additional responsive records exist.

[24] Based on my review of the parties' representations and the records already disclosed, I find that the appellant has not provided a reasonable basis for me to conclude that additional responsive records exist. I find that the town has provided 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.

[25] Accordingly, I am upholding the town's search as reasonable and dismiss the appeal.

**ORDER:**

I uphold the town's search as reasonable and dismiss the appeal.

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

\_\_\_\_\_ July 20, 2018