

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3731

Appeal MA17-441

Township of Uxbridge

February 11, 2019

Summary: The township received a request under the *Act* for access to information pertaining to an identified property, including an HVAC plan and the engineering drawing. The requester also sought access to correspondence, notes, emails, meeting minutes, agendas and phone records in possession of the township in relation to the planned use of the expanded structure. The township granted access, in full, to the records. The sole issue in this appeal is whether the township conducted a reasonable search. In this order, the adjudicator finds that the township conducted a reasonable search for records 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 Township of Uxbridge (the township) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information pertaining to an identified property including an HVAC plan and the engineering drawing. The requester also sought access to all records (including correspondence, notes, emails, meeting minutes, agendas and phone records) in the possession of the township (including staff, township agents or consultants and the mayor and council) in relation to the planned use of the expanded structure from June 1, 2016 to June 1, 2017.

[2] In its decision, the township granted access, in full, to the records.

[3] The requester, now the appellant, appealed the decision to this office on the

basis that further records should exist.

[4] During mediation, the township issued a supplementary decision noting that a further search had been conducted and access was granted to the HVAC drawing that was originally requested. The appellant believed that additional records should exist and specifically asked that the mayor, deputy mayor and clerk's records be searched. The mediator relayed this information to the township and it conducted a further search for records. The township sent a letter to the appellant, which outlined the searches that took place and the results. The township advised that no additional records exist.

[5] As mediation did not resolve this appeal, it was moved to the next stage, where an adjudicator conducts an inquiry under the *Act*.

[6] During my inquiry, I sought and received representations from the township and the appellant. Pursuant to this office's *Code of Procedure* and *Practice Direction Number 7*, a copy of the parties' representations (in their entirety) were shared.

[7] In this order, I find that the township conducted a reasonable search for records.

DISCUSSION:

[8] The sole issue in this appeal is whether the township conducted a reasonable search for responsive records.

[9] 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.

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

[11] 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

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Order PO-2554.

are reasonably related to the request.⁴

[12] 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.⁵

[13] 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.⁶

[14] The township provided representations in the form of an affidavit sworn by its Deputy Clerk. The affidavit referred in details to the steps the township took in conducting its search. The day after it received the request, the Clerk's assistant sent an email to the township's Chief Building Official, Committee of Adjustment Secretary/Planning Technician, the Director of Legislative Services/Clerk, Manager of By-law Services, Council, Municipal Planner and the Chief Administrative Officer (CAO) requesting them to search for and provide for all records responsive to the request. On the same day, the Municipal Planner, CAO, Manager of By-law Services, the mayor, and a number of named councillors confirmed that they had no records responsive to the request.

[15] Throughout June and July 2017, the Chief Building Official, the Committee of Adjustment Secretary/Planning Technician and Director of Legislative Services/Clerk provided their records, which were responsive to the request.

[16] In September 2017, the township conducted a further search, which resulted in the HVAC plan being found, which was provided to the appellant.

[17] During mediation, the mediator suggested that the township conduct another search as the appellant believes additional records exist from the Director of Legislative Services/Clerk, the mayor and a named councillor. Subsequently, the Deputy Clerk emailed the mayor, the Director of Legislative Services/Clerk and a named councillor to search for any and all correspondence responsive to the request. Shortly afterwards, the named councillor, the mayor and the Director of Legislative Services Clerk confirmed that they have no additional records responsive to the request.

[18] The appellant, on behalf of an environmental group, provided representations in response to the township's affidavit. In his representations, the appellant explained the background of the group's involvement in the matter of a named corporation operating a year round karting services centre. He states:

⁴ Orders M-909, PO-2469 and PO-2592.

⁵ Order MO-2185.

⁶ Order MO-2246.

[Our group] is concerned that the township and applicant may have agreed to a private plan potentially in contravention of municipal law. [We] believe this may explain why [a named Committee of Adjustment member] approved the year round kart services reflected in the HVAC plan and which was in conflict with the minor variance application. Based on these concerns and evidence [we] believe more records should exist.

[19] Based on my review of the township's evidence and the appellant's evidence, I find that the township has conducted a reasonable search for responsive records. I find that the appellant has not provided me with a reasonable basis for concluding that additional records exist. I acknowledge that the appellant believes additional records should exist due to his theory that there is a private plan/agreement between the township and the applicant, a named corporation. However, he has not provided any evidence to support this theory, or any evidence to support that such records would exist. As stated above, the *Act* does not require the township to prove with absolute certainty that further records do not exist. In the circumstances, I am satisfied that the township provided sufficient evidence to demonstrate that it made a reasonable effort to address the appellant's request and locate all records reasonably related to the request. Therefore, I uphold the township's search for responsive records.

ORDER:

I find that the township conducted a reasonable search for responsive records and dismiss the appeal.

Original signed by: _____

Lan An
Adjudicator

February 11, 2019 _____