

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3739-F

Appeal MA17-232

The Corporation of the Municipality of Mattawan

March 22, 2019

Summary: The Corporation of the Municipality of Mattawan (the municipality) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for all records pertaining to the Municipality of Mattawan Official Plan Update. In Interim Order MO-3694-I, the municipality was ordered to conduct a further search for responsive records. The adjudicator finds that the municipality'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 Corporation of the Municipality of Mattawan (the municipality) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following:

This is a request for all records (without limiting the generality of the following) including notes, emails, correspondence, reports, proposals and draft documents pertaining to the Municipality of Mattawan Official Plan Update, including any affected Bylaw(s) or Schedules, for the period from October 01, 2015 to February 15, 2017.

For clarity, let me be explicit that this request is for the Municipality's records, and not those of [a specified planning municipality].

[2] The municipality issued a decision granting full access to 46 pages of responsive

records, including emails and correspondence, notices of public meetings, Official Plan review notes and agendas.

[3] The requester, now the appellant, appealed the municipality's decision to this office, because he believes further responsive records exist.

[4] In Interim Order MO-3694-I, I ordered the municipality to conduct a further search for responsive records. In compliance with the interim order, the municipality conducted a further search and submitted an affidavit, detailing its further search efforts. I invited and received representations from the appellant in response to the municipality's affidavit.

[5] In this final order, I find that the municipality's search is reasonable, and dismiss the appeal.

DISCUSSION:

Did the municipality conduct a reasonable search for records?

[6] The sole issue remaining in this appeal is whether or not the municipality conducted a reasonable search for responsive records.

[7] Where a requester claims 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 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.

[8] 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 it has made a reasonable effort to identify and locate responsive records.² 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.³

[9] 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

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Orders M-909, PO-2469 and PO-2592.

basis for concluding such records exist.⁴

[10] In Interim Order MO-3694-I, I found that the municipality did not conduct a reasonable search, because the municipality's representations about its search efforts were not detailed and specific enough for me to reach that conclusion. Specifically, it was unclear who conducted the search, what records and files were searched, and how the search was conducted. Accordingly, I ordered the municipality to conduct a further search for responsive records and submit an affidavit detailing steps taken in this new search.

[11] In response to Interim Order MO-3694-I, I received and reviewed correspondence and an affidavit, sworn by the municipality's Clerk-Treasurer. Based on the information provided, I am satisfied that the municipality's further search was reasonable. The municipality's representations included almost all of the information that I ordered, and the details of the search efforts were more clearly stated. The appellant maintains his position that a reasonable search was not conducted. However, he has not provided a reasonable basis for concluding that further responsive records exist.

[12] The appellant makes several arguments with respect to alleged deficiencies in the municipality's affidavit. He is very particular about the information that he alleges is missing from the municipality's affidavit. For example, the appellant takes issue with the municipality's statement regarding who was consulted as part of the search. While the municipality's affidavit states who was consulted as part of the search, the appellant argues that there is no information regarding when those consultations took place, and it is unclear what was discussed and what specifically each party was consulted about.

[13] I have reviewed the appellant's representations and I am not persuaded that he has established a reasonable basis for concluding that further responsive records exist. It is clear the appellant has strong opinions about how the search should have been conducted and what information should have been included in the affidavit. The appellant also argues that the municipality did not include all of the information specified in my previous order. However, the *Act* does not stipulate how a search should be undertaken, or what information should be included in an affidavit. Nor does the *Act* demand perfection. I must only be satisfied that sufficient evidence has been provided to establish that a reasonable search has been conducted.

[14] Based on the municipality's representations, I find that the municipality has provided sufficient evidence to establish the reasonableness of its search. Further, since I have no reasonable basis to conclude that a further search would yield further responsive records, I find that the municipality conducted a reasonable search in

⁴ Order MO-2246.

response to my findings in Interim Order MO-3694-I, and dismiss the appeal.

ORDER:

Original signed by _____
Anna Truong
Adjudicator

_____ March 22, 2019