

Information and Privacy Commissioner,
Ontario, Canada



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

FINAL ORDER MO-3840-F

Appeal MA16-545

The Corporation of the Township of Madawaska Valley

September 24, 2019

Summary: In this final order, the adjudicator upholds the reasonableness of the additional searches conducted by the township in response to Interim Order MO-3798-I. As the only remaining issue for determination in the appeal is now resolved, this appeal is dismissed.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M.56, section 17.

OVERVIEW:

[1] This final order follows Interim Order MO-3798-I, in which I disposed of a number of issues arising from a requester's appeal of the decision of the Corporation of the Township of Madawaska Valley (the township) in response to a request for certain records arising in the context of the requester's former employment with the township. In the interim order, I upheld the township's denial of access to some records based on the grounds claimed in the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). However, I identified a number of deficiencies in the township's search for records, and consequently found that the township had not conducted a reasonable search in accordance with its obligations under the *Act*. I therefore ordered the township to conduct a further search for records reasonably related to the appellant's request, and to make a decision on access to any newly identified records.

[2] In response to the interim order, the township conducted further searches and located a number of responsive records. The township chose to disclose the majority of these records to the appellant.

[3] The township and the appellant both provided representations about the township's additional search efforts following the interim order. The parties' representations were exchanged in accordance with this office's *Practice Direction 7*. The appellant now accepts that the township has fulfilled its obligations to conduct a reasonable search, but she raises a number of other matters that she asks me to consider before making my final decision in this appeal.

[4] In this final order, I find that through its additional search efforts, the township has now complied with its obligations under section 17 of the *Act*. Other issues raised by the appellant are not matters for determination in this inquiry. I dismiss the appeal.

DISCUSSION:

Did the institution conduct a reasonable search for records?

[5] Following the interim order, the sole issue remaining for determination is whether the township conducted a reasonable search for records as required by section 17 of the *Act*.

[6] 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 that are reasonably related to the request.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.

[7] In deciding whether the township's additional searches meet the requirements of section 17, a relevant, though not determinative, factor is the appellant's view about the reasonableness of the township's further searches. However, because the appellant is already aware of and has not challenged the township's detailed representations on the steps it took in conducting further searches, I will only describe them here in a very general way.

[8] These representations were prepared by the township's current Chief Administrative Officer (CAO)/Clerk, who is responsible for requests under the *Act*. Because she was not employed by the township in this role during the initial searches, the current CAO/Clerk was aided in the further searches by the township's Deputy Clerk (who was employed by the township in a different role during the time period covered by the appellant's request). In addition, given the township's limited staff, in order to comply with the order within the prescribed time frame, the CAO/Clerk engaged additional outside staff (an IT consultant and an administrative assistant) to help with

¹ Orders M-909, PO-2469 and PO-2592.

the searches.

[9] The CAO/Clerk contacted a number of individuals during the course of her search, including several who are no longer employed by the township. These include the former CAO/Clerk (who originally responded to the appellant's request); former members of township council; current and former township employees; the township's external legal counsel; and the external human resources consultant who had been retained by the township to conduct an investigation in relation to a matter raised by the appellant. Many of these individuals had been involved in the township's original searches, but conducted fresh searches at the request of the CAO/Clerk.

[10] The CAO/Clerk also provides a detailed summary of the steps taken by the external IT consultant to conduct a forensic audit of electronic records in the township's current and old computer servers, including in order to retrieve any responsive email records of former township employees. The CAO/Clerk provides extensive detail about how the IT consultant conducted these searches, including about the locations searched and the various key word combinations used to search.

[11] As a result of all these searches, the township identified a large number of additional records. Along with its representations on search, the township provided the appellant with a revised decision and a supplementary index of records that describes each newly identified record and the township's decision on access for each one.

[12] While the appellant is now satisfied with the township's further searches, she raises some other matters for my consideration.

[13] The appellant observes that the township refers in its representations to certain additional costs that it incurred in the course of complying with the interim order, such as the costs of engaging additional staff. The appellant notes that she has not been provided with a fee estimate, and she argues that she should not be held responsible for any of these costs. She provides a number of reasons why these costs should be borne by the township alone.

[14] The township would have been entitled under section 45(1) of the *Act* to charge a fee for certain costs associated with its further searches (and would have been required, under section 45(3), to issue a fee estimate if the fee exceeded \$25). If the township had done so, and the appellant had disagreed with the amount of the fee, this matter could have been the subject of a fresh appeal to this office [section 45(5)].

[15] However, it is clear from the township's revised decision that it has not charged the appellant any fee; in fact, the township has already released to the appellant all the newly identified records to which it decided to grant full access. The township has confirmed that it provided details in its representations about the additional expenses it incurred in order to demonstrate the extent of its further search efforts, and in support of its position on the reasonableness of its search. The appellant's arguments about fee and fee waiver are not relevant here.

[16] The appellant observes that the township's further searches resulted in the identification and disclosure to her of a large number of records that it ought to have located during its original searches. She submits that some of these newly disclosed documents would have been germane to her application against the township before the Human Rights Tribunal of Ontario, which was later settled. She makes other comments about the conduct of the township and its external legal counsel during that proceeding.

[17] In the interim order, I concluded that the township had not conducted a reasonable search for records, and as a remedy I ordered that it conduct further searches. I also provided guidance on the identification of potentially responsive records. This remedy addressed the deficiencies in the township's original searches. I will not address them again here. In the interim order, I also confirmed that the outcome of the Human Rights Tribunal proceeding involving the parties has no bearing on the conduct of the inquiry under the *Act*. Any dispute between the parties about matters arising from that other proceeding remains outside the purview of this office.

[18] Finally, the appellant asks that I recognize that the township deliberately flouted its obligations under the *Act*, and she suggests that I consider recommending that the township provide compensation.

[19] The interim order contained order provisions to address the township's failure to comply with the *Act's* requirements to conduct a reasonable search for responsive records. I am satisfied that the township has now complied with its obligations under the *Act*. I conclude that no further order is warranted.

[20] Even if I believed that a further order were warranted in this case, I would not have the authority to give the costs remedy sought by the appellant. Among other reasons, the question of whether costs should be awarded in a proceeding is not directly related to the scope of the IPC's duty, in conducting an inquiry, to review a head's decision.² I also observe that there is no explicit authority for the IPC to make recommendations following an inquiry (unlike, for example, the IPC's powers in addressing privacy complaints under the *Act*).³

ORDER:

I uphold the reasonableness of the township's further searches. I dismiss the appeal.

Original signed by _____

Jenny Ryu

September 24, 2019

² See Orders P-604 and P-724.

³ See discussion in *Reynolds v. Binstock*, 2006 CanLII 36624 (ON SCDC).

Adjudicator