

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3846

Appeal MA17-3-2

Municipality of Chatham-Kent

October 8, 2019

Summary: The municipality received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for access to the municipality's costs for alternative ambulance and fire service delivery models. In Order MO-3613, Adjudicator Smith found that the information at issue in the record is not exempt under sections 6(1)(b) (closed meeting) or 11 (economic and other interests). She ordered the municipality to disclose the information at issue in the record to the appellant. After receiving the record, the appellant contacted this office stating that he believes additional records responsive to the request exist. As such, this appeal was opened to address reasonable search.

In this order, the adjudicator finds that the municipality conducted a reasonable search for responsive 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 Municipality of Chatham-Kent (the municipality) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to:

A copy of all supporting evidence and documentation detailing total financial, operational costs: direct, indirect and associated with the Implementation, cost of 1st year and subsequent years annual costing's of operation for proposals A; B; C as submitted in "preliminary" only by

administration to council and the public on June 27/2016[sic], respecting the FIRE/EMS amalgamation of services and alternatives described under proposal A;B.

[2] The municipality issued a decision granting partial access. It granted full access to the total financial and operational costs for proposals A, B and C. However, it denied access to a Spreadsheet of Costing and Options for Model A, B and C, pursuant to the discretionary exemption at section 11 of the *Act*.

[3] The requester appealed that decision, which resulted in appeal MA17-3 being opened. At mediation, the municipality issued a decision granting access to additional information and denying access to a Spreadsheet of Costing and Options for Model A, B, and C pursuant to the discretionary exemptions at sections 6(1)(b) (closed meeting) and 11 (economic and other interests), and the mandatory exemption at section 10(1) (third party information) of the *Act*.

[4] As further mediation was not possible, the appeal proceeded to the adjudication stage. In Order MO-3613, Adjudicator Diane Smith found that section 10(1) was no longer at issue, as it had only been claimed for Model A. (The appellant was only interested in the information contained in Models B and C.) Adjudicator Smith also found that sections 6(1)(b) and 11(a), (c), (e), (f) and (g) of the *Act* did not apply to exempt Models B and C of the record. The municipality was ordered to disclose the information under the Models B and C columns to the appellant.

[5] In compliance with Order MO-3613, the municipality disclosed the information under the Models B and C columns of the spreadsheet. Following receipt of the disclosed information, the appellant contacted this office stating that he believes additional records responsive to the request exist. As such, appeal MA17-3-2 was opened to address this issue.

[6] During mediation, the appellant stated that his request for information could be clarified as an extended request for the following information:

All the supporting documentation/evidence that would support the municipality final report to Council and which would demonstrate and match the end results of each of the reports submitted to the council and the public, as Proposal "A", Proposal "B" and Proposal "C", respecting the FIRE/EMS amalgamation report.

[7] The municipality conducted an additional search of its records. It subsequently granted full access to an additional document that it had located, a Master Combined Service Document.

[8] Following review of the Master Combined Service Document, the appellant stated that the document did not represent the specifics of his request. The appellant further stated that he continues to believe additional documents responsive to the request exist

at the municipality.

[9] As further mediation was not possible, this appeal was moved to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*.

[10] During my inquiry, I sought and received representations from the municipality and the appellant. Pursuant to section 7 of this office's *Code of Procedure and Practice Direction Number 7*, copies of the municipality's representations (in their entirety) were shared with the appellant. The appellant did not consent to sharing his representations except for a paragraph contained in an email to the Adjudication Review Officer and an argument made in his representations.

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

DISCUSSION:

[12] The only issue in this appeal is whether the municipality conducted a reasonable search for records.

[13] 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.

[14] 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

[15] 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.⁴

[16] 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

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Order PO-2554.

⁴ Orders M-909, PO-2469 and PO-2592.

of the responsive records within its custody or control.⁵

Summary of the parties' representations

[17] In its representations, the municipality submits that it has conducted a reasonable search for records. In support of its assertion, the municipality attached an affidavit sworn by the Director of Municipal Governance and Municipal Clerk (the Municipal Clerk).

[18] The Municipal Clerk advised that she was the person responsible for conducting the search for additional documents because she is an experienced employee who was and continues to be the most knowledgeable about the subject matter of the request. She advised that she reviewed records in the Fire and Emergency Division and in the Finance, Budget and Technology Services Department. She also advised that she contacted both junior and senior staff members to assist her with this search as necessary, including the Chief of the Fire and Emergency Services Division and the General Manager and Chief Financial Officer and Treasurer. The Municipal Clerk further advised that the searches did not result in any additional records being located.

[19] In addition, the affidavit referred to the fact that the municipality complies with *By-law No. 5-2018, A By-law to retain and preserve the records of the municipality and its local boards in a secure and accessible manner* to ensure that it does not destroy records that should be retained and preserved. As such, the Municipal Clerk attested that she does not believe the municipality has destroyed any records reasonably related to the request. She also advised that the municipality must retain Budget and Estimate Records for a period of 7-years.

[20] As stated above, although the appellant provided representations, he did not consent to sharing it.⁶ However, he consented to sharing a paragraph contained in an email sent to the Adjudication Review Officer and an argument made in his representations. With respect to the former, the appellant submits that the spreadsheet provided by the municipality contained only total amounts. He submits that there must be numbers behind these total amounts, which would collectively add to the total amounts displayed in the spreadsheet. However, he submits that the municipality has not provided the receipts to verify the municipality displayed totals.

[21] With respect to the latter, he submits that the municipality admits that it has in-camera responsive records due to the statement made by the Municipal Clerk in paragraph 7 of her affidavit.

[22] In response, the municipality submits that the appellant seems to be suggesting

⁵ Order MO-2185.

⁶ He did consent to having his sur-reply representations discussed in this order.

that there must be background documents that informed the spreadsheet, which would be responsive records in this matter. However, the municipality submits that it conducted a diligent search and could not find additional records.

[23] With respect to paragraph 7 of the Municipal Clerk's affidavit, the municipality submits this paragraph referred to a closed session meeting of Municipal Council held on a specified date. The municipality states that this is the meeting in which the previously disclosed records, including the spreadsheet in question, were reviewed. It submits that there are no further responsive records related to that meeting.

[24] In his sur-reply representations, the appellant submits that the municipality failed and continues to fail to supply taxpayers with supporting financial costings' and analysis to show how it arrived at its total costing figures and to justify how it can declare Proposal "C" to be the best absent of supporting documentation. He also submits that performing a "reasonable search" does not mean supplying endless amount of non-related information. The appellant finally submits that the municipality changed the scope of his request to mean only a "single paper spreadsheet".

Analysis and findings

[25] 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.⁷

[26] In this case, the appellant did not do so. He simply argues that there must be supporting documentation behind the total amounts contained in the spreadsheet.

[27] For clarification purposes, the spreadsheet in question was the record at issue in Order MO-3613. It contains the costs and options for Models A, B, and C. It was presented to council to lay out the financial implications of three alternative ambulance service delivery models that council could consider.

[28] The municipality submits that there is no supporting documentation for the total amounts contained in the spreadsheet. However, it did provide the appellant with a copy of the Master Combined Service Document, which contains a breakdown of items, such as wages, insurance, fuel, equipment, for the fire and emergency services in the municipality for 2015. Moreover, the municipality offered the appellant an opportunity to meet with its staff to discuss the meaning of the Master Combined Service Document as it is a complex document.

[29] I note that the appellant's access request was made in November 2016. As such, the total amounts contained in the spreadsheet for the years 2017, 2018, 2019, 2020

⁷ Order MO-2246.

and 2021 are projections. As such, the supporting documentation would not exist for projections and the information in the Master Combined Service Document may provide the appellant with the information he is looking for.

[30] In such circumstances, I agree with the municipality that the appellant has not provided a reasonable basis for concluding that additional responsive records exist. The appellant's argument that there must be supporting documentation behind the total amounts does not persuade me that the employee who conducted the search was not sufficiently knowledgeable or experienced in the subject matter of the request, or that the locations searched and search terms used were unreasonable. Accordingly, I find that the municipality conducted a reasonable search.

ORDER:

I uphold the municipality's search and I dismiss this appeal.

Original Signed by: _____
Lan An
Adjudicator

_____ October 8, 2019