

Information and Privacy Commissioner,
Ontario, Canada



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

FINAL ORDER MO-3909-F

Appeal MA18-252

Township of Scugog

March 4, 2020

Summary: This final order disposes of the only remaining issue in this appeal: whether the Township of Scugog (the township) conducted a reasonable search in response to a request made under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records related to a complaint made against two township councillors and the decision to engage an Integrity Commissioner. The adjudicator upholds the reasonableness of the township's further search and dismisses the appeal.

Statute Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 17.

Order Considered: Order MO-3819-I.

OVERVIEW:

[1] In Interim Order MO-3819-I, I addressed the access decision and search efforts of the Township of Scugog (the township) made in response to the following request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

Please provide all documents and records relating to the receipt of a Code of Conduct complaint against [named councillor] and [named councillor] in October of [year], the decision to engage an Integrity Commissioner to investigate this complaint, and the evaluation, selection and awarding of a contract to [named individual] to act as Integrity Commissioner for the

Township of Scugog, including Requests for Proposals, Requests for Tenders, Requests for Quotations or other Calls for Bids, and all Tenders, Quotations or Proposals, contracts, emails, telephone records, faxes, minutes, letter, memoranda, and reports to council.

[2] The appellant had appealed the township's access decision to the Office of the Information and Privacy Commissioner of Ontario (the IPC, or this office), and raised the issue of reasonable search as well. I allowed his appeal of the township's access decision, in part, in Interim Order MO-3819-I,¹ and that is not the subject of this final order.

[3] The only issue to be decided in this order is whether the further search that I ordered the township to conduct in Interim Order MO-3819-I was reasonable. The parties exchanged representations about the township's further search efforts. A small portion of the township's representations were withheld from the appellant in accordance with the confidentiality criteria of this office.²

[4] For the reasons that follow, I uphold the reasonableness of the township's search and dismiss the appeal.

DISCUSSION:

[5] In Interim Order MO-3819-I, I accepted that some aspects of the township's search efforts were reasonable, but found that there was insufficient evidence regarding other aspects of the township's search. After the township conducted a further search (its third), it provided additional evidence explaining all of its search efforts. In light of this evidence, I accept that the township's further search as reasonable in the circumstances, for the reasons set out below.

[6] When an appellant 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 17.³ 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] 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 Six responsive records were at issue in Order MO-3819-I. I found that two of them were subject to the *Act* and I ordered the township to issue an access decision regarding those records without resorting to section 52(3) of the *Act*, and the township has done so. I also ordered the township to disclose the portions of the other four records that do not contain personal information to the appellant, and the township did so.

² *Practice Direction 7* of the IPC's *Code of Procedure*.

³ Orders P-85, P-221 and PO-1954-I.

basis for concluding that such records exist.⁴

[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 that it has made a reasonable effort to identify and locate responsive records.⁵ To be responsive, a record must be "reasonably related" to the request.⁶ 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.⁷

[9] 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.⁸

Experienced employees

[10] In Interim Order MO-3819-I, I accepted that the township had engaged experienced employees, knowledgeable about the subject matter of the request to conduct the search. As the township clerk was one of these employees, I accept that he was also sufficiently experienced to conduct the further search ordered in Interim Order MO-3819-I.

[11] The appellant submits that, despite the seriousness and sensitivity of the subject matter resulting in limited staff involvement in the search, the township should have also sought the help of its "Information Technology specialist." In considering this submission, I am mindful that my order stated that the township's further search "should be conducted by an experienced individual or individuals employed . . . who would be reasonably knowledgeable in the subject matter of the request [and that this] would include any employees in the township's IT department." This does not mean that the township was obligated to engage an IT "specialist," if it had one. I am not satisfied that the township was required to involve an IT specialist in its search for responsive records.

Types of searches and search terms used

[12] In Interim Order MO-3819-I, I stated that I was unable to sufficiently understand from the township's representations what type of search each employee conducted, the location(s) searched, or which search terms were used.

[13] The township has now provided sufficient evidence in that regard. The township

⁴ Order MO-2246.

⁵ Orders P-624 and PO-2559.

⁶ Order PO-2554.

⁷ Order MO-2185.

⁸ Orders M-909, PO-2469 and PO-2592.

states that its further search included a search of paper and electronic records. For its electronic search, the town used a mix of general and specific search terms, including: "integrity commissioner", "code of conduct", "complaint", the last name of each of the councillors involved, the last name of the integrity commissioner, "Request for Proposal", "Tenders", "Quotations", and the name of the complainant (which was withheld in the township's representations).

[14] While the appellant suggests that the names of the law firm and staff of the integrity commissioner should have been used too, I find that this is speculative. Given the prominence of the individuals whose titles and/or names were used to the subject matter of the request, I am satisfied that the specific names and titles used as search terms were reasonable in the circumstances. And as mentioned, the *Act* does not require the town to prove with absolute certainty that further records do not exist. The township had to provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.⁹

[15] I am also satisfied that that the township's use of more general search terms, such as "code of conduct," was reasonable, in light of the clerk's knowledge of the subject matter of the request and the wording of the request itself. The appellant suggests that other general terms such as "bullying" and "intimidating" should have been used too, but I do not accept that the terms suggested by the appellant were necessary for me to find that the township conducted a reasonable search.

Other concerns

[16] The appellant raised an apparent discrepancy in an invoice disclosed to him as a grounds for believing that a revised invoice should have been generated by the township and disclosed to him. However, I note that the discrepancy appears to have been over \$18, so it is possible that the township did not generate records to address it. In any event, if records were not generated by an institution, that is not a matter that can be addressed in a reasonable search appeal. While the appellant believes a revised invoice should exist, that is not evidence that it does and was not located in a search. I am not persuaded that the apparent \$18 discrepancy undermines the reasonableness of the township's search efforts, and I decline to order a further search over it.

[17] In addition, the appellant submits that it appears that one of the invoices disclosed to him is missing certain billable hours, though he states that the "missing" information does not appear to be redacted. I do not accept this as a basis for ordering a further search.

[18] Furthermore, I find that the appellant raised concerns that fall outside of the scope of the request at issue. His original request consisted of three parts, and during mediation, a fourth was added: the receipt of the specified complaint against the

⁹ Orders P-624 and PO-2559.

councillors; the decision to engage an integrity commissioner; the selection process, and award of a contract to the person selected; and the invoices to the township from the integrity commissioner. While I did address his points about the deadlines involved in Interim Order MO-3819-I in a limited way, I am satisfied by the township's more detailed evidence on a whole about the reasonableness of its search. The appellant also raised concerns about the content of a USB stick, which I find to be outside the scope of the request at issue before me. If he would like disclosure in that regard, he is free to file a new request under the *Act*.

[19] In Interim Order MO-3819-I, I noted that the mention of "the main file relevant to this request" suggests that additional responsive records could exist, and that the township did not satisfactorily address the suggested implication behind its own description. However, the township has now done so. It explained that its record management practice is that it has one file for a particular matter, and that even though the file was easily accessible, the township expanded its search to the record holdings of other staff (and the mayor at the time) in order to do a thorough search. This is a reasonable explanation, which I find reasonably addresses the concern regarding the wording "main file."

[20] In addition, in Interim Order MO-3819-I, I discussed the appellant's point that one record appeared to suggest that a telephone conversation had taken place ("As discussed yesterday"), and that no telephone records were identified as responsive records, though specifically requested. I found that the township did not sufficiently address this in its representations, and that the township's reference to "the main file" suggested that telephone records and other records of other types of communication responsive to the request were not searched. Following its further search, the township stated that, while it recognizes that wording in the record in question, it did not find a record relating to that discussion during its further search. The township also confirmed that conversations are not recorded. In addition, the township clarified the result of its search efforts with the previous clerk, who was the subject of this record, and confirmed that no such record of a conversation exists. Based on all of this evidence, I am satisfied that the concerns expressed in Order MO-3819-I regarding telephone records and the search efforts involving the previous clerk have been reasonably addressed.

[21] Considering all the circumstances of this case, based on the totality of the evidence before me from the township and the appellant's reasons for believing that additional responsive records exist, I am satisfied that the township's search efforts were reasonable. Therefore, I will not order the township to conduct a further search, and I dismiss this appeal.

ORDER:

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

Original Signed by: _____
Marian Sami
Adjudicator

March 4, 2020 _____