

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3938

Appeal MA18-416

Township of Ramara

July 28, 2020

Summary: The township received an access request under the *Municipal Freedom of Information and Protection of Privacy Act* for information pertaining to a specified property. The township granted partial access to the responsive records. The appellant appealed the decision to this office. During mediation, the appellant confirmed he was not interested in pursuing the information withheld under the mandatory personal privacy exemption at section 14(1), but he raised the issue of reasonable search. In this order, the adjudicator finds that the township conducted a reasonable search.

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 Township of Ramara (the township) received an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following information about a property:

Request copy of and examination of original Township of Ramara, Application for a Permit to Place or Dump Fill, Bylaw 2012.70 completed prior to dumping of fill at property identified as 5563 Simcoe County Rd 169.

Request copy of documents that accompany Township of Ramara, Application for a Permit to Place or Dump Fill, Bylaw 2012.70 for this property. Including:

- Copy of report and soils analysis of the source site, (identifying, Qualified Person certified report, accredited laboratory, *Environmental Protection Act* Part XV.1 standard the soils have met.)
- Copy of site alteration plan for the lands prescribed in Schedule B attached to Bylaw 2012.70
- Copy of Lake Simcoe Region Conservation Authority or alternate conservation authority permit.

[2] The township issued a decision granting partial access to the responsive records with severances pursuant to the mandatory personal privacy exemption at section 14(1) of the *Act*.

[3] The requester, now the appellant, appealed the township's decision to this office.

[4] During mediation, the appellant advised the mediator that he believed additional responsive records should exist and provided the mediator with a description of the information that he sought access to. The mediator forwarded this information to the township. The appellant confirmed he was not pursuing access to any of the withheld information in the responsive records.

[5] The township provided a written response to the appellant regarding actions taken and procedures followed in relation to Ramara Fill Bylaw 2012.70, A Bylaw to Prohibit or Regulate the Placing or Dumping of Fill in the Township of Ramara (Bylaw 2012.70). The township advised the appellant that this was all the information it has in response to his request.

[6] The appellant advised the mediator that he continues to believe additional responsive records should exist.

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

[8] During my inquiry, I invited and received representations from the township and the appellant. Pursuant to section 7 of this office's *Code of Procedure and Practice Direction Number 7*, copies of the parties' representations were shared with the other party.

[9] In this order, I find that the township conducted a reasonable search for responsive records and I dismiss the appeal.

DISCUSSION:

[10] The only issue in this appeal is whether the township conducted a reasonable

search for records.

[11] 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.

[12] 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

[13] 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

[14] 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

Summary of the parties' representations

[15] The township submits that it conducted a reasonable search for records. In support of this assertion, the township provided an affidavit from the Chief Building Official/Bylaw Enforcement Officer (whose responsibilities include enforcing the *Ontario Building Code*, municipal bylaws and other applicable legislation, overseeing permits and conducting inspections) and an affidavit from the Record Manager/FOI Coordinator (whose responsibilities include organizing municipal records and preparing these records for information requests).

[16] In his affidavit, the Chief Building Official/Bylaw Enforcement Officer (CBO) explains that the Building Department maintains building permits and accompanying documentation as they deal with issues, create, and receive records during day-to-day transactions with the public.

[17] In her affidavit, the Record Manager/FOI Coordinator explains that she relies on the specific departments who are subject matter experts, to gather relevant records, as

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.

⁵ Order MO-2185.

they deal with issues, create, and receive records during transactions with the public.

[18] Both affiants state that the Records Manager and Building Department staff conducted a thorough search in the building permit files and in the property files by address but no further records exist. They affirm that the type of records requested are filed in the building permit files and/or in the property files by address. As such, any records relevant to the request were retrieved from these areas. They also state that among the records released were copies of the Application for a Permit to Place or Dump Fill (the Application) and the soil analysis report.

[19] In response, the appellant questions the existence of documentation from Lake Simcoe Region Conservation in which it states that a permit is not required for the large-scale soil dumping at the specified property. He submits that the township collected a very minor portion of the required information to support the Application. The appellant also submits that the township did not apply or enforce the majority of the protective measures specified in Bylaw 2012.70. Moreover, he submits that if the township decided not to appropriately apply and enforce Bylaw 2012.70 then it should have registered a valid explanation, which would be available if an access request was made.

[20] In addition, the appellant questions how the source site test sampling dated March 30, 2017 and its analysis results dated April 10, 2017 can support a Permit to Place or Dump Fill issued on November 16, 2017 (subsequently 7 or 7.5 months later).

[21] Furthermore, the appellant submits that the affidavit of the CBO lacks details. He suggests that the lack of details is due to the departure of the CBO. The appellant questions why no date of departure for this employee was provided as there is no way of knowing when or if anyone representing the township assumed responsibilities for the continuation of the work that the former employee had been assigned.

[22] Finally, the appellant submits that there must be more documentation as Part 5, section 5.1 of Bylaw 2012.70 lists the permit conditions associated with the existing application. He points out that the township has not provided a site plan that includes the large-scale soil dumping at the specified property.

[23] In its reply representations, the township reiterates that it has provided all the records that it possesses.

[24] In his sur-reply representations, the appellant reiterates that he continues to rely on his previous representations. He submits that if the township insists that the information requested is not available then it should provide an appropriate explanation as to why the information was not properly collected, and, thus, making it unavailable under an access request.

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.⁶

[26] In this case, the appellant believes that additional records should exist due to what he believes the township should have done in such circumstances. As such, he submits that the following records should exist:

- Documentation from Lake Simcoe Region Conservation Authority stating a permit is not required for the large-scale dumping at the specified property.
- Documentation associated with the proper compliance or noncompliance with Bylaw 2012.70.
- A written explanation by the CBO as to why a decision was made by him not to apply and enforce Bylaw 2012.70.

[27] However, the appellant's argument for the existence of additional records is not based on what the township did in the circumstances.

[28] In different circumstances, the records noted by the appellant may exist. However, I accept the two affiant's evidence that the Records Manager and Building Department staff conducted a thorough search in the building permit files and in the property files but no further responsive records exist. Based on the evidence, I am satisfied that experienced employees, who were knowledgeable in the subject-matter of the request and familiar with the relevant record-keeping practices, conducted the search for responsive records.

[29] I understand that the appellant is very frustrated with what he sees as the township's improper enforcement of Bylaw 2012.70. I also understand that the appellant believes that the township should have a written explanation for why its CBO decided not to properly apply and enforce Bylaw 2012.70 with respect to the specified property. However, this office does not oversee a municipality's by-law enforcement nor does it have the power to require a municipality to provide an explanation for its actions.

[30] Accordingly, I find that the township conducted a reasonable search.

⁶ Order MO-2246.

ORDER:

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

Original Signed by: _____

July 28, 2020 _____

Lan An
Adjudicator