

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4063

Appeal MA19-00442

Saugeen Valley Conservation Authority

June 10, 2021

Summary: The appellant made an access request under the *Act* to the authority for records, including all hand-written notes taken by a specified individual at a specified meeting of the authority. The authority provided the appellant with the notes. The appellant believes that some pages were missing from the notes. After unsuccessfully raising his concerns with the authority, the appellant appealed to the IPC.

The authority and the appellant filed a relatively large amount of evidence in this appeal. The authority's evidence attests to the completeness of the notes provided; the appellant's sets out a basis for why there are missing pages including that the authority intended to conceal them.

In this order, the adjudicator upholds the search as reasonable concluding that further searches would yield no further responsive records.

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

OVERVIEW:

[1] The appellant made an access request¹ under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Saugeen Valley Conservation

¹ There were two access requests that were duplicative in part. They are referred to as a single request in this order.

Authority (the authority) for all hand-written notes taken by a specified individual at a specified meeting of the authority and a digital recording of the same meeting. The requested hand-written notes are different than the formal minutes of the meeting, which are publicly available.

[2] The authority located records responsive to the request and issued the following decisions: it stated that there is no digital recording of the meeting; and, it provided the appellant with a copy of the specified hand-written notes (the "notes").

[3] After reviewing the notes, the appellant notified the authority that he believed certain pages were missing. The authority reviewed the search and confirmed its decision. The appellant appealed the authority's decisions to the IPC.

[4] During mediation, the appellant confirmed that he appeals only the part of the decision pertaining to the notes, not the digital recording. In an effort to resolve the appeal, the authority conducted another search and provided the appellant with an affidavit from the individual who made the notes, the recording secretary. The appellant continued to believe that pages of the notes were missing, had been concealed or otherwise withheld by the authority.

[5] The appeal could not be resolved at mediation and it was transferred to the adjudication stage of the appeal process. I began the inquiry by first inviting the appellant to make representations in response to the affidavit. The representations were shared with the authority which provided a response. Further responses and replies were made and shared in accordance with the IPC's *Code of Procedure and Practice Direction 7*.

[6] In this order I find that the authority conducted a reasonable search and I dismiss the appeal.

DISCUSSION:

[7] The sole issue in this appeal is whether the authority's search for responsive records was reasonable. 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 17.²

[8] The appellant contends that there are additional pages of notes that have not been disclosed to him. Throughout the course of the appeal and in this inquiry, the authority has provided assurances to the appellant that all pages have been disclosed. The appellant does not accept the assurances and has provided evidence to support his contention that additional pages exist and are being improperly withheld by the

² Orders P-85, P-221 and PO-1954-I.

authority. This evidence is examined and discussed below.

Representations

The authority's initial evidence

[9] As noted in the overview, the recording secretary who made the notes provided affidavit evidence attesting to the following:

- it is her responsibility to take the notes of the authority's meetings;
- how she understands and performs her note-taking responsibilities, including that she follows Robert's Rules of Order;
- that the notes disclosed to the appellant are a "complete and unaltered copy" of the notes that she took at the meeting in question;
- that the notes were prepared to assist her with preparation of the minutes of the meeting;
- that no part of the notes were withheld by the individual or any of the staff or members of the authority; and,
- nothing was added or removed by the individual or any of the staff or members of the authority.

[10] The affidavit also provided information about some of the things that happened during the meeting in question.

The appellant's representations

[11] The appellant is dissatisfied with the recording secretary's affidavit and is particularly focused on the fact that she did not specifically address whether she recorded the voting that occurred during a certain portion of the meeting in which the appellant participated that I will refer to in this order as the "specific portion." In the absence of a statement that the recording secretary either did or did not take notes during the specific portion, the appellant argues that the notes were intentionally removed or concealed by the authority.

[12] The appellant makes a number of observations about the notes, including the type of notebook that they were made in, that the recording secretary is a thorough note taker and that she appears to use both sides of the pages in the notebook. The appellant groups the notes into two sections and using the time notations in those notes, observes that certain events that occurred during the specific portion (of the meeting) are not reflected in the notes.

[13] The appellant contends that when one considers the note-taking style and practice of the recording secretary, which he discerned from an examination of the

notes, there is an inconsistency in the amount of notes taken during the specific portion.³ He specifically alleges that there are two consecutive pages missing that record what happened at the specific portion.

[14] In support of his position, the appellant also provided evidence from other people who attended the meeting to attest to the fact that the events that he says occurred during the specific portion occurred. With reference to excerpts of the notes, the appellant describes other things that were said or done that are not contained in the notes. He also argues that excerpts of the notes (i.e. the recording secretary's notes to herself about voting procedure) suggest that events that occurred at the meeting are not contained in the notes.

[15] Further, the appellant suggests a motive for why the authority (not the recording secretary) would wish to withhold or conceal the record of what happened during the specific portion. He asserts that an accurate record of what occurred at the meeting would be financially beneficial to him and financially detrimental to the authority in the context of an Application to Alter a Regulated Area made by the appellant. He also suggests that the recording secretary was improperly pressured into providing the assurances given in this appeal.

[16] He suggests the possibility that the recording secretary may believe that the notes are complete copy but that another former staff member, the then General Manager/Secretary Treasurer of the authority (the GM), removed the pages at issue to advance the authority's interests.

[17] Although the appellant does not allege that the recording secretary had any motive to conceal the pages, he argues that she made untrue statements in her affidavit. He points to the fact that the notes did not contain reference to certain information that the recording secretary would be required to include according to Robert's Rules of Order, which the recording secretary says that she follows.

[18] The appellant also describes the discrepancies between the notes and the formal minutes. For example, the notes do not contain records of votes that were taken and for which there is a record of a vote in the minutes. In the appellant's view, this is evidence that there are additional hand-written notes.

[19] Generally speaking, the appellant is dissatisfied with the affidavit evidence provided by the authority because he says that it fails to address the core question about why the notes contain no reference to what occurred during the specific portion.

³ The appellant's representations contain detailed calculations of the rate of note taking by the note-taker, which I have reviewed.

The authority's representations

[20] In response to the appellant's representations and the issues set out in a Notice of Inquiry,⁴ the authority provided two additional affidavits, one from the former GM who the appellant alleges removed the pages and another from the then-current GM who was involved with the mediation and the initial part of the inquiry. The authority also responded to the appellant's arguments

[21] Generally, the authority stands by its search, states that the notes are complete and it expressly denies that additional pages ever existed. The authority also explained for the first time that in addition to the notes, the recording secretary also used "pre-printed motion forms" to help keep track of votes that were eventually recorded in the minutes.

[22] Regarding discrepancies between the notes and the formal minutes, the authority describes the different purposes of the two records. It points out that the notes are not a *verbatim* record of what occurred and were produced primarily for the use of the recording secretary to prepare the minutes. It also refers to the authority's Records Management and Retention Policy (the retention policy), which was in effect at the time and stipulates that hand-written notes are to be destroyed after minutes are made.

[23] The authority reviewed the allegations made by the appellant and rejects them. It denies that any pages were destroyed by anyone and it denies that there was any motive to destroy any information. Briefly summarized, the authority disputes that it had any financial benefit to gain by withholding records about what transpired at the meeting to the appellant. The authority conceded that it was under unrelated financial pressures but it expressly rejects the appellant's theory that this created a motive on its part to conceal information from the appellant.

[24] It rejects that the appellant's observations about the recording secretary's style and pace of note-taking support any conclusion that the pages were removed.

[25] The authority addresses the appellant's evidence about what happened at the meeting. To summarize, the authority does not appear to dispute what happened at the meeting but the dispute is whether the events that occurred should have been recorded in the formal minutes.

[26] In response to the appellant's arguments about why the notes did not include voting information, the authority explained (as noted above) that the recording secretary had "pre-printed motion forms" that she used to record votes that were eventually recorded in the minutes.

⁴ The appellant was also provided with a Notice of Inquiry.

[27] The authority denies that the recording secretary was asked to prepare the affidavit with any pressure or influence from anyone else at the authority.

[28] The former GM whom the appellant alleges removed the pages expressly denies that he did so and provided a description of the steps he took to respond to the request, obtain the notes and provide them to the appellant.

[29] The new GM, who was not involved with the meeting in question, but was involved in responding to this appeal, reviewed the circumstances, had discussions with the recording secretary and the former GM and provided an affidavit describing the steps he took to satisfy himself that the notes were complete and that no pages were removed.

[30] In addition to denying the allegations of the appellant, the authority states that the only official record of the meeting is what is reflected in the minutes, that those minutes are accurate and were prepared in accordance with all applicable procedures.

The appellant's reply

[31] The appellant replies that he is not persuaded or assured by the authority's response. Much of his reply representation re-state his evidence above.

[32] However, he takes significant issue with the former GM's evidence about what happened when the notes were provided to him, including whether the pages were reviewed with him personally by the former GM.

[33] He also points out that it was not until the authority made its representations in this inquiry that he learned about the existence of pre-printed motion forms. The appellant believes that these forms are within the scope of his request and they should have been disclosed to him. The appellant also argues that the fact that authority did not refer to the forms until such a late stage in the appeal is a reason why I should doubt the veracity and reliability of the evidence provided by the authority in the appeal.

The authority's sur-reply

[34] The authority's sur-reply was provided by the current GM of the authority – a different person than either of the GMs described above. The current GM explains that the pre-printed motion forms used by the recording secretary were destroyed after she prepared the minutes. The authority refers to the prior affidavit evidence filed about the retention policy and states that the notes that are the subject of this appeal should also have been destroyed.

[35] The current GM states that she reviewed the materials, had discussions with the recording secretary and the two former GMs and that she is satisfied that the pre-printed motion forms were destroyed after the formal minutes were "transcribed."

[36] Otherwise, the authority stands by its search and refers to and repeats evidence

summarized above.

Other evidence

[37] The appellant and the authority provided other evidence about what happened during the specified portion, the meeting in general and the possibility of animosity between the appellant and another meeting participant. I have reviewed this evidence but have not summarized in this order because it is not relevant to the issues that need to be determined.

Finding

[38] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate responsive records.⁵ The *Act* does not require the authority to prove with absolute certainty that further records do not exist. However, it must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.⁶

[39] I will begin by first addressing whether additional responsive records exist and I am satisfied that they do not. I have reached this conclusion on the basis of the comprehensive affidavit evidence provided by the authority, which I have scrutinized with the benefit of the representations made by the appellant. I find on the basis of the evidence that the notes provided to the appellant are all the notes that existed in the recording secretary's notebook. I also find that the pre-printed motion forms – which were arguably within the scope of the request – were destroyed and no longer exist.

[40] It is unfortunate that the appellant was not informed about the existence of the pre-printed motion forms until late in the appeal. I agree with the appellant that the fact of their existence casts some doubt on the broad statements about the completeness of the notes *in general* made by representatives of the authority in the inquiry. Although I have considered this, it is my view that the focus of the authority's representations and statements made was to the notes contained in the recording secretary's notebook and to respond to the appellant's suggestion that pages have been removed. In consideration of the comprehensive affidavit evidence, I also have no reasonable basis to disbelieve the evidence of the authority's representatives.

[41] Regarding the notes, I find on a balance of probabilities that additional pages in the notebook did not exist. Regarding the pre-printed forms, I also find on a balance of probabilities that they no longer exist, having been duly destroyed⁷ in accordance with the authority's retention policy.

⁵ Orders M-909, PO-2469 and PO-2592.

⁶ Orders P-624 and PO-2559.

⁷ Section 4.1 of the *Act*.

[42] I am therefore satisfied that further searches would not yield further responsive records. As a result, I find that the authority's search was reasonable and I dismiss this appeal.

ORDER:

The appeal is dismissed.

Original signed by: _____
Valerie Jepson
Adjudicator

_____ June 10, 2021