

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-4061

Appeal MA19-00238

Town of Wasaga Beach

June 8, 2021

**Summary:** The sole issue in this appeal is whether the Town of Wasaga Beach (the town) conducted a reasonable search for records responsive to an access request made under the *Municipal Freedom of Information and Protection of Privacy Act*. In this order, the adjudicator finds that the town conducted a reasonable search for records responsive to the request, and she 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.

### OVERVIEW:

[1] This order disposes of the sole issue remaining as a result of an appeal of an access decision. The requester made a multi-part access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Town of Wasaga Beach (the town) for:

1. all emails, faxes, or letters received from the voters/electorate pertaining to the process, duty of Scrutineers, outcome and overall comments pertaining to the results of the October 22, 2018 election;
2. a list of all sworn-in Scrutineers for the 2018 election;
3. a list of the names of all individuals who were in the polling room as/after the polls closed;

4. from the 1,446 votes cast by telephone the number that cast their vote for only one Race;
5. all correspondence to or from [a specified company] and anyone representing [the specified company];
6. a system-generated report of unique I.P. addresses accessing the election system and number of ballots cast per each;
7. the address and location of the data warehousing facility where the Town of Wasaga Beach data resides. Please provide the name and address of the corporation responsible for maintaining this facility;
8. the name and address of the corporation responsible for maintaining the data (i.e. responsible for the integrity, security, backups, etc.);
9. the name and address of the company that developed the election software;
10. the name and address of the company the Town of Wasaga Beach licenses the software from; and
11. the name and address of all companies and persons that have the ability to access any and/or all of the data, including any and all means of access.

[2] The requester clarified the timeframe for the records requested in part 1 of the request, and subsequently withdrew part 5 of the request.

[3] The town issued a decision granting partial access to the responsive records. The town explained that 18 public documents that were responsive to the request were forwarded to the requester by email, and therefore, those records would not be provided as part of the response to the request. The town denied access to an additional 77 responsive records, claiming the application of the mandatory exemption in section 14(1) (personal privacy) of the *Act*. The town also advised that the clerk is required to destroy ballots under section 88 of the *Municipal Elections Act*, however, the retention period had been extended to a specified date. Finally, the town advised the requester that no records responsive to parts 3, 4 and 6 of the request exist.

[4] The requester (now the appellant) appealed the town's decision to the IPC.

[5] During the mediation of the appeal, the appellant confirmed their interest in pursuing full access to the records requested in parts 2, 3, 4 and 6 of the request, and confirmed that the remaining parts of the request were no longer at issue in this appeal. With respect to part 6 of the request, the appellant confirmed that they were not pursuing access to the specific IP addresses.

[6] Also during mediation, the town confirmed its decision that no responsive records exist in respect of parts 3, 4, and 6 of the request. The town confirmed that the records responsive to part 2 of the request were being withheld under section 14(1) of

the *Act*.

[7] The mediator communicated the town's response to the appellant. After further discussions with the mediator, the appellant raised the possible application of the public interest override in section 16 of the *Act*.

[8] The appeal then moved to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry. I am the adjudicator in this matter. Early in the inquiry process, the appellant raised the issue of reasonable search, which was added as an issue in this appeal. I then sought and received representations from the town. In its representations, the town advised that it revised its decision and disclosed the records in part 2 of the request, that is, the names and signatures of the election scrutineers, to the appellant. As a result, these records, and the personal privacy exemption claimed with respect to them, are no longer at issue. The sole issue remaining is whether the town conducted a reasonable search for records responsive to the request.

[9] I then sought representations from the appellant, who advised they would not be providing representations. However, the appellant eventually provided representations.

[10] For the reasons that follow, I uphold the town's search for records responsive to the request and I dismiss the appeal.

## **DISCUSSION**

[11] The sole issue in this appeal is whether the town conducted a reasonable search for records responsive to the access request.

[12] 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.<sup>1</sup> 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.

[13] 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.<sup>2</sup> To be responsive, a record must be "reasonably related" to the request.<sup>3</sup>

[14] A reasonable search is one in which an experienced employee knowledgeable in

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<sup>1</sup> Orders P-85, P-221 and PO-1954-I.

<sup>2</sup> Orders P-624 and PO-2559.

<sup>3</sup> Order PO-2554.

the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.<sup>4</sup>

[15] 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.<sup>5</sup>

[16] 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.<sup>6</sup>

[17] A requester's lack of diligence in pursuing a request by not responding to requests from the institution for clarification may result in a finding that all steps taken by the institution to respond to the request were reasonable.<sup>7</sup>

[18] I asked the town to provide a written summary, by way of affidavit, of all steps taken in response to the request. In particular:

1. Did the town contact the requester for additional clarification of the request? If so, please provide details including a summary of any further information the requester provided.
2. If the town did not contact the requester to clarify the request, did it:
  - a. choose to respond literally to the request?
  - b. choose to define the scope of the request unilaterally? If so, did the town outline the limits of the scope of the request to the requester? If yes, for what reasons was the scope of the request defined this way? When and how did the town inform the requester of this decision? Did the town explain to the requester why it was narrowing the scope of the request?
3. Please provide details of any searches carried out including: by whom were they conducted, what places were searched, who was contacted in the course of the search, what types of files were searched and finally, what were the results of the searches? Please include details of any searches carried out to respond to the request.

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<sup>4</sup> Orders M-909, PO-2469 and PO-2592.

<sup>5</sup> Order MO-2185.

<sup>6</sup> Order MO-2246.

<sup>7</sup> Order MO-2213.

4. Is it possible that such records existed but no longer exist? If so, please provide details of when such records were destroyed including information about record maintenance policies such as evidence of retention schedules.

[19] The town provided its evidence by way of an affidavit sworn by the Clerk of the Town/Director of Legislative Services. The town submits that it spent significant time gathering and providing information to the appellant and conducted a reasonable search for all records.

[20] In particular, the town submits that prior to the access request made under the *Act*, searches were conducted in preparation for meetings and in responding to email correspondence from the appellant regarding the election. The affiant met with the appellant (and spouse), and searched all election files in preparation for the meeting. During the meeting, all reports and information available were viewed by the appellant and questions were answered by the affiant. In response to a subsequent email from the appellant seeking further information, the affiant requested all detailed reports available to it from the electronic voting provider to ensure that all available data could be provided to the appellant. A second meeting took place with a town staff member and the appellant (and others), in which all election reports and documents requested were reviewed by the participants of the meeting.

[21] The town further submits that it then received the formal access request under the *Act* and sought to clarify the request with the appellant, which was done. The town further submits that with respect to ballot information, it does not have the ballot information in the form as requested in parts 4 and 6 of the request, but that all ballot information/records that it has were provided to the appellant. The town goes on to argue that the information as requested in parts 4 and 6 of the request does not exist, and never existed in the form requested. The town submits that this was explained to the appellant, stating:

Considerable time and analysis would be required to attempt to pull this security information, and would cast doubt on future elections with regards to the anonymity of voting and integrity of the voting process, and can be considered a violation of the election principles that the Returning Officer is required to uphold. The comments from the internet voting service provider verify this:

An important further consideration on this particular type of data request, is that it would not be in an available report in the normal course of an election. It would at least require system administrators to initiate an inspection of the data at a level that would attract the interest and investigation of the event auditors prior to any type of activity being approved, or considered, and would also require the approval of the event Electoral Authorities. The security and integrity of the event is paramount in the conducting of an election and availability of individual level voter activity, that is considered

immutable affirmation of their activity, would not be generated as a regular course of an event.

[22] Lastly, with respect to part 3 of the request, which was for a list of names of individuals who were in the polling room as/after the polls closed, the affiant swears that as the Returning Officer for the election, she was present at the location named in the request on election night and that a list of individuals in the room was not compiled. She also notes that related information exists, namely the sign-in forms for scrutineers, which were previously disclosed to the appellant.

[23] The appellant submits that they represent a ratepayers association, consisting of a group of local residents who have concerns with the 2018 municipal election, including concerns with security, electronic voting, third party service providers the absence of an auditing process to validate election results. The appellant's representations do not address the issue of reasonable search.

[24] While I acknowledge the appellant's concerns surrounding the 2018 election, I find that it is not my role to decide whether the town validated/audited its election results. There are other accountability mechanisms and audit procedures in place to address such matters. My only role is to determine whether the town has conducted a reasonable search for responsive records that have actually been created and are found in the town's record holdings.

[25] In conclusion, I am satisfied that the town conducted a reasonable search for records responsive to the access request, as required by section 17 of the *Act*. The town engaged in communications with the appellant, seeking clarification of the request, and then proceeded to make reasonable efforts to locate records that were responsive to the request. Further, I find that the appellant has not established a reasonable basis for believing that further records exist.

**ORDER:**

I uphold the town's search for records, and I dismiss the appeal.

Original signed by: \_\_\_\_\_  
Cathy Hamilton  
Adjudicator

\_\_\_\_\_ June 8, 2021