

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4230

Appeals MA21-00038 and MA21-00177

Township of Uxbridge

June 27, 2022

Summary: The Township of Uxbridge (the township) received two related requests under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) related to a specified address. In response to the requests, the township conducted searches and provided partial access to the responsive records. The appellant appealed the township's decisions, pursuing the issue of reasonable search in each appeal. The adjudicator resolves both appeals in this order, upholding the reasonableness of the township's searches, and dismissing the appeals.

Statute 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 Uxbridge (the township) received two requests under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) related to a specified address. This order resolves two appeals, in relation to the township's search for records responsive to each of the requests.

[2] One request was for the following:

...this FOI requests building permits, site plans, notices, and orders for [specified address] from [specified date] to [specified date].

[3] The other request was as follows:

I request information pertaining to the following property: [specified address]. I request the following:

All records (including correspondence, notes, emails, meeting minutes and agendas, and phone records) in the possession of the Township of Uxbridge Staff in relation to Application [specified number] and Application [specified number]. This request excludes records already cover by FOI file [specified number] (permits, orders, notices, and orders).

All records (including correspondence, notes, emails, meeting minutes and agendas, and phone records) in the possession of the Township of Uxbridge Staff in relation to a person or persons from [specified property] (or [specified Association] and or agent 1) granting permission or claiming legal right exists for the owner of [specified Lot #] to use Block A for secondary access, and or 2) granting permission or claiming legal right exists for the owner of [specified Lot #] to perform site alterations on Block A."

[4] In response to each request, the township issued an access decision, granting partial access to the responsive records. The township withheld the remaining portions of the requests under the mandatory exemption at section 14(1) of the *Act*.¹

[5] The requester, now the appellant, appealed the township's decisions to the Information and Privacy Commissioner of Ontario (the IPC).

[6] The IPC appointed a mediator to explore the possibility of resolution. The appellant confirmed to the mediator that the only issue under appeal of each access decision is that further responsive records relating to the request should exist; the information withheld under section 14(1) is not at issue. The township agreed to conduct another search for responsive records. After doing so, the township informed the mediator that no further responsive records exist in response to either request. The appellant maintained his position that further records should exist.

[7] Since no further mediation was possible, the appellant requested that the appeals move to adjudication on the basis of the reasonable search issue. As a result, the appeals moved to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry under the *Act*.

[8] As the adjudicator assigned to these appeals, based on my review of the file documentation, I decided to conduct a joint inquiry. I began an inquiry under the *Act* by sending a Notice of Inquiry, setting out the facts and issues, to the township. I

¹ In response to the first request listed, the township's decision letter stated that the exemption being claimed was at section 12(1), but later, during mediation at the IPC, it clarified that it was actually relying on the exemption at section 14(1).

sought and received an affidavit (with supporting attachments) from the township in response. I then sought and received written representations from the appellant in response to the Notice of Inquiry and the township's affidavit and attachments.

[9] For the reasons that follow, I uphold the reasonableness of the township's searches, and dismiss the appeals.

DISCUSSION:

[10] By way of background, the requests relate to information about how it came to be that a certain landowner was allowed to build a certain structure on their property, which is said to encroach on other land, and interfere with the use and enjoyment of that land. However, the only issue in the two appeals before me is whether the township has conducted a reasonable search for records as required by section 17 of the *Act*.² Since I am satisfied that the searches carried out were reasonable in the circumstances, I uphold the township's decisions.

[11] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.³

[12] The *Act* does not require the institution to prove with certainty that further records do not exist. However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;⁴ that is, records that are "reasonably related" to the request.⁵

[13] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are reasonably related to the request.⁶ The IPC will order a further search if the institution does not provide enough evidence to show that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.⁷

[14] The institution must provide a written explanation of all steps taken in response to the request, including details of any searches the institution carried out, such as: who conducted the search, who was contacted in the course of the search, the types of files searched, and the results of the search.

² Orders P-85, P-221 and PO-1954-I.

³ Order MO-2246.

⁴ Orders P-624 and PO-2559.

⁵ Order PO-2554.

⁶ Orders M-909, PO-2469 and PO-2592.

⁷ Order MO-2185.

The township's evidence

[15] The township provided an affidavit from its Clerk and Director of Legislative Services and the Municipal Freedom of Information and Protection of Privacy Coordinator (whom I will refer to as "the affiant").

[16] The affiant explains that the township responded literally to each request and did not contact the appellant for additional information.

[17] With regards to where the township searched for records, the township also provided some details about this in its early correspondence with the IPC (with an IPC analyst); this correspondence was attached to the township's affidavit and shared with the appellant during the inquiry. The township had advised the IPC analyst that the township searched the property file of the property in question, as it contains all of the information related to building activity on a property and the relevant details were provided

[18] In addition, the affiant states that to the best of her knowledge and belief, all current township employees known to be associated with the subject matter of the requests were contacted and requested to go through all their records, and that all related files were searched.

[19] The affidavit also summarizes all steps taken in response to the two requests; copies of correspondence (whether with other township employees, the appellant, or the IPC) are attached to the affidavit.

[20] On receipt of the first request, the affiant directed her staff to email two (named) employees, the Chief Building Official and the Manager of By-law Services, requesting all relevant records. The affiant received the records from the Chief Building Official enclosing the information requested and an index of records. After the appellant appealed the township's decision to the IPC, the affiant received a request for clarification from an IPC Intake Analyst.

[21] Similarly, on receipt of the second request, the affiant also directed her staff to email the (named) Chief Building Official and the Manager of By-law Services, requesting all relevant records, specifically all records relating to two specified applications. In response, By-law Services staff advised in writing that there was nothing to be added by By-law Services for this request. However, the affiant received records from the Chief Building Official enclosing the information requested and an index of records. After the appellant appealed the township's decision to the IPC and the affiant exchanged correspondence with IPC personnel, the affiant directed her staff to email staff in Building Services and By-law Services, requesting records related to an additional search. She received an email response from the Chief Building Official indicating that there was no information related to the township's approval in relation to the property. The affiant notes that By-law Services had indicated previously that there

was nothing to be added for this request.

The appellant's response

[22] The appellant's representations address several matters, such as the township's governance, and specifics about the property that is the subject matter of the requests (including the appellant's views about the existence of irregularities in the property's permit approval process). However, having reviewed these representations, I find them to be unrelated to the specific issue of reasonable search under the *Act*, so I will not summarize them here.

[23] With respect to the township's affidavit evidence, the appellant provides some background about the nature of his dealings with the affiant, which I will not be more specific about so as to avoid identifying him in this order. The appellant states that he hopes I will consider the evidence of their past dealings when I consider "the integrity of the affidavit."

[24] In addition, the appellant notes that because several specified entities (including the Ombudsman) have advised him that they do not have an enforcement mandate or authority in relation to the matters that he raises, and that his options are to vote, run for elected office, or use the courts. The appellant says that he accepts this reality, and that for court action to be feasible, it is critical that he have unrestricted access to records. He states that this has heightened his awareness that the IPC's mandate is foundational to ensuring our democratic institutions survive.

Analysis/findings

[25] Based on my review of the township's affidavit evidence and the appellant's representations, I am satisfied that the township has provided sufficient evidence that it conducted a reasonable search in response to each of the requests, in the circumstances.

[26] It is not within the scope of this IPC appeal to assess the appellant's views and assertions about matters such as the township's governance, or even whether approvals should have been granted in relation to the property in question or not. On the evidence before me, these matters do not relate to whether the township provided enough evidence to show that it has made a reasonable effort to identify and locate responsive records – the only issue that I am to decide in these appeals.

[27] Although I appreciate that the appellant appears to have strained relations with various township officials and employees (past or present), including the affiant, the fact of strained relations with the township does not sufficiently establish that there is reason to question "the integrity of the affidavit" that is before me. I have reviewed the affidavit and its many supporting attachments, and I find no basis for finding it unreliable.

[28] As mentioned, a reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are reasonably related to the request.⁸ It is also worth reiterating that the *Act* does not require the institution to prove with certainty that further records do not exist.

[29] Based on my review of the township's affidavit evidence (including the attached supporting documentation), I find that the township took reasonable steps to conduct searches in response to each of the requests.

[30] More specifically, I find that it was reasonable for the township to assign the affiant, its Clerk and Director of Legislative Services and the Municipal Freedom of Information and Protection of Privacy Coordinator, to direct the township's search efforts, given her role.

[31] Furthermore, due to the subject matter of the requests (various types of information relating to a specific property), it was reasonable for the affiant to ask the Chief Building Official and the Manager of By-law Services to search for responsive records. I accept that these two employees are experienced and knowledgeable in the subject matter of the requests, given the roles of these employees and the type of information being sought.

[32] The wording of the requests is clear, and I am satisfied that the township did not need to seek clarity from the appellant about the scope of either request before conducting searches for responsive records. I also accept the affiant's attestation that all relevant files were searched, and the supporting correspondence to the IPC analyst, explaining that the property file was searched because it would contain all information about the property in question.

[33] While an appellant will rarely be in a position to indicate precisely which records the institution has not identified, an appellant still must provide a reasonable basis for concluding that such records exist.⁹ I find that the appellant has not done so here. Rather, it appears that the appellant would like me to consider issues such as township governance and the substance of township approvals in relation to this property in order to cast doubt on the township's evidence or to suggest why the township would be motivated to not conduct a reasonable search. However, I am not satisfied that these matters undermine the evidence that is before me, regarding the steps the township actually took to search for responsive records in response to each request. The appellant's representations do not provide me a reasonable basis to question matters relevant to, for example, the scope of the searches conducted or the expertise of the two employees tasked to conduct searches, such that I have any reasonable basis for ordering a further search. Therefore, while I appreciate that the appellant

⁸ Orders M-909, PO-2469 and PO-2592.

⁹ Order MO-2246.

would like further information about the property in question because of the concerns mentioned in his representations, I find he has not provided a reasonable basis for concluding that additional records exist.

[34] For these reasons, I uphold the reasonableness of the township's searches, and dismiss the appeals.

ORDER:

I uphold the reasonableness of the township's searches, and dismiss the appeals.

Original Signed by: _____
Marian Sami
Adjudicator

_____ June 27, 2022