

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4232-F

Appeal MA19-00447

Municipality of Temagami

July 27, 2022

Summary: This final order follows Interim Order MO-4104-I in which the adjudicator ordered the municipality to conduct a further search for records. The appellant made a request to the municipality under the *Act* for records relating to the installation of a punch lock on a municipal office door. The municipality located a responsive record and granted the appellant access to it in full. The appellant appealed the municipality's decision, challenging the adequacy of the municipality's search. In Interim Order MO-4104-I, the adjudicator found that the municipality did not conduct a reasonable search for responsive records and ordered it to conduct a further search. In this final order, the adjudicator finds that the municipality has now conducted a reasonable search for responsive records and 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.

Orders Considered: Interim Order MO-4104-I.

OVERVIEW:

[1] This final order disposes of the only issue remaining from Interim Order MO-4104-I, namely whether the Municipality of Temagami (the municipality) conducted a reasonable search for records responsive to an access request made by the appellant, as required by section 17 of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] The appellant submitted a request to the municipality for access to records relating to the installation of a punch lock on the door to the Public Works office within a specified time frame, and to an alleged incident that the appellant says preceded the lock's installation. The request sought access to related emails, notes, correspondence, journal entries and reports, communications between named councillors and other individuals, and to a specific letter from the municipality to a named individual.

[3] After exchanging correspondence with the appellant to clarify the request and to provide a specific date of the alleged incident identified by the appellant, the municipality issued a decision that no responsive records exist.

[4] The appellant appealed the municipality's decision, taking the position that responsive records exist and that the municipality had failed to conduct a reasonable search for them. During mediation, the municipality conducted a search and located one responsive record (the letter identified in the request). The municipality granted access to the letter in its entirety.

[5] The appellant, however, continued to raise concerns about the reasonableness of the municipality's search for responsive records, maintaining that additional records should exist to which the municipality did not grant access.

[6] Mediation did not resolve the issue of reasonable search and the appeal was transferred to the adjudication stage of the appeal process. I conducted an inquiry, during which I sought and received representations from the municipality and the appellant. In Interim Order MO-4104-I, I found that the municipality had not conducted a reasonable search for responsive records and I ordered it to conduct another search.

[7] In the event that the municipality located additional records as a result of its further search, Interim Order MO-4104-I required the municipality to provide a decision letter to the appellant regarding access to any newly-located records, including any exemptions claimed if access was denied.

[8] The municipality conducted a further search and located responsive records. As required by the interim order, the municipality issued an access decision denying access to the newly-located records. The appellant has appealed the municipality's new access decision, which is now the subject of a separate appeal that is not before me and is not addressed in this order.¹

[9] The only issue before me in this final order is whether the municipality has conducted a reasonable search for responsive records. For the reasons discussed below, I find that it has, and I dismiss this appeal.

¹ The municipality claims that the newly-located records are exempt under sections 6(1)(b) (closed meeting) and 7(1) (advice or recommendations) of the *Act*. As set out above, that decision is the subject of a separate appeal and is not addressed in this order, which is limited to the sole issue of the reasonableness of the municipality's search for records responsive to the appellant's request.

DISCUSSION:

[10] If a requester claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act*.² If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision. Otherwise, it may order the institution to conduct another search for records.

[11] 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;³ that is, records that are "reasonably related" to the request.⁴

[12] 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.⁵ 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.⁶

[13] 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.⁷

Interim Order MO-4104-I

[14] During the inquiry leading to Interim Order MO-4104-I, I asked the municipality to provide a written summary of all the steps it took in the searches conducted in response to the appellant's request. In the Notice of Inquiry, I asked the municipality to respond to a number of questions soliciting details of any searches that were carried out.

[15] The municipality submitted that it had conducted multiple searches. It said that its legal counsel had "numerous telephone conversations" regarding the appeal with the clerk, mayor, and clerk-treasurer, who searched their records electronically and in hard copy, but that no records were located. The municipality also submitted that its treasurer/administrator had conversations with municipal employees and sent an email asking individuals named in the request to search their records. Although the municipality provided a copy of that email, its representations did not include details about the searches, by whom the searches were conducted, the places or types of files

² Orders P-85, P-221 and PO-1954-I.

³ Orders P-624 and PO-2559.

⁴ Order PO-2554.

⁵ Orders M-909, PO-2469 and PO-2592.

⁶ Order MO-2185.

⁷ Order MO-2246.

searched, or the results of those searches, except that one letter had been located and eventually disclosed.

[16] The municipality argued that it disclosed the only responsive record – the letter – and that, since the installation of the lock was not the result of an incident or a complaint as alleged by the appellant, there were no more responsive records.

[17] In Interim Order MO-4104-I, I found that the appellant's request was not limited to the letter. The request was for hard-copy or email communications exchanged between and among a list of individuals, including the mayor, councillors, employees and Public Works Committee members, as well as for other communications such as correspondence, notes or journal entries relating to the alleged incident surrounding the installation of the lock. With her representations, the appellant provided copies to the IPC of emails she exchanged with municipal representatives and employees, including those identified in her request, discussing the lock and the incident she believes was the catalyst for its installation.

[18] Because the appellant's request included access to emails, and because the appellant produced copies of emails that the municipality did not locate, I found that the appellant had provided a reasonable basis for her belief that further responsive records may exist.

[19] I therefore ordered the municipality to conduct a further search.

The municipality's further search

[20] In response to Interim Order MO-4104-I, the municipality conducted further searches for responsive records.

[21] The municipality provided an affidavit sworn by its clerk, stating that she conducted a search over five specific days in October and November of 2021, during which she contacted various individuals, including those identified in the appellant's request. The affidavit describes the types of records these individuals were asked to search for, and the types records that were located as a result.

[22] As noted above, because these further searches resulted in additional records being located, the municipality issued a new decision denying access to those records.

[23] I provided the appellant with a copy of the municipality's affidavit and invited her representations about the reasonableness of the search. The appellant's representations do not address the municipality's further search, but rather other municipal matters, the roles of municipal employees and councillors at the time of her "complaint," and state that that the municipality "know[s] exactly what spurred the lock installation" and that facts have been skewed to "cover errors."

Analysis and findings

[24] For the reasons that follow, I find that the municipality has now conducted a reasonable search for records in satisfaction of Interim Order MO-4104-I and its obligations under the *Act*.

[25] Based on the municipality's affidavit and the new decision which indicates that additional records were located, I am satisfied that the municipality has conducted a reasonable search for records responsive to the appellant's request. I find that an experienced employee knowledgeable in the subject matter of the request expended a reasonable effort to locate records, including emails, relating to the installation of the punch lock and the alleged incident that precipitated it. I am satisfied that the municipality made reasonable inquiries of councillors and staff in an effort to locate responsive records.

[26] The appellant maintains in her representations that a specific incident triggered the installation of the punch lock, which the municipality denies. However, the reasons for the punch lock's installation are not relevant to the issue under appeal, which is for access under the *Act* to information about it, not the underlying reasons for it.

[27] As stated in Interim Order MO-4104-I, I make no finding about the circumstances that may or may not have preceded or caused the installation of a punch lock on the door to an office on municipal property, or whether or not it was triggered by a complaint to the municipality.

[28] Lastly, the appellant has provided me with no basis for her belief that additional responsive records exist that are not the subject of the municipality's new decision or that have not already been disclosed. Having considered the circumstances, I find no reasonable basis for a belief that further responsive records exist.

[29] In summary, I find that the municipality has now conducted a reasonable search as required by section 17 of the *Act*.

ORDER:

I uphold the municipality's search as reasonable and dismiss this appeal.

Original Signed by: _____

Jessica Kowalski
Adjudicator

July 27, 2022