

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4363

Appeal MA20-00395

Township of North Stormont

April 17, 2023

Summary: The Township of North Stormont (the township) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for access to records related to a decision to increase the salary of the township's then Acting Chief Administrative Officer. The township located responsive records and issued several access decisions in which it partially disclosed records to the appellant. The appellant believes that additional responsive records existed.

The adjudicator finds that the township's search for responsive records was reasonable and dismisses the appeal.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, sections 17(1).

OVERVIEW:

[1] The township decided to increase the salary of its then Acting Chief Administrative Office (CAO). The appellant disagreed with this decision. The township made a complaint to an external body about the appellant's conduct. This appeal concerns the appellant's access request for records relating to the decision to increase the CAO's salary and the complaint about him.

[2] The Township of North Stormont (the township) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for

access to the following information:

Any record in the custody or control of the Township recording, summarizing, referencing, documenting, or in any way relating to, connected with, or arising from the decision to increase the salary of then-Acting CAO, [name], made in or around April 2020 (the "April Compensation Decision").

Any record in the custody or control of the Township recording, summarizing, referencing, documenting, or in any way relating to, connected with, or arising from the decision to and the filing of a complaint identifying [the requester].

Without limiting the generality of the foregoing, I am requesting access to the following records relating to, connected with, or arising from the April Compensation Decision and complaint identifying [the requester].

- All memos, reports notes, email communications, text messages, records stored in messaging applications, presentations, briefing notes, recordings, and other documents;
- All materials relating to meetings of Council including but limited [sic], Agendas (including draft Agendas), notes, Minutes (including draft Minutes).

[3] The township issued an access decision letter dated August 13, 2020 granting partial access to responsive records including various emails and letters. The township denied access to portions of these records pursuant to section 14(1) (personal privacy) of the *Act*. Access was denied to other records in full pursuant sections 6(1)(b) (closed meeting) and 12 (solicitor-client privilege) of the *Act*.

[4] In addition, the township denied records pursuant to section 15(b) (information soon to be published) and provided the link to where these records could be located.

[5] The requester (now the appellant) appealed the township's decision to the Information and Privacy Commissioner of Ontario (the IPC) and a mediator was assigned to attempt to resolve the issues in this appeal.

[6] During the course of mediation, several issues were resolved, and a supplementary access decision letter was issued to the appellant dated May 4, 2021, disclosing further records to him.

[7] The appellant continued to raise the issue of the search, articulating that additional records should exist and that the township is required to produce the records as requested.

[8] The appellant also raised an issue as to whether the decision was made by a properly designated or delegated head for the purpose of making decisions under the *Act*. In the appeal, the appellant states:

The township has not delivered a lawful response to the request, as it has purported to designate an ineligible person to serve as “head”, and to unlawfully delegate requests under MFIPPA to that person. Specifically, contrary to section 3(1) of the Act the township has purported to appoint its CAO as “head”.

[9] The township advised the mediator that the decisions regarding access and their designated head were made pursuant to the requirements of the *Act* and that it stands by its decisions.

[10] After further discussions with the mediator, the appellant advised the mediator that he would like to pursue the appeal at adjudication, where an adjudicator may conduct an inquiry.

[11] The file was assigned to me and I decided to conduct an inquiry. I sought the parties’ representations, which were shared between them in accordance with the IPC’s *Code of Procedure* and *Practice Direction 7*.

[12] During the inquiry, the township issued four more access decision letters dated June 3, 2022, November 23, 2022, January 9, 2023 and March 10, 2023, and disclosed further records to the appellant with each letter.

[13] In this order, I uphold the township’s search for responsive records as reasonable and I dismiss the appeal.

DISCUSSION:

Preliminary matters

[14] The appellant initially argued that the delegation to the Acting CAO that issued the original access decision letter was not authorized by the township’s by-laws. The township has provided detailed representations as to how the delegation was authorized under its by-laws. The appellant has not sought a specific remedy and has continued to receive and respond access to responsive records in five supplementary decision letters since the original access decision of August 13, 2020.

[15] As no useful purpose would be now served by my determining that the Acting CAO was not authorized to issue the original access decision, I decline to adjudicate this issue.

[16] During the inquiry, the appellant stated that he would like to receive access to all

of the records he has already received access to in “their native digital format.” The issue of manner of access is not an issue within the scope of the appeal before me and I, therefore, do not address it in this order. This issue was not canvassed at mediation, nor did it appear in the list of issues to be mediated.

Did the township conduct a reasonable search for records?

[17] As set out above in more detail, the appellant sought access to:

- township records related to the decision to increase the then-Acting CAO’s salary in April 2020, and
- records related to the township’s complaint about the appellant’s reaction to this decision.

[18] The township issued an access decision letter dated August 13, 2020 granting the appellant with partial access to responsive records that included emails and letters.

[19] During the mediation stage of the appeal, the township issued a supplementary access decision letter dated May 4, 2021 disclosing closed session Council meeting notes.

[20] During the adjudication stage of this appeal, the township provided detailed representations about its search. It advised that the former acting CAO/Clerk (not the Acting CAO whose salary increase is the subject of the request) searched for and reviewed email and paper correspondence related to the subject of the CAO’s April 2020 salary increase and the township’s complaint regarding the appellant. This involved a search of her email inbox, as well as asking other members of staff and the mayor to perform a similar search.

[21] The appellant responded and provided representations indicating what records he believed had not yet been located. In response, the township located additional records, including records that were not located in the township’s record holdings but were located in its external lawyer’s file. The township then issued its second supplementary decision letter dated June 3, 2022. The appellant then advised what further records had not been located and the township conducted another search and located more records.

[22] The township continued to conduct searches after being provided by me with the appellant’s submissions as to what records he believed had not yet been located after reviewing the township’s disclosure. The township continued to locate more records and issued three more supplementary decision letters with further disclosure. These three additional supplementary decision letters were dated November 23, 2022, January 9, 2023, and March 10, 2023, and included disclosure of responsive emails, letters, minutes of meetings, correspondence, a complaint form, and contracts.

[23] As such, the appellant has received six access decision letters all of which included responsive records being disclosed to him. These letters were:

- the original access decision letter dated August 13, 2020,
- a decision letter issued during mediation of the appeal dated May 4, 2021, and
- four decision letters issued during adjudication dated June 3, 2022, November 23, 2022, January 9, 2023, and March 10, 2023.

[24] Following receipt of the fourth supplementary decision letter of January 9, 2023, the appellant provided representations on what records he believes still ought to exist and be disclosed to him.

[25] The appellant referred to his letter of November 29, 2022, which he sent after the township's fourth supplementary decision letter dated November 23, 2022. Specifically, the appellant stated that:

...The undated and untimed email from [Director of Finance / Treasurer, The Township of North Stormont], the sender requests calculations. There is follow up email to this request. Further, the sender poses a question to [one of the recipients] as to whether he "would like to advise him of these changes as of next pay?" No follow up documentation has been provided in response to this question. This email is incomplete as the date and time of the email is not reflected on the email produced.

[26] In response, the township issued a fifth supplementary decision letter dated March 10, 2023 in which it disclosed two more email chains, being the emails that the appellant had indicated were missing or incomplete from its prior disclosure as set out in the appellant's November 23, 2022 and January 9, 2023 correspondence.

[27] In response, the appellant confirmed that the township has now provided access to the complete email exchange he was seeking, including the missing date, time and the parties' email addresses. However, the appellant now seeks an explanation as to why this information had been redacted and wonders if there are further emails that may have been generated since this April 2020 email chain.¹

Analysis

[28] 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

¹ The appellant also asked other questions about notations contained on the records to indicate the exemptions claimed by the township; these concerns are not relevant to the appeal before me.

² Orders P-85, P-221 and PO-1954-I.

[29] 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

[30] 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

[31] 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 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, a further search may be ordered.⁷

[32] The appellant has now received six access decision letters disclosing records to him from searches undertaken by the township to locate additional records. The later searches were undertaken in response to the appellant's concerns about the adequacy of the search.

[33] Based on my review of the parties' representations, the appellant's request, the six access decision letters, and the records disclosed to the appellant, I find that the township has now conducted a reasonable search for responsive records.

[34] I find that an employee with sufficient knowledge was tasked with coordinating and carrying out the search. I am also satisfied, based on the township's evidence and its efforts to respond to the appellant's concerns, that the township understood and carried out logical searches to identify responsive records. I am satisfied that the township has demonstrated that it has made a reasonable effort to identify and locate responsive records, records that are "reasonably related" to the request.

[35] In my view, the appellant has not provided a reasonable basis for concluding that additional responsive records exist. I acknowledge that the appellant is skeptical of the township's efforts because of their successive supplementary decisions, but I find that the appellant's concerns are mere speculation that maybe there are more records related to the compensation decision and the complaint. Considering the searches and disclosures that have been provided, I am not persuaded that additional searches would yield more records.

[36] In conclusion, I am upholding the township's search for responsive records as

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.

reasonable and I dismiss the appeal.

ORDER:

I uphold the township's search for responsive records as reasonable and I dismiss the appeal.

Original Signed By: _____
Diane Smith
Adjudicator

_____ April 17, 2023