

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4401

Appeal MA22-00143

County of Norfolk

June 23, 2023

Summary: The County of Norfolk (the county) received a request under *MFIPPA* for records in its possession relating to two named individuals, a named company and a specified address with specific categories of the types of records requested. The county responded asking for clarification of the request and have the appellant narrow the scope, taking the position that the request was not clear and could also lead to hundreds of records, some of which the appellant would not require. The appellant appealed, taking the position that the county must conduct a search for responsive records and that the request could not be narrowed. In this order, the adjudicator allows the appeal and orders the county to issue an access decision.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 17, 19, 20 and 45; *Regulation 823*, sections 8 and 9.

Orders and Investigation Reports Considered: Order P-81.

OVERVIEW:

[1] The County of Norfolk (the county) received the following request for information under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

We hereby request any and all records that the Norfolk County (the "County") may have in relation to [named individual], [named individual], [numbered company] and/or [specified address] (the "Property") in the County, which may include, but is not limited to, the following:

1. Any and all applications, including any zoning or building permit applications;
2. Any and all permits, including any building permits;
3. Any and all site plans or site plan agreements;
4. Any and all drawings, plans or surveys, including reference plans;
5. Any and all by-laws, including any site-specific zoning by-laws;
6. Any and all staff or other reports, including all attachments thereto;
7. Any and all correspondence, including emails to/from members of Council or City staff as well as all text messages;
8. The minutes of any meeting, including any Council, committee or City staff meeting, where either [named individual], [named individual] and/or [numbered company] and/or [specified address] was discussed, including any senior management team minutes, as well as any notes taken during said meetings;
9. Any and all decisions, approvals, allowances, consents, agreements or contracts not otherwise referenced above; or
10. Any and all enforcement records, including those in relation to fire prevention, property standards, the *Building Code*, zoning by-law infractions or any other by-law infractions.

Pursuant to section 17(3) of the *Municipal Freedom of Information and Protection of Privacy Act*, this is a continuing request which, if granted, will remain in effect for two (2) years from today's date.

[2] The county issued a letter requesting clarification indicating the following:

The request does not provide sufficient detail to locate the information or records requested. Please clarify the following components in order for your request to proceed with:

- A time frame for your request
- Specific staff names or positions to search in relation to parts 7 and 8 of your request

[3] The requester replied, as follows:

To be clear, the Request does not have an associated time frame and it is not limited to any individual staff persons or positions.

Rather, we are requesting any and all records that the County might have in relation to [numbered company], [named individual] and/or [named individual], as outlined in the Schedule "A" to the Request.

[4] The county sent the requester an email, as follows:

We cannot continue with this request as you have not clarified, and is still on hold until clarified. If I do not receive clarification by thirty days of my February 9, 2022 Clarification letter, the file will be closed in accordance with *MFIPPA*. The purpose of my call noted in my letter was that extensive clarification is required beyond the two bullet points outlined in the letter. Should you wish to proceed with the request I ask that you provide clarification and set up a call with me for a further amicable discussion. Norfolk County will retain its rights under *MFIPPA* to reformulate the request as required to perform a search, ensure that the request is not an abuse of the right of access, and does not unreasonably interfere with Norfolk County operations. Clarification will continue until those three conditions are met.

[5] The requester, now the appellant, appealed the county's decision to decline to process the request without further clarification to the Office of the Information and Privacy Commissioner of Ontario (the IPC).

[6] The mediator communicated with the appellant and the county to discuss the appeal.

[7] The county explained that the appellant has not provided sufficient detail for it to locate or identify the requested records. Specifically, the county said it is unable to conduct a search for records without a defined time frame and names of staff members.

[8] The mediator sought clarification from the appellant who confirmed he does not wish to limit the time range of the request or restrict the search to specific staff members.

[9] The mediator conveyed this information to the county. The county maintained its position that it cannot conduct a search until the appellant clarifies the request.

[10] As no further mediation was possible, the file was transferred to the adjudication stage of the appeals process in which an adjudicator may conduct an inquiry under the *Act*. As the adjudicator assigned to the appeal, I decided to conduct an inquiry and sought the parties' representations. Representations were received and shared in accordance with the IPC's Code of Procedure.

[11] In this order, I find that the request is clear and order the county to conduct a search and issue an access decision.

DISCUSSION:

[12] The sole issue in this appeal is whether the appellant's request provided sufficient detail to enable the county to identify responsive records under section 17 of the *Act*.

[13] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

(1) A person seeking access to a record shall,

(a) make a request in writing to the institution that the person believes has custody or control of the record, and specify that the request is being made under this Act;

(b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;

(2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[14] To be considered responsive to the request, records must "reasonably relate" to the request.¹ Institutions should interpret requests liberally, in order to best serve the purpose and spirit of the *Act*. Generally, if there is ambiguity in the request, this should be resolved in the requester's favour.²

Representations

[15] In its representations, the county submits that without further clarification and narrowing of the request, it would be extremely difficult for it to conduct an appropriate search or identify responsive records. The county explains that the records could be in a number of locations within its numerous departments and records storage systems.

[16] The county also refers to IPC precedents concerning councillor to councillor correspondence that are found not to be in an institution's custody or control. It submits that clarifying the request to identify which types of council records are being

¹ Orders P-880 and PO-2661.

² Orders P-134 and P-880.

sought would assist in determining whether the records are accessible under the *Act*.

[17] The county also explains that without clarification of the request, there could be extensive search time to locate responsive records as there may be decades worth of records as the county was established in 2001, and prior to that was a number of different municipal districts. The county submits that throughout the years there have been dozens of council members and staff who may have had records that contain search criteria that might include some component of this request. The county submits that without narrowing the scope of the request, a search of this magnitude could result in hundreds of records; some which may not have anything to do with the intent of the request which would be an undue hardship on the municipality to expend resources to complete a search. The county submits that narrowing the scope would help ensure the resources used for the search were for the pertinent records and assist staff in determining where the applicable records may be stored as it has numerous physical and digital storage areas.

[18] The appellant submits that the request for records pertaining to his client and their property was reasonable. He submits that he has submitted similar requests to other municipalities, across Ontario, without incident.

[19] The appellant explains that the county has charged his client with contravening its zoning by-law and therefore he wants to find records, in the county's possession, which would help provide some background and/or context in relation to the relevant issues for the prosecution and potentially assist in defending his client in court. The appellant notes that he is not looking for a specific record, but records in relation to his client and their property.

[20] The appellant states that in its initial correspondence, the county essentially indicated that they were just too busy; and that unless the request was significantly narrowed, it would not conduct an initial search. The appellant submits that this is contrary to the *Act*. The appellant submits that the county has provided no evidence to support its new claim, made in its representations, that even conducting a search would somehow constitute "undue hardship."

Analysis and finding

[21] In its representations, the county provided submissions concerning council records requested in parts 7 and 8 of the request. It suggests the possibility that these records are outside the county's custody or control unless the record relates to a specific county matter. The county also submits that some of the records may be subject to the law enforcement exemption and/or the solicitor-client privilege exemption at sections 8 and 12 of the *Act* respectively. In my view, the county is required to conduct a search and examine the records and responses provided in order to determine if any potentially responsive records are outside of its custody or control or subject to an exemption under the *Act*; therefore, its submissions in this regard are

premature. The county attached a number of IPC decision to support the position that the records may not be in its custody or control (Orders M-813, MO-3607 and MO-4075). However, I note that in each of these orders, the institution involved completed a search and issued an access decision, in some cases disclosing some records, with custody or control of certain records remaining as an issue to be decided. In my view, these orders are not helpful in supporting the county's position that a search for records is not required without further clarification.

[22] The county submits that it needs better clarification and a narrowed scope in relation to the request so it can efficiently process it. In my view, the request is clear and the county had the necessary information to initiate a search for responsive records without obtaining clarification from the appellant. In the request (set out above,) the appellant is seeking access to information relating to two named individuals, a numbered company and/or a specified address. As part of the request, the appellant specifies ten categories that the records may include. In my view, the request is sufficiently detailed for the county staff to conduct a search.

[23] The county sought clarification by attempting to have the appellant narrow the request by indicating a timeframe and asking for specific staff names/positions with respect to parts 7 and 8 of the request. The county focuses on the difficulty it would have in processing the access request if it was not narrowed to include far fewer records than initially sought. However, I note that the county does not suggest that the request needs to be clarified because it does not understand what is being requested.

[24] As set out in section 17(1), upon receipt of the request, the head must first be satisfied that the request is sufficiently clear. I find the appellant's request to be sufficiently clear and detailed as to what the appellant is seeking. I find that the county was in a position to either search for responsive records and issue an access decision or provide the appellant with an interim access decision.

[25] I remind the county of the fee and time extensions provisions of the *Act* and Regulation 823 which provides institutions with tools to respond to requests.³ This includes the ability of an institution to provide a fee estimate to the appellant based on either a representative sample of records or consultation with an experienced staff member who would be familiar with the records.

ORDER:

The county is ordered to issue an access decision in accordance with sections 19 to 21 of the *Act* treating the date of this order as the date of the request for administrative purposes only.

³ Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

Original signed by: _____

Alec Fadel
Adjudicator

June 23, 2023 _____