

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4445

Appeal MA21-00333

Corporation of the Municipality of Temagami

September 26, 2023

Summary: The municipality received a request under the *Act* for an investigator's report resulting from an allegation of harassment made against the requester by an employee of the municipality. The municipality issued a decision that no responsive records exist relating to the request. The requester appealed the municipality's decision on the basis that responsive records should exist. In this order, the adjudicator finds that the municipality provided sufficient evidence to show that a complaint was not made against the requester and the municipality's search was reasonable. He dismisses the appeal.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, RSO, 1990, c. M.56, section 17.

OVERVIEW:

[1] The Municipality of Temagami (the municipality) received a request for the following:

Please provide me with the Investigator's Report, commissioned by the Municipality, looking into the allegation of harassment made by [named individual] against me, [appellant's name].

[2] The municipality issued a decision stating that there were no records related to this request.

[3] The requester, now the appellant, appealed the municipality's decision to the Office of the Information and Privacy Commissioner of Ontario (the IPC).

[4] During mediation, the appellant indicated her belief that the responsive records exist within the municipality's custody or control. The municipality conducted a second search but did not locate any records. The municipality also explained to the appellant why no records exist relating to the specified harassment allegation in the appellant's request. The appellant continued to assert that responsive records should exist.

[5] As mediation did not resolve the appeal, the file was moved to the adjudication stage of the appeals process where an adjudicator may conduct an inquiry. Representations were sought and received from the municipality and the appellant.

[6] In this order, I find that the municipality's search was reasonable and dismiss the appeal.

DISCUSSION:

[7] 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*.¹ 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.

[8] 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.²

[9] 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

[10] 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

¹ Orders P-85, P-221 and PO-1954-I.

² Order MO-2246.

³ Orders P-624 and PO-2559.

⁴ Order PO-2554.

⁵ Orders M-909, PO-2469 and PO-2592.

⁶ Order MO-2185.

[11] The sole issue in this appeal is whether the municipality's search for responsive records was reasonable. The municipality did not locate any responsive records in its search and in its representations asserts that no complaint was made against the appellant and therefore no investigation report exists relating to same.

[12] The municipality also explained that the employee named in the request indicated that he did not recall making a complaint about the appellant.

[13] The appellant provided a copy of two letters she had received from the municipality's legal counsel which supported her submission that a complaint had been made against her by the specified employee.

[14] The appellant's representations, including the two letters, were provided to the municipality for response. The municipality provided reply representations that attempted to address this and another related appeal involving another appellant. However, the municipality did not address the matter of the letters from counsel that set out that a complaint was made about the appellant.

[15] Since the municipality did not address a main issue resulting from the appellant's representations, I invited further representations from it in the form of an affidavit that would adequately address the appellant's evidence.

[16] Ultimately, the municipality provided an affidavit where the affiant affirmed that notwithstanding the letters from counsel referenced by the appellant, the specified employee did not file a workplace harassment complaint against the appellant.

[17] The affidavit provided by the municipality was sent to the appellant who questions why the affidavit was sworn by a lawyer who was not involved with the original situation when the "main players" are still in their positions. The appellant submits that it appears that the named employee has changed his story as he now apparently claims that he did not file a harassment complaint against her. The appellant submits that the affidavit does not address why the municipality's legal counsel sent her the initial correspondence referencing that a complaint was made about her by the specified employee.

Finding

[18] I find that the municipality's search was reasonable given its confirmation that there was no complaint made by the named employee. As a result, no investigative report concerning a complaint made about the appellant exists. Despite the letters the appellant provided which suggest that a workplace complaint was made about the appellant, after investigating the matter further, the municipality provided an affidavit setting out that the named employee did not file a workplace complaint against the appellant.

[19] Despite the appellant's submission that the affidavit should have been sworn by

a lawyer initially involved with the situation, I find that the affidavit provided contains sufficient evidence for a finding that no complaint against the appellant was made. The affiant references the letters provided by the appellant that suggest that a workplace harassment complaint was made against her and affirms that after a file review no harassment complaint was made against the appellant by the specified employee.

[20] The *Act* does not require the municipality to prove with certainty that further records do not exist. However, it must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;⁷ that is, records that are “reasonably related” to the request.⁸ Given the evidence provided by the municipality, I find that it has provided sufficient evidence to show that the requested investigative report does not exist. I accept the municipality’s explanation that a harassment complaint was not made against the appellant and therefore, no investigation would have occurred. Accordingly, I find that the search was reasonable and dismiss the appeal.

ORDER:

I find the municipality’s search is reasonable and dismiss the appeal.

Original Signed by: _____
Alec Fadel
Adjudicator

September 26, 2023 _____

⁷ Orders P-624 and PO-2559.

⁸ Order PO-2554.