

Information and Privacy Commissioner,
Ontario, Canada



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

FINAL ORDER MO-4457-F

Appeal MA21-00323

Township of Severn

November 3, 2023

Summary: This final order resolves the outstanding search issue from Interim Order MO - 4430-I. Following the interim order, the Township of Severn (the township) conducted a further search for videos and photos and provided an affidavit in support of its search. In this order, the adjudicator finds that the township has now provided sufficient evidence to establish that its search efforts were reasonable, 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: Orders MO-4275 and MO-4430-I.

OVERVIEW:

[1] This final order disposes of the remaining issue from Interim Order MO-4430-I – whether the Township of Severn (the township) conducted a reasonable search for videos and photos responsive to the appellant’s request as required by section 17 of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] The appellant’s request was for the complete file relating to the complaint and investigation of a sauna at a specified property.

[3] The township identified responsive records and decided to grant the appellant partial access to these records, including nine photos.

[4] In Interim Order MO-4430-I, I ordered the township to conduct a further search for videos and photos. In provision 5 of the interim order, I ordered the township to provide me with an affidavit sworn by the individual who conducted the further search for videos and photos. In provision 6 of the interim order, in the event that additional records were located, I ordered the township to provide a decision letter to the appellant regarding access to those records.

[5] The township conducted a further search and located a video and two photos taken on December 2, 2020 and issued an access decision with respect to them to the appellant.

[6] The township provided me with an affidavit relating to the further search, which I shared with the appellant in accordance with the IPC's *Code of Procedure and Practice Direction Number 7*. The appellant provided representations in response.

[7] In this final order, I find that the township has now conducted a reasonable search and dismiss the appeal.

DISCUSSION:

[8] The only issue left to decide in this appeal is whether the township has now conducted a reasonable search for videos and photos responsive to the appellant's request.

[9] In Interim Order MO-4430-I, I found that the township conducted a reasonable search, in part, for responsive records. Specifically, I found that the township had not conducted a reasonable search for the video(s) and photos purportedly taken on December 2, 2020.

[10] After Interim Order MO-4430-I was issued, the township conducted a further search for the video(s) and photos in question. It located a video and two photos taken on December 2, 2020. The township issued an access decision to the appellant granting full access to these records.

[11] The township provided the IPC and the appellant with affidavit evidence detailing its further search.

Analysis and findings

[12] I have reviewed the township's affidavit, and am now satisfied that the township has provided sufficient evidence that it conducted a reasonable search for the videos and photos in question.

[13] Having reviewed the appellant's representations in response to the township's affidavit evidence, the appellant asserts that the township did not conduct a reasonable

search for a number of reasons. First, the appellant argues that other staff members are missing from the search, such as the Planning staff (specifically a named individual) and Building staff. Second, she argues that the former law enforcement officer likely emailed the videos and photos not only to the individuals listed in paragraph 1 of the affidavit and the affiant but also to the entire township staff. Third, the appellant argues that the township should contact the former law enforcement officer and the former chief building officer to question them about the missing videos and photos. Finally, she argues that the township did not ask its IT staff to assist in searching for electronic or deleted records.

[14] On my review of the affidavit, I find that the township asked its Planning staff and Building staff for responsive records. The affidavit states that the former chief building officer and the director of planning and development were asked to search for responsive records. Although the township did not ask the named Planning staff to search for responsive records, it is only required to have an experienced employee knowledgeable in the subject matter of the request to conduct the search. In my view, the *Act* does not require that *all* employees by the institution conduct a search for responsive records.

[15] The appellant's argument that the former law enforcement officer likely emailed the videos and photos not only to the individuals listed in paragraph 1 of the affidavit and the affiant but also to the entire township staff is speculative. I acknowledge that the warrant executed on the appellant's sauna was the first time the township had executed a warrant. However, there is no evidence that the former law enforcement officer emailed it to the entire township staff.

[16] The appellant also argues that the township should contact the former law enforcement officer and the former chief building officer to question them about the purportedly missing videos and photos. More specifically, she requests that the township disclose the last day of employment for both these former employees. She argues that if the township is relying on their departure to explain the missing records then it needs to disclose their departure date.

[17] I note that by the time the township submitted its representations in June 2022, the chief building officer at the time of the execution of the warrant had retired as he is referred to as the former chief building officer in those representations. It is unclear when the law enforcement (who executed the warrant) was no longer employed at the township. In any event, the *Act* does not require the township to question its former employees about purportedly missing records.¹ As stated in Interim Order MO-4430-I, the *Act* does not require the township to prove with *certainty* that further videos and/or photos do not exist in its record holdings. The township is simply required to provide

¹ See MO-4275, where the adjudicator found it reasonable that the Chief Administrative Officer conducted inquiries of his own since the town employee who initially conducted the search was no longer employed by the town.

enough evidence to show that it has made a reasonable effort to identify and locate responsive records, in this case the video and photos in question.² I find that they have done so, for the reasons set out above.

[18] Finally, the appellant argues that the township should have asked its IT staff to assist in searching for electronic or deleted records. From my review of the affidavit, the affiant searched the S:\\drive and the office records vault during the further search. Although the township could have asked its IT staff for assistance in searching for electronic records, there is no evidence that the affiant was not capable of doing it herself.

[19] Given the township's affidavit detailing its additional search and the fact that a video and two photos were located, I find that the township has now conducted a reasonable search.

ORDER:

I uphold the reasonableness of the township's search, and dismiss the appeal.

Original signed by: _____
Lan An
Adjudicator

_____ November 3, 2023

² Orders P-624 and PO-2559.