



**Information and Privacy
Commissioner/Ontario**
**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-577

Appeal M_9500151

Township of Osnabruck



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act).

On June 30, 1994, the Township of Osnabruck (the Township) received the following request:

Would you please provide me with the current, and official status of the Commercial Hunting Operations in the Township of Osnabruck, i.e.

- (i) Are Commercial Hunting Operations, located in our Township, a permitted Land Use as per the Township of Osnabruck Zoning By-Law #79-44?
- (ii) Are 'Site Specific Rezoning' procedures available to would_be, and existing Commercial Hunting businesses?

The Township issued a decision letter and provided the requester with a copy of Zoning By-Law #79-44. The Township also stated in the letter that "if an amendment is deemed necessary, 'Site Specific Rezoning' procedures are available to any land owner or business located within the municipality." The requester wrote to the official who signed the Township's decision letter contending that the Township did not respond adequately to his access request, but took no further action at that time.

Subsequently, he filed another access request, which is identical in wording to the request of June 30, 1994, with the Township. In response to the second request, a lawyer retained by the Township wrote to the requester indicating that the Township has been advised that commercial hunting operations "are not a land use, and therefore could not be controlled by the zoning by_law."

Following further correspondence between the requester and the Township's lawyer in which the lawyer indicated that answers to the requester's question could be determined in the zoning by-law itself, the requester filed an appeal of the Township's decision.

During mediation, the Township issued a revised decision letter in which it provided an updated summary list of amendments to Zoning By-Law #79-44. The letter indicated further that, with respect to part one of the request, no records exist pertaining to the requested information on whether commercial hunting operations are a permitted land use other than those which had already been provided to the appellant.

With respect to the second part of the request for site specific rezoning procedures, the Township stated in its revised letter that it has not formally adopted a set of written procedures and that if rezoning is "deemed to be necessary, the zoning amendment process is available to any municipal landowner."

The appellant asserts that responsive records exist which contain information relating to whether commercial hunting operations are a permitted land use. In particular, he referred to the Township lawyer's letter referred to above, and claimed that the lawyer must have provided the legal advice to the Township in writing.

A Notice of Inquiry was provided to the Township and the appellant. Representations were received from both parties. Along with his representations, the appellant has attached extensive background information pertaining to the issues surrounding commercial hunting operations in the Township, some of which originate from the Township.

DISCUSSION:

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records which he or she is seeking and the Township indicates that such a record does not exist, it is my responsibility to ensure that the Township has made a reasonable search to identify any records which are responsive to the request. The Act does not require the Township to prove with absolute certainty that the requested record does not exist. However, in my view, in order to properly discharge its obligations under the Act, the Township must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records responsive to the request.

The Township's representations consist of an affidavit sworn by the Clerk-Treasurer of the Township. She details the searches conducted of the following: Council minutes, Planning Advisory Committee minutes, property files, Zoning By-Law, Official Plan, By-Law #94-04 (re: fees) and records management for Planning and Development (re: commercial hunting). In addition, she indicates that the Township's lawyer appeared before Council at a special meeting to give an opinion that hunting, commercial or otherwise, is not set out in the Township's Zoning By-Law as a land use. She states further that, to her knowledge, no records have been destroyed.

As I indicated above, the appellant submitted a number of documents which pertain to the issue of commercial hunting in the Township. They provide some background to the issue and document the Township's involvement in discussions concerning it. They do not, however, assist me in determining that more records should exist.

In correspondence submitted by the appellant throughout this appeal, it appears that he is essentially seeking an opinion from the Township regarding its interpretation of the Zoning By-Law. However, as noted above, my responsibility in deciding this case is to determine whether the Township has conducted a reasonable search for responsive records. The Township is under no obligation to create records, nor to conduct legal research to provide an interpretation on this point for the appellant.

I have reviewed the representations submitted by the parties, the documentation submitted by the appellant and the records which have been provided to the appellant by the Township. In my view, the Township has provided the appellant with records which are responsive to the request

as worded. Furthermore, I am satisfied that the Township has taken all reasonable steps to locate the records responsive to the appellant's request.

ORDER:

I uphold the Township's decision.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ July 28, 1995