



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

# **ORDER MO-1733**

**Appeal MA-030228-1**

**Town of Georgina**



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## **NATURE OF THE APPEAL:**

The Town of Georgina (the Town) received a request under the *Municipal Freedom of Information and Protection of Privacy Act (the Act)* for access to the following documents relating to the requesters' property.

Building Permits #'s. 83-237 and 850554.

- Copy of drawings – approvals
- Contractor information
- Copy of all inspections
- Copy of final inspections
- Copy of plumbing inspections (contractor info too)

Copy of deeming by law 78-80 (passed 1978-05-08).  
Copy of zoning by law 911-93-649.

Copies of building-code act 1983 and 1985 and regulations.

In its decision, the Town advised the requesters that information regarding Building Plan Permits #830237 and #850554 was denied in accordance with section 22(1)(a) of the *Act* as no such records exist. The Town stated that the Chief Building Official has advised that the Town is no longer in possession of these records.

The Town also explained that a portion of the request is granted and that the personal information was being exempt under section 14(1) of the *Act*. It also provided the requesters with a copy of the By-laws 78-80 and 911-93-649.

The Town suggested that an updated copy of the *Building Code Act* could be purchased at the Government Book Store in Toronto. The Town further advised that copies of the 1983 and 1985 *Building Code Act* could be obtained by contacting the Provincial Government and also suggested that the requesters might find assistance in this matter by contacting their MPP.

The requesters (now the appellants) appealed the Town's decision stating that they believe that building permits #830237 and #850554 exist on a card system, as well as a 1980 survey and a 1994 survey. They also stated that additional records related to their property should exist and that they should be granted access to them.

Upon appeal, the Town clarified that section 14(1) had been claimed in error, as the by-laws did not contain any personal information.

I provided the appellant and the Town with a Notice of Inquiry informing them that a mediator was assigned to the file and if the appeal was not resolved by mediation, an oral inquiry would be held to determine whether the Town has conducted a reasonable search for records responsive to the request.

During mediation the Town explained that with the exception of one individual file card for each permit, all building permit records for residential buildings less than three-storeys, for the years 1983 to 1985, which included the records relating to Permits #830237 and #850554, were destroyed in accordance with the Town's Records Retention By-law. In support of its position, the Town provided the appellants and this office with sworn affidavits from the Deputy Clerk and the Building Inspector for the Town.

During mediation, the Town also conducted additional searches in the roll file in the building department and located two building permit cards in respect of the two permits, which indicate the legal description of the property, the property roll number, what the permit was issued for and the name of the contractor. The Town also found two surveys dated 1980 and 1994, two sworn affidavits dated May 30, 1994 from the previous owners of the property and a property information report dated May 30, 1994. The Town disclosed these records to the appellants.

The issues were not resolved through mediation and the appeal proceeded to the oral hearing.

I conducted the inquiry via teleconference. Both the appellants were present. The Town was represented by its Deputy Clerk who is also the FOI Co-ordinator, the Chief Building Official, the Building Clerk who searched for the records, and the Building Inspector. During the inquiry and at the request of the appellants, the Zoning Examiner who signed the property information report dated May 30, 1994 was present for part of the proceedings.

## **DISCUSSION:**

### **REASONABLENESS OF SEARCH**

Where a requester provides sufficient detail about the records he is seeking and the institution indicates that records do not exist, it is my responsibility to ensure that the institution has made a reasonable search to identify all records that are responsive to the request. The *Act* does not require the institutions to prove with absolute certainty that further records do not exist. However, in order to properly discharge its obligations under the *Act*, the institution must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate all responsive records.

A reasonable search is one in which an experienced employee expends a reasonable effort to locate records that are reasonably related to the request.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records may, in fact, exist.

## **THE REPRESENTATIONS**

### **The Appellants**

The appellants stated their belief that building permits #830237 and #850554 as well as other additional records relating to the appellant's property should exist.

The appellants pointed out that the property information report dated May 30, 1994, which was located by the Town during mediation, is an update to a previous report. The appellants believe therefore that the original report upon which the update was based should exist. The property information report confirms certain information about the property including that there were no work orders outstanding as at that date. The appellants questioned how a property information report could be issued when the building permits containing all the pertinent information were destroyed. In this regard, the appellants refer to the Building Inspector's initial on the report as a sign-off that no outstanding work orders existed on the property. The appellants argue that the Building Inspector must have relied on the permit records in order to be able to conclude that there were no outstanding work orders. Essentially, the appellants' position is that additional records must exist as the basis for the updated property information report.

The appellants also stated that the location of the property falls within the jurisdiction of a specific conservation authority and that the approval of the conservation authority is required before a building permit can be issued. The appellants stated that since a building permit was issued, it was reasonable to conclude that the conservation authority's approval was obtained and therefore, such a record would exist.

The appellants questioned the Town's search for records and stated that it should have contacted the conservation authority as part of its search for responsive records. The appellants believe that the Town should be able to access the conservation authority's records.

The appellants also questioned where the Town's records were located at the time that they were destroyed and what lead to the passage of the amended by-law, which required the destruction of these records.

### **The Town**

The Town provided the following representations in support of its position that it conducted a reasonable search for responsive records.

The Town explained that its first records retention by-law was passed in 1986 (By-law No. 86-72.) The Town stated that this by-law did not have a retention period for building division records. Consequently, the by-law was amended by By-law No. 88-018, which provides that the retention period for residential buildings less than three-storeys high is five years. The Town stated that starting in 1988, all building division files for residential properties under three-storeys were destroyed in accordance with the amended by-law.

The Town referred to the affidavits dated July 22, 2003 sworn by the Deputy Clerk and the Building Inspector, copies of which were provided to the appellants and this office. In the affidavits, the Deputy Clerk and the Building Inspector state that, except for one individual file card for each permit, all building permit records for residential buildings less than three storeys, including those related to permit #830237 and #850554, were destroyed in their entirety for the years 1983 to 1985 inclusive. This was in accordance with the Town's Records Retention By-law 86-72 k (AD-4), as amended, which states that the retention schedule for buildings less than three storeys is five years.

The Building Inspector in his sworn affidavit stated that he physically assisted with the removal of the files from the municipal building and the loading of the files into the shredding machine. The Deputy Clerk stated that she witnessed the removal of these files from the municipal building and the loading of the files into the shredding machine. Both stated that the building permit records for residential buildings less than three storeys from 1983 to 1985 were not transferred onto microfiche or converted to any other permanent record type prior to their destruction.

In regards to the original property information report, the Town confirmed that its searches have not located the report. The Town stated that it may have been destroyed, and the update was retained because it was believed to be more accurate. The Town pointed out that there are no retention schedules for property information reports.

The Town stated that the roll file, which is maintained in the building department, is the only complete file on the property and would contain surveys, property information reports or work orders if any were issued. The Town explained that a work order is issued if there are issues of non-compliance, an order to stop a work order, an order regarding unsafe conditions, or emergency. If an order was issued against a property, it would be retained in the roll file until the work has been completed. If there has been no work done on a property there would be no work order in the roll file. Most properties do not have orders if they had a permit from the start.

In response to the appellants' question regarding the basis upon which the Chief Building Officer was able to sign off on the property information report, the Town explained that at the time the property information report was issued, i.e. May 30, 1994, the roll file did not have any outstanding work orders, and that is what the property information report reflected.

The Town also explained that it is not responsible for obtaining approval from the conservation authority. The Town stated that the conservation authority is a separate entity with its own record retention period and that the Town and the conservation authority have different and separate jurisdictions and mandates. The Town explained that where a property falls within a conservation authority area, it is the responsibility of the builder or purchaser to take the building plans to the conservation authority for review and to obtain its approval. The conservation authority would then provide its approval in writing to the Town. If such an approval had been applied for and received it would have been placed in the building permit file. As mentioned previously, the building permit files were shredded in accordance with the Town's records retention by-law.

The Town pointed out that on page 2 of the May 30, 1994 property information report it was specifically recommended that, where the property was located within the Fill and Conservation Limits, the applicant or purchaser contacts the conservation authority directly. The Town had no jurisdiction to search for any records that may be in the custody of the conservation authority. The Town stated that it does not forward building permits or any other information to the conservation area.

The Town advised that the following steps were taken in their search to locate the records:

- when the request was received the building division was contacted to search for permit files #830237 and #850554. The building division did a search and responded that the permits were not there.
- the building clerk, who is an experienced employee familiar with the nature of the records at issue, stated that on numerous occasions she searched the computers, and went to the Master Inquiry to see if she could locate additional records. There was an entry for a permit for a woodstove in 2001, but no information about permit files #830237 and #850554. The building clerk stated that she checked the roll file and there was nothing in them regarding the two permits. The building clerk also stated that the roll file contained two surveys dated 1980 and 1994, two affidavits dated May 30, 1994 and a property information report dated May 30, 1994. She then checked the cardex file and found the two card files for the permits. The records from the roll file and the two cards were disclosed to the appellants. The building clerk also stated that she checked the plumbing records for the hook up to the water sewer, and found no records. She and other employees went down to the basement several times to search basement records where records are kept in preparation for shredding and found no responsive records.

The Town invited the appellants to attend at its office to view the roll file, if they wished.

## **FINDINGS**

I have carefully considered all the presentations submitted by both parties. As I indicated previously, my responsibility is to ensure that the institution has conducted a reasonable search to identify all responsive records. The *Act* does not require the institution to prove with absolute certainty that records do not exist. The issue for the purposes of this appeal is whether the Town has conducted a reasonable search for the records.

Based on the affidavits and the representations submitted by the Town, I am satisfied that the building permit records relating to the appellant's property were destroyed by the Town in accordance with its retention by-law. I am also satisfied that the searches for other responsive records undertaken by the Town were conducted by experienced, knowledgeable individuals and that all reasonable steps have been taken to respond to the appellants' request.

I empathize with the appellants' frustrations in not being able to obtain records that they believe would be important for them to have. However, I am satisfied that the searches undertaken by the Town for responsive records were adequate and reasonable in the circumstances.

**ORDER:**

I dismiss the appeal.

Original signed by: \_\_\_\_\_  
Frances Soloway  
Acting Adjudicator

\_\_\_\_\_ December 24, 2003