



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER MO-2161

Appeal MA-050215-1

Township of Georgian Bay



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NATURE OF THE APPEAL:

The Corporation of the Township of Georgian Bay (the Township) received a request from a local association under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), for information relating to a newly constructed Township administration building. In a formal Freedom of Information request, the requester, the representative and President of the association, sought responses to the following fourteen questions posed in a prior letter to which the requester had not yet received a written response from the Township:

1. Are minutes maintained for closed sessions of Council? If yes, are these minutes provided to the auditors for their certification as to compliance?
2. In a more general sense, does the engagement of the Township auditors include a compliance audit to monitor adherence to proper procedures, resolutions and bylaws of the Township, and the Municipal Act, 2001?
3. At the Sep 05, 2004 meeting of Council, the Mayor is quoted as saying that "...Mayor Kennedy indicated that stipulations under in (sic) Municipal Act, 2001, [S 239 (2)] with respect to meetings closed to the public would allow council to go into closed session on this matter, however, Council supports open communication with the public." In fact, Council went into closed session over this matter on Oct 06, 2003, and Feb 02, Apr 05, May 17, Jun 07 and Nov 26, 2004. In addition, on at least one other occasion, Sep 27, 2004, statements indicate decisions having been made which are not recorded in Council minutes; therefore, decisions could only have been made outside of open Council meetings. Can you please advise what clause in the Municipal Act, 2001 and/or the Township Procedure By-Law you are relying on that would permit discussion of a proposed capital project in closed session?
4. At the Oct 14, 2004 meeting of Council, CAO-Clerk Report 14-04, on the subject of Budget Review, was discussed. Although there are several errors in the spread sheet accompanying the report, there are listings of payments totaling \$132,643.11. This sheet is titled "Assessments of Administration Building." A review of the approved 2004 budget did not identify a budget provision for these expenses. Similarly, a review of minutes of Council did not reveal authorizations for this expenditure. Please advise of the date and resolution number authorizing these expenditures.
5. Please advise if the services of [a named individual] and of [6 named companies] were retained by the Township directly or by [another named company].
6. The services of [the other named company] are itemized in the above report as:

- a. Work from Oct 6 to Feb 20 \$15,861.04
- b. Work from Feb 20 - May 14 \$31,810.25
- c. Work from May 16 - July 16 \$15,632.12

Please advise if these services were obtained through a tender process in accordance with the Township Purchasing Policy and when and by what means these tenders were approved.

- 7. The same CAO-Clerk's Report 14-04 detailed expenditures of \$83,978.19 on a spread sheet titled "Summary Temporary Relocation Costs." Please advise of the date and resolution number(s) authorizing these expenditures? Please advise if these services were obtained through a tender process in accordance with the Township Purchasing Policy and when and by what means these tenders were approved.
- 8. In Committee of the Whole-Budget Minutes of Mar 16, 2004 it is stated "Although no decision can be made at present on proceeding with a new municipal office, because the Architect is not coming to a meeting until April to present the Preliminary design and Construction Budget for it, the Treasurer was directed to add \$150,000.00 to the 2004 budget for principal and interest payments." In the approved 2004 budget, account 61329100, titled "Debenture Repayment," shows this \$150,000.00 allocation. It is also included in By-Law 2004-23 being a by-law to adopt the estimates for all the sums required during the year 2004 for the purposes of the Municipality of the Township of Georgian Bay. Please advise why estimates for debenture repayment would be included in the 2004 budget when neither a debenture by-law nor a capital project was approved. Please further advise of the justification for amending budget items for debt repayment for an, as yet, unapproved capital project to a line item for consultant's fees without notice to the public as apparently required under the Municipal Act 2001, section 291.
- 9. In the minutes of the meeting of Committee of the Whole of Council-Budget dated Feb 03, 2004 there is a resolution recommending transfer of \$274,000 of surplus consolidated revenue for fiscal year 2003 to reserves back dated to Dec 31, 2003. The line item budget for fiscal year 2004 shows a 2003 budget for reserve transfer of \$130,000 versus an actual 2003 transfer of \$500,450. This creates an appearance of closer correlation of expenditure to budget figures in 2003 and actually portrays expenditures in excess of budget of \$68,841. "This action appears pre-planned as evidenced in the minutes of Committee of the Whole of April 10, 2003 where it was stated "A question was raised on whether or not additional reserves should be added to the

budget. Since the reserves were drastically improved in 2002, and since it was felt that additional efficiencies might be found in 2003, which Council could then transfer at year end to reserves, it was decided to proceed with the budget as presented." Please advise on what dates, for what purposes and the resolution numbers which established the reserve accounts and the dollar targets for each respective account.

10. Further to paragraph 9 and as noted above, the line budget for fiscal year 2004 shows a 2003 budget for reserve transfer of \$130,000. The recommendation at Committee of the Whole of Council - Budget dated Feb 03, 2004, and subsequently approved by Council on Feb 26, 04, authorized the retroactive transfer of \$274,000 of surplus revenue. This would total a 2003 transfer of \$404,000. As noted above, the actual recorded transfer is \$500,450. Please provide the date and resolution number(s) for the transfer of this additional \$96,450.
11. The Consolidated Financial Report dated Dec 31, 2003 lists "Reserves set aside for specific purpose by Council" as:
 - a. Working Capital
 - b. Acquisition of Capital Assets
 - c. Capital Projects
 - d. Pit Rehabilitation
 - e. Elections
 - f. Streetlights
 - g. Pay Equity
 - h. Library
 - i. Other

The resolution discussed at paragraph 9 above approved transfers to:

- a. Account 30-00-3018 - Reserve - Zoning By-law
- b. Account 30-00-3016 - Reserve - Protective Inspections
- c. Account 30-00-3014 - Reserve - Fire
- d. Account 30-00-3003 - Reserve - Capital Projects
- c. Account 30-00-3002-Reserve - Public Works Equipment
- f. Account (unknown) - Reserve - Building Fund

Please advise on the lack of correlation between the two above lists.

12. At the special Meeting of Council on May 14, 2004, the Treasurer identified an annual repayment for necessary borrowing for this project at \$296,209 (11% increase on a 2003 net taxation of \$2,692,060) She further estimated the required payments necessitating a \$2.27 tax

increase per \$100,000 of current property assessment. Please provide the calculation for the Treasurer's estimate of increase to taxation.

13. At a Special Meeting of Council on Nov 26, 2004, a resolution was passed to engage the services of [an identified company] as Engineering Consultants. Please provide information on the budget provision for this undertaking and the date and resolution number approving expenditure for this undertaking.
14. Further to paragraph 13 above, it seems apparent that this engagement will significantly extend into the 2005 fiscal year. As this is a non-routine expenditure in support of a proposed capital project please provide the date and resolution number of pre-budget approval for expenditures in the 2005 fiscal year for this undertaking.

In the formal request letter, in addition asking for responses to the above noted points and/or questions, the requester also sought access to the following.

...

Item #2...There is no record I have notice to this letter in the agenda or minutes of Council meetings to confirm that this specific letter was brought forward for discussion at Council in accordance with the Township's procedural by-law (Sec. 6(h)). The minutes of Council dated February 14, 2005 (page 11, paragraph 3) noted that Council has directed staff not to respond to written correspondence

...Please provide the minutes of the meeting where this decision of Council occurred so the discussion at Council is clear. Further, please provide the resolution or by law to support this decision of Council.

Item #3...In addition, please include all previous correspondence submitted to the Mayor/Councillors and CAO from [a named association] as part of this request for a response under the Freedom of Information legislation.

In its decision letter, the Township advised as follows:

None of the 14 questions posed in the January 31, 2005 letter, is considered a request under the *Act*, as it does not pertain to a specific access for records.

In response to the information requested in the request letter, the Township indicated that all decisions of Council are contained in the minutes of open meetings which are posted on the Township's webpage. The Township denied access to those records, pursuant to section 15(a) (information published or available) of the *Act*.

The Township denied access to the resolution or by-law relating to the Council's decision with respect to responding to the request, as it does not exist. The Township further advised that it will not consider the numerous pieces of correspondence submitted under the April 1, 2005 letter, as they deal with several issues. The Township suggested that the requester submit a request form for access to each of the records that the requester is seeking.

The requester (now the appellant) appealed the Township's decision.

During mediation, the Township responded to each of the fourteen questions posed in the original letter, as follows:

1. No responsive records exist.
2. No responsive records exist. The Township has an agreement with the auditors for the auditing of the Township's financial operations, not to audit compliance to by-laws. However, this agreement and its related documentation are outside the scope of this request and the appellant should submit a new FOI request to obtain these records.
3. Section 239-2(c), in conjunction with section 1 (Definitions), of the *Municipal Act* gives the Township the authority to hold closed sessions to discuss acquisition or disposition of buildings (as defined under "land").
4. The responsive record is Resolution # C-379-2004 which is available on the Township webpage. Access is denied to this record pursuant to section 15(a) of the *Act*.
5. The consultants were all hired by RYA Associates.
6. There are no responsive records to this question. The Township did not enter into a tender process as it was RYA Associates' responsibility to manage this portion of the project.
7. The Resolution relating to these expenditures is # C-379-2004 and is part of the minutes of the October 14, 2004 Council meeting. The relocation services were not obtained through a formal tender process because the Township utilized the same office relocation company that the District of Muskoka had recently used. The District had obtained several quotes and was happy with the selected company's services and costs.
8. This is a clarification question, not an access request for records. The Township explained that since there was no change to the budget, no authorization was needed.

9. Access to the "Ministry of Municipal Affairs and Housing 2004 Financial Indicator Review" is denied pursuant to section 15(a) of the *Act*, as it is available on the Township and the Ministry of Municipal Affairs' webpages. The Ministry's recommendation to the Township was to continue increasing the reserve funds.
10. The date and resolution number is available in the Minutes of the Council's meetings; therefore, access is denied pursuant to section 15(a) of the *Act*.
11. This is a clarification question, not an access request for records. No records which would explain the lack of correlation, exist.
12. The 2004 calculations, which were publicly available at one point, have been destroyed by the Treasurer, as no longer relevant. No responsive records exist.
13. The "Summary of fees" is available in the Minutes of the November 26, 2004, meeting. Access is denied pursuant to section 15(a) of the *Act*.
14. The budget is stated in Resolution #C-418-2004. Access to this record is denied pursuant to section 15(a) of the *Act*.

Upon discussion with the mediator, the Township agreed to expand the scope of the request to include the agreement and its related documentation, in an effort to resolve this issue. The Township advised that, upon payment of \$10.70 related to the search and the photocopying fees, the following records would be released:

- a copy of the agreement with the auditors;
- a 6 page letter outlining the auditors' approaches to the audit;
- a letter outlining what the Township should make available for the audit process;
- a one-page "Management Letter" reporting the auditors' findings.

The appellant has agreed to pay the requested fees and confirmed that item # 2 of the request is no longer at appeal. The appellant also indicated that she is satisfied with the Township's responses to questions # 1, 5, 6 and the first part of 7. Therefore, these items are no longer at issue in this appeal.

Despite mediation efforts, the appellant has advised that she is not satisfied with the responses that the Township has provided with respect to questions # 3, 4, 8, 9, 10, 11, 13, 14. The Township takes the position that it does not have to provide the specific answers to all the questions posed in the request. Accordingly, I have added as a preliminary issue in this appeal, whether the Township has complied with its obligations under the *Act* in the manner in which it responded to the appellant's request.

With respect to the information sought by the requester that the Township has advised is currently publicly available and exempt from disclosure under section 15(a), the appellant states that she has reviewed the publicly available documents and cannot find the answers to the issues identified by its questions. Therefore, she takes the position that the information she has requested is not publicly available under section 15(a). Additionally, the appellant maintains that copies of the publicly available records that are responsive to questions # 4, 9, 10, 11, 13, 14 of the request letter should have been provided. Accordingly, whether the information is, in fact, publicly available under section 15(a) is at issue in this appeal.

Finally, the appellant takes the position that further records responsive to the last part of question # 7 and question # 12 should exist. Accordingly, whether the Township conducted a reasonable search is at issue in this appeal.

No further mediation was possible and the appeal was transferred to adjudication stage of the appeal process.

I decided to begin my inquiry into this appeal by sending a Notice of Inquiry to the Township initially. The Township provided representations in response. I then sent a copy of this Notice of Inquiry to the appellant, inviting representations. The appellant responded with representations.

DISCUSSION:

PRELIMINARY ISSUE: HAS THE TOWNSHIP COMPLIED WITH ITS OBLIGATIONS UNDER THE ACT?

Section 4(1)(a) of the *Act* states:

Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless,

the record or part of the record falls within one of the exemptions under sections 7 to 17.

Section 2(1) provides a definition of the word “record”. The definition reads, in part:

“record” means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise...

Representations

In the circumstances of this appeal, the appellant’s request consists of a series of 14 questions. The appellant has indicated that she is not satisfied with the responses provided by the Township with respect to questions #3, 4, 8, 9, 10, 11, 13, and 14.

The Township takes the position that under the *Act*, it is not obliged to provide the specific answers to the questions outlined in the request; rather it takes the position that it is only obliged to provide access to specific records sought by the appellant.

The Township submits that it is not obliged to respond to requests for information that are “within an individual’s knowledge” as that obligation under the *Act* extends only to information that is in a recorded form. The Township cites several prior orders that have addressed this issue. The Township submits:

...In Order M-33, former Commissioner Tom Wright stated:

I have previously examined the issue of the extent to which the *Act* covers information not recorded in any tangible form. In Order 196, I indicated that, in my view, the *Act* does not impose a specific duty on an institution to transcribe oral views, comments or discussions. Similarly, it is my view that the *Act* does not require an institution to produce information from an individual’s memory or knowledge.

With respect to the question of the extent to which an institution should respond to questions directed to it by a requester, former Commissioner Sidney B. Linden made the following statement in Order 99:

While it is generally correct that institutions are not obliged to “create” a record in response to a request, and a requester’s right under the *Act* is to information contained in a record existing at the time of his request, in my view the creation of a record in some circumstances is not only consistent with the spirit of the *Act* it also enhances one of the major purposes of the *Act* i.e, to provide a right of access to information under the control of the institutions.

In Order MO-1724, Adjudicator Frank DeVries agreed with the former Commissioners’ comments. He stated:

It is my view that there is no statutory obligation on the institution to respond to the request in any way different from the way it did. Although the response to the initial request could have specifically identified the willingness on the part of the institution to assist the appellant, I find that the actions of the institution in responding to the appellant’s request were reasonable and satisfactory in the circumstances.

Adjudicator DeVries went on to say that although ordinarily it would be preferable for an institution to assist a requester in identifying information to the extent possible, in the circumstances of that appeal, he found that the position taken by the institution in responding to the appellant's request was reasonable and satisfactory in the circumstances.

The Township submits that the circumstances in this appeal are identical to those addressed in Order MO-1724. The appellant asked the Township a series of 14 questions and then followed up with additional clarifying questions. Where it was possible to respond to the appellant with a pre-existing record this information was either provided to the appellant or the appellant was directed to the appropriate venue to locate the information, e.g. the Township's webpage. Where the information responding to the request is within the knowledge of an individual and no records exist, the Township is not obliged under the *Act* to create a record.

The appellant takes the position that the Township failed to comply with its obligations under the *Act*. She submits that the letter which forms the request was originally a letter intended to confirm whether documentation existed to counter preliminary conclusions contained in a report. This report had been prepared by the appellant organization examining the circumstances surrounding a capital project for a new or renovated administration building. She submits that the Township did not respond to the letter, although it was subsequently incorporated into a request for information under the *Act*. The appellant submits that the Township failed to seek clarification on what was being requested, failed to provide clear advice or assistance to locate the records that it claims exist in the public domain and that it has been reluctant to identify the records which provides answers to the questions. The appellant submits:

It is our position that the Township has relied on the language of the original letter in characterizing the issues raised as questions or requests for clarification i.e. at item 6, of the request "*Please advise if these services were obtained through a tender process in accordance with the Township purchasing policy and when and by what means these tenders were approved*" could be replaced by "*please provide the following*:"

- *copies of the Call for Tender Documents;*
- *copies of all advertisements for the Call to Tender; and*
- *minutes of tender opening meeting.*"

[emphasis in original]

If the Township had responded to the letter or expressed objections to the form of our letter in a timely fashion we would have restated our requests for information many months ago. At the current time we view the Township's position as simply one of delay. It is significant that no effort was made by the Township to seek any clarification to the requests for information contained in the correspondence. All of the [appellant] executive and the Committee Chair live

locally and were readily accessible should there be a Township interest in either clarification or follow-up.

The appellant also alleges that “the Township has represented in the minutes of Council meetings their intentions to restrict access to information”.

Analysis and finding

The Township takes the position that it is not obliged to respond to the request as it is framed because it is not a proper request under the *Act* in that it does not request specific records but poses questions and seeks clarifying information that is “within an individual’s knowledge”. While it is true that there is no statutory duty that obliges the Township to respond to questions, record information that is “within an individual’s knowledge”, or create a new record where one does not currently exist, I find that the Township was under a statutory obligation to respond to the request at issue in this appeal.

In Order M-493, Senior Adjudicator John Higgins addressed the argument that a request in the form of questions does not constitute a proper request under the *Act*, stating:

Even if I agreed with the Board that the request is, for the most part, in the form of questions, I would not agree that, on this basis, the request is not a proper one under the *Act*. The Board has not provided any authority to substantiate this argument. Moreover, it would be contrary to the spirit of the *Act* to exclude a request on such a technical basis.

In my view, when such a request is received, the Board is obliged to consider what records in its possession might, in whole or in part, contain information which would answer the questions asked. Under section [24] of the *Act*, if the request is not sufficiently particular “... to enable an experienced employee of the institution, upon a reasonable effort, to identify the record”, then the Board may have recourse to the clarification provisions of section [24(2)].”

I agree with Senior Adjudicator Higgins’ reasoning and adopt it for the purposes of this appeal.

It is true that, for the most part, the request at issue in the current appeal is written in the form of a request for clarification of certain occurrences or facts or a request for reasons as to why a particular course of action was taken. However, in my view, the fourteen points outlined in the request are sufficiently detailed to direct an experienced employee of the Township, upon a reasonable effort, to locate any records that might be responsive to the request. As Senior Adjudicator Higgins found in Order M-493, it would be contrary to the spirit of the *Act* for the Township to refuse to respond to the request on such a technical basis.

Although the Township did not respond to the appellant’s request within the statutorily prescribed timelines outlined in the *Act*, it did provide a response to the appellant’s fourteen

points during mediation. As a result, although the response was delayed and not in accordance with the timelines imposed by the *Act*, the Township has, albeit belatedly, fulfilled its obligations as it has responded to the request.

Therefore, I find that the request was submitted in a format which the Township is obliged to respond to it under the *Act*. I further find that it is not within my jurisdiction to impose any remedies, such as punitive damages, for the delay caused by the Township's initial inaction. Accordingly, I am satisfied that the Township's response to the appellant's request is in compliance with its obligations under the *Act*.

INFORMATION AVAILABLE TO THE PUBLIC

The Township takes the position that some of the information responsive to the appellant's request can be found in the minutes of certain Council meetings and resolutions from those meetings. The Township submits that these records are exempt from disclosure under section 15(a) as they are currently available to the public. The appellant does not agree and takes the position that the information she has requested is not publicly available under section 15(a) for a number of reasons.

Section 15(a) states:

A head may refuse to disclose a record if,

the record or if the information contained in the record has been
published or is currently available to the public.

This exemption is intended to provide an institution with the option of referring a requester to a publicly available source of information where the balance of convenience favours this method of alternative access; it is not intended to be used in order to avoid an institution's obligations under the *Act* [Orders P-1114, P-1316].

For this section to apply, the institution must establish that the record is available to the public generally, through a regularized system of access, such as a public library or a government publication centre [Orders P-327, P-1387].

To show that a "regularized system of access exists", the institution must demonstrate that:

- a system exists,
- the record is available to everyone, and
- there is a pricing structure that is applied to all who wish to obtain the information.

[Order P-1316]

Examples of the types of records and circumstances that have been found to qualify as “regularized system of access” include:

- unreported court decisions [Order P-159]
- statutes and regulations [Orders P-170, P-1387]
- property assessment rolls [Order P-1316]
- septic records [Order MO-1411]
- property sale data [Order PO-1655]
- police accident reconstruction records [Order MO-1573]

The exemption may apply despite the fact that the alternative source includes a fee system that is different from the fees structure under the *Act* [Orders P-159, PO-1655, MO-1411, MO-1573]. However, the cost of accessing a record outside the *Act* may be so prohibitive that it amounts to an effective denial of access, in which case the exemption would not apply [Order MO-1573].

Representations

The Township submits that it “posts certain information including budget, minutes and agendas on the Township webpage – www.township.georgianbay.on.ca” and that public documents are also “available on request at the Township office to view and/or for a fee of \$.50 per photocopied page or as listed in our User Fees By-Law 2002-319.

The Township submits:

The appellant was advised in writing in the decision letter of May 4, 2005, as follows: “If you have a specific resolution or by-law number and would like a certified copy of the original signed resolution or by-law, please provide clarification as to which resolution or by-law number you are requesting access to.” The former FOI Coordinator that dealt with the initial request and decision letter is no longer in the employ of the Municipality; therefore, I cannot comment further if the appellant was given additional options verbally.

Addressing whether the Township feels it has discharged its duty to inform the requester of the location of the publicly available information, the Township submits:

In the decision letter dated May 4/05, the appellant was advised that “many of the questions you have asked can be answered by reviewing minutes of meetings of Council and Committees, which are posted on our webpage.” Further, the appellant attends most Committee and Council meetings; therefore, is familiar with the deliberations at those meetings. Further the appellant is a frequent user of the Township webpage; therefore, is knowledgeable of the information contained on the webpage. As the appellant has submitted frequent FOI requests and is a frequent records user, it is my opinion that she is familiar and

knowledgeable on how to request and receive records from the Township whether through the FOI process, webpage, viewing it or by asking for a copy.

The appellant disputes the fact that the records that provide answers to her questions are publicly available.

First, the appellant submits that information posted on the Township website cannot be considered a resource for “everyone” for the following reasons:

- It was confirmed in several public meetings during the past 12 months that the majority of property owners do not own, have access to, or know how to operate a computer.
- The computer access infrastructure is slow and takes a long time to download which makes printing documents difficult and a lengthy process.
- The Township does not comply with Procedural by-laws for either print of website access to minutes or agendas in a timely manner and therefore, website access is moot because there is often nothing to access, via website.

As for accessing records on site at the Township, the appellant submits that this too cannot be considered as “available to the public” for the following reasons:

- 85% of property owners reside outside of the Township and access to Township records is inconvenient for seasonal property owners to attend at the Township.
- The option of attending at the Township office to review records has not been offered by the Township and little assistance has been made to facilitate access to information.
- Despite the fact that a “head has a duty to inform the requester of the specific location of the records or information in questions” (Orders P-123, P-191, M-729), in response to this FOI request, the Township did not offer or provide any clear assistance.
- Charges of \$.50 per page for public information that should be available is a burden to the public seeking fair access to public information.
- The Township does not provide records to the public attending public meetings despite the fact that the *Municipal Act* requires the Township to make copies of all information discussed at Council available.
- Agenda packages cost \$60.00 annually.

The appellant also refutes the statement made in the decision letter and referred to in the Township’s representations which states that “many of the questions you have asked can be answered by reviewing minutes of meetings of Council and Committees, which are posted on our webpage.” She states that she has reviewed the publicly available documents and cannot find the answers to the issues identified in her questions. The appellant submits that the directions to minutes indicated as a response to the questions in her request letter do not adequately answer the questions posed and sometimes do not answer them at all.

Analysis and finding

Having reviewed the representations of the Township, the Township's website, and the representations of the appellant, I accept that a regularized system of access exists and that the records to which the Township has directed the appellant in response to the request are publicly available within the meaning of section 15(a).

As noted above, for the exemption at section 15(a) to apply, the Township must establish that the record is available to the public generally, through a regularized system of access. A regularized system of access exists if a system exists for dissemination of the record, the record is available to everyone, and there is a pricing structure that is applied to all who wish to obtain the information [see Order P-1316].

First, I find that such a regularized system of access exists. Reviewing the Township's website, it is clear that the minutes and agendas of Council and Committee Meetings are available to be viewed on the website. The Township advises on its website that agendas are posted and that an annual subscription to its agenda package may be purchased for a specific fee. In its representations, the Township confirms that public documents, including budget, minutes and agendas, are available upon request at the Township office to be viewed or photocopied. Additionally, there are Procedural By-Laws that dictate public access to such information. In my view there is clearly a system of access in place for the public to obtain access to the relevant Township records.

Second, I find that the records are available to everyone. The records containing information sought by the appellant are available on the Township's website. The appellant argues that the majority of property owners do not own, have access to, or know how to operate a computer. Today, the internet is a common tool to publicly disseminate information. Many public institutions, including libraries, have computers that are available for public use at no or minimal charge. Additionally, I do not accept that the length of time that it takes to download documents in any way alters the fact that it is available to be accessed by the general public. In my view, information posted on a public website can be considered "available to everyone".

However, even if it could be found that the information published on the Township website is not "available to everyone", the Township advises that public records are also available to be viewed on site at the Township Municipal Office and photocopies of those records can be made for a fee. I do not accept the appellant's argument that this cannot be considered to be "available to everyone" given that a large proportion of property owners reside outside of the Township and it is inconvenient for them to attend at the Municipal Office. In previous orders it has been found that records held by public libraries and government publications centers are available to everyone [Orders P-327, P-1387]. In my view, accessing records in these locations are similar to accessing records at the Township's Municipal Office; individuals wishing to view the records in person, rather than on the website, will likely have to attend on site during regular business hours. In my view, it is beyond the Township's control that many of its property owners live

outside their jurisdiction and, aside from making public records available on the website, accessible to be viewed on site during regular business hours, and able to be copied for a fee, there is not much more that the Township can do to ensure that the records are available to the public. Accordingly, I find that the records are available to everyone for the purposes of section 15(a).

Third, I find that there is a pricing structure in place that is applied to all those who wish to obtain access to the record and/or information. The pricing structure is outlined in the Township's User Fees By-Law 2002-319 which sets fees, including, the price per page for photocopying and the price of subscribing to the Township's regular agenda package. The appellant does not dispute that the Township has a pricing structure in place for access to this information, but argues that the charge of \$.50 per page for photocopies and the \$60.00 annual fee for subscription to agenda packages is an unreasonable burden on the public seeking fair access to public information.

As noted above, previous orders of this office have established that section 15(a) may apply despite the fact that the alternative source includes a fee system that is different from the fees structure under the *Act* [Orders P-159, PO-1655, MO-1411, MO-1573]. However, it has been acknowledged that the cost of accessing a record outside the *Act* may be so prohibitive that it amounts to an effective denial of access, in which case the exemption would not apply [Order MO-1573].

In the circumstances of this appeal, although I acknowledge that \$.50 per photocopied page is different from the \$.20 per page prescribed by the regulations under the *Act*, I do not accept that \$.50 per page for photocopies is so prohibitive that it amounts to an effective denial of access. Similarly, I also do not accept that \$60.00 annually for a subscription to an agenda package is unreasonable, let alone so prohibitive that it amounts to a denial of access.

In sum, the Township made information relating to the request available on its website or on-site at the Municipal Office. In addition, the Township has enacted a by-law that sets out the pricing structure for access to the information that is responsive to the appellant's request. In my view, the Township has demonstrated it has in place a regularized system of access to make the information available to everyone with established fees that are consistently applied to all requesters. Accordingly, I find that the Township has established that the records that it has directed the appellant to are "published or available to the public" and section 15(a) applies to them.

Although I have found that section 15(a) applies to the records at issue in this appeal. The appellant's representations raise several additional issues that I feel I should briefly address.

The appellant argues that despite her review of the records which the Township has offered as responsive to the request, some of those records do not actually provide the answers to the issues identified by her questions. Although, in its representations, the Township has acknowledged that there are two instances where there is no correlation between the information sought by the

appellant and the resolution identified as containing the response, it submits that these responses were provided to the appellant by the former Freedom of Information Coordinator and the new Coordinator cannot discern why the specific records were referenced. Nevertheless, the current Coordinator has made an effort to explain why they might have been referenced. For the other records referenced as responsive, I have carefully reviewed the request as well as the information contained in the minutes found on the Township website. I note that the appellant's request is quite specific and acknowledge that the information sought by the appellant may not necessarily be recorded in the manner in which she anticipates. Taking this into account, in my view, the Township has undertaken a reasonable effort to direct the appellant to records that might best respond to her questions or points, even if it does not provide her with the exact information sought.

With respect to the Township's duty to inform the appellant of the location of the answers in the publicly available records, I note that the Township has directed the appellant to the minutes of meetings on specific dates as well as to specific resolution numbers contained within those minutes. Given the length and detail of the minutes identified and the information outlined by the appellant in the request, I am satisfied that the Township has fulfilled its obligation under section 15(a) to direct the appellant to the proper publicly available records.

Finally, the appellant's alleges that the Township did comply with its own Procedural By-Laws in granting access to the minutes or agendas in a timely manner and that the Township does not provide records to the public, despite the fact that the *Municipal Act* requires them to do so. From my review of the Township website, not only does it appear to me that the minutes and agendas of Council and Committee meetings are indeed posted on the website in a timely manner, it is not within my jurisdiction to determine whether or not the Township is acting in contravention of any other Act.

REASONABLE SEARCH

In appeals involving a claim that additional responsive records exist, as is the case in this appeal, the issue to be decided is whether the Board has conducted a reasonable search for the records as required by section 17 of the *Act*. If I am satisfied that the search carried out was reasonable in the circumstances, the decision of the Township will be upheld. If I am not satisfied, further searches may be ordered.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records. A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request. [Orders M-282, P-458, M-909, PO-1744 and PO-1920]

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

Representations

During this appeal, the appellant took the position that responsive records should exist for, at the very least, the last part of question 7 of the request (information relating to the Township's decision to hire a specific relocation company) and question 12 of the request (information relating to the Treasurer's estimate of increase to taxation due to annual repayment of necessary borrowing identified at the Special Meeting of Council on May 14, 22004, including the calculation for the estimated increase).

As the request was handled by the former Freedom of Information Coordinator and Head of the Township, who is not longer in the employ of the Municipality, the Township provided the following information about the search conducted for the requested records:

In the decision letter of May 4, 2005, further clarification was request as follows: "please provide clarification as to which resolution or by-law number you are requesting access to". There are no further notations or records in the files indicating a request for additional clarification.

...As the new Coordinator, I have conducted a further review of the file, and found no further notations or records in the files indicating a request for additional clarification.

... [A]s the new FOI Coordinator, I have conducted my own search in answer to these two request as follows:

Question #7 – I have discussed the matter with the CAO/Clerk-Treasurer...who confirmed that the Township did not use a formal tender process for relocation services because the Township utilized the same company that the District of Muskoka had recently used. The District of Muskoka had obtained several quotes and was happy with the selected company's services and costs. No records exist for a formal tender process by the Township.

Question #12 – I have discussed the matter with the CAO/Clerk-Treasurer...who confirmed that the calculations requested by the appellant were drafted at a point in time for the purpose of a specific meeting. No responsive records exist as they were no longer required and were destroyed by the Treasurer.

The appellant's representations state that the answers provided in the Township's representations demonstrate that the Township did not conduct a reasonable search, and, therefore have not complied with their obligations under the *Act*. The appellant submits that the questions raised in the letter that formed the basis of the request were "highly detailed and followed months of examination and thousands of pages of documentations." The appellant submits:

The requests in the letter were raised in order to confirm, withdraw or amend the conclusions and issues that were identified through this thorough examination of Township records. This letter addressed the issues identified in regard to Township financial responsibilities. Accountability to the public in financial matters particularly is a significant duty under the *Municipal Act*.

...

It appears to us from the response provided by Council through the process of IPC Inquiry that considerable documents do not or did not ever exist and that the correct deliberative processes did not occur. The point is that these deliberative processes should have taken place and corresponding documentation should be part of the public record. In this instances it is positive information for the Township to acknowledge a lack of public records rather than obfuscate the situation by avoiding the questions, misrepresenting some facts, and questioning our lack of diligence in accessing public records that it appears to us, do not even exist.

Analysis and finding

As set out above, in appeals involving a claim that additional records exist, the issue to be decided is whether the Township has conducted a reasonable search for responsive records as required by section 17 of the *Act*. Also set out above, although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that additional records might exist.

Having considered the submissions of both the Township and the appellant as well as the circumstances of this appeal, I find that I have not been provided with a reasonable basis for concluding that additional responsive records might exist.

The request submitted by the appellant was very detailed in nature and clearly was compiled as a result of a lengthy review of information available to the appellant which did not neatly mesh to permit a clear understanding of certain actions taken by the Township. In order to better understand certain actions, the appellant sought specific information that she assumed should have been recorded and kept by the Township.

In my view, although the Township did initially prove to be reluctant in their search for responsive records, during the course of this appeal, the Township made a reasonable effort to identify and locate any existing records that might be responsive to the various points outlined in the appellant's request.

In the Township's response to the request prepared during mediation, the Township identified that records do not exist that explain or record the information sought in some of the points outlined in the request. Additionally, in the Township's representations, further detail is given to

explain to the appellant that records containing the information sought for points 7 and 12 of the request simply do not exist.

The appellant's representations do not provide me with a reasonable basis to conclude that, despite the Township's position that the records do not exist, additional records responsive to points 7 and 12, among others, might exist.

I understand the appellant's frustration in discovering that information that a member of the public might assume is routinely recorded and filed by the Township simply does not exist. I have no reason to assume that records containing this information exists and cannot be located by any act of bad faith on the part of the Township. Additionally, I have no jurisdiction to determine whether or not the Township was obliged by statute, by-law, policy or other means to keep records detailing of any of the information sought by the appellant.

Accordingly, based on the information provided by both the Township and the appellant and having considered the circumstances of this appeal, I am satisfied that the Township's search for records responsive to the request was reasonable in the circumstances.

ORDER:

1. I uphold the Township's decision to deny access to the responsive records on the basis that they are exempt under section 15(a).
2. I uphold the Township's search and dismiss that aspect of the appeal.

Original signed by: _____
Catherine Corban
Adjudicator

February 16, 2007 _____