

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2688

Appeal MA11-364

Town of Erin

January 12, 2012

Summary: The appellant sought records related to a specific referee's award under the *Line Fences Act*. This order determines that the town conducted a reasonable search for responsive records.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, s. 17(1).

Cases Considered: *John Doe v. Ontario (Information and Privacy Commissioner)*, 1993 CanLII 3388 (ON SCDC).

BACKGROUND:

[1] The Town of Erin (the town) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA or the *Act*) for information relating to a specified award made under the *Line Fences Act*.

[2] Following receipt of the request, the town sought clarification of the records requested pursuant to section 17(1)(b) of the *Act*. In correspondence dated July 17, 2011, the requester clarified his request as follows:

1. ... please have the Provincial Referee to make a new statement giving his reason why he changed the *Line Fences Act* Rule from being a Right Hand Rule to being a Left hand Rule ...

2. ... confirmation of [a named individual's] payment of [amount] to [a named contractor] directly by her and not by her deposit to you, the clerk lawfully under subsection (1) *Line Fences Act & Municipal Act* 345 & 412... Did contrary to subsection (1) & 345 & 412 contrary to the *Criminal Code of Canada* s. 426(1)(b) ... Please send a copy of the Bank Notes of the cheque [named individual] paid to [named contractor] cashed marked paid to [named contractor] by the bank
3. ... copy of both front & back of cancelled cheque showing signatures ...

Decision:

[3] The town issued a decision granting partial access to the requested information. The town included an index of records outlining its decision with respect to each part of the request.

[4] With respect to parts 1 and 2 of the request, the town indicated:

1. The Provincial Referee is appointed by the Province and he does not work for the municipality. The record or document you are requesting does not exist currently and therefore the record is not in the custody or control of the municipality.
2. The record being requested is not in the care and control of the municipality. The Town does not have access to [named contractor's] personal business records. [Named individual] submitted an invoice she paid to the contractor [named contractor] who constructed the line fence which was marked paid in full.

[5] With respect to part 3 of the request, the town granted partial access to the requested record. Access to some information was denied pursuant to section 14(1) (personal privacy) of the *Act*.

Appeal:

[6] The requester (now the appellant) appealed the decision of the town to this office.

Results of mediation:

[7] During the course of mediation, the appellant advised the mediator that, with respect to part 3 of the request, he would like to see the stamp indicating the date that the named individual cashed the cheque.

[8] The mediator advised the town that, on her copy of the records, the month and day were visible but not the year. The town agreed to retrieve its original copy and provide this information to the appellant. In a letter dated September 28, 2011, the town provided the appellant with a revised severed copy of the back of the cheque. In that letter, the town noted that the bank's date stamp is not clear because the bank stamped over the carbon area on the back of the cheque. The town advises that its bank records confirm that the cheque was cashed on November 16, 2006. The town advises that the remainder of the cheque continues to be severed as it contains the personal banking information of the named individual.

[9] The appellant advised the mediator that he is not appealing the severances of personal information. As a result, section 14(1) of the *Act* is not at issue in this appeal. However, the appellant believes additional records responsive to the request exist within the town's office. As a result, the appellant has raised the issue of whether the town conducted a reasonable search for records responsive to his request.

[10] Mediation was not successful and the appeal was moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*. I sought and received representations from the town and the appellant, which were shared in accordance with *Practice Direction 7* of the *IPC Code of Procedure*.

[11] In this order, I uphold the town's search for responsive records.

DISCUSSION:

Did the town conduct a reasonable search for records?

[12] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17 [Orders P-85, P-221 and PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[13] In the Notice of Inquiry, the town was asked to provide a written summary of all steps taken in response to the request. In particular, it was asked to respond to the following:

1. Did the institution contact the requester for additional clarification of the request? If so, please provide details including a summary of any further information the requester provided.
2. If the institution did not contact the requester to clarify the request, did it:
 - (a) choose to respond literally to the request?
 - (b) choose to define the scope of the request unilaterally? If so, did the institution outline the limits of the scope of the request to the requester? If yes, for what reasons was the scope of the request defined this way? When and how did the institution inform the requester of this decision? Did the institution explain to the requester why it was narrowing the scope of the request?
3. Please provide details of any searches carried out including: by whom were they conducted, what places were searched, who was contacted in the course of the search, what types of files were searched and finally, what were the results of the searches? Please include details of any searches carried out to respond to the request.
4. Is it possible that such records existed but no longer exist? If so please provide details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.

[14] In response to the Notice of Inquiry, the town provided a letter from the town's clerk. In this letter, the clerk states that she was directly involved with producing the responsive records with the exception of the cheque issued by the town's Treasury Department and the information on the tax collectors roll. She states that she personally searched her records and also requested the Treasury Department to search their respective files for any responsive records. She then provided specific representations concerning the first two parts of the appellant's request as follows:

[15] Part 1 seeks:

1. ... please have the Provincial Referee to make a new statement giving his reason why he changed the *Line Fences Act* Rule from being a Right Hand Rule to being a Left hand Rule...

[16] The clerk states that:

[The appellant's father, the] property owner requested the Line Fence Committee to review a line fence dispute. The Committee rendered a decision. [The property owner] appealed the Committee's decision to the Ministry. The Ministry then requested one of their Provincial Referee's to conduct a Hearing. The Provincial Referee does not work for the municipality. The Provincial Referee issued an award. The [appellant's] family does not agree with the award. ... [T]he referee's (section 10(5) & (6) of the *Line Fences Act*) decision is final. The record or document [the appellant] is requesting does not exist currently and therefore the record is not in the custody or control of the municipality...

[17] Part 2 seeks:

2. ... confirmation of [the other property owner's] payment of [amount] to [named contractor] directly by her and not by her deposit to you, the clerk lawfully under subsection (1) *Line Fences Act* & *Municipal Act* 345 & 412. ...Did contrary to subsection (1) & 345 & 412 contrary to the *Criminal Code of Canada* s.426 (1)(b)... Please send a copy of the Bank Note of the cheque [she] paid to [the contractor] cashed marked paid to [the contractor] by the bank.

[18] The clerk states that:

The Provincial Referee's award required [the appellant's father] (property owner) to construct the property line fence as set out in the award. [He] failed to comply with the order to construct the fence and therefore [name] (the other property owner) assumed the responsibility. [She] then hired an independent contractor [name] to construct the fence. [The other property owner] presented a receipt confirming that she had paid [the contractor's] fencing bill in full.

[The appellant's father, the property owner] did not pay his portion of the fence and therefore the municipality paid [his] share of the said fence to [the other property owner] and placed the amount on the tax collectors rol[[]].

The personal business records of this independent contractor [name] are not in the care and control of the municipality.

[19] In response, the appellant questions the authenticity of the cheque provided to the town by the other property owner showing that she paid the contractor to install the fence. He also questions the authenticity of the cheque that the town paid to the other property owner for reimbursement for half of the cost of the fence. The appellant

wants the bank that cashed both cheques to certify that the payments were made. The appellant also wants the police to investigate the *Line Fences Act* referee's decision and the town's seizure of the appellant's father's cattle.

Analysis/Findings

[20] 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 [Orders P-624 and PO-2559]. To be responsive, a record must be "reasonably related" to the request [Order PO-2554].

[21] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request [Orders M-909, PO-2469, PO-2592].

[22] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control [Order MO-2185].

[23] 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 [Order MO-2246].

[24] In this appeal, I find that the town has provided sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate the responsive records. The appellant has not provided a reasonable basis for concluding that additional responsive records exist. In fact, the appellant has not identified any additional records that he believes may exist. Instead, he has raised matters that are outside my jurisdiction to consider under the *Act* in this inquiry. As stated by the Divisional Court in *John Doe v. Ontario (Information and Privacy Commissioner)*,¹

The Commissioner exercises a supervisory function in respect of compliance by government institutions with provisions of the *Act* and has exclusive jurisdiction to review the decision of a head of an institution under the *Act* relating to a request for access ...

[25] The appellant is seeking to verify the authenticity of certain cheques. He also wants to dispute the lawfulness of the *Line Fences Act* award and the town's seizure of cattle. None of these matters are within my jurisdiction to consider under the *Act*. Concerning the matter that is within my jurisdiction to determine, namely, the reasonableness of the town's search under section 17(1) of the *Act*, I find that the town

¹ 1993 CanLII 3388 (ON SCDC)

conducted a reasonable search for responsive records. Accordingly, I am upholding the town's search for responsive records and I am dismissing this appeal.

ORDER:

I uphold the town's search and dismiss the appeal.

Original signed by: _____
Diane Smith
Adjudicator

_____ January 12, 2012