

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3054

Appeal MA13-456-2

Township of Bonfield

May 27, 2014

Summary: The township received a request for access to an identified letter. The township provided the letter to the appellant, but took the position that an appendix to the letter was not responsive to the request. This order determines that the request for the letter includes a request for any appendices to the letter, and orders the township to issue an access decision regarding the appendix.

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

Orders Considered: Order 134 and P-880.

OVERVIEW:

[1] The Township of Bonfield (the township) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for "a photocopy of the letter of management from [a named company], which appeared on the Council agenda of July 9, 2013, new business item #1."

[2] After addressing a "deemed refusal" issue which was resolved when Appeal MA13-456 was closed, the township issued a decision to the appellant. In its decision, the township advised the appellant that access was granted to the requested letter. Attached to the township's decision was a copy of the two-page letter.

[3] Upon receipt of the decision and the attached letter, the appellant appealed the township's decision on the basis that an attachment to the letter exists, and that this attachment was not disclosed to her. As a result, the current appeal file (MA13-456-2) was opened.

[4] During mediation, the appellant confirmed that the letter disclosed to her refers to an "attached appendix" which was not included. The appellant is pursuing access to this attached appendix. Also during mediation, the township took the position that the "attached appendix" was not provided to the appellant as it was not requested, and therefore falls outside the scope of the request. The township provided this office with a copy of the appendix.

[5] The sole issue in this appeal is whether the appendix attached to the requested letter falls within the scope of the request.

[6] Mediation did not resolve this appeal, and it was transferred to the inquiry stage of the process where an adjudicator conducts an inquiry under the *Act*. I sent a Notice of Inquiry identifying the facts and issues in this appeal to the township, initially, and received representations in response. I decided that it was not necessary to invite representations from the appellant in the circumstances of this appeal.

[7] In this order, I find that the appendix is included in the scope of the request, and I order the township to issue an access decision with respect to it.

RECORD:

[8] The record at issue is a one-page appendix attached to the letter identified as responsive to the request.

DISCUSSION:

SCOPE OF THE REQUEST

[9] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;

- (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; ...
- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[10] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.¹

[11] In Order P-880, Adjudicator Anita Fineberg determined that records must "reasonably relate" to the request in order to be considered "responsive." She went on to state:

... the purpose and spirit of freedom of information legislation is best served when government institutions adopt a liberal interpretation of a request. If an institution has any doubts about the interpretation to be given to a request, it has an obligation pursuant to [section 17(2) of the *Act*] to assist the requester in reformulating it. As stated in Order 38, an institution may in no way unilaterally limit the scope of its search for records.

[12] In Order 134, former Commissioner Sidney B. Linden also commented on the proper interpretation of section 17(2) of the *Act*, stating, among other things:

...the appellant and the institution had different interpretations as to what this meant: the institution felt that the files were outside the scope of the original request and should be the subject of a new one; and the appellant thought he was seeking information which he expected to receive in response to his initial request. While I can appreciate that there is some ambiguity on this point, in my view, the spirit of the Act compels me to resolve this ambiguity in favour of the appellant. The institution has an obligation to seek clarification regarding the scope of the request and, if it fails to discharge this responsibility, in my view, it cannot rely on a narrow interpretation of the scope of the request on appeal.

[13] In Order PO-1897-I, commenting on the above orders, Senior Adjudicator Sherry Liang noted that in the appeal under consideration in Order 134, the request was somewhat vague, and that the institution had genuine difficulty in interpreting the

¹ Orders P-134 and P-880.

scope of the request. She pointed out, however, that "even there, the former Commissioner resolved the ambiguity in favour of the appellant's view of the request."

[14] In this appeal, the appellant's request was for "a photocopy of the letter of management from [a named third party], which appeared on the Council agenda of July 9, 2013, new business item #1." The responsive letter refers to an attached appendix. The issue in dispute is whether the appellant's request is simply for the letter itself, or for the letter including the referenced appendix.

[15] The township takes the position that the request was properly interpreted to be only for the letter, that the appendix was "never requested," and that by providing the requested letter to the appellant, the township was fully responding to the request.

Analysis and Findings

[16] To begin, I note that the appellant's request is for the identified letter "which appeared on the Council agenda of July 9, 2013, new business item #1." In that publicly available agenda item, there is a reference to the identified letter, but there is no indication that the letter contains or includes an appendix. As a result, the appellant could not have known that the letter included an appendix until she received the requested letter, which specifically referred to the appendix. Only the township would have known that the letter included an appendix.

[17] In these circumstances, I find that the appendix to the requested letter "reasonably relates" to the request, as it is attached to the letter, is directly referred to in the letter and relates to the same subject matter. Accordingly, applying the analysis found in Order P-880, I find that the appendix to the letter is responsive to the request.

[18] I also find that the township's interpretation of the request to include only the letter and not the appendix is an overly narrow and restrictive interpretation of the request. Although the request only mentioned the letter, a liberal interpretation of the request, in keeping with the purpose and spirit of freedom of information legislation, would interpret the request in such a way as to include any attachments. I find that by interpreting the request in the way it did, the township, which was the only party that knew that the letter included an appendix, unilaterally limited the scope of the request. In these circumstances, at the very least, the township ought to have contacted the requester to clarify what was being requested, as required by section 17(2) of the *Act*.

[19] As a result, I find that the scope of the appellant's request includes the appendix attached to and referred to in the requested letter, and I will order the township to issue an access decision on the appendix.

Additional matters

[20] I wish to briefly address two additional matters referred to by the township.

[21] In its representations, the township refers to the appendix to the letter and identifies that it has certain concerns about its disclosure. I confirm that this order addresses only the issue of whether the appendix was or was not included in the scope of the request. In that regard, this order does not require the township to disclose the appendix, rather, it orders the township to issue an access decision respecting it.

[22] Secondly, the township's representations refer to a number of the challenges it is facing, including issues arising from a labour relations dispute, the township's current practices resulting from those issues, and concerns about the motivation behind the request. However, these issues do not impact my finding that the scope of the request includes the appendix to the letter, and I will not address them further in this order.

ORDER:

I order the township to provide an access decision to the appellant regarding access to the appendix, in accordance with the requirements of the *Act*, and treating the date of this order as the date of the request.

Original Signed By: _____
Frank DeVries
Adjudicator

_____ May 27, 2014 _____