

Information and Privacy Commissioner,  
Ontario, Canada



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

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## **ORDER MO-3269**

Appeal MA14-589

Town of Whitchurch-Stouffville

December 14, 2015

**Summary:** The appellant sought access to information pertaining to an allegation of improper removal of property from an identified location, as well as a general request for recorded video. At the close of mediation the only remaining issue was whether the town conducted a reasonable search for responsive records. This order upholds the reasonableness of the town's search.

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

### **BACKGROUND:**

[1] The Town of Whitchurch-Stouffville (the town) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act* or *MFIPPA*) for access to information pertaining to an allegation of improper removal of property from an identified location, as well a general request for recorded video. The request also sought answers to certain questions posed by the requester relating to the allegation. In particular, as clarified by the requester, the request sought access to the following information:

- a. A copy of DVD's containing all taping of our programs and our videoed activities during the 3 hours of rental time each month.

- b. A list of who was interviewed in the "investigation" regarding the missing equipment, the name of the person or person(s) who did the investigation, the date of the "investigation" if in fact there was an investigation.
- c. A response and result of a second investigation as to my letter addressed to the Mayor and each of the Councillors in which I enquired as a taxpayer the following:
  1. What was the total amount of cost to taxpayers to date for replacement of missing equipment?
  2. Why was the equipment always replaced and not recovered as a saving to taxpayers?

[2] The town issued an initial decision letter containing its responses to the questions posed by the requester and advising that no record exists pertaining to the request for recorded video.

[3] The requester (now the appellant) appealed the decision. The town then issued a revised decision letter clarifying that no records were found that were responsive to the request for recorded video and that it did not have custody or control over records responsive to items (b) and (c) of the request. The town stated that those responsive records would be in the custody and control of an identified entity. It suggested that the appellant should direct his request for that information to the Chair of the Board of that entity.

[4] At mediation, the town advised the mediator that as a result of the management of the identified entity being transferred to the town, it now had custody and control of records relating to that entity, and that a further search had been conducted for responsive records. The town located records that it viewed as responsive to the request and issued a further decision letter granting the appellant access to them, in full. The appellant took the position that additional responsive records ought to exist. Accordingly, the sole issue in this appeal is whether the town conducted a reasonable search for responsive records.

[5] As mediation did not resolve the matter it was moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*.

[6] I commenced my inquiry by sending the town a Notice of Inquiry setting out the facts and issues in the appeal. The town provided responding representations. I then sent a Notice of Inquiry to the appellant, along with a copy of the town's representations. The appellant provided representations in response. I determined that the town should be provided an opportunity to respond to the portions of the appellant's representations that I summarized in a letter to the town. The town advised that it had nothing further to add.

[7] In this order, I uphold the town's search as reasonable.

## **SEARCH FOR RESPONSIVE RECORDS**

[8] 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.<sup>1</sup> 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.

[9] 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.<sup>2</sup> To be responsive, a record must be "reasonably related" to the request.<sup>3</sup>

[10] 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.<sup>4</sup>

[11] 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.<sup>5</sup>

[12] 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.<sup>6</sup>

[13] The town provides an affidavit of its Deputy Clerk in support of its position that it conducted a reasonable search for responsive records.

[14] With respect to the recorded video requested by the appellant, she deposes that:

I confirmed with the Town's Director of Leisure and Community Services, whose responsibilities include all town facilities, that the requested video recording no longer exists in accordance with the town's Video Surveillance Policy, ... . The said Policy includes the following statement:

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<sup>1</sup> Orders P-85, P-221 and PO-1954-I.

<sup>2</sup> Orders P-624 and PO-2559.

<sup>3</sup> Order PO-2554.

<sup>4</sup> Orders M-909, PO-2469 and PO-2592.

<sup>5</sup> Order MO-2185.

<sup>6</sup> Order MO-2246.

The recording systems only provide an estimated 14 days of recorded information and overwrite the recorded information in a continuous loop.

[15] She further deposes that, “[b]ecause the recording systems overwrite the recorded information automatically, no active steps are taken by town staff to destroy such information.”

[16] With respect to other responsive records, she deposes that:

When the Board of Management of [an identified entity] was dissolved in [specified date], the Cultural Facility and Programming Coordinator for [the identified entity] was instructed to transfer all records from the former Board to the municipality. The former Chair of the Board was also contacted and confirmed that he had no Board records in his possession. All records of the Board were maintained in electronic format.

There are a total of 299 electronic records dated from 2009 when the Board was first established to December of 2014, including Board Agendas, Minutes, Meeting Notes, Monthly Financial Reports and Budgets. I reviewed every individual record and found that there was no mention of the alleged missing equipment incident.

... The alleged incident occurred at the end of 2012, as indicated in the [appellant’s] letter, and as confirmed by the mediator assigned by the [IPC] to this file, who corresponded with the requester in this regard. Therefore, I have also provided monthly financial reports of the Board from 2012 and 2013 that show the cost of equipment repair/maintenance.

[17] In response, the appellant provides wide-ranging representations detailing his concerns regarding his various interactions with the town pertaining to his property and his volunteer work, and why he believes that a copy of a videotape related to an allegation of improper removal of property ought to exist.

[18] He states that the police were not called in to investigate the alleged theft and asserts that although it said it did, the town conducted no investigation itself as neither he nor the two volunteers were contacted. He submits that the “video hard disk mysteriously disappeared”, even though the then Director of the facility had promised him “it would be always be safely kept in archives” Furthermore, he states that neither he nor the two other volunteers were allowed to view a copy of the video recording that he says he was told contained evidence of the alleged theft. He asserts that he did not believe that the then Director had any proof of the alleged theft but also maintains that the video recording still exists because it is not believable “that theft evidence would be destroyed”.

[19] The appellant’s submissions focussed on the reasonableness of the town’s search

for a recorded video pertaining to the alleged theft. No submissions were provided specifically challenging the reasonableness of the town's search for other records, including the other recorded video requested by the appellant. However, while the appellant takes issue with the conduct of the town and the basis for the theft allegation, he does not provide sufficient evidence to challenge the reasonableness of the town's search for responsive video recording or the town's statement that it does not exist, because it was likely automatically overwritten.

[20] As set out above, the *Act* does not require the institution to prove with absolute certainty that further responsive 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. Based on the evidence before me, I am satisfied that a search was conducted by an experienced employee of the town knowledgeable in the subject matter of the request, who expended a reasonable effort to locate records, including responsive recorded video, which are reasonably related to the request.

[21] I am satisfied that, in all the circumstances, the town conducted a reasonable search for records responsive to the request.

**ORDER:**

I uphold the reasonableness of the town's search for responsive records.

Original Signed by: \_\_\_\_\_  
Steven Faughnan  
Adjudicator

December 14, 2015 \_\_\_\_\_