

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3936

Appeal MA18-414

Township of Ramara

July 14, 2020

Summary: The township received an access request under the *Municipal Freedom of Information and Protection of Privacy Act* for information pertaining to a property. The township granted partial access to a responsive record. The appellant appealed the decision to this office. During mediation, the appellant confirmed he was not interested in the information withheld under the mandatory personal privacy exemption at section 14(1), but he raised the issue of reasonable search. In this order, the adjudicator finds that the township conducted a reasonable search.

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

OVERVIEW:

[1] The Township of Ramara (the township) received an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following information about a property:

Request copy of and examination of original Township of Ramara, Application for a Permit to Place or Dump Fill, Bylaw 2012.70 completed prior to dumping of fill at property identified as 5646 Simcoe County Rd 169.

Request copy of documents that accompany Township of Ramara, Application for a permit to Place or Dump Fill, Bylaw 2012.70 for this property. Including:

- Copy of report and soils analysis of the source site, (identifying, Qualified Person certified report, accredited laboratory, *Environmental Protection Act* Part XV.1 standard the soils have met.)
- Copy of site alteration plan for the lands prescribed in Schedule B attached to Bylaw 2012.70
- Copy of Lake Simcoe Region Conservation Authority or alternate conservation authority permit.

[2] The township issued a decision granting partial access to a responsive record with severances pursuant to the mandatory personal privacy exemption at section 14(1) of the *Act*. The responsive record that the township disclosed was a Stop Work Order dated December 6, 2017. The township denied access in full to the soil analysis reports on the basis that the named property owner did not need to submit these reports (as a fill permit was not required) and the named property owner did not consent to their disclosure.

[3] The requester, now the appellant, appealed the township's decision to this office.

[4] During mediation, the appellant advised the mediator that he believed additional responsive records should exist and provided the mediator with a description of the information that he sought access to. The mediator forwarded this information to the township. The appellant confirmed he was not pursuing access to any of the withheld information in the responsive record.

[5] The township provided a written response to the appellant regarding actions taken and procedures followed in relation to Ramara Bylaw 2012.70, A Bylaw to Prohibit or Regulate the Placing or Dumping of Fill in the Township of Ramara (Bylaw 2012.70). The township also disclosed five additional records, which did not include an Application for a Permit to Place or Dump Fill, and advised the appellant this was all the information it has in response to his request.

[6] The appellant advised the mediator that he continues to believe additional responsive records should exist.

[7] As further mediation was not possible, the appeal was moved to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry under the *Act*.

[8] During my inquiry, I invited and received representations from the township and the appellant. Pursuant to section 7 of this office's *Code of Procedure and Practice Direction Number 7*, copies of the parties' representations were shared with the other party.

[9] In this order, I find that the township conducted a reasonable search for

responsive records and I dismiss the appeal.

DISCUSSION:

[10] The only issue in this appeal is whether the township conducted a reasonable search for records.

[11] 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 17.¹ 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.

[12] 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.² To be responsive, a record must be "reasonably related" to the request.³

[13] 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.⁴

[14] 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.⁵

Summary of the parties' representations

[15] The township submits that it conducted a reasonable search for records. In support of this assertion, the township provided an affidavit from the Chief Building Official/Bylaw Enforcement Officer (whose responsibilities include enforcing the *Ontario Building Code*, municipal bylaws and other applicable legislation, overseeing permits and conducting inspections) and the Record Manager/FOI Coordinator (whose responsibilities include organizing municipal records and preparing these records for access to information requests).

[16] In his affidavit, the Chief Building Official/Bylaw Enforcement Officer explains

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Order PO-2554.

⁴ Orders M-909, PO-2469 and PO-2592.

⁵ Order MO-2185.

that the Building Department maintains building permits and accompanying documentation as it deals with issues, and creates and receives records during day-to-day transactions with the public.

[17] In her affidavit, the Record Manager/FOI Coordinator explains that she relies on the specific departments who are subject matter experts, to gather relevant records, as they deal with issues, and create and receive records during transactions with the public.

[18] Both affiants state that the Records Manager and Building Department staff conducted a thorough search in the building permit files and in the property files by address, but no further records exist. They state that the type of records requested are filed in the building permit files and/or in the property files by address. As such, any records relevant to the request were retrieved from these areas. They also state that although the appellant feels that a permit under the Bylaw 2012.70 should have been required for the specified property, the township's Bylaw 2012.70 did not require it.

[19] In response, the appellant submits that some of the additional records, an Accessory Building Permit and the Pre-permit Zoning Proposal Review, which were discovered and provided to him during mediation, support the township's "story". He argues that they "exist" now because the township needed documentation to support its story. The appellant also argues that an email from the township mayor indicates that there is paperwork available through the named property owner for every truckload that came in. As such, he does not understand why this paperwork was not provided to him.

[20] In its reply representations, the township explains that five additional records were provided to the appellant, during mediation, in order to offer clarification. They include the following:

- a December 11, 2017 Application for Permit to Construct Storage Building
- s December 12, 2017 Pre-permit Zoning Proposal Review
- a December 11, 2017 Building Permit Receipt⁶
- a December 12, 2017 Accessory Building Permit
- a June 14, 2018 Footing Inspection Report

⁶ The township clarified that the accessory building and the storage building is the one and same building. It also clarified that the building permit receipt dated December 11, 2017 is for the accessory building/storage building.

[21] It points out that these records did not fall within the scope of the appellant's access request. The township also explains that the named property owner may have the paperwork pertaining to the truckloads but the township does not have copies of them.

[22] In his sur-reply representations, the appellant submits that the Stop Work Order was dated December 6, 2017 while the approval date for the Accessory Building Permit was dated December 12, 2017 and that permit was disclosed to him on September 17, 2018. He argues that the eventual disclosure of these records had everything to do with the township circumventing the protective measures of Bylaw 2012.70.

[23] Finally, the appellant submits that there should be an explanation for why the named property owner was not required to obtain a permit to place or dump fill. He states that if the township had any intention of respecting the protective measures of Bylaw 2012.70, then why was the alleged paperwork from the property owner not made available as part of its response to his access request. He also questions why there is not any documentation from Lake Simcoe Region Conservation Authority allegedly authorizing the large-scale soil dumping at the named property as not requiring a permit. Moreover, the appellant submits that the township has the responsibility to collect the paperwork from the named property owner as part of its proper application and enforcement of Bylaw 2012.70.

Analysis and findings

[24] 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.⁷

[25] In this case, the appellant argues that additional records should exist, such as the original Township of Ramara, Application for a Permit to Place or Dump Fill, Bylaw 2012.70 and/or a copy of the Lake Simcoe Region Conservation Authority permit.

[26] In different circumstances, these records may exist if the township had required the property owner in question to obtain an Application for a Permit to Place or Dump Fill. I accept the two affiant's evidence that the township did not require the named property owner to obtain such an application. As such, this record and other records do not exist for this specified property.

[27] In addition, I am satisfied that the township would not have a copy of the paperwork given to the named property owner by the truck drivers. This paperwork was created by a private entity, not by the township and there is no suggestion that it was

⁷ Order MO-2246.

provided to the township.

[28] I understand that the appellant is frustrated with what he sees as the township's improper enforcement of Bylaw 2012.70. However, this office does not oversee a municipality's by-law enforcement. I am also satisfied that there is no reason why the township would be in possession of any relevant records belonging to the conservation authority.

[29] In any event, based on the evidence, I am satisfied that experienced employees, who were knowledgeable in the subject-matter of the request and familiar with the relevant record-keeping practices, conducted the search for responsive records. Accordingly, I find that the township conducted a reasonable search.

ORDER:

I uphold the township's search and I dismiss this appeal.

Original signed by: _____

Lan An
Adjudicator

July 14, 2020 _____