

Information and Privacy Commissioner,
Ontario, Canada



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

FINAL ORDER MO-3975-F

Appeal MA18-00901

The Corporation of the Town of Amherstburg

November 25, 2020

Summary: This final order follows Interim Order MO-3934-I and disposes of the only remaining issue in this appeal: whether the town conducted a reasonable search in response to a request under the *Municipal Freedom of Information and Protection of Privacy Act* for correspondence between the town's Chief Administrative Officer and his staff and the OPP. The adjudicator finds that the town conducted a reasonable search for responsive records and dismisses the appeal.

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

Orders and Investigation Reports Considered: Order MO-3934-I.

OVERVIEW:

[1] This final order disposes of the only issue remaining from Interim Order MO-3934-I, whether the Corporation of the Town of Amherstburg (the town) conducted a reasonable search for records, as required by section 17 of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] The appellant submitted a request under the *Act* to the town for the following records:

Correspondence from CAO [named individual] to the OPP regarding the police costing, including, but not limited to, letters, emails and notes regarding telephone calls from him and his staff.

[3] The town located responsive records and issued a decision granting the requester (now the appellant) partial access to them. The appellant appealed the town's decision to this office. During the mediation stage of the appeal, some of the issues were resolved.

[4] The appeal was transferred to the adjudication stage of the appeal and after conducting an inquiry, I issued Interim Order MO-3934-I in which I upheld the appeal and ordered the town to conduct further searches.

[5] In response to Interim Order MO-3934-I, the town conducted a further search and located three additional records and it issued a supplementary access decision disclosing these records in full to the appellant.

[6] As it was ordered to do, the town also submitted representations and describing its further searches. The appellant was invited to, and provided, representations. I did not find it necessary to share the appellant's representations with the town.

[7] In this final order, I find that the town has now conducted a reasonable search for responsive records and I dismiss the appeal.

DISCUSSION:

[8] The sole issue in this appeal is whether the town's search for responsive records was reasonable.

[9] 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.

[10] 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

[11] 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.³ A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Orders M-909, PO-2469 and PO-2592.

effort to identify and locate all of the responsive records within its custody or control.⁴

[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.⁵

Order MO-3934-I

[13] In Order MO-3934-I, I ordered the town to conduct further electronic searches using email accounts of staff in the Chief Administrative Officer's office, including the Executive Assistant. I also ordered the town to conduct further paper and electronic searches to address the evidence provided by the appellant that there were other records that ought to have been located in the search, specifically a May 8, 2017 email and a letter from the Chief Administrative Officer to the OPP (the "other specific records").

Representations

[14] The town provided representations and affidavits sworn by the following employees: the Chief Administrative Officer (the CAO), the Executive Assistant to the Chief Executive Officer (the EA), the Application and Network Analyst, the Clerk/Risk Manager (the Clerk) and the Policy and Committee Coordinator.

[15] The town submits that it complied with Order MO-3934-I and otherwise conducted a reasonable search. It explains that the Clerk arranged for the CAO and his only staff member, the EA, to carry out further physical searches. Further, staff from the Clerk's office also conducted these additional searches.

[16] The Clerk also directed additional electronic searches using a variety of search terms within all of the email records held by the town, not "merely those sent by or held by individuals in the CAO's Division." This latter search yielded more than 24,000 records, which were reviewed by the town's Policy and Committee Coordinator to identify responsive records.

[17] Regarding the other specific records that the appellant believes ought to exist, the town states that it conducted special searches to attempt to locate records that would meet the criteria and, it located one of them (the letter). It notes that the letter was already in the public domain, but it nevertheless disclosed it in its supplementary access decision issued after its further searches.

[18] In response, the appellant continues to believe that the search was not

⁴ Order MO-2185.

⁵ Order MO-2246.

reasonable. She asserts that the secondary physical search was too narrowly focused on the other specific records and she notes that one of the other specific records was not located. She submits that this is evidence that there ought to be more responsive records.

[19] The appellant says that the high volume of records is the result of “generalized keywords” used by the town. On the basis of one of the affidavits, the appellant asserts that the town did not conduct the electronic search in email accounts other than the CAO’s.⁶

Finding

[20] I find that the town has now conducted a reasonable search for responsive records. In my view, the town’s further searches comply with Order MO-3934-I and demonstrate a reasonable effort to identify responsive records.

[21] I have reached this conclusion in consideration of the following factors. Experienced employees knowledgeable in the subject matter of the request conducted the searches and the searches were overseen by the Clerk’s office. In my view, the search terms used for the electronic search are logically connected to the request. Lastly, the electronic search was undertaken over all of the emails in the town’s possession.

[22] I have considered the fact, as raised by the appellant, that the new searches did not yield a May 8 email (one of the other specific records). I have also considered the appellant’s submissions that she has at least one other responsive record in her possession that was apparently not yielded by the search. One would have expected that the May 8 email would have been found by the additional searches conducted by the town. However, when I weigh that fact against the breadth and scope of the searches that the town did conduct, I am nevertheless satisfied that the town engaged in a reasonable effort to identify records, which is the burden it must meet.

[23] I find that the town conducted a reasonable search for records responsive to the appellant’s request as required by section 17 of the *Act*.

ORDER:

I uphold the town’s search as reasonable and dismiss the appeal.

⁶ When I provided the appellant with the town’s affidavits, I inadvertently omitted the town’s summary representations, which provide some context related to this submission. I subsequently provided the appellant with these representations.

Original Signed by: _____
Valerie Jepson
Adjudicator

November 25, 2020 _____