

Information and Privacy Commissioner,  
Ontario, Canada



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

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## **FINAL ORDER MO-4053-F**

Appeal MA19-00664

Township of Perth East

May 21, 2021

**Summary:** This Final Order follows Interim Order MO-4023-I, in which the adjudicator ordered the township to conduct a further search for responsive records. The township conducted a further search and located additional records that it disclosed to the appellant. The appellant continued to challenge the reasonableness of the township's search because the township did not locate records that confirm the current owner of the culvert on his farm property. The adjudicator accepts the affidavit evidence of the township and upholds the reasonableness of the township's search for records responsive to the appellant's access request.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, section 17.

**Orders and Investigation Reports Considered:** Interim Order 4023-I.

### **OVERVIEW:**

[1] This Final Order follows Interim Order MO-4023-I, in which I ordered the Township of Perth (the township) to conduct a further search for records responsive to the appellant's access request under the *Municipal Freedom of Information and Protection of Privacy Act (Act)*. The appellant's request was for records that identify the owner of the culvert on his farm property. In response to the appellant's request, the township disclosed to him copies of township By-laws 14-67 and 10-77, and three sets of Council Meeting Minutes from 1977.

[2] The appellant challenged the reasonableness of the township's search on the basis that it had not located any records that confirm the current owner of the culvert, and specifically, records that show when, why and how the ownership of the culvert changed. The appellant explained that the township originally owned the culvert in accordance with By-Law 1042, but, at some point, the township decided to attribute ownership of the

culvert to him without his knowledge. He argued that the township should have records confirming its position that he is the current owner of the culvert.

[3] In Interim Order MO-4023-I, I agreed with the appellant that there was a reasonable basis to believe that additional records exist because the township had not searched for records related to the culvert on his property specifically. In order provision 1 of Interim Order MO-4023-I, I ordered the township to search for all records that refer to the ownership of the culvert and, specifically, records related to the appellant's property and the years 1968 and 2009. In order provision 2 of Interim Order MO-4023- I, I ordered the township to provide me with affidavits sworn by individuals with direct knowledge of the additional search I ordered, including the names and positions of the individuals that conducted the search, the steps they took, the types and locations of files they searched, and the results of each search.

## **DISCUSSION:**

### **The township's further search for responsive records**

[4] In response to order provisions 1 and 2 of Interim Order MO-4023-I, the township provided an affidavit sworn by its Municipal Clerk. In her affidavit, the Municipal Clerk attests:

- She has responsibilities relating to municipal drains, including: administering Tile Drain and Municipal Drain programs; administrative functions of the Drainage Programs as required under legislation (construction and maintenance phases and public notices); and preparing and distributing all correspondence and follow-up on drainage applications.
- She searched the Gordon Ruston Municipal Drain (the Drain) reports including By-Law 14-67, By-Law 10-77 (the current by-law), By-Laws and minutes pertaining to the endorsement of the Drain, and correspondence in the Drain File.
- Comprehensive searches of the records pertaining to the Drain have occurred corporately at the township's municipal vault, archives vault and in its electronic records.
- In correspondence dated January 31, 2012, the appellant acknowledged that the culvert is "not engineered to the municipal drain."
- In correspondence dated February 24, 2012 to the appellant, the township Drainage Superintendent stated that the culvert on the appellant's property was not installed under the authority of an engineer's report and therefore is not maintained by the township.

[5] With the Municipal Clerk's affidavit, the township enclosed:

- A letter from the township to the appellant and his spouse about "Private Culvert Replacement" and a responding letter from the appellant and his spouse seeking permission to work on the culvert, both dated September 24, 2009.

- A letter from the Drainage Superintendent to the appellant and his spouse dated October 21, 2009 regarding "Culvert Installation" on the appellant's property.
- A statutory declaration sworn by the appellant and his spouse on July 14, 2011 regarding the "New Culvert" on his property.
- The January 31, 2012 letter signed by the appellant and referred to in the Municipal Clerk's affidavit. In this letter, the appellant states, "My [lawyers] have determined that the culvert is not engineered on the Municipal Drain."
- Two letters from the Drainage Superintendent to the township, one dated February 24, 2012 and the second dated April 3, 2012, regarding "Culvert Installation" on the appellant's property.

[6] The township provided a copy of the affidavit, and the correspondence enclosed with it, to the appellant. I then invited the appellant to consider the township's disclosure of the additional responsive records attached to the affidavit and to advise me if he continued to challenge the reasonableness of the township's search.

### **The appellant's representations on the township's compliance with Interim Order MO-4023-I**

[7] In his representations, the appellant repeats his understanding that as per By-Law 1042, his culvert crossing was provided by the Township of Ellice in 1950 and is part of the Drain. He also repeats his concerns about the township unilaterally changing the ownership of the culvert without telling him when, why or how the change occurred, and treating his property differently than the other three neighbouring farms by claiming he privately owns the culvert on his property. The appellant concludes his representations by maintaining his request for written confirmation of the current owner of the culvert on his farm property.

### **The township's search for responsive records was reasonable**

[8] To establish that it conducted a reasonable search for responsive records, the township must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.<sup>1</sup> The IPC has consistently held that to be responsive to the request, records must "reasonably relate" to the request.<sup>2</sup> 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 that are reasonably related to the request.<sup>3</sup> The IPC has also consistently held that, although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester must still provide a reasonable basis for concluding that such records exist.<sup>4</sup>

[9] Having reviewed the parties' representations and all of the information before me, I am satisfied that the affidavit provided by the township's Municipal Clerk is sufficient evidence that the township has made a reasonable effort to identify and locate responsive

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<sup>1</sup> Orders P-264 and PO-2559.

<sup>2</sup> Order PO-2554.

<sup>3</sup> Orders M-909, PO-2649 and PO-2592.

<sup>4</sup> Order MO-2246.

records. Considering her responsibilities relating to municipal drains and to the Drain in particular, I accept that the Municipal Clerk is an experienced employee knowledgeable in the subject matter of the request.

[10] The Municipal Clerk's evidence that she searched the Drain reports and that corporate searches of the municipal vault, archives vault and electronic records were also conducted, is sufficient to establish that she expended a reasonable effort to locate records that are reasonably related to the appellant's request. I also note that the Municipal Clerk located and disclosed to the appellant correspondence relating to the culvert on his specific property, including two letters from 2009, in accordance with my directions in order provisions 1 and 2 of Interim Order MO-4023-I.

[11] Although I understand the appellant's concern about not receiving the specific written confirmation of the culvert ownership that he seeks and a satisfactory explanation about what he claims is a change in ownership, I do not consider this a reasonable basis to conclude that additional responsive records exist. It appears that the township does not have a record that would satisfy the appellant's concern, namely, a record that names the current owner of the culvert and clarifies when, why and how the current owner came to own the culvert.

[12] The township has located and disclosed records from 2009 and 2012 that indicate the township considers the appellant to be the private owner of the culvert on his property. The legitimacy and timing of the township's claim that the appellant owns the culvert is not an issue regarding access to records under the *Act*. I am only able to deal with the issue of whether the township's search for records responsive to the appellant's request was reasonable.

[13] Based on the evidence adduced by the township and the additional records it produced in response to Interim Order MO-4023-I, I find that the township's search was reasonable.

**FINAL ORDER:**

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

Original signed by: \_\_\_\_\_  
Stella Ball  
Adjudicator

\_\_\_\_\_ May 21, 2021