

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-4159

Appeal MA20-00180

The Corporation of the Township of South Glengarry

February 7, 2022

**Summary:** The appellant requested access to his “personal information records,” referencing the township’s personal information bank index. The township told the appellant that it did not maintain any personal information banks or the corresponding index. After discussing it with the appellant, the township reformulated the request and issued a decision, in which it disclosed some records that were identified as responsive to the reformulated request.

The appellant appealed to the IPC. The main focus of the appeal was the township’s failure to maintain a personal information bank index and its corresponding failure to search for records within its personal information banks.

During the mediation stage of the appeal, the appellant objected to the mediator transmitting the Mediator’s Report to the adjudicator. This issue was added to the scope of the appeal.

During the adjudication stage of the appeal, the township explained that it in fact does maintain personal information banks. Also during the adjudication stage, the township published, on its website, a personal information bank index.

Although several issues were canvassed in the adjudication of this appeal, the adjudicator determined that only the following issues required determination to resolve the appeal: the appellant’s concerns in relation to the Mediator’s Report, the appellant’s concerns about the township’s lack of a personal information bank index required by section 34 of the *Act*, the scope of the request and the reasonableness of the township’s search for records.

The adjudicator finds that the issues raised by the appellant in relation to the Mediator’s Report are unfounded.

The adjudicator finds that because the township has now published its personal information bank index, it is now in compliance with section 34 of the *Act* and therefore concerns about whether the township is in breach of this part of the *Act* are moot.

Lastly, the adjudicator finds that the township's reformulation of the appellant's access request did not reflect the appellant's request. As a result, the adjudicator concludes that the categories of records that were searched are not responsive to the appellant's access request.

However, the adjudicator does not order further searches. The appellant may now make a new request for his personal information contained within the township's personal information bank(s) but he must first specify which personal information banks that he believes contain his personal information.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, sections 2 (definition of "personal information bank"), 17, 34, and 35.

## **OVERVIEW:**

### **The original request**

[1] The appellant made the following access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Corporation of the Township of South Glengarry (the township):

1. Please identify and provide access to inspect and correct all of my personal information records which I have not previously requested.
2. Please identify and provide all S34 [section 34 of the *Act*] Personal Information Bank index or records relating to my personal information records which I have not previously requested.

[2] The request form indicated that the appellant's preferred method of access was to examine the physical records.

[3] Because the request refers to section 34 of the *Act*, it will assist to briefly explain that section, as well as the companion section, section 35. Section 34 of the *Act* requires that an institution make available to the public an index of all personal information banks that are in its custody or control. "Personal information bank" is defined in the Act and it means, "a collection of personal information that is organized and capable of being retrieved using an individual's name or an identifying number or particular assigned to the individual." Section 35 requires that institutions "attach or link" to the personal information (stored in a personal information bank) records of any improper use or disclosure of that personal information. Sections 34 and 35 are reproduced in the Appendix to this order.

[4] The appellant attended the office of the township in person to discuss the

request with the Deputy Clerk. During the discussion and in the eventual decision letter, the Deputy Clerk informed the appellant that the township did not maintain personal information banks or the corresponding index.

[5] The appellant found this to be a serious and significant omission on the part of the township. As will be explained in more detail below, the township in fact does maintain personal information *banks* and during the course of the inquiry, the township created and published online a personal information bank *index*.

### **The reformulation due to the lack of personal information banks**

[6] I will now return to the initial meeting between the Deputy Clerk and the appellant. Because the Deputy Clerk believed (at the time) and told the appellant that the township did not have any personal information banks, the focus of the discussion became to reformulate the request so that the township could respond to it.

[7] The township then issued a decision letter. The discussion between the appellant and the Deputy Clerk was summarized in the decision letter. The decision letter also identified the following types of records that could be responsive to the first part of the appellant's request: (a) compliance letters, (b) building permit files, (c) "complaints & FOI submitted by [the appellant]," (d) e-mails between [the appellant] and staff, and (e) legal documents.

[8] Regarding compliance letters (a), the decision stated that no compliance letters were located in the appellant's building property file. Regarding building permit files (b), the township disclosed to the appellant "a copy of all items found in" his building permit file. Regarding complaints and FOI forms submitted by the appellant (c), the township requested that the appellant identify a specific record for correction or a specific complaint or form to review. Regarding emails between the appellant and township staff (d), the township stated that such email correspondence had been "voluminous" and asked that the appellant submit a more detailed request form for particular records.

[9] Regarding legal documents (e), the township denied access to these records on the basis that they are subject to solicitor-client privilege under the section 12 exemption of the *Act*. The township also stated that the request for legal documents was frivolous and vexatious as the appellant "...repeatedly made this request and have been advised that no access will be granted to these files."

[10] The township advised that the request to provide physical access to the original records could not be granted due to the township's office being closed to the public during the COVID-19 pandemic.

[11] Regarding the second part of the appellant's request, the decision stated that the township does not maintain personal information banks. However, the township provided access to three records that it says contained the appellant's personal information, consisting of screenshots from the township's accounting software. The

decision invited the appellant to submit a request in writing if any of these items require correction.

[12] In summary, the township disclosed: records from the appellant's building permit file, and screenshots from the township's accounting software.

[13] The appellant did not find it necessary to reformulate his request and disagrees with the way in which it was reformulated. Later, the appellant made a related subsequent access request to the township that responded to the way in which the township reformulated his request. The related subsequent access request will be explained in my discussion of Issue C, below.

### **The appeal to the IPC**

[14] The appellant appealed to the Information and Privacy Commissioner of Ontario (IPC) about several issues. An IPC mediator was assigned to explore resolution, although no resolution was achieved.

[15] In order to transfer the file to the adjudication stage of the appeal process, the mediator prepared a Mediator's Report<sup>1</sup> and sent it for review by, and input from, the parties. The appellant objected to the mediator's intention to provide the adjudicator with the Mediator's Report. After attempting to address the appellant's concerns by revising the Mediator's Report, the mediator transferred the file to the adjudication stage.

[16] Also during mediation, the appellant filed a notice of constitutional question,<sup>2</sup> arguing that the township's failure to maintain a personal information bank constitutes a violation of his freedom of expression rights set out in section 2(b) of the *Canadian Charter of Rights and Freedoms*.

[17] After attempting to clarify and narrow the issues, I conducted a written inquiry by issuing notices of inquiry to the appellant and the township. I received representations, responses, replies and sur-replies from both parties, which were shared with the other in accordance with the IPC *Code of Procedure*. I did not share the appellant's final reply representations with the township because they did not raise any new issues related to the appeal that had not yet been addressed by the township.

[18] The notices of inquiry that I prepared for the parties included the following issues:

- What are the appellant's concerns about the mediation process? I did not invite representations from the township on this issue.

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<sup>1</sup> Referred to as the Report of Mediator in part 6 of the IPC's *Code of Procedure*.

<sup>2</sup> The notice was sent to the IPC and the attorneys general of Ontario and Canada by email on November 15 and 16, 2020. Neither of the attorneys general provided representations in this inquiry.

- Did the township conduct a reasonable search? Under this issue, I invited representations from both parties about the township's personal information bank obligations and the appellant's claims that his *Charter* rights had been violated.
- What is the scope of the request? I explained that scope may be at issue because the appellant disputed the way in which the township narrowed the request.
- Is the township required to provide the appellant with physical access to records already disclosed to him?
- Is the appellant's request to access legal documents frivolous or vexatious? (As indicated above, this is the township's position as conveyed in its decision letter.)
- Regarding the legal documents identified but withheld: do they contain the appellant's personal information; are they exempt under section 38(a) in conjunction with section 12, or section 12 alone; and, did the township exercise its discretion in deciding not to disclose them?

[19] During the inquiry, the appellant requested that I issue interim orders to compel the township to comply with section 34 of the *Act*, among other remedies. He also requested an immediate oral hearing for the purpose of obtaining interim relief. I decided to continue solely with the written inquiry for the purposes of resolving all issues in the appeal.<sup>3</sup>

[20] Also during the inquiry, the township indicated that it was prepared to "waive" application of section 12 to the records that it had identified as responsive to the "legal documents" category of records, although it sought a ruling on its decision to treat that part of the appellant's request (i.e. the part for "legal documents") as frivolous and vexatious.

### **Further context and brief conclusion**

[21] The lack of the personal information bank index – and the possibility that the township did not maintain any personal information banks – complicated the request and the appeal leading to this order. And it is the reason why I find it necessary to provide the following further context at this stage of the order to situate the appeal.

[22] The appellant and the township have had a number of interactions, including litigation, over the years and there is a mistrust on the part of the appellant about what is being said or done about him by the township. As I have come to understand it, the appellant believes that the township has improperly disclosed his personal information

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<sup>3</sup> I informed the appellant of this decision by letter dated July 20, 2021.

to third parties or internally among township staff.<sup>4</sup> Although the appellant does not use these words, I have come to understand that the access request that is the subject of this appeal is the first step in the appellant's attempt to locate examples of instances when the township improperly used or disclosed his personal information.

[23] To locate examples of improper use or disclosure, the appellant asserted his right under the *Act* to review the township's personal information bank index (as the township is required to maintain, section 34) and obtain access to his personal information contained in the personal information banks. He expects, as contemplated by section 35(1) of the *Act*, that if there have been unauthorized uses or disclosures of his personal information stored within the personal information banks, records of these incidents will be *attached or linked* to his personal information otherwise stored in the applicable personal information bank.

[24] Against this context and having reviewed the course of events and the parties' extensive representations in this appeal, I have determined that it is only necessary to dispose of the following issues in this appeal:

- The appellant's concerns with the Mediator's Report.
- The appellant's concerns about the township's compliance with its duties under section 34(1) of the *Act* to maintain a personal information bank index.
- The scope of the request and the township's search.

[25] In this order, I find that the issues raised by the appellant in relation to the Mediator's Report are unfounded.

[26] I also find that because the township has now published its personal information bank index as required by section 34 of the *Act*, the appellant's concerns are moot.

[27] Regarding the scope of the request, I find that the township's reformulation did not reflect the appellant's request. To begin, I find that the appellant's request is limited to his personal information contained in the township's personal information banks. The township advised the appellant that it did not have any personal information banks and, as a result, none were searched. It follows, therefore, that the records that were searched for (or identified) are not responsive to the request. As will become clear, the appellant simply does not seek the records that the township searched for.

[28] In these circumstances however, I do not order the township to do a further search. This is because, unfortunately, the request as made is not sufficiently clear. For the search to be sufficiently clear, the appellant must identify which personal information bank(s) that he wishes for the township to search. To be fair to the appellant, he was not able to do so because the township had not, until recently,

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<sup>4</sup> Early in the inquiry, I confirmed with the appellant that this appeal is not a privacy complaint.

produced the index of personal information banks. In my view, there is no need for the IPC to supervise the appellant's next access request and the township's search for additional records at this stage.

[29] In these circumstances, it is also my view that there is no basis to review the reasonableness of the searches that were undertaken on the basis of the reformulation. Because the reformulated request did not reflect what the appellant sought, there is no basis on which to assess whether the searches that were undertaken were reasonable.

[30] For similar reasons, it is also not necessary to consider the following issues:

- whether the appellant is entitled to physical access;
- whether the request for legal documents was frivolous or vexatious; and,
- the township's claim that the section 12 exemption or solicitor-client privilege applied to the records identified by searches for legal documents.

[31] Whether the appellant is entitled to physical access to the records is a moot issue because no responsive records were searched, or identified.

[32] The township's claim that the appellant's request for "legal documents" is based on its own reformulation, not the appellant's request, and it is therefore not necessary to assess the township's claim that this part of the request is frivolous or vexatious.

[33] The documents identified as "legal documents" were identified on the basis of the township's reformulation, which are not responsive to the request. The appellant does not seek these documents. Further, the township has ceased to rely on the section 12 exemption during the course of the inquiry. In these circumstances, there is no reasonable purpose to be served by reviewing the township's exemption claims.

## **ISSUES:**

- A. The appellant's concerns with the Mediator's Report.
- B. The appellant's concerns with the township's failure to maintain a personal information bank index.
- C. What is the scope of the request and did the township conduct a reasonable search?

## **DISCUSSION:**

### **Issue A: The appellant's concerns with the Mediator's Report**

[34] The *Act* provides that the IPC may attempt to mediate the appeals that come before it.<sup>5</sup> It is well-established that the IPC has the power to control its own process.<sup>6</sup> The following parts of the *Code of Procedure* describe the IPC's process as regards the role of IPC mediators and the preparation of Mediator's Reports:

6.03 At mediation, a Mediator may contact the parties, investigate the circumstances of the appeal, and attempt to:

(a) effect a settlement of all of the issues in the appeal; or

(b) if all of the issues in the appeal cannot be settled, narrow the issues that proceed to the Adjudication stage.

6.04 At the end of mediation, the Mediator will prepare a Report of Mediator and send a copy to the parties.

6.05 If a party believes that the Report of Mediator contains an error or omission, the party may ask the Mediator to amend the report. Such a request shall be made in writing within 10 days after the report is sent. The Mediator may amend the report on the request of a party or on his or her own initiative. Where the report is not amended, the Mediator will advise the relevant party, in writing, of his or her decision regarding the request. Where the report is amended, the Mediator will send a copy of the amended report to the parties.

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6.07 Where an appeal is not settled in the Mediation stage, the IPC will stream it to the Adjudication stage. In that event, the Report of Mediator will be provided to the Adjudicator.

[35] At the mediation stage, the appellant objected to the mediator providing the adjudicator with the Mediator's Report, claiming that it would reveal "mediation privilege," among other concerns. The mediator attempted to address the appellant's concerns by adjusting the content of the Mediator's Report. The appellant continued to object to the mediator providing the report to the adjudicator.

[36] The appeal was transferred to the adjudication stage and a Mediator's Report

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<sup>5</sup> Section 40.

<sup>6</sup> See seminal Order 164, in the context of the *Freedom of Information and Protection of Privacy Act, 1994*.



was finalized, as provided for in section 6.07 of the *Code of Procedure*. The appellant's concern with the Mediator's Report procedure was added as an issue in the appeal.

[37] I invited the appellant to make representations about his concerns with the Mediator's Report procedure. In his representations on this issue, the appellant stated that because I had reviewed the Mediator's Report, the issue was moot. However, he requested that I provide a ruling that when privilege is claimed, it must be respected. According to the appellant, he claimed mediation privilege or settlement privilege over the entire mediation process.

### ***Discussion***

[38] Mediator's Reports are a key component of the appeal process at the IPC and reflect the important work of the mediator assigned to the appeal. As reflected in section 6.03 of the *Code of Procedure*, an IPC mediator has two main functions: to attempt to settle some or all of the issues on appeal; and, to narrow the issues that remain for the adjudicator to consider.

[39] To carry out the first function, IPC mediators expertly assist and enable parties in many cases to resolve the issues in their appeal in informal and collaborative ways. Depending on the matter, a mediator may include general information about these efforts in the Mediator's Report, but they do not share confidential discussions that took place during mediation with adjudicators.

[40] To carry out the second function, IPC mediators prepare a procedural overview and list the remaining issues in a Mediator's Report. The reason that this type of information is included in a Mediator's Report is to help to ensure that issues to be adjudicated are issues within the jurisdiction of the IPC and to encourage a more efficient adjudication.

[41] In the present appeal, the appellant reviewed and commented on the Mediator's Report. As a result of the appellant's comments, adjustments were made to the Report.

[42] The information that was contained in the Mediator's Report that I reviewed describes only the access request, the township's decision and a listing of the issues and claims made by the parties. None of this information is – or could be – confidential. It is merely the procedural overview of the request and the appeal.

[43] In my view, the mediator followed the IPC's *Code of Procedure* and I find that the appellant's concerns are unfounded.<sup>7</sup>

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<sup>7</sup> Many mediator's reports contain much more detail than the one at issue here. This is entirely in keeping with the mediator's dual role as described above. Mediators do not include confidential mediation discussions in their mediator's reports.

**Issue B: The appellant's concerns with the township's failure to maintain a personal information bank index**

[44] As will be elaborated on in further detail at Issue C, a central component of the appellant's access request is the township's personal information banks.<sup>8</sup> The appellant's appeal and his representations in this inquiry focus mainly on the township's duty to maintain a personal information bank index referred to in section 34 of the *Act* and his assertion that the township has failed in this duty to facilitate his access to personal information contained within its personal information banks.

[45] This became a flash point because, initially, the township told the appellant that it did not have any personal information banks or, therefore, an index. It is therefore necessary to explain the appellant's concerns and the township's response to them as important context for the appeal. As I will explain below, the issue is now moot because the township has published its personal information bank index.

***Personal information banks***

[46] A "personal information bank" is defined in section 2 of the *Act* as a "collection of personal information that is organized and capable of being retrieved using an individual's name or an identifying number or particular assigned to the individual."

[47] Section 34(1) of the *Act*, which is reproduced in the Appendix to this order, requires that an institution make available for inspection by the public an index of all personal information banks in the custody or under the control of the institution. As prescribed in section 34(1), the index must describe the following information about the personal information bank:

- a. its name and location;
- b. the legal authority for its establishment;
- c. the types of personal information maintained in it;
- d. how the personal information is used on a regular basis;
- e. to whom the personal information is disclosed on a regular basis;
- f. the categories of individuals about whom personal information is maintained;  
and
- g. the policies and practices applicable to the retention and disposal of the personal information.

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<sup>8</sup> In the Notices of Inquiry issued in this appeal, I included this township's compliance with section 34 under the issue of whether the township conducted a reasonable search.

[48] Section 35 of the *Act* states that when personal information contained within a personal information bank is used for a purpose other than as described in paragraph (d), or disclosed to any person other than the person identified in paragraph (e), the institution must attach “or link” to the personal information at issue a record of the improper use or disclosure.

### ***Representations***

#### *The appellant*

[49] The appellant takes significant issue with the township’s failure to maintain a personal information bank index and more specifically with the township’s initial statement that it does not maintain any personal information banks. The appellant states that it is not true that the township does not maintain any personal information banks and that its failure to maintain and make available an index of them is a contravention of the *Act*.

[50] He argues that the township’s failure has impeded his rights to access and correct personal information under the *Act* and he states that this failure has infringed his freedom of expression rights as established in section 2(b) the *Canadian Charter of Rights and Freedoms*.

[51] In support of the latter argument, the appellant refers to the Supreme Court of Canada decision, *Ontario (Public Safety and Security) v. Criminal Lawyers’ Association*,<sup>9</sup> which addressed situations when access to information is necessary for meaningful exercise of free expression on matters of public or political interest.

[52] The appellant describes the two-part test set out in *Criminal Lawyers’ Association*: (1) access to the information must be necessary for the meaningful exercise of free expression on matters of public or political interest; and (2) if requirement 1 is met, it must also be the case that there are no countervailing considerations inconsistent with disclosure, such as privileges, and/or evidence that disclosure would impair the proper functioning of the institution.

[53] The appellant argues that in the present case, access is necessary because the *Act* establishes his right to access his own personal information, citing sections 31, 36(1), 34 and 35. Regarding the second requirement, he submits that because of the gravity of the township’s actions – including its failure to maintain a personal information bank – any countervailing considerations would be outweighed in favour of disclosure (as I understand the argument).

[54] Regarding the remedy for the alleged *Charter* breach, the appellant asks that the township’s access decision be declared of no force and effect, that the IPC investigate the township for possible violations of the *Act* and that I order it to comply with the *Act*.

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<sup>9</sup> 2010 SCC 23.

[55] The appellant also refers to Order PO-2826, an order in which the adjudicator acknowledged that the Supreme Court of Canada has characterized the federal *Privacy Act* as quasi-constitutional legislation.<sup>10</sup>

*The township*

[56] The township's representations in this inquiry provided an important correction and clarification. The township explains that it does in fact maintain personal information *banks* but it concedes that at the time of making its representations, it had not prepared or maintained the required *index*. The township explains that the prior statements made to the appellant that the township does not have a personal information bank was a statement made in error. Regarding the statements made in the decision letters (which will be described in more detail below), the township states that when it said that it did not have a "personal information bank," it had erroneously omitted the word "index" and that this gave rise to a misunderstanding.

[57] The township acknowledges that it is required by section 34 of the *Act* to maintain personal information banks and their accompanying index. The township states that it has been transparent with the appellant about its failure to maintain a personal information bank index. The township provided some information about a number of operational barriers within the township and its workforce that have prevented it from developing and maintaining the index. It has committed to ensuring that it fulfills its duty in the "near-term future" and it has described some recent and upcoming operational and budget changes that will assist with this goal.

[58] The township's representations also included a copy of a draft index, which was imminently to be published, which was provided to the appellant during the course of the inquiry.

[59] The township rejects the proposition that its failure to maintain the index has impacted the appellant's freedom of expression rights under the *Charter*.

*The appellant's reply*

[60] In reply on this issue, the appellant disputes the credibility of the township's explanation that a mere miscommunication has occurred. He says that the clarification by the township which occurred in the inquiry is contrary to prior statements made during the mediation and to others and that it cannot be relied upon.

[61] The appellant submits that the township's representations in the inquiry contain admissions that the township does not comply with section 34 of the *Act*.

[62] Regarding the draft index shared with him during the inquiry, the appellant

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<sup>10</sup> The appellant also refers to sections 7 and 8 of the *Charter* in relation to concerns about breach of privacy. This appeal deals only with the access request made by the appellant.

argues that it does not comply with section 34 because it does not include certain specified information. The appellant says that the time that it took for the township to complete the personal information bank index is unacceptably long and that, in any event, draft documents are not evidence of a plan.

[63] Regarding the township's representations about the *Charter*, the appellant submits that the township has mischaracterized his claim to defend its own breach of the *Act* and the *Charter*.

### ***Update***

[64] A review of the township's website at the time of writing this order indicates that the township has published a Personal Information Bank Index Listing on its website, as it indicated that it would be doing in its representations.<sup>11</sup>

[65] The township's personal information bank index is therefore now available for public inspection as required by section 34 of the *Act*.

### ***Discussion – the issue is moot***

[66] As is clear, the township has now published its personal information bank index. It is therefore my view that there is no issue to be adjudicated in relation to this issue. In other words, I find that this is a moot issue and that no useful purpose would be served by my deciding on the moot issue.<sup>12</sup> As a result of this development and my decision, it is also not necessary to consider the appellant's *Charter* arguments.

### **Issue C: What is the scope of the request and did the township conduct a reasonable search?**

#### ***Brief conclusion***

[67] As is evident, the appellant's access request became complicated because the township did not (at the time) maintain a personal information bank index.

[68] In the discussion that follows, I explain why I have concluded that the appellant's request is limited to his personal information contained in the township's personal information banks.

[69] I also explain that while there is no doubt that the township acted in good faith to reformulate the request, the township's reformulation bears no resemblance to what the appellant is seeking and why it therefore also follows that the records that were

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<sup>11</sup> See <https://www.southglengarry.com/en/municipal-services/resources/Documents/Personal-Information-Bank-Index.pdf> (accessed on February 7, 2022).

<sup>12</sup> See Orders PO-4127, MO-3964, P-1295 and PO-3925-I as examples of orders in which adjudicators have found issues to be moot in consideration of the test in *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342.

searched for (or identified) are not responsive to the request.

[70] Although I do not make any further orders, which I will also explain, I trust that this discussion and my findings will assist the parties to move forward should the appellant wish to make a request for his personal information contained within the township's personal information banks.

***Scope of request***

[71] 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).

[72] 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.<sup>13</sup> To be considered responsive to the request, records must "reasonably relate" to the request.<sup>14</sup>

[73] A requester's lack of diligence in pursuing a request by not responding to requests from the institution for clarification may result in a finding that all steps taken by the institution to respond to the request were reasonable.<sup>15</sup>

***The request, reformulation and subsequent request***

[74] The appellant's original access request was:

1. Please identify and provide access to inspect and correct all of my personal information records which I have not previously requested.

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<sup>13</sup> Orders P-134 and P-880.

<sup>14</sup> Orders P-880 and PO-2661.

<sup>15</sup> Order MO-2213.

2. Please identify and provide all S34 [section 34] Personal Information Bank index or records relating to my personal information records which I have not previously requested.<sup>16</sup>

[75] Recall that the township told the appellant that the township did not have any personal information banks or, therefore, an index. After a discussion with the appellant, the township identified the following categories of records that it said would be responsive to the request: (a) compliance letters, (b) building permit files, (c) "complaints & FOI submitted by [the appellant]," (d) e-mails between [the appellant] and staff, and (e) legal documents.

[76] As summarized earlier, the township carried out searches for categories (a), (b) and (e), which yielded some records. It also requested additional clarification for categories (c) and (d). Although the township said that it did not have a personal information bank, it provided access to three records that it says contained the appellant's personal information, consisting of screenshots from the township's accounting software.

[77] The appellant made a subsequent, related, request,<sup>17</sup> which stated (emphasis added):

This FOI request is for information not previously requested. It corrects, complements or is in addition to [the initial request at issue in this appeal], which was narrowed by the Deputy Clerk to non Personal Information Bank records on the basis that PIB records are not maintained. E.g. Disclosed and/or Disposed records, the links to the collection and use of the disclosed and/or disposed records i.e.:

1. I seek access to all and any personal information about me contained in all personal information banks in the custody or under the control of [the township]; and the index of all related personal information banks in the custody or under the control of the [township] (maintained or not) setting forth

- (a) its name and location;

- (b) the legal authority for its establishment;

- (c) the types of personal information maintained in it;

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<sup>16</sup> The appellant attempts to draw a distinction between "records that contain his personal information" and "personal information records." "Personal information record" is not a concept contained in the *Act*, although "records" are, as well as "personal information." Having carefully reviewed all of the appellant's arguments, I have concluded that the appellant's reference to "personal information records" is intended to mean his personal information contained within a personal information bank.

<sup>17</sup> Included with the appellant's representations in this inquiry.

- (d) how the personal information is used on a regular basis;
- (e) to whom the personal information is disclosed on a regular basis;
- (f) the categories of individuals about whom personal information is maintained; and
- (g) the policies and practices applicable to the retention and disposal of the personal information.<sup>[18]</sup>

2. I seek access to all and any other personal information about me in the custody or under the control of the [township] with respect to me that I may identify once provided with the indices sought above.

3. I also seek access to all and any record of use of my personal information for a purpose other than how my personal information is used on a regular basis as described in (d) above.

4. I also seek access to all and any record of disclosure of my personal information to a person other than a person described in (e) above.

5. Once given access to my personal information. I may request correction of my personal information if there is an error or omission; and I may require that a statement of disagreement be attached to the information reflecting the correction that was requested but not made; and require that any person or body to whom my personal information has been disclosed within the year before the time a correction is required or a statement of disagreement is required be notified of the correction or statement of disagreement.

I will refer to this request as the "subsequent request."

[78] The township responded to the subsequent request by reiterating that it did not maintain personal information banks and that it had already responded to the request.

### ***Representations***

#### *Appellant's initial representations*

[79] The main focus of the appellant's initial representations is the township's failure to maintain a personal information bank index.

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<sup>18</sup> Listed paragraphs (a) to (g) are quotes from section 34(1) of the *Act*, which describes the contents of a personal information bank index.



[80] He also characterized the township's reformulation of the request as "unilateral" and he disputes that it accurately reflects the records that he seeks. He says, "I seek personal information about me. I already know and don't need my "email exchanges with staff" and "the personal information you may have included on complaints and FOI forms ...." He says that he needs and wants records of staff's *use and disclosure* of "my FOIs, emails and complaints that I do not know about."

*Township's representations*

[81] The township says that the appellant's assertion that it unilaterally narrowed the request is false. The township explains that the initial request was broad in scope and that it did not sufficiently describe the records sought. To address this, the Deputy Clerk spoke with the appellant and explained to him the types of records that may contain his personal information. Through this discussion, the township says, the request was narrowed and the Deputy Clerk added notes to identify the types of records that were discussed – the categories described above

[82] In sum, the township submits that the Deputy Clerk helped the appellant to reformulate what it says was a broad request and that the appellant was invited to provide additional clarification in the decision letter itself, which he did not provide.

*Appellant's reply*

[83] In reply, the appellant submits that the township unilaterally selected a timeframe for records disclosed under category (e) (legal documents). He also says that the township used a literal interpretation of what the request was "without further attempts to clarify" the request.

[84] The appellant says that the township is mis-characterizing his request. For example, he says,

The new claim [by the township] is "the appellant is not seeking specific records" but records "containing his personal information." Where? The request does not say "containing." [The appellant then quotes from the request, which refers to "personal information *records*."]

[85] He submits that the township's statement that it is confident that it carried out a reasonable search should be rejected, citing Order MO-3510-I, in which similar arguments were rejected.

[86] The appellant states that the township "cannot do a reasonable search without indexes – S34 or otherwise."

[87] He also argues that if the township had searched and retrieved his personal information from a personal information bank, he would also be provided with records of improper use or disclosure as those records are required to be maintained with the

personal information. As I understand this argument, the appellant relies on section 35 of the Act, which requires the township to *attach or link* to personal information contained within a personal information bank the instances of when that information was used or disclosed improperly.

[88] The appellant says, also, that his request is broader than just the personal information bank *index*. He says that part two of the request also contains a request for (emphasis added) "records *relating* to [his] personal information records," which he argues has been overlooked by the township. He says,

Plain and obviously my request does not specifically ask for only S34 indexes. Plain and obviously, my request is for S34 indexes OR 'records *relating to* my personal information records.' e.g. relating to my emails, FOI and complaint submissions.

[89] He says that the township's representations contain no evidence of any attempt to identify and locate responsive records "relating" to his "personal information records" and that the effect of the township's reformulation to "exclude related records."

[90] The appellant refers to an excerpt from a bill of costs prepared by the township's lawyer, apparently in the course of litigation between the township and the appellant, which indicates that the township's legal counsel had "emails to and from" the appellant and the township clerk in September 2019. As I understand this part of the appellant's representations, he offers this information as an example of the possibility that records of the nature he is seeking exist. That is, records between the township and its legal counsel *about the appellant* and which he has not previously requested. Importantly, he believes that such records would be included in a personal information bank, along with any section 35-record indicating an improper use or disclosure.

[91] The appellant also makes representations about other statements made by township staff about whether it has made any disclosures of unauthorized use of personal information contained within a personal information bank as it may be required to do under section 35 of the *Act*. These representations relate to correspondence between the township and the appellant that occurred during the inquiry about section 35.<sup>19</sup>

#### *Township's reply*

[92] The township maintains that it conducted a reasonable search for records responsive to the reformulated request. Regarding the categories of records for which it sought additional clarification (categories (c) and (d)), the township says that it has never received the requested clarification.

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<sup>19</sup> That is, an email exchange with a date range of March 30, 2021 to April 1, 2021, also known as Attachment "NoProcessInPlace" to the appellant's reply representations.

[93] The township denies that it unilaterally selected a timeframe for the “legal documents” component of the request. It explains that it determined the relevant timeframe based on the wording of the request – *i.e.* “records not previously requested.”

[94] The township submits that the appellant’s arguments about section 34 and 35 are not relevant to the issues of reasonable search or scope. However, as already explained above, it explains that it has been preparing the personal information bank index and it attached a copy of a draft document that, it says, would bring the township into compliance with section 34.

[95] The township submits that contrary to the appellant’s arguments in this appeal, the Deputy Clerk properly assisted the appellant to reformulate the request, performed a reasonable search and provided access when no exemptions were applied. It also submits that it considered the entire request made by the appellant.

[96] The township denies that it applied a literal interpretation of the request and it expressly denies that it made no further attempts to clarify, pointing to the decision letter itself that invited the appellant to clarify.

[97] The township reiterates the requirements in section 17 of the *Act*. The township says that the appellant is not seeking specific records, as envisioned by section 17 but rather that he “continuously makes broad, generalized requests for records ‘containing his personal information’ but fails to provide sufficient detail” to enable the township to respond to the request.

[98] The township submits that to the extent that the appellant is now arguing that his original request included “disclosure records” (a term used by the appellant), it is clear from the face of the request that it does not refer to those type of records.

[99] Regarding the appellant’s arguments about his recent correspondence with the township and section 35, the township says that these arguments are confusing and not relevant.

*Appellant’s further reply*

[100] The appellant begins his further reply representations by again referring to correspondence between him and the township that occurred during the course of inquiry. This correspondence, generally, involves the appellant asking the township about how to make the request now that the township had acknowledged that it has personal information banks and that it was in the process of developing a personal information bank index.

[101] He notes that in this correspondence the township explained that it maintains its records using a particular file system. On this point, the appellant submits that the township has not provided any evidence of any search of this file system. The appellant

also argues that the personal information banks ought to be able to be searched, even though there is no index.

[102] The appellant also raises concerns about alleged improper “disclosures” made by the township and referring to an email exchange between the township and the appellant about the township’s authority to disclose and use information under section 32<sup>20</sup> of the *Act*, including to township staff and consultants.

[103] The appellant says that he did clarify his request, contrary to the township’s submissions, referring to a number of emails that he sent to the township and the subsequent request, described above.

[104] The appellant says several times that because the township has failed to meet its obligations under sections 34 and 35 of the *Act*, no finding of reasonable search is possible.

[105] The appellant says, based on the township’s correspondence to him that occurred during the course of the inquiry, that the township has admitted that there are emails from the township to its solicitor, the township council, the Chief Administrative Officer and the IPC and that this is an admission of undisclosed responsive records. Viewed broadly, the appellant argues that such emails are responsive because they would constitute improper disclosures or uses within the meaning of sections 35(1)(a) or (b) and that information about their *disclosure* or use would be attached or linked to his personal information that is otherwise stored in a personal information bank.

[106] The appellant doubts the township’s evidence that it considered the totality of his request, including the second half of part two of the original request. He points, again, to the township’s reference to emails from the township to its solicitor, council and the CAO as evidence, which he deems as responsive.

[107] The appellant takes issue with the township referring to part of his arguments as confusing and that they refer to irrelevant matters. He says that the township had told him in the context correspondence ongoing outside the confines of the inquiry that his questions and comments were “fair.”

[108] The appellant reiterates his argument that the request was narrowed unilaterally.

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<sup>20</sup> Parts of section 32 referred to by the township and the appellant are,  
An institution shall not disclose personal information in its custody or under its control except,  
...  
(c) for the purpose for which it was obtained or compiled or for a consistent purpose;  
(d) if the disclosure is made to an officer, employee, consultant or agent of the institution who needs the record in the performance of their duties and if the disclosure is necessary and proper in the discharge of the institution’s functions;  
...  
(k) to the Information and Privacy Commissioner;

He submits specifically (under a different heading and in response to a different issue), that his request was "not a request to access 'legal documents' that contain the appellant's personal information."

[109] Referring to the index of "legal documents" provided by the township in the appeal, the appellant says that he is the author of seven of these records and that he has copies of the rest. He says, however, that the records identified by the township, combined with other records that he already has, are evidence that further responsive records exist. He also says that if he had had the chance he would have clarified that he does not seek access to the records identified by the township as responsive to the "legal documents" part of the search.

[110] In response to the township's argument that his request does not include "disclosure records," the appellant refers to section 35 and that any personal information contained in a personal information bank would also "attach or link" any improper uses or disclosure of that information. He also says, as I understand it, that the township should have understood that his request, as stated, was for "disclosure records" because it has always been understood that he seeks to correct information, which, he says only matters if the information is otherwise to be disclosed to someone else.

[111] As is clear, the appellant's main focus has been with the township's failure to maintain a personal information bank index and, relatedly, his ability to request and correct personal information contained within the township's personal information banks.

### ***Findings***

[112] On the face of it, the appellant's original request is to access his "personal information records" held by the township and to then provide any corrections or determine whether his "personal information records" were improperly used or disclosed.

[113] The appellant uses the phrase "personal information records" in both parts of his original request. "Personal information record" is not a concept contained in the *Act*, although "records" are, as well as "personal information."

[114] The appellant's use of this phrase may seem unimportant, as it likely did to the township. However, in this inquiry the appellant has drawn a distinction between "records that contain his personal information" and "personal information records." Considering this, and with the benefit of his representations in this inquiry, I have concluded that the appellant's reference to "personal information records" means the personal information *contained within* a personal information bank – importantly to the appellant, including any and all records of improper use or disclosure of that information.

[115] In other words, I have concluded that the request at issue in this appeal is limited to records *contained within the township's personal information banks*. I have reached this conclusion in consideration of the wording in the request, the appellant's representations about what he is seeking, his heavy reliance on sections 34 and 35 of the *Act* and, most importantly, the clarification that the appellant made to his request in the subsequent request, which is quoted at paragraph 77, above.

[116] In summary form, I find that the request was for:

- all personal information about the appellant *contained within the township's personal information banks*.
- the township's personal information bank index,
- any record of use of the appellant's personal information (contained in a personal information bank) for a purpose other than how that personal information is used on a regular basis as described in section 34(1)(d) (the component of the personal information bank index that identifies how the information in a particular personal information bank is used on a regular basis),
- any record of disclosure of the appellant's personal information (contained in a personal information bank) to a person other than a person described in section 34(1)(e) (the component of the personal information bank index that identifies to whom the information in a particular personal information bank is disclosed on a regular basis).

In addition:

- the appellant does not seek information previously requested,
- the appellant also reserved his right to request correction of his personal information, once disclosed to him.

[117] When presented with the original request, albeit without the benefit of the appellant's subsequent request (or his representations in this appeal), the township informed the appellant that it did not have personal information banks and it reformulated the request into a variety of categories of records.

[118] The township's attempt to reformulate the request was a well-intentioned effort. Although a discussion occurred between the township and the appellant to attempt to reformulate the request, I have concluded that the parties were, effectively, speaking different languages to each other. The appellant, as he has in this inquiry, undoubtedly spoke with detailed reference to sections 34 and 35. The township staff person engaging with the appellant at the time was seemingly unaware of the implications and

nuances of sections 34 and 35.<sup>21</sup>

[119] The resulting reformulation prepared by the township, unfortunately but unsurprisingly, bears no resemblance to the request. It does not include records contained within a personal information bank, an essential element of the request.

[120] Nevertheless, the reformulation formed the basis of the searches that occurred. As is clear, none of these searches involved personal information banks. The appellant does not seek the records described in the reformulation – he has stated this repeatedly in the inquiry.

[121] The outcome is that the township has not carried out a search that is responsive to the request. Ordinarily in a case like this, the IPC would order the township to carry out further searches. In my view, it is not appropriate to do so in this case.

[122] Although the township's reformulation was not an accurate reflection of the request, the appellant's request as explained above is not sufficiently specific because it does not identify which personal information banks to search.<sup>22</sup> In fairness to the appellant, he was not able to determine the township's personal information banks until recently.

[123] If the appellant wishes to continue to pursue these records, he may do so while clearly identifying which particular personal information bank that he believes contains his personal information.

[124] Because of my findings, it is not necessary to consider the following issues:

- whether the appellant is entitled to physical access;
  - whether the request for legal documents was frivolous or vexatious;
- and,
- the township's claim that the section 12 exemption or solicitor-client privilege applied to the records identified by searches for legal documents.

[125] Whether the appellant is entitled to physical access to the records is a moot issue because no responsive records were searched, or identified.

[126] The township's claim that the appellant's request for "legal documents" is based on its own reformulation, not the appellant's request, and it is therefore unnecessary to assess the township's claim that this part of the request is frivolous or vexatious.

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<sup>21</sup> It is important to observe, based on the representations filed in this inquiry, that the township staff are now fully versed with personal information banks and the corresponding index.

<sup>22</sup> Order PO-3085.

[127] The documents identified as “legal documents” were identified on the basis of the township’s reformulation, which are not responsive to the request. The appellant does not seek these documents. In these circumstances, there is no reasonable purpose to be served by reviewing the township’s exemption claims, particularly when the township has ceased to rely on this exemption during the course of the inquiry.

[128] Before concluding, it is important that I explain that to the extent that the appellant argued in this appeal that other records exist that may be responsive to the request, I have concluded that the appellant expects that these types of records may be included within a personal information bank.

### **ORDER:**

On the basis of the findings above, I make no order.

Original signed by: \_\_\_\_\_

Valerie Jepson  
Adjudicator

February 7, 2022 \_\_\_\_\_

### **APPENDIX**

*Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56*

#### **Personal information bank index**

34 (1) A head shall make available for inspection by the public an index of all personal information banks in the custody or under the control of the institution setting forth, in respect of each personal information bank,

- a. its name and location;
- b. the legal authority for its establishment;
- c. the types of personal information maintained in it;
- d. how the personal information is used on a regular basis;
- e. to whom the personal information is disclosed on a regular basis;
- f. the categories of individuals about whom personal information is maintained;  
and
- g. the policies and practices applicable to the retention and disposal of the personal information.



**Ensure accuracy**

(2) The head shall ensure that the index is amended as required to ensure its accuracy. R.S.O. 1990, c. M.56, s. 34.

**Inconsistent use or disclosure**

35 (1) A head shall attach or link to personal information in a personal information bank,

- a. a record of any use of that personal information for a purpose other than a purpose described in clause 34 (1) (d); and
- b. a record of any disclosure of that personal information to a person other than a person described in clause 34 (1) (e).

**Idem**

(2) A record of use or disclosure under subsection (1) forms part of the personal information to which it is attached or linked. R.S.O. 1990, c. M.56, s. 35.