

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4511

Appeal MA23-00017

County of Frontenac

April 19, 2024

Summary: The county received a detailed request under the *Act* for access to records related to a certain notice issued by the county. The county advised that there were no responsive records. On appeal, the appellant challenges the county's interpretation of the scope of the request and the reasonableness of the county's search for responsive records. The adjudicator allows the appeal in part. She upholds county's interpretation of the scope of the request, in part, but finds that the county's interpretation of the request was narrow in one respect. She orders the county to conduct a search in response to that aspect of the request.

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

OVERVIEW:

[1] This appeal involves the question of whether an institution narrowly interpreted a request, and as a result, did not conduct a reasonable search.

[2] The County of Frontenac (the county) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records for a certain timeframe, and specifying the following other parameters:

All communications, including staff reports, emails, orders, formal complaints, etc. relating to the County of Frontenac's Notice of the Howe Island Ferry lane reduction dated October 3, 2022, between County council

and staff including [name 1, name 2, and name 3], and the following individuals:

1. Members of the public;
2. Representatives of Frontenac Islands Township including [name 4 and name 5];
3. Representatives of Transport Canada (including any orders issued by Transport Canada); and
4. Representatives of the Ontario Ministry of Transportation including [name 6 and name 7].

[3] In response to the request, the county issued a decision to the requester, which stated:

A search of our records concludes that there were no responsive records related to your request. All communications to County Council are listed on the monthly regular Council agenda and may be viewed at your own leisure on the County's Civic web portal which may be accessed at [web address].

[4] The requester (now the appellant) filed an appeal to the Information and Privacy Commissioner of Ontario (IPC) about the county's response.

[5] I conducted an inquiry into the appeal. The parties were invited and provided representations about the issues under appeal.

[6] For the reasons that follow, I uphold the county's interpretation of the scope of the request, in part. I find that the county reasonably interpreted one aspect of the request, but narrowly interpreted another aspect of it (regarding communications involving the named county staff and one or more other parties, related to the county's Notice of the Howe Island Ferry lane reduction dated October 3, 2022). As a result, I order the county to conduct a search on that aspect of the request).

DISCUSSION:

[7] The appellant argues that the county narrowed the scope of the request and did not conduct a reasonable search. The county submits that the request is for communications from "County Council" to various others, which it provided the appellant with an online public link to. For the reasons that follow, I allow the appeal, in part.

[8] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records.

[9] Section 17(1) 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, and specify that the request is being made under this Act;

(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).

[10] To be considered responsive to the request, records must “reasonably relate” to the request.¹ Institutions should interpret requests liberally, in order to best serve the purpose and spirit of the *Act*. Generally, if there is ambiguity in the request, this should be resolved in the requester’s favour.²

What records would be responsive to this request?

[11] The appellant submits that his request included a request for communications between individual members of County Council and named individuals. He also submits that emails involving county staff members and others listed in the request are responsive to the request. The county submits that the request is for all communications between County Council and various others.

Communications between County Council and various others

[12] The parties disagree about the county’s interpretation of the term that the appellant’s legal counsel used in the request: “County Council.” At mediation, the county advised that if the appellant wanted individual councillor’s records, the request would have to be resubmitted. At adjudication, the county submitted that individual councillors’ records are not subject to the *Act*, citing past court decisions and IPC orders. The appellant points to those submissions as showing that the county did not ever intend to release these records. The appellant also notes that some IPC orders have held that a councillor’s records may fall under the custody or under the control of an institution and, therefore, be subject to the *Act*. The appellant submits that records responsive to this request would be such records because the individual councillors were involved in the

¹ Orders P-880 and PO-2661.

² Orders P-134 and P-880.

decision-making process in question.

[13] Having reviewed the parties' representations and the request itself, I find that as it relates to County Council, the request is clear and unambiguous. It is for correspondence with "County Council" and others. However, County Council speaks through bylaws and council resolutions. The county referred the appellant to the County Council's website where these documents would be found.

[14] In my view, the appellant expected the county to interpret his reference to County Council to mean communications to or from individual city councillors. The request does not say this and because it is clear and unambiguous, I agree with the county that the scope, as it relates to County Council, is limited to communications from County Council which are found on the County's website. The fact that an individual councillor's records may be subject to the *Act* in certain circumstances does not mean that these circumstances exist here,³ or that the request, as worded, is for individual councillor's records.

[15] Considering the wording of the request and the parties' representations, in my view, there is no basis for interpreting the words "County Council" as a request for individual county councillor's records. If that was what the appellant wanted in addition to records of the County Council, or in the alternative to them, then the request should have been worded differently – especially given the jurisprudence indicating that requests for individual councillor's records may not be subject to the *Act*.⁴

[16] Where I disagree with the county is its interpretation of the scope of the request involving various named county staff. I discuss that next.

Communications between named county staff and various others

[17] As mentioned, to be considered responsive to the request, records must "reasonably relate" to the request.⁵ Institutions should interpret requests liberally, in order to best serve the purpose and spirit of the *Act*. Generally, if there is ambiguity in the request, this should be resolved in the requester's favour.⁶

[18] The request before me seeks communications and lists various named county staff and others. When I consider that wording and the appellant's position, a liberal interpretation of the request would have interpreted the request as seeking communications between each named county staff member and one or more of the various other parties listed in the request (such as members of the public), with regards

³ I have made no findings about that in this order, either way, as that is outside the scope of this appeal.

⁴ If the appellant chooses to submit a new request seeking one or more individual councillor(s)' records, I invite the appellant and the county to consider the long-standing jurisprudence regarding whether an institution has an individual county councillors' records in its custody or control, within the meaning of the *Act*. The parties may wish to review, for example, [Order MO-4364](#) and the orders cited in it, in this regard.

⁵ Orders P-880 and PO-2661.

⁶ Orders P-134 and P-880.

to the subject of the county's Notice of the Howe Island Ferry lane reduction of October 3, 2022. Based on my review of the county's representations, I find that the county did not interpret the request that way.

[19] I acknowledge that the request was worded so that its literal interpretation could be that a responsive record would be for all communications of County Council *and* various named staff *and* various others. This cumulative wording would mean that any responsive record would be one of communications of County Council as a body and a minimum of ten individuals. However, as noted, such a record would not exist because County Council speaks, or "communicates," through by-laws and resolutions. In my view, the county should have interpreted the request more liberally. In the circumstances, I find that it should have resolved the ambiguity in the appellant's favour by also considering the request to be for communications between each of the named county staff and one or more of the various others listed in the request, regarding the county's Notice of the Howe Island Ferry lane reduction of October 3, 2022.

Conclusion

[20] The appellant argues that the county applied a narrow interpretation of the request and I agree, in part. The county was right to interpret the request as not being one for individual councillor's records, and as being for communications between County Council and various individuals. However, the county should have interpreted the request more liberally in the circumstances, as being one for all communications about the subject matter involving each of the named county staff and one or more of the various others listed.

[21] For these reasons, I allow the appeal on the issue of scope, in part. The appellant's request should be interpreted to mean communications between each of the named county staff and one or more of the various others listed in the request, regarding the county's Notice of the Howe Island Ferry lane reduction of October 3, 2022. I will order the county to conduct a search for responsive records on this basis.

ORDER:

1. I allow the appeal in part on the issue of scope. I order the county to interpret the request liberally, as including in its scope, communications between each of the named county staff and one or more of the various others listed in the request, regarding the county's Notice of the Howe Island Ferry lane reduction of October 3, 2022.
2. I order the county to conduct a search for the aspect of the request referenced in provision 1 of this order, treating the date of this order as the date of the request for the purposes of the procedural requirements of the *Act*. The county must issue an access decision for any records that are located or even where records are not

located. The county is not permitted to rely on the time extension provision in section 20 of the *Act*.

Original Signed By: _____

Marian Sami
Adjudicator

_____ April 19, 2024