

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4570

Appeal MA22-00132

Municipality of Trent Lakes

September 25, 2024

Summary: An individual asked the municipality for records concerning a zoning issue. The municipality provided records but denied access to some information. It said that its decision was based on three reasons (exemptions) set out in the *Act*: that disclosure would reveal the substance of deliberations in a closed council meeting (section 6(1)(b)), that disclosure would reveal information that would harm an ongoing law enforcement matter (section 8(1)(a) and 8(1)(b)) and that disclosure would reveal solicitor-client privileged information (section 12). The requester appealed the decision and also stated that the municipality's search was not reasonable as more information should be available.

In this order, the adjudicator upholds the municipality's decision that section 6(1)(b) and 8(1)(a) apply to exempt the information from disclosure. He does not agree with the municipality that record 49 is exempt under section 12. Finally, he finds that the municipality's search was reasonable.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, RSO, 1990, c. M.56, sections 6(1)(b), 8(1)(a), 12 and 17.

Orders and Investigation Reports Considered: Orders M-16, MO-1245, MO-2246, P-624-PO-2554 and PO-2559.

OVERVIEW:

[1] The Municipality of Trent Lakes (the municipality) received a request pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act* or *MFIPPA*)

for information regarding a specified address, including zoning, permits, business and other information.¹

[2] The municipality issued a decision granting partial access to the requested records, redacting certain information pursuant to section 14(1) (personal privacy) of the *Act*. The municipality denied access to some of the responsive records, in full, pursuant to sections 8(1) (law enforcement matter) and section 12 (solicitor-client privilege) of the *Act*. In addition, the municipality indicated that a search has been conducted and no responsive records were located for several parts of the request.

[3] The requesters (now the appellants) appealed the municipality's decision to the Office of the Information and Privacy Commissioner of Ontario (the IPC).

[4] During mediation, the municipality revised its decision granting partial access to the requested records where certain information was redacted pursuant to section 14(1) (personal privacy) of the *Act*. It continued to withhold information pursuant to section 8(1) (law enforcement matter), 12 (solicitor client privilege) and 6(1)(b) (closed meeting) of the *Act*. The municipality also included an updated index of records detailing its access decisions on all the responsive records.

[5] The appellants advised the mediator that they were not pursuing access to information that was withheld pursuant to section 14(1) (personal privacy) of the *Act*. Accordingly, section 14(1) of the *Act* is no longer at issue in this appeal and therefore records 4, 6, 7 and 82-85 (from the documents listed on the municipality's index,) are not at issue in this appeal.

[6] During mediation, the appellants indicated that they wanted to pursue access to records withheld pursuant to sections 6(1)(b), 8(1) and 12 of the *Act* at adjudication. The appellants also raised the issue of reasonable search indicating their belief that further records exist. The mediator communicated the appellants' concern to the municipality. The municipality confirmed that they provided a detailed index to the appellant with the responsive records and no further records were located.

[7] As no further mediation was possible, the file was transferred to the adjudication stage, and I conducted a written inquiry. The parties' representations were shared in accordance with IPC's *Code of Procedure*.

[8] In this order, I uphold the municipality's decision to withhold the information under sections 6(1)(b) and 8(1). I do not uphold the municipality's claim that section 12 applies to record 49 and I order it disclosed. I find that the municipality's search was reasonable.

¹ See appendix for the entire request.

RECORDS:

[9] The records at issue are those that were fully withheld and are listed in the index of records, provided to the appellant, consisting of 85 documents. During the inquiry, the municipality provided access to parts of record 76, 77, 78 and 79 (information relating to the dates and people in attendance at the closed meetings) with the rest of the information remaining in dispute.

ISSUES:

- A. Does the discretionary exemption at section 6(1)(b) relating to closed meetings apply to the records?
- B. Does the discretionary exemption at section 8(1) related to law enforcement activities apply to the records?
- C. Does the discretionary solicitor-client privilege exemption at section 12 of the *Act* apply to the records?
- D. Did the institution exercise its discretion under sections 6(1)(b) and 8(1)?
- E. Did the institution conduct a reasonable search for records?

DISCUSSION:

Background

[10] According to the appellants, they were working constructively with the municipality concerning a specified zoning issue. They advise that they were informed that the municipality was commencing litigation relating to the zoning issue. At one point, the appellants were instructed to request information via the access to information process going forward, which led to the request in this appeal.

[11] Much of the appellants' representations focus on zoning issues with the municipality which are not before me. The appellants also asked that much of their representations be kept confidential. Because their representations about the zoning decisions are not before me, it was not necessary to share these, and they are not described in this order.

[12] The appellants' representations focus on a public interest in the information concerning the zoning issue with the municipality. Section 16 of the *Act* is the "public interest override" that provides for the disclosure of records that would otherwise be exempt under another section of the *Act*. It states:

An exemption from disclosure of a record under sections 7, 9, 9.1, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[13] However, section 16 of the *Act* does not include section 6, 8 or 12 as exemptions that can be overridden by a compelling public interest in disclosure.²

[14] During the inquiry, the appellants suggested that there are grounds for the records to be released in their entirety due to a grave environmental, health or safety hazard, referring to section 5(1) of the *Act*. I provided the appellants with my determination that there is no right to raise the application of this section on appeal and that section 5(1) is a mandatory provision that requires the head (in this case, the head of the municipality) to disclose records in certain circumstances. I referred the appellants to IPC Order 65, where former Commissioner Sidney B. Linden found that the duties and responsibilities set out under section 5(1) of the *Act* belong to the head alone. Accordingly, I will not be considering the application of section 5(1) further in this decision.

Issue A: Does the discretionary exemption at section 6(1)(b) relating to closed meetings apply to the records?

[15] Section 6(1)(b) protects certain records relating to the closed meetings of a council, board, commission or other body.

[16] Section 6(1)(b) reads:

A head may refuse to disclose a record,

that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public.

[17] For this exemption to apply, the institution must show that:

1. a council, board, commission or other body, or a committee of one of them, held a meeting,
2. a statute authorizes the holding of the meeting in the absence of the public, and
3. disclosure of the record would reveal the actual substance of the deliberations of the meeting.³

[18] To establish the exemption, the institution must show that it held a meeting, and

² A public interest in disclosure is, however, a relevant factor in a head's exercise of discretion. See *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23.

³ Orders M-64, M-102 and MO-1248.

that it was authorized by law to hold the meeting *in camera*.⁴ For the meeting to be authorized to be held *in camera*, its purpose must have been to deal with a matter for which a closed meeting is authorized by statute.⁵

[19] For section 6(1)(b) to apply, it must be established that disclosure of the record would reveal the actual substance of deliberations that took place at the *in camera* meeting, and not just the subject of the meeting or the deliberations.⁶ “Deliberations” refer to discussions conducted with a view towards making a decision.⁷

[20] Section 6(1)(b) does not protect records merely because they refer to matters discussed at a closed meeting, and it does not protect the names of individuals attending meetings, and the dates, times, and locations of meetings.⁸

[21] Section 6(2)(b) of the *Act* sets out the exception to section 6(1)(b) and reads:

Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record if,

...

(b) in the case of a record under clause (1)(b), the subject- matter of the deliberations has been considered in a meeting open to the public;
or

Representations

[22] The municipality refers to section 239(2) of the *Municipal Act* which authorizes holding a meeting *in camera* in certain situations. It submits that its council held a meeting, and that meeting was held in the absence of the public pursuant to section 239(2)(e). It confirms that the matter being discussed involved litigation, a subject matter that is permitted to be discussed in a meeting closed to the public under section 239(2)(e) of the *Municipal Act*. It notes that resolutions were passed prior to all *in camera* meetings and provided a copy of the resolution to proceed into the *in camera* portion of the meetings on four separate occasions.

[23] The municipality refers to its own procedural by-law B2020-118 that was passed under section 238(2) of the *Municipal Act*. It notes that section 13 of its by-law includes requirements for closed meetings.

[24] The municipality submits that disclosure of the withheld information would reveal the actual substance of the deliberations of the meetings and suggests that the actual

⁴ Order M-102.

⁵ *St. Catharines (City) v. IPCO*, 2011 ONSC 2346 (Div. Ct.).

⁶ Orders MO-703, MO-1344, MO-2389 and MO-2499-I.

⁷ Order M-184.

⁸ Order MO-1344.

substance or the subject of the meeting would be sufficient to identify the nature of the discussion.

[25] The municipality notes that part of the record could be disclosed as it includes the names of individuals attending the meetings, dates, times, and locations of the meetings.⁹ It submits that the rest of the information, if disclosed, would disclose the substance of the closed meeting item and deliberation.

[26] The municipality submits that the subject matter of the deliberations in question has not been considered in a meeting open to the public, and, as a result, the deliberations in question has not been considered in a meeting open to the public. It confirms that there have been no votes taken in a public meeting concerning the subject matter of the deliberations.

[27] The appellants suggest that the municipality is "making the claims they are" because they have not followed the legal process in a specified zoning issue. Initially they suggested that the municipality was meeting with a specified party in the closed meetings, however, the municipality subsequently provided redacted minutes of the meeting showing those that were in attendance.

Analysis and finding

[28] The records the municipality withheld under section 6(1)(b) include minutes from the closed meetings (records 76, 78, 79 and 81) and correspondence from its solicitor (records 75, 77 and 80).

Part 1: the municipality's Council held a meeting

[29] The first part of the test for exemption under section 6(1)(b) requires the municipality to establish that a meeting was held.

[30] The records support the municipality's position that its council held a meeting on four specified dates. Therefore, I find that the first part of the three-part test under section 6(1)(b) has been met.

Part 2: a statute authorizes the holding of the meeting in the absence of the public

[31] The second part of the test requires the municipality to establish that the meeting was properly held *in camera* (in the absence of the public) by identifying the relevant statutory authority to support it. In determining whether there was statutory authority to hold a meeting in camera under part two of the test, I must consider whether the purpose of the meeting was to deal with the specific subject matter identified in the statute authorizing the holding of a closed meeting.

⁹ The municipality disclosed this information to the appellant during the inquiry in a revised access decision.

[32] Under section 239(1) of the *Municipal Act, 2001*, all meetings must be open to the public unless they fall within the prescribed exceptions. Section 239(2) of the *Municipal Act, 2001*, sets out the exceptions that authorize the convening of a meeting in the absence of the public.

[33] I have reviewed the information withheld under this section which includes correspondence from the municipality's solicitor concerning litigation of the specified zoning issue and closed meeting minutes concerning the matter. I agree that the municipality's council was authorized to discuss this matter in a closed meeting as section 239(2)(e) of the *Municipal Act, 2001* specifically authorizes that a meeting may be closed to the public if the matter being considered is litigation or potential litigation affecting the municipality. I also agree with the municipality that section 239(6) of the *Municipal Act, 2001* is relevant to allow these closed meetings because this section allows a vote to be taken in a closed meeting which gives direction or instructions to officers, employees, or agents of the municipality.

[34] After reviewing the records, I find the municipality was authorized to hold this meeting in camera under section 239 of the *Municipal Act, 2001*. Specifically, section 239(2)(e) and 239(6) of the *Municipal Act, 2001* provided the municipality with the statutory authority to hold the meeting in camera.

[35] In conclusion, I find that the municipality was authorized under the *Municipal Act, 2001* to hold the meetings of August 10, 2021, October 5, 2021, October 25, 2021, and January 11, 2022, *in camera*.

Part 3: Disclosure of the records would reveal the actual substance of the deliberations of the meetings

[36] With respect to the third requirement set out above, the wording of the provision and previous IPC decisions establish that in order to qualify for exemption under section 6(1)(b), there must be more than merely the authority to hold a meeting in the absence of the public. Section 6(1)(b) of the *Act* specifically requires that disclosure of the records would reveal the actual substance of deliberations which took place at the municipality's closed meeting, not only the subject of the deliberations.

[37] The municipality submits that part 3 of the test is met because disclosure of the records would reveal the substance of the deliberations of the meeting. The municipality submits that disclosure of the withheld information in the records would identify the nature of the discussions.

[38] After reviewing the relevant records, I find that disclosure would reveal the substance of deliberations relating to the litigation of a specified zoning issue. Further, I find the information in the records contains more than a discussion of the mere subject of the deliberations but contains detailed information and provides insight into what was deliberated. The withheld information would, if disclosed, reveal information the council

considered and discussed with a view towards making a decision regarding the specified zoning issue. Based on my review of the records, which includes meeting minutes and correspondence from the municipality's solicitor, I find their disclosure would reveal the substance of deliberations at the relevant closed meetings.

[39] Accordingly, I find that all three parts of the section 6(1)(b) test have been met and the withheld information in the records at issue (records 75-81) is exempt from disclosure under section 6(1)(b) of the *Act*.

[40] Regarding section 6(2)(b), the municipality states that the subject matter in question has not been considered in a meeting that was open to the public. After considering the parties' representations, I find that the subject matter of the closed meeting was not considered in a meeting that was open to the public and the section 6(2)(b) exception does not apply to the records.

[41] Therefore, I find that information the municipality withheld (records 75 - 81) is exempt from disclosure by section 6(1)(b).

[42] Section 6(1)(b) is a discretionary exemption, and I will therefore review the municipality's exercise of discretion below.

Issue B: Does the discretionary exemption at section 8(1) related to law enforcement activities apply to the records?

[43] The municipality submits that the exemptions at section 8(1)(a) and 8(1)(b) are relevant and apply in this appeal. These sections state:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

(a) interfere with a law enforcement matter;

(b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

[44] For section 8(1)(a) to apply, the law enforcement matter must still exist or be ongoing.¹⁰ This exemption does not apply once the matter is completed, nor where the alleged interference is with "potential" law enforcement matters.¹¹

[45] For section 8(1)(b) to apply, the law enforcement investigation in question must be a specific, ongoing investigation. The exemption does not apply where the investigation is completed, or where the alleged interference is with "potential" law

¹⁰ Order PO-2657.

¹¹ Orders PO-2085 and MO-1578.

enforcement investigations.¹² The investigation in question must actually exist or be ongoing.¹³

Representations

[46] The ministry submits that the matter in question, that is related to the request, is an ongoing "law enforcement matter" and there is a current application with the Ontario Superior Court of Justice.

[47] The municipality notes that the law enforcement matter pertains to an alleged contravention of the municipality's comprehensive zoning by-law and is the subject of ongoing legal proceedings. It submits that disclosure of the records related to the alleged contravention could potentially reveal the municipality's litigation strategy potentially impacting this and any additional legal proceedings commenced by it with respect to the law enforcement issue.

[48] The municipality notes that at the time of the request, the matter in question was an active law enforcement investigation which subsequently has resulted in the commencement of legal proceedings which are currently pending before the Court.

[49] In their representations, the appellants do not indicate why the law enforcement exemption claim does not apply. The appellants indicate that they were informed of the municipality's investigation and subsequent litigation concerning the issue at the heart of the request. The appellants suggest that the municipality has been obstructing justice by using a combination of "regulatory oversight and/or 'it's in litigation.'" The appellants refer to the public interest and grave environmental danger as reasons why the law exemption claim should not apply to the information for which it was claimed.

[50] The appellants refer to the application in the courts referenced by the municipality. They submit that the timelines show that it was an attempt to appease them so they would "not go to IPC adjudication." They submit that they have seen the court application and that "it is ludicrous."

Analysis and finding

[51] For the following reasons, I find that section 8(1)(a) applies to exempt all of the withheld information claimed under this exemption from disclosure.

[52] The term "law enforcement"¹⁴ is defined in section 2(1):

"law enforcement" means,

¹² Order PO-2085.

¹³ Order PO-2657.

¹⁴ The term "law enforcement" appears in many, but not all, parts of section 8.

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or
- (c) the conduct of proceedings referred to in clause (b)

[53] In Orders M-16 and MO-1245, it was found that “law enforcement” can include a municipality’s investigation into a possible violation of a municipal by-law.

[54] For section 8(1)(a) to apply, the law enforcement matter must still exist or be ongoing.¹⁵ This exemption does not apply once the matter is completed, nor where the alleged interference is with “potential” law enforcement matters.¹⁶

[55] After reviewing the parties’ representations and examining the information that was withheld under section 8(1)(a), it is evident that the municipality was investigating a law enforcement matter relating to an alleged contravention of the municipality’s zoning by-law that is now the subject of ongoing legal proceedings. I agree that disclosure of the records related to the alleged contravention could interfere with the law enforcement matter including potentially revealing the municipality’s enforcement strategy and impacting any additional legal proceedings commenced by it with respect to the law enforcement matter. As a result, I find that section 8(1)(a) applies to exempt the withheld information from disclosure.

Issue C: Does the discretionary solicitor-client privilege exemption at section 12 of the *Act* apply to the records?

[56] Section 12 exempts certain records from disclosure, either because they are subject to solicitor-client privilege or because they were prepared by or for legal counsel for an institution. It states:

A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation.

[57] Section 12 contains two different exemptions, referred to in previous IPC decisions as “branches.” The first branch (“subject to solicitor-client privilege”) is based on common law. The second branch (“prepared by or for counsel employed or retained by an institution...”) is a statutory privilege created by the *Act*. The institution must establish that at least one branch applies.

¹⁵ Order PO-2657.

¹⁶ Orders PO-2085 and MO-1578.

[58] The municipality claimed a number of records were exempt from disclosure by section 12 of the *Act*, however, I have already found that legal correspondence (records 75, 77, and 81) is exempt under section 6(1)(b). The sole record remaining at issue is record 49, described in the index as a letter from the municipality's counsel to the specified third party regarding a specified zoning violation. A copy of this correspondence was provided to the IPC by the appellants with their representations.

[59] The municipality submits that record 49 is subject to the common law solicitor-client communication privilege designed to prevent confidential information passed between a solicitor and their client from becoming evidence in court. It also suggests that the record is subject to statutory litigation privilege. It submits that record 49 was prepared by its legal counsel in the course of legal proceedings involving a third party. It suggests that "privilege may be claimed in the course of the conduct of the proceedings." It submits that no waiver has occurred with respect to this letter.

[60] The rationale for the common law solicitor-client communication privilege is to ensure that a client may freely confide in their lawyer on a legal matter.¹⁷ This privilege protects direct communications of a confidential nature between lawyer and client, or their agents or employees, made for the purpose of obtaining or giving legal advice.¹⁸ The privilege covers not only the legal advice itself and the request for advice, but also communications between the lawyer and client aimed at keeping both informed so that advice can be sought and given.¹⁹

[61] Confidentiality is an essential component of solicitor-client communication privilege. The institution must demonstrate that the communication was made in confidence, either expressly or by implication.²⁰ The privilege does not cover communications between a lawyer and a party on the other side of a transaction.²¹

[62] Record 49 is a letter from the municipality's solicitor to a third party and not, as the municipality suggests information passed between a solicitor and their client. The municipality has not established that disclosure of the letter between counsel and the third party could disclose confidential communications between the municipality's legal counsel and its client. As a result, I find that common law solicitor-client communication privilege does not apply to this information.

[63] Further, after reviewing the record, it is apparent that statutory litigation privilege does not apply to it. This privilege applies to records prepared by or for counsel employed or retained by an institution "in contemplation of or for use in litigation." It does not apply to records created outside of the "zone of privacy" intended to be protected by the

¹⁷ Orders PO-2441, MO-2166 and MO-1925.

¹⁸ *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).

¹⁹ *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.); *Canada (Ministry of Public Safety and Emergency Preparedness) v. Canada (Information Commissioner)*, 2013 FCA 104.

²⁰ *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.

²¹ *Kitchener (City) v. Ontario (Information and Privacy Commissioner)*, 2012 ONSC 3496 (Div. Ct.)

litigation privilege, such as communications between opposing counsel.²² After reviewing record 49, it is apparent that the third party recipient of the correspondence at issue, does not have a common interest with the municipality in the matter.

[64] Further, I am not convinced that any “privilege” in this document was not waived, given that the appellants provided a copy of this correspondence with their representations.

[65] As a result, I do not uphold the municipality’s claim that section 12 applies to record 49, and I will order it to provide a copy to the appellants.

Issue D: Did the institution exercise its discretion under sections 6(1)(b) and 8(1)? If so, should the IPC uphold the exercise of discretion?

[66] The section 6(1)(b) and 8(1)(a) exemptions are discretionary (the institution “may” refuse to disclose), meaning that the institution can decide to disclose information even if the information qualifies for exemption. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[67] In addition, the IPC may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose;
- it takes into account irrelevant considerations; or
- it fails to take into account relevant considerations.

[68] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.²³ The IPC cannot, however, substitute its own discretion for that of the institution.²⁴

[69] Some examples of relevant considerations are listed below. However, not all of these will necessarily be relevant, and additional considerations may be relevant:²⁵

- the purposes of the *Act*, including the principles that:
 - information should be available to the public,
 - individuals should have a right of access to their own personal information,

²² See *Ontario (Attorney General) v. Big Canoe*, [2006] O.J. No. 1812 (Div. Ct.); *Ontario (Ministry of Correctional Service) v. Goodis*, cited above.

²³ Order MO-1573.

²⁴ Section 43(2).

²⁵ Orders P-344 and MO-1573.

- exemptions from the right of access should be limited and specific, and
- the privacy of individuals should be protected,
- the wording of the exemption and the interests it seeks to protect,
- whether the requester has a sympathetic or compelling need to receive the information,
- whether disclosure will increase public confidence in the operation of the institution,
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person,
- the age of the information, and
- the historic practice of the institution with respect to similar information.

[70] In this appeal, the municipality submits that in denying access to the records, it exercised its discretion under the section 6(1)(b) and 8(1) exemptions in accordance with the provisions, and permissions, contained under *MFIPPA* and in conjunction with the provisions provided for in the *Municipal Act, 2001*. It states that it did not exercise its discretion in bad faith or for an improper purpose.

[71] The appellants suggest that the municipality did not act in good faith when processing their access request. They note that they were initially working with the municipality on the specified zoning issue but at one point realized that the municipality was misleading them to believe that they were working collaboratively "to ensure that justice would be served." The appellants suggest that there is carefully orchestrated collusion going on between the municipality and a specified company regarding the specified zoning issue. They suggest that the people entrusted to protect the community have abandoned their public duty of care and instead of protecting the community and environment from harm, have recklessly endangered it. The appellants believe that they have uncovered criminal behaviour by the municipality. The appellants submit that there is a public interest in the information at issue and it should be disclosed.

Finding

[72] After reviewing the records and the representations of the parties, I uphold the municipality's exercise of discretion.

[73] The information that is exempt under section 6(1)(b) and 8(1)(a) relates to an investigation and law enforcement matter regarding a specified zoning issue. Given the nature of the information, I find that the municipality took relevant factors into account when exercising its discretion in choosing to withhold this information. In particular, I am

satisfied that when the municipality considered applying the section 6(1)(b) and 8(1)(a) exemptions to the records, it properly considered the purpose of the exemptions and the interests sought to be protected. Considering the information in the records, which is significant and sensitive to the municipality, I find that the municipality has not exercised its discretion in bad faith. I uphold its exercise of discretion.

Issue E: Did the institution conduct a reasonable search for records?

[74] During mediation, the appellant stated that more information should exist and therefore the municipality's search is an issue in this appeal. If a requester claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act*.²⁶ If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision. Otherwise, it may order the institution to conduct another search for records.

[75] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are reasonably related to the request.²⁷ The IPC will order a further search if the institution does not provide enough evidence to show that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.²⁸

Representations

[76] The municipality states that when it received the request it did not contact the appellant for clarification as it was unnecessary, and it was able to respond literally to the request. The municipality notes that upon receiving the request, it reached out to the relevant departments requesting that searches be conducted for any responsive records. The municipality notes that its staff searched electronic systems and physical records in the custody and control of the municipality. The municipality notes that in the course of this search, its Head contacted legal counsel, the CAO/treasurer, the director of building and planning/chief building official, the director of emergency services, the building and planning assistant, and the fire administrative assistant. The municipality provided an affidavit sworn by its clerk and Head confirming the details of the search.

[77] In their representations, the appellants address the search issue and suggest that the municipality was not open and accountable and did not provide "as much information as possible to the public." The appellants' representations seem to focus on the rationale the municipality made for not disclosing the information that it located.

[78] The appellants submit that the municipality did not assist them with their request despite many requests to do so. They suggest that if the municipality assisted them, they

²⁶ Orders P-85, P-221 and PO-1954-I.

²⁷ Orders M-909, PO-2469 and PO-2592.

²⁸ Order MO-2185.

would have asked for continuing access for a 2 year period. They indicate that they were informed during the mediation that they could submit another request for additional information.

[79] The appellants state that they do not know what documents they are seeking as they have no idea what the municipality has or what they are entitled to. They refer to the index of records provided by the municipality. The appellants submit that the index alluded to documents that they were told did not exist and excludes documents that they suspect exist. The appellants submit that they require every single record that the municipality has relating to anything relating to the specified address, specified individuals, a specified corporation, their lawyers, business partners, and hired representatives.

Finding

[80] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.²⁹

[81] The *Act* does not require the institution to prove with certainty that further records do not exist. However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;³⁰ that is, records that are "reasonably related" to the request.³¹

[82] The initial part of the request is for all information available under the *Act* relating to a specified address. The request then sets out the particulars of what that information should include. In their representations, the appellants, when addressing the search, refer to information that would not be responsive to the request including information related to specified individuals, a corporation, their lawyers, business partners, and hired representatives.

[83] The municipality's evidence concerning its search shows that it was conducted by its clerk. The clerk provided an affidavit that confirmed the details of the search. The clerk attests that they requested paper and electronic searches be performed by the municipality's legal counsel, the CAO/Treasurer, the director of building and planning/chief building official, the director of emergency services, the building and planning assistant, and the fire administrative assistant. In my view, the municipality has provided the evidence to show that its search was conducted by an experienced employee knowledgeable in the subject matter of the request who made a reasonable effort to locate records that are reasonably related to the request.

[84] As described above, although the appellants are skeptical about the search, they

²⁹ Order MO-2246.

³⁰ Orders P-624 and PO-2559.

³¹ Order PO-2554.

have not established any reasonable basis to conclude that further searches would yield more records.

[85] As a result, I find that the municipality's search was reasonable.

ORDER:

1. I uphold the municipality's claim that sections 6(1)(b) and 8(1)(a) apply to the records.
2. I uphold the municipality's search as reasonable.
3. I do not uphold the municipality's claim that section 12 applies to record 49.
4. I order the municipality to provide the appellants with a copy of record 49 by October 31, 2024 but not before October 26, 2024.
5. In order to verify compliance with this order, I reserve the right to require the municipality to provide me with a copy of the record disclosed to the appellants pursuant to order provision 4.

Original Signed by: _____
Alec Fadel
Adjudicator

September 25, 2024 _____

APPENDIX

All information available to me through MFIPPA regarding [a specified address] regardless of who initiated them. Include zoning and building use designation when it was sold in [a specified year]. All applications for zoning and change of use, building applications.

Specifically, we are requesting the following information, beginning January 1, 2020, regardless of who initiated them, related to [the specified address]:

- All building Permit applications, including change of use, and their supporting documentation
- All Septic Permit applications, including their supporting documentation
- All Environmental documentation that would have been required for operating an industry that probably uses hazardous chemicals and whose by-products include noxious emissions and toxic waste.
- All rezoning applications, including change of use and supporting documentation
- All applications regarding moving a business to Trent Lakes, including their supporting documentation
- All Burn Permits that have been applied for
- A complete list of measures taken by Trent Lakes regarding By-Law, Zoning, Building and Business violations. Please include times and dates and outcomes of any warnings and/or charges laid.
- all permits that have been issued
- All permits that are pending,
- All applications that have been declined.
- a summary of actions taken by Trent Lakes leading up to you turning this over to Legal including Minutes and outcomes of Special Meetings
- The zoning designation or the Property at time of sale, including any By-law revisions that it may have been granted
- The designation of the building at time of sale, included any revisions since it was built several years ago.
- The number of other complaints, official and unofficial, that have been registered beginning in 2020.

We realize that you cannot tell us who raised them, nor do we want to know; however, the latest information that we have is that only one other complaint has been filed and it was recent. When I first spoke with [named individual] in April she said that we weren't the first to complain and indicated that there had been others, in the plural.