

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4585-F

Appeal MA21-00612

Township of Oro-Medonte

October 25, 2024

Summary: This final order determines whether the Township of Oro-Medonte (the township) conducted a reasonable search for responsive records in response to Interim Order MO-4561-I about an individual's request under the *Municipal Freedom of Information and Protection of Privacy Act* for access to records about the municipal water system. In Interim Order MO-4561-I, the adjudicator determined that the township had not conducted a reasonable search for two parts of the individual's request and ordered it to conduct a further search for records responsive to those parts. In this final order, the adjudicator finds that the township has now conducted a reasonable search for responsive records, and she dismisses the appeal.

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

Orders Considered: Interim Order MO-4561-I.

OVERVIEW:

[1] This final order addresses the reasonableness of the Township of Oro-Medonte's (the township) search for responsive records about the municipal water system after having been ordered to conduct a further search in Interim Order MO-4561-I.

[2] By way of background, the township received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

- A. On September 14, 1992 the Township of Medonte passed resolution 92-230 "That council approves of entering into an agreement with the Township of Oro for the provision of certain water services and authorize the Reeve and Clerk execute the agreement". If this agreement is different from the "contract" prepared by Oro Township on, before or after Wednesday, August 5, 1992, would the Township of Oro-Medonte please provide a copy of this "executed agreement" as well? These are likely the same agreement. If there are 2 distinct agreements please provide each at your discretion. See Oro confirmatory By-law 92-65.
- B. A [copy of] colour schedules A&B in the Water Rights Guarantee Agreement (WRGA) of May 23, 1980 also recognized as Notice Agreement LT37845. The schedules were highlighted in yellow, green and red lines showing key easements in Horseshoe Valley Zone 1.
- C. A copy of schedules for the Oro Water Agreement of October 31, 1990 registered as LT185779.
- D. A copy of the Horseshoe Valley Water Works project contract No. 78386 between the Township of Medonte and [specified company]. This contract is also referred to as the [specified company] Project of April 10, 1980.
- E. A copy of [specified report], motion No. 15, Oro Township, Wednesday, August 5, 1992, Confirmation By-law 92-65. All motions were "adopted, ratified and confirmed".

[3] The township granted partial access to the responsive records. The township withheld access to portions of the records/some of the records under sections 8(1)(e) (endanger life or safety), 8(1)(i) (security), and 13 (danger to safety or health) of the *Act*.

[4] The appellant appealed the township's decision to the Information and Privacy Commissioner of Ontario (IPC) and a mediator was appointed to explore resolution. During mediation, the appellant took issue with the township's decision to withhold information under sections 8(1) and 13 of the *Act*, claiming that further records responsive to his request should exist.

[5] As a mediated resolution was not possible, the appeal proceeded to the adjudication stage, and I conducted an inquiry. In Interim Order MO-4561-I, I did not uphold the township's decision to withhold the record at issue under sections 8(1) and 13 and found that the township had not conducted a reasonable search for two parts of the appellant's request. I ordered the township to conduct a further search for records responsive to Parts B and E of the appellant's request, to issue a decision to the appellant with respect to any new records located, and to provide me with an affidavit outlining its new search.

[6] Subsequently, the township conducted a further search, which did not locate

further records, and provided an affidavit outlining its search efforts. After receiving the township's affidavit, I shared it with the appellant and invited his representations, which I received.¹

[7] In this final order, I uphold the township's further search as reasonable and dismiss the appeal.

DISCUSSION:

Did the township conduct a reasonable search for responsive records in response to Interim Order MO-4561-I?

[8] In Interim Order MO-4561-I, I found that the township did not conduct a reasonable search for records responsive to Parts B and E of the appellant's request. The appellant claims that specific records responsive to those parts of his request should exist despite not having been located by the township.

[9] Where a requester claims additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.² If I am satisfied the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[10] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show it has made a reasonable effort to identify and locate responsive records.³ A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related (responsive) to the request.⁴

[11] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding such records exist.⁵

The township's representations

[12] The township submits that in response to Interim Order MO-4561-I, it conducted a further search for records responsive to Parts B and E of the appellant's request and no responsive records were located. In support of its position, the township submitted the

¹ I have reviewed all the representations submitted, but I have only summarized the relevant portions below.

² Orders P-85, P-221 and PO-1954-I.

³ Orders P-624 and PO-2559.

⁴ Orders M-909, PO-2469 and PO-2592.

⁵ Order MO-2246.

affidavit of its Clerk and Head of Freedom of Information.⁶ In her affidavit, the Clerk provides details about the further search for records relating to Parts B and E of the appellant's request, but notes that no responsive records were located. The relevant portions of the township's representations and affidavit are as follows:

- the Clerk and the Deputy Clerk conducted a full and complete search of all digital records;
- the Director of Environmental Services conducted a search of all paper records;
- township staff spent a total of 21 hours searching both physical and digital records;
- records responsive to Part B of the appellant's request were disclosed to the appellant in 2022, per the mediation agreement, and this part of the request was withdrawn by the appellant in an email to the township; and
- the township has received multiple requests from various individuals for the report responsive to Part E of the appellant's request, but despite its repeated search efforts, this report has not been located.

The appellant's representations

[13] The appellant reiterates, as submitted in his original representations, that the maps disclosed to him by the township in response to Part B of his request, and in accordance with an agreement reached in mediation, were not the correct maps. He submits that the maps that were disclosed to him appear to be from the Oro Water Agreement, not the Water Rights Guarantee Agreement (WGRA), as he requested. The appellant submits that there are three colour maps from the WGRA that are responsive to Part B of his request and the township should still have them.

[14] The appellant is unhappy that the township agreed to disclose the WGRA maps to him in exchange for him "relinquishing many" other records, only to disclose the incorrect maps to him. He submits that this is not "fair and equitable."

[15] With respect to the specified report responsive to Part E of his request, the appellant reiterates that it should have been permanently retained and there should be documentation of when it was destroyed if it is missing. The appellant submits, absent documentation of its destruction, the township should still have a copy of the report.

Analysis and findings

[16] In Interim Order MO-4561-I, I ordered the township to conduct a further search for records responsive to Parts B and E of the appellant's request, because I found that

⁶ The township hired a new Clerk between the time this appeal was filed and when Order MO-4561-I was issued.

the appellant raised a reasonable basis for concluding that further responsive records may exist beyond those identified by the township. I also ordered the township to provide me with an affidavit including the details of its further search including the names of the individuals who conducted the search, information about the types of files searched, the nature and location of the search, the steps taken in conducting the search and the results of the further search.

[17] The township has provided an affidavit of its Clerk and Head of Freedom of Information, which outlines the township's search efforts in response to the appellant's request and Interim Order MO-4561-I. The township has listed the individuals involved in the search, provided a sufficient explanation of where it searched, and the result of the search. The township's affidavit provides all the details that I directed it to provide in Interim Order MO-4561-I.

[18] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.⁷ Based on the evidence that the township has provided, I am satisfied that experienced employees knowledgeable in the subject matter of the request conducted a search for records responsive to Parts B and E of the appellant's request, and that they expended a reasonable effort in doing so. Therefore, I find that the township has conducted a reasonable search for records responsive to the appellant's request.

[19] The appellant continues to submit that records responsive to Parts B and E of his request should exist, specifically three colour maps and a report. The appellant emphasizes the importance of these documents and the fact that the township should have them in its record holdings. However, I find that the appellant has not established a reasonable basis as to why these records should exist, despite the township's position that none have been located after multiple searches. From his representations, it is clear that the appellant has questions and concerns about the township's documentation and document management practices, or lack thereof. However, this is a matter that is not within my authority to consider under the *Act*.

[20] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding such records exist.⁸ Based on my review of the representations of the parties, I find that there is insufficient evidence before me to establish a reasonable basis to conclude that the specific records the appellant believes should exist, exist in the township's record holdings but have not yet been located by the township through its searches. Given that the township has now conducted multiple searches for these specific records, I am not persuaded that ordering the township to conduct another search will locate these records that the appellant claims should exist. Even if I found the township

⁷ Orders M-909, PO-2469 and PO-2592.

⁸ Order MO-2246.

did not conduct a reasonable search, which I do not, I can only order the township to conduct a further search. I cannot order it to produce specific records.

[21] Additionally, as noted above, the *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show it has made a reasonable effort to identify and locate responsive records,⁹ which I find that the township has done.

[22] For all the reasons set out above, I find that the township has conducted a reasonable search for responsive records.

ORDER:

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

Original Signed by: _____
Anna Truong
Adjudicator

_____ October 25, 2024

⁹ Orders P-624 and PO-2559.