



Information and Privacy
Commissioner/Ontario

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

ORDER M-21

Appeal M-910305

City of Kitchener



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O R D E R

The appellant submitted a request to the City of Kitchener (the institution) under the Municipal Freedom of Information and Protection of Privacy Act (the Act), for a letter, the purpose of which was to have the institution confirm in writing the existence of a survey marker which defined the boundaries between the appellant's property and that of his neighbour. In addition, the appellant requested that this letter acknowledge that the survey marker, which the appellant claimed defined the boundaries between the two properties in question, had been uprooted.

The appellant subsequently clarified his request by indicating that he wished to receive any letter, field report, drawing or survey which either acknowledged or detailed the removal of a survey stake he claims was lost as a direct result of the installation of a gas main on the property adjacent to his. According to the appellant, this installation occurred in 1982.

The institution informed the appellant that it was unable to grant access as no records existed which responded to his request. The appellant appealed the institution's decision.

In an attempt to mediate, the Appeals Officer contacted the institution to determine the procedures employed in searching for records and the reason the institution claimed that no records existed. The institution provided the Appeals Officer with copies of memos that the Assistant City Clerk of the institution sent to the Commissioners of Planning And Development, and Public Works with respect to the appellant's request and the responses to them. The memos of response indicate that after verification of the search conducted by the respective departments, the institution is unable to locate any records pertaining to a survey stake.

In the course of his investigation, the Appeals Officer was informed by the institution's Draftsperson/Inspector of Utilities that in the event that a survey marker was uprooted at the time that a gas service was being installed by a contractor engaged by the institution, that in all likelihood, a damage report would have been made to the Safety division of the institution. As a result of receiving this information, the Appeals Officer communicated with the institution's Manager of Safety and Training in order to ascertain if this department had any record of a damage report concerning the appellant's property, or the property adjacent to the appellant's with respect to an incident that would have occurred in 1982.

The Appeals Officer was informed that the department did not have any record of a damage report being made. In addition, the Manager of Safety and Training pointed out that any such record, if it ever had existed, would have been destroyed, because the institution only keeps such records for seven years from the date of their creation. The appellant was not satisfied with this explanation.

As mediation was not successful, the appeal proceeded to an inquiry. A Notice of Inquiry, accompanied by an Appeals Officer's Report, was sent to the institution and the appellant, outlining the issues in the appeal and inviting representations. Written representations were received from the institution and the appellant. The institution has also provided five affidavits relating to the search for and existence of records pertaining to the appellant's request. Affidavits of search have been sworn by the institution's Freedom of Information and Privacy Co-ordinator, Draftsperson/Inspector of Utilities, Director of Utilities, Manager of Safety and Training, and Zoning Inspector.

In his representations, the appellant claims that a good part of the correspondence regarding the fence and boundary line was with the institution's City Clerk's and Freedom of Information and Privacy Co-ordinator's offices. According to the appellant, there may exist a key witness to the original boundary marker position who can still remember its placement. It is also the appellant's view that the doctrine of "legal adverse possession" would assist him in his claim that his neighbour is infringing on his property rights.

As I am sure the appellant is aware, this office has no jurisdiction to adjudicate a dispute between the appellant and his neighbour over property boundaries. The sole issue to be determined is whether the institution's search for records responsive to the request was reasonable.

I have reviewed the memos sent by the Assistant City Clerk of the City of Kitchener to the various departments of the institution and the responses received. In addition, I have reviewed the affidavits sworn by the five employees of the institution. Taking into consideration all of the circumstances I have outlined, I am satisfied that the search conducted by the institution was reasonable.

Original signed by: _____
Tom Wright
Commissioner

_____ June 11, 1992