



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-172

Appeal M-9200249

City of Toronto



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ORDER

The City of Toronto (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to particulars surrounding a fire which occurred in the requester's residence, prior to her moving in March, 1989. Specifically, the requester sought the date of the fire, the name of the property owner at the time of the fire, and details about the fire and damage. In an effort to narrow the scope of the search, the appellant also informed the City that it was her best guess that the fire had occurred between 1968 and 1981, but most likely between 1968 and 1973.

The City issued an interim decision consisting of a fee estimate of \$1200 for each year of records to be searched, and advising that there could be personal information severed from the records, pursuant to section 14 of the Act. The City indicated that since its fire reports are kept in the order of the dates they occurred only and not by the addresses, and since the appellant could not provide a specific date of the fire, the City would have to search all of its reports for all of the years between 1968 and 1981 in order to identify if a report with respect to the property in question exists.

The requester appealed the City's decision to this Office.

During the processing of the appeal, it became clear that the City had not determined whether any records responsive to the request exist in its custody or control. It indicated that even if the appellant were to pay the fees, there was no guarantee that any records would be located. The City's computerized record-keeping system currently in place does not include fire reports which occurred prior to January 1, 1992. The City identified a partly alphabetized manual index of addresses at which fires were reported. This index was searched for the period 1967 to 1986 but no fire incident report was found with respect to the residence in question. Based on the searches it conducted, the City advised that the requested record could not be located.

Therefore, it was determined that, before dealing with the fee estimate, it would be necessary to resolve the issue of whether the City has conducted a reasonable search to identify a record that would be responsive to the appellant's request. Representations were requested and received from the City and the appellant on this issue.

Upon receipt of a request, the City must first be satisfied pursuant to section 17(1) of the Act, that the request is sufficiently clear that "an experienced employee of the institution, upon a reasonable effort, [could] identify the record." If the request is not sufficiently clear, the City is required by section 17(2) to offer the requester assistance in reformulating the request so as to comply with section 17(1). In this appeal, both the City and the appellant have attempted to clarify the request, however, the appellant was not able to provide the City with a specific date of the fire, which is the critical information required to locate the record, given the City's current record keeping system. Based on the searches it conducted, the City has determined that it was unable to confirm whether a record responsive to the request exists. In my view, it is not appropriate for the City to issue a fee estimate for locating a record in circumstances where it cannot reasonably expect to identify a responsive record. My responsibility in such cases is to ensure that the City has made a reasonable effort to identify the record, as required under section 17(1). In my view, the Act does not require the City to prove to the degree of absolute certainty that the requested record does not exist.

In its representations, the City submitted two affidavits covering its record-keeping system and the particulars of the searches undertaken to identify responsive records.

The first affidavit was sworn by a Captain in the Toronto Fire Department with seven years of experience as Records Administration Officer, who states that he has a thorough knowledge about the storage and retrieval of records of the nature requested. He states that fire reports for the past 25 years are retained by the City and that records can be located and retrieved easily for all fires which occurred prior to January 1, 1992, for which the date is known. Because the date of the fire at the appellant's residence is not known, the Captain searched the City's Buildings and Inspection Department computer database in which information relating to construction permit applications from 1970 to the present is stored. He confirms that he found no application regarding the appellant's residence that is related to a fire.

The second affidavit was sworn by an analyst in the City's Freedom of Information office. She states that she searched the Fire Department's manual index for the fire in question, but could not locate a report regarding the appellant's residence.

In her affidavit, she attests to the fact that she searched the alphabetized manual annual index for incidental fires, as well as a second similar index for fires of size. Each index consists of a page or pages for each letter of the alphabet on which the street address of the property and the date of the fire are hand-written. The pages are bound by year and the years bound into volumes.

The affidavit confirms that on two separate days, the indices were checked under the street name of the appellant's residence. The incident fire index was checked from 1967 to 1986, and the fires of size index was examined from 1965 to 1986. No records responsive to the request were found. The manual indexing system was discontinued at the end of 1986.

Having carefully considered the representations of the parties and the affidavit evidence, and having regard to the age of the record and the broad nature of the request, I find that the City's search for the responsive records is reasonable in the circumstances of this appeal.

Original signed by:
Asfaw Seife
Inquiry Officer

August 11, 1993