



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-254**

**Appeal M-9300401**

**City of Scarborough**



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# ORDER

On January 4, 1994, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and make orders under the provincial Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

On July 21, 1993, the City of Scarborough (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to a single page letter concerning the requester, dated May 30, 1991 and addressed to the City's Planning and Buildings Department. The request specified that the letter related to a meeting on May 29, 1991 at the Malvern Resource Centre, at which a named City employee gave a presentation to a group of residents regarding a development project.

The City denied access on the grounds that the responsive record does not exist in its files. The requester appealed the City's decision based on his belief that a responsive record does exist.

Mediation was not successful, and notice that an inquiry was being conducted to review the City's decision was sent to the appellant and the City. Representations were received from the City only.

The sole issue to be decided in this appeal is whether the City has conducted a reasonable search for the requested record.

The City indicated in its representations that the appellant had submitted a previous request, received by the City on March 12, 1993, for "a copy of all correspondence received by the City of Scarborough Planning and Buildings Department relating to me". For the sake of clarity, I will refer to the request which is the subject of this appeal as "the present request" and the request received March 12, 1993 as "the previous request".

The City's representations go on to state as follows:

This request [i.e. the previous request] was subsequently clarified by the requester to indicate that he was only interested in files pertaining to the Malvern Community and the Neilson Industrial District ... for the months of May, June and July of 1991. Had the letter requested in [the present request] existed in the Planning and Buildings Department files, the searches carried out in response to the earlier request would have revealed this letter, however, no such letter was found ...

The City has provided two affidavits from staff members who conducted and/or co-ordinated these searches, which substantiate that the requested record was not found in the Planning and Buildings Department when the searches were conducted regarding the previous request. These affidavits indicate that a total of approximately twenty-seven hours of staff time were devoted to these searches.

The City relied on these searches carried out on the previous request for the purpose of responding to the present request.

The City's representations also identified that the named City employee who made the presentation at the meeting at the Malvern Resource Centre was, at the time the present request was received, on secondment from the Planning and Buildings Department to another department. For the purpose of responding specifically to the present request, files were searched in the department to which the named employee was seconded, in an attempt to locate the requested record. The City supplied two affidavits confirming that this search was carried out and that the record was not located.

Where a requester provides sufficient details about the record to which he is seeking access and the City indicates that no responsive record can be located, it is my responsibility to ensure that the City has made a reasonable search to identify any records which are responsive to the request. In my view, the Act does not require that the City prove to the degree of absolute certainty that such records do not exist.

The fact situation in this appeal is unusual in that the City chose to rely, in part, on searches conducted with regard to a previous request in reaching the conclusion that it did not have a copy of the requested record. In some circumstances that would not, in my view, constitute a reasonable search. However, in this appeal, the previous request was submitted only a few months prior to the present request, and it is clear that the requested record falls within the ambit of the previous request as clarified. Furthermore, the amount of search time expended on these searches was considerable. Under the circumstances, I find that the City's action in relying, in part, on these previous searches was reasonable.

Having carefully reviewed the representations of the City, and the affidavit evidence submitted to me, I am satisfied that the search conducted by the City for the requested record was reasonable in the circumstances.

### **ORDER:**

I uphold the decision of the City.

### **POSTSCRIPT:**

The City's representations indicated that the requested letter was actually a memorandum, which had been forwarded to the Metropolitan Toronto Police Services Board (the Police), and that no copy of the memorandum was retained by the City. This would normally raise the possible application of section 18(2) of the Act, which provides for transfers of requests by one institution to another. However, in this case the appellant had previously made a request to the Police for records which included this memorandum, and in their response the Police denied access to the memorandum. The decision of the Police regarding the memorandum was appealed to the Commissioner's office and upheld in Order M-41. Accordingly, in my view, no useful purpose would have been served by transferring this request to the Police.

Original signed by: \_\_\_\_\_  
John Higgins  
Inquiry Officer

\_\_\_\_\_ January 27, 1994