



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-275**

**Appeals M-9300197, M-9300198 and M-9300199**

**City of Peterborough**



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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.

The City of Peterborough (the City) received three requests under the Municipal Freedom of Information and Protection of Privacy Act from three individuals for access to all records which contain their personal information, including records within six named departments of the City.

The City responded by stating that the City has "no files containing personal information" of any of the three requesters. The requesters appealed this decision. In the letter of appeal the appellants asserted that the City had hundreds of pages of records containing their names and address.

During mediation, the appellants confirmed that the City had provided them with the above-mentioned records in response to a previous request and appeal (Appeal M-910244, Orders M-59 and M-76). Appeal M-910244 concerned a request for information regarding a particular address.

The City took the position that all records within its custody or control relating to the appellants were previously dealt with in Appeal M-910244, and that none of these records contain the personal information of the appellants.

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

Prior to proceeding to inquiry, the three appellants submitted written authorizations for one appellant to act as agent for the other two.

The sole issue to be decided in this inquiry is whether the City has conducted a reasonable search for responsive records.

The Act does not require the City to prove with absolute certainty that the requested records do not exist. However, in my view, in order to properly discharge its obligations under the Act the City must provide me with sufficient evidence which shows that it has made a **reasonable** effort to identify and locate records responsive to the requests (Orders P-457 and M-148).

In the Notice of Inquiry, the City was asked to respond to specific questions relating to the steps taken to search for records responsive to the requests and to submit an affidavit sworn by the employee of the City who conducted the search.

In its representations, the City provided an affidavit from the City Clerk, who is also the Freedom of Information Co-ordinator for the City. With respect to the steps taken to search for records responsive to

these requests, the City Clerk states:

I was already familiar with all of the material contained in the files of the various departments identified in the requests, because these requests related to the same files which were the subject of numerous previous requests for information on the part of the requesters. The most recent requests were different only in their reference to "personal information".

... I had, in December of 1992, personally obtained and carefully reviewed all of the relevant departmental files and produced materials for release to the requesters in January, 1993. I have also satisfied myself that no additional records were created, between December, 1992, and May, 1993, in any of the relevant departments, which would contain personal information related to any of the requesters, by discussing the requests with City staff responsible for the maintenance of each such file.

The City Clerk maintains, in his affidavit, that none of the records in the City's custody or control contain the personal information of the appellants.

In my view, the City's search for records conducted with respect to the appellants' previous requests was not directed at searching for records which contain personal information, but was directed at information relating to a particular address.

In Order M-254, Inquiry Officer John Higgins addressed the situation where an institution chose to rely, in part, on searches conducted with respect to a previous request. He stated:

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.

I agree that there may exist situations where relying on a previous search is reasonable. In my view, however, this is not one of those situations.

The City asserts that the current requests were different **only** in their reference to "personal information". This is not a minor distinction. Nor is the information requested necessarily a subset of the information previously requested, in that the requests which are the subject of this appeal do not restrict the search to records relating to the particular property.

In my view, there must be some evidence that the person conducting the search for records responsive to these requests has turned his or her mind to the specific category of information requested.

The City failed to provide evidence that it has turned its mind to this category of information. Rather, it has made an assumption that, as it had dealt with requests relating to general information concerning the appellants' property in the past, there was no need to investigate further to determine whether it also had records which might contain personal information relating to these individuals. I am, therefore, of the view that the City's reliance on previous searches for records responsive to these requests was not reasonable in the circumstances.

The circumstances in this inquiry are somewhat different from the usual situation involving the reasonableness of the search conducted for responsive records. In this case the City has previously identified records containing information about the appellants. In Order M-59, some of the information was described as:

... memoranda between the City Solicitor and Fire Prevention Officers, or vice versa, providing advice or commentary in relation to possible prosecution for [various requirements under the Fire Code, Fire Marshall's Act, or other provincial legislation].

The records relating to Appeal M-910244 include correspondence and inspection files regarding the named address. The appellants claim in their letter of appeal that the records contain information about them.

It would appear that much of the information contained in these records relates to the appellants in the context of their activities as owner/managers of an income producing property, or to the income producing property itself.

"Personal information" is defined in the Act as "recorded information about an identifiable individual". Several orders have canvassed the question of whether information about a business can be considered personal information (Orders 16, 113, P-364, P-515 and P-651). In Order P-515, Assistant Commissioner Irwin Glasberg recognized a distinction between personal information and information which relates to business activities. He stated that:

In order to satisfy the definition of "personal information" contained in section 2(1) of the Act, a record must contain information about an identifiable individual. It has been held in Order 113 that information which outwardly pertains to a business entity may, in certain circumstances, more properly relate to an identifiable individual. If that is the case, the information may then qualify as that individual's personal information.

As it would appear that many of the records included in the previous request contain information relating to the appellants, in my view it is incumbent on the City to carefully search **all** relevant files and review the records it locates to determine whether that information can be categorized as personal information.

The City has provided no evidence which demonstrates that it reviewed the information contained in its files to determine whether or not this information could be categorized as personal information. I am of the view that the City's failure to go through this exercise was not reasonable in the circumstances.

In summary, it is my opinion that the City has not discharged its statutory obligation to conduct a reasonable search for records responsive to the requests. Accordingly, I find that the City's search for responsive records was not reasonable in the circumstances.

**ORDER:**

1. I order the City to conduct a further search for responsive records and to notify the appellants by letter as to the results within 20 days of the date of this order.
2. If, as a result of the further search, the City identifies any records responsive to the requests, I order the City to provide a decision letter to the appellants regarding access to these records in accordance with sections 19 and 22 of the Act, considering the date of this order as the date of the requests, without recourse to a time extension.
3. In order to verify compliance with this order, I order the City to provide me with a copy of the letter referred to in Provision 1 of this order within 25 days of the date of this order. This notice should be forwarded to my attention c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: \_\_\_\_\_  
 Laurel Cropley  
 Inquiry Officer

\_\_\_\_\_ February 24, 1994