



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-338

Appeal M-9400105

Town of Dryden



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NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The appellant has requested from the Town of Dryden (the Town) access to all records relating to the termination of her employment with the Town, as well as all records relating to the creation of and hiring for a new, named job position. The Town provided the appellant with access to certain records and denied access, either in whole or in part, to others. The appellant is satisfied with the Town's decision on access, but maintains that more records should exist.

A Notice of Inquiry was provided to the parties to the appeal. Representations were received from both parties.

DISCUSSION:

The sole issue in this appeal is whether the Town has conducted a reasonable search for records which are responsive to the appellant's request.

The Act does not require the Town 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 Town must provide me with sufficient evidence which shows that it has made a **reasonable** effort to identify and locate records responsive to the request (Order M-275).

In her representations, the appellant submits that when an employee is terminated it is highly improbable that no records exist which indicate the reasons for termination. In relation to the second portion of the request, the appellant states that during times of fiscal restraint, it is unlikely that when a new senior position is created and a person hired, no records are created indicating that any proposal, discussions or approval took place before the new position was created and filled.

As part of its representations, the Town has included the sworn affidavit of the Administrative Assistant who is also the Town's records co-ordinator. The affidavit outlines the areas the Administrative Assistant personally searched for responsive records. It also identifies employees who were requested to search their files in February 1994 and the results of these searches.

The details outlining a second expanded search, which took place during March 1994, were also provided in the affidavit. The Administrative Assistant further indicates that a new filing system was established in the fall of 1992 and, that since that date no records have been destroyed in accordance with the retention schedule.

I have carefully reviewed the representations of the appellant, and those of the Town, and I am satisfied that the Town has taken all reasonable steps to locate any records responsive to the appellant's request.

ORDER:

I uphold the decision of the Town.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ June 28, 1994