



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-416

Appeal M-9400113

The Corporation of the City of York



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Corporation of the City of York (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all documentation pertaining to the requester's company and its owners, including correspondence between library officials, "other government agencies and their staff and police forces".

The request was also forwarded to the York Public Library Board for a response.

The City advised the requester that the relevant records were located in the City Clerk's office and invited him to view these documents. He did so. The requester appealed the City's decision granting access to this information on the basis of his belief that the City failed to provide him with all responsive information.

During mediation, the City provided the appellant with an Affidavit of Search outlining the extent of the search it had conducted for responsive records. The Supervisor of Corporate Records and Freedom of Information and Privacy Co-ordinator for the City indicated that searches of the relevant files in the Clerk's Department, the By-Law Enforcement section of the Legal Department and the Mayor's Office were conducted. The only records located were those in the Clerk's Department which the appellant had viewed.

As the appellant still maintained that more records existed, a Notice of Inquiry was provided to the appellant and the City. Representations were received from both parties.

The sole issue in this appeal is whether the City's search for records was reasonable in the circumstances of this appeal.

DISCUSSION:

REASONABLENESS OF SEARCH

Where the requester provides sufficient details about the records which he is seeking and the City indicates that such records do not exist, it is my responsibility to ensure that the City has made a reasonable search to identify any records which are responsive to the request. 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 to show that it has made a **reasonable** effort to identify and locate records responsive to the request.

As his representations, the appellant has provided this office with a copy of two documents. It is his position that, if the City had conducted a reasonable search, these two documents should have been identified and disclosed to him in response to his request under the Act. Thus he maintains that these documents constitute evidence that the City has not provided him with all the information in its files.

One of these documents is a letter dated March 30, 1991 to the Mayor of the City from the Chief Executive Officer of the City Public Library. Only pages two and three of this letter are included in the copy provided

by the appellant. The letter in its entirety was previously viewed by the appellant at the City Clerk's office. It is identified as Record 17 in the package of documents previously viewed by the appellant.

The second document provided by the appellant consists of three pages dated September 5, 1991 and titled "Information Regarding Videos". This document was provided to the appellant by the York Public Library Board in its decision letter dated June 3, 1994. It was identified as Record 33.

The City's representations consist of an affidavit sworn by the individual who is both the Director of Council Services and City Clerk. He details the searches conducted of the files in the Clerk's Department, the By-Law Enforcement section of the Legal Department and the Mayor's Department. He describes the positions and experience of the individuals who either conducted or assisted with the searches, as well as the time period during which the searches were performed.

Based on the information contained in the two affidavits prepared by the City, and the materials disclosed to the appellant, I am satisfied that the search undertaken by the City for responsive records was reasonable in the circumstances of this appeal.

ORDER:

I uphold the decision of the City.

Original signed by: _____
Anita Fineberg
Inquiry Officer

November 2, 1994