



Information and Privacy
Commissioner/Ontario

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

Appeal M-9400592

The Corporation of the Townships of Belmont and Methuen



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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 Corporation of the Townships of Belmont and Methuen (the Townships) received a request for copies of road subsidy reports relating to a particular road for the period of January 1, 1988 to December 31, 1988.

Access was provided to records for the period of May 1, 1988 to December 31, 1988. The requester appealed the Townships' decision on the basis that he believes records exist for the period of January 1, 1988 to April 30, 1988.

The sole issue in this appeal is whether the Townships search for records responsive to the request was reasonable.

A Notice of Inquiry was provided to the appellant and to the Townships. Representations were received from both parties.

DISCUSSION:

REASONABLENESS OF SEARCH

Where a requester provides sufficient detail about the records which are sought and the Townships indicate that such records do not exist, it is my responsibility to ensure that the Townships made a reasonable search to identify any records that are responsive to the request. The Act does not require the Townships to prove with absolute certainty that the requested records do not exist. However, in order to properly discharge its obligation under the Act, the Townships must provide sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request.

The Townships did not provide an affidavit describing the search for responsive records despite being requested to do so in the Notice of Inquiry. The Townships did not provide any information about steps taken to locate the road subsidy reports which the appellant believes exist. Rather, the Townships refer to past communication with this office in order to substantiate its position that no records exist for the period in question.

Prior to submitting representations, the Townships indicated that consultation with the Townships' Superintendent of Works resulted in its position that no records exist for the timeframe identified by the appellant. However, no information was or has been provided about the identity of the person who conducted the searches, the locations that were searched, the names and positions of any other individuals who were contacted in the course of the search, and the types of files searched.

Further to this, the Townships state that the Ministry of Transportation would confirm the Townships position that no records exist for the timeframe in question. No direct evidence has been provided by the Townships to confirm this assertion.

Having reviewed the representations of both parties, I am not satisfied that the Townships have taken all reasonable steps to locate road subsidy reports relating to the period in question.

ORDER:

1. I order the Townships to conduct a further search for road subsidy reports relating to the named road for the period of January 1, 1988 to April 30, 1988 and to notify the appellant in writing as to the results of that search, within twenty (20) days of the date of this order.
2. In the event that responsive records are located, I order the Townships to render a final decision on access to the records in accordance with the provisions of sections 19 and 22 of the Act, treating the date of this order as the date of the request, without recourse to a time extension under section 20 of the Act.
3. I order the Townships to provide me with a copy of the correspondence referred to in Provisions 1 and 2 (if applicable) within thirty-five (35) days of the date of this order. This 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: _____
Holly Big Canoe
Inquiry Officer

_____ March 14, 1995