



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-614

Appeal M_9500335

City of Peterborough



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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 City of Peterborough (the City) received a request for access to four documents referred to on page 4 of the minutes of a meeting of the City's fire department, held on July 8, 1991 (the minutes). The requester also sought access to an "internal memorandum", another document referred to in the minutes. The City had previously provided a copy of the minutes to the requester pursuant to the provisions of Order M-275. This order resolved the issues arising in an appeal of the City's response to one of the requester's prior requests under the Act.

The City provided the requester with a copy of a memorandum dated February 28, 1991 and advised him that he had already received this document on January 8, 1993, in response to a previous access request. This document was numbered Record 31(h)(iii) at that time. The City also advised the requester that it was unable to determine with any certainty the identity of the other four documents. However, the City told the requester that he had already received access to all records in its custody related to the subject matter of these requests, the requester's property.

The requester appealed the City's decision as he maintains that the four documents he requested should exist. In addition, he states that the memorandum the City provided to him was not the document referred to in the minutes.

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

The sole issue in this appeal is whether the City has conducted a reasonable search for the requested records.

DISCUSSION:

REASONABLENESS OF SEARCH

As part of its representations, the City has provided an affidavit sworn by its Freedom of Information and Privacy Co-ordinator (the Co-ordinator).

The Co-ordinator states that when he received the request, he met with the former Deputy Chief of the fire department who, in that capacity, attended the meeting of the fire department on July 8, 1991. The former Deputy Chief had no recollection of the documents which may have constituted the four records referred to in the third paragraph on page 4 of the minutes of that meeting. The former Deputy Chief also indicated that the memorandum referred to in the minutes was Record 31(h)(ii), previously provided to the appellant.

The Co-ordinator further states that all records related to the appellant's property have been located and provided to the appellant in response to his previous requests.

I have some difficulty with respect to the City's position with respect to the four documents and the internal memorandum requested by the appellant. If the City was uncertain as to which four documents the appellant was requesting, it had an obligation under section 17(2) of the Act to assist the appellant in clarifying the request. This also applies to the memorandum.

Moreover, I am of the view that the four documents are clearly identified in the March 1, 1991 entry in the minutes of the meeting. They are:

- (1) a draft letter written by a Senior Fire Prevention Officer (SFPO) to the Deputy Chief;
- (2) the findings of the SFPO;
- (3) references to the Fire Code; and
- (4) a reissued Notice of Violation dated February 28, 1991.

The March 1, 1991 entry in the minutes indicates that documents 2, 3 and 4 were attachments to document 1.

As far as the internal memorandum is concerned, it is the appellant's position that the document he received, dated February 28, 1991, is a fire inspection report as opposed to a memorandum. The document is entitled "Observations of SR. FPO ..." and consists of a list of nine items which are the results of an inspection of the property by the author of the document. There is no indication that the document was to be sent to any other individuals which is the common format of a memorandum.

The Co-ordinator also states that after he issued the City's decision to the requester, he met with another individual who was present at the July 8 meeting, the former Chief Fire Prevention Officer. This individual advised the Co-ordinator that he recalls that the minutes of the meeting referred to "certain draft documents". The former Chief Fire Prevention Officer does not recall the number or content of these drafts. He states that at the conclusion of the meeting he received instructions from the then Fire Chief to destroy all the drafts which he did. The Co-ordinator states that the City has no policy or by-law requiring the retention of drafts in a file.

Where a requester provides sufficient details about the records which he or she is seeking and the City indicates that such a record does 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.

Based on the information provided in the Co-ordinator's affidavit, and in particular that of the former Chief Fire Prevention Officer, it appears that the four documents requested by the appellant have been destroyed. Accordingly, no purpose would be served by ordering the City to undertake a search for these records. As far as the memorandum is concerned, while I appreciate the appellant's position that the February 28, 1991 document is not in the form of a

memorandum, I accept the evidence included in the Co-ordinator's affidavit from the former Deputy Chief that it was, in fact, the document referred to in the minutes of the July 8 meeting.

In these circumstances, there is no remedial order for me to make. However, I would strongly encourage the City to communicate promptly with requesters in the future if it is at all uncertain as to what records are being requested under the Act. In this way, it will satisfy its obligations under section 17(2) of the Act.

ORDER:

I uphold the decision of the City.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ October 17, 1995