



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

ORDER M-863

Appeal M_9600270

City of Stoney Creek



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NATURE OF THE APPEAL:

The City of Stoney Creek (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to copies of records relating to the requester. The requester specifically sought access to the following:

1. a letter or any communication prepared by the Mayor and distributed to councillors referring to the requester and the termination of her employment and/or management change with a specified company, effective October 16, 1995;
2. a letter sent by the requester to the Mayor following the last municipal election requesting council participation on a rotating basis on a local community television channel;
3. any communication from March, 1994 to November, 1995 from the City to the specified company or vice versa where the requester is personally referred to or generally referred to in the context of management at the television studio; and
4. any communication between a producer at the specified company and the Mayor and/or councillors where the requester is personally referred to or generally referred to in the context of management at the television studio.

In its response, the City indicated that it had located one record and extended the time for issuing a decision to consult the specified company (the company). The City then issued a decision letter granting access to the record and advised that the company had not located any responsive records. With respect to item 2 above, the City also indicated that any record personally addressed to the Mayor and/or councillors was not in the custody or control of the City. The requester appealed the denial of access.

The City subsequently issued a supplementary decision in which it reconsidered its position on the custody and control of certain records. In this decision letter, the City stated that no other records existed in response to the request. The City also indicated that the Mayor's records had also been searched and no responsive records were located.

During mediation, the requester asked for and received the title of the individual contacted at the company and the date the contact was made. As a result of the above, the only issue in this appeal is the reasonableness of the search conducted by the City for records responsive to the request.

This office provided a Notice of Inquiry to the appellant and the City. Representations were received from both parties.

DISCUSSION:

REASONABLENESS OF SEARCH

The appellant believes that additional records responsive to her request exist. Specifically, she claims that a letter from her to the Mayor does exist. She points out that, at no time, has the City stated that the records requested do not exist.

Where a requester provides sufficient details about the records which she is seeking, 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 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 appellant's request.

With its representations, the City has provided an affidavit sworn by the Acting Assistant to the Clerk (the Assistant) together with a letter from the Mayor. The City has also provided a copy of its records retention by-law. In the affidavit, the Assistant states that in response to the request, she searched the files in the Clerk's department and the Mayor's office and found one record. The Assistant goes on to say that she then telephoned the appellant to clarify the request and advised her that all letters personally addressed to the Mayor or councillors (i.e. correspondence relating to personal matters) are not in the custody and control of the City. At this time, the Assistant informed the appellant that additional time would be required in order to contact the company and seek its assistance with the search. The Assistant states that she sent a letter to the company by facsimile requesting assistance with the search and received a verbal response within a week. The company confirmed that it had no records responsive to the request. The Assistant states that in response to mediation efforts of the Commissioner's office, a search was also conducted of the records sent to the Mayor at her home address and no responsive records were found.

The letter from the Mayor confirms that a search was conducted of all records sent to her home address in relation to her position as Mayor and no records responsive to the request were found.

I have carefully reviewed the representations of the parties together with the affidavit provided by the City. I am satisfied that the City has taken all reasonable steps in the circumstances of this appeal to identify and locate the requested records.

ORDER:

I dismiss this appeal.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

November 25, 1996