



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

ORDER M-926

Appeal M_9600384

City of Orillia



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NATURE OF THE APPEAL:

The City of Orillia (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for:

- (a) documents relating to structural and financial scenarios regarding the Orillia Police Service and the City, particularly with respect to senior management positions and specifically with respect to the requester, and
- (b) all documents pertaining to studies relating to alternate policing for the City by the Ontario Provincial Police or other agencies.

Prior to issuing its access decision, the City sought clarification of the request from the requester by telephone and subsequently received a letter from the requester providing additional clarification.

The City then granted partial access to the records it identified as responsive to the request, claiming certain exemptions under the Act to deny access to portions of the records.

In its decision letter to the requester, the City listed the general city records which were searched to identify records responsive to the request. The City also provided the requester with an index of responsive records.

The requester appealed the City's decision solely on the basis that more records exist which respond to the request. Therefore, the City's decision to claim exemptions is not under review in this appeal.

During the course of mediation, the appellant provided the City with more information regarding possible locations of additional responsive records. As a result, the City located 99 additional documents and provided the appellant with an index of these records. Because the City was still unclear as to the specific nature of the additional records sought by the appellant, it asked the appellant to identify which of these documents, if any, respond to his request. The appellant responded by saying that while some of the documents may pertain to his request, he still believes more records exist, in addition to those already identified. Specifically, the appellant is of the view that records which predate 1991 have yet to be located by the City.

This office provided a Notice of Inquiry to the appellant and the City inviting the parties to comment on the reasonableness of the City's search for responsive records. Representations were received from both parties.

DISCUSSION:

REASONABLENESS OF SEARCH

Where a requester provides sufficient detail about the records which he is seeking and the City indicates that further 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 further 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.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records may, in fact, exist. In my view, by describing in sufficient detail the nature of the records which he is seeking, as well as their possible location, the appellant has done so. It was as a result of the information provided by the appellant to the City that additional documents for the period 1991 to 1996 were located in the Office of the Mayor and included in this appeal. The appellant's knowledge about records pre-dating his employment with the City (those from 1976 to 1991) which are responsive to his request is less specific and detailed, however.

At the suggestion of the Appeals Officer assigned to the appeal by this office, the City's Deputy Clerk/Freedom of Information and Protection of Privacy Co-ordinator spoke directly with the appellant and clarified a number of matters relating to the request and the responsiveness of certain records to it. As noted above, as a result of these conversations, additional records were identified and an index of them was provided to the appellant by the City. I find that the City met its obligation to the appellant to clarify and identify the nature of the records which he was seeking.

The City has also described in great detail the nature and extent of the searches which it has undertaken for records responsive to the request. The City's Deputy Clerk/Freedom of Information and Protection of Privacy Co-ordinator, the City Manager or his administrative assistant conducted searches of the following record holdings:

- The manual index of City Council Minute Resolutions for the years 1976 to 1992;
- hard copies of City Council Committee Minutes for the years 1976 to 1992;
- the electronic Council and Council Committee Minutes Index for the years 1993 to the present;
- the contract file for the construction of the Peter Street South Police Station in 1976;
- the file relating to the social contract and its impact on the City's operations;
- the file relating to OPP costing information for the provision of police services to the City for the years 1993 to the present;
- records from the Office of the Mayor;
- the City's electronic file management system (Assured Information Systems/The Ontario Municipal Records Management System);
- the City's Archives.

The City also submits that its records retention schedule, which is included in section 240 of the City of Orillia Municipal Code, provides that certain records which may have been responsive to the appellant's request were disposed of six years after their creation. Other records, such as City Council minutes are, however, maintained permanently. By way of summary, the City argues that it has made every effort to determine the location of any files which may contain information responsive to the appellant's request.

In Order M-909, Inquiry Officer Laurel Cropley made the following finding with respect to the obligation of an institution to a requester to conduct a reasonable search for records. She found that:

In my view, an institution has met its obligations under the Act by providing experienced employees who expend a reasonable effort to conduct the search, in areas where the responsive records are likely to be located. In the final analysis, the identification of responsive records must rely on the experience and judgment of the individual conducting the search.

I adopt this statement for the purposes of the present appeal. In my view, the search conducted by the City's staff for records responsive to the appellant's request was reasonable in the circumstances of this appeal. I find that the staff identified a number of possible locations for responsive records and that the searches conducted of those locations was reasonable.

ORDER:

The search for responsive records by the City was reasonable and this appeal is dismissed.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ April 15, 1997