



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

ORDER M-988

Appeal M_9700124

Town of Richmond Hill



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NATURE OF THE APPEAL:

The Town of Richmond Hill (the Town) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for legal and any other costs associated with legal action between the Town and a named entertainment establishment (the Adult Entertainment Parlour). The request included legal and other costs incurred by the Mayor and two Town councillors and "man hours used up by legal team".

The Town provided the requester with a breakdown of legal costs for the years 1996 and 1997. The Town claimed the exemptions found in sections 10(1) (third party information) and 12 (solicitor-client privilege) of the Act to deny access to certain records. Finally, the Town advised the appellant that no records exist which respond to portions of his request. The requester (now the appellant) appealed the Town's decision.

During the course of mediation, the appellant advised the Appeals Officer that he is not interested in actual records. He believes that more information exists which responds to his request. Specifically, he believes that information exists which reflects legal costs incurred by the Town in its dealings with the named establishment, prior to 1996. The appellant advised that he is seeking only the bottom-line legal cost figures.

This office sent a Notice of Inquiry to the appellant and the Town. Representations were received from the Town only. The sole issue to be determined in this appeal is whether the Town's search for responsive records was reasonable in the circumstances.

DISCUSSION:

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records which he or she is seeking and the Town indicates that such records do not exist, it is my responsibility to ensure that the Town has made a reasonable search to identify any records which are responsive to the request. The Act does not require the Town to prove with absolute certainty that the requested record does not exist. However, in my view, in order to properly discharge its obligations under the Act, the Town must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request.

The Town provided an affidavit sworn by the Manager of Corporate Records and Freedom of Information and Privacy Co-ordinator (the Co-ordinator). In his affidavit, the Co-ordinator outlined the details of the search which was conducted to locate any and all legal expense accounts. He indicated that in order to reply to the requester regarding a detailed list of all legal expenses incurred by the Town over the past 18 years (approximate commencement date of the Adult Entertainment Parlour), he conducted a complete search of the Town's active, inactive and destroyed records index as contained in the Town's Computerized Records Management Database.

He stated further that a follow up to this search, including verifying the contents of all paper based transfer sheets that accompany all departmental boxes to the Town's internal storage facility, was conducted following receipt of the confirmation of this appeal.

The Town's search for responsive records produced 67 subject file folders and a further three boxes of legal miscellaneous subject file folders. Following a search through these files, the Town concluded that no records of detailed legal fees exist. Also a review and search of accounts payable files was performed and no records were found for legal fees other than those already revealed to the requestor.

The Co-ordinator indicates that the Town's internal legal department was formed early in 1990. Prior to this time all legal services for the Town were performed at a fixed monthly retainer fee by an external solicitor.

The Co-ordinator indicates further that the Town's record retention By-law provides for the destruction of any accounts payable records older than seven years, and business licensing records older than five years. As a result, the Co-ordinator confirms that two files that may have contained information relating to the Adult Entertainment Parlour search have been destroyed.

Finally, the Co-ordinator refers to the Liquor Licence hearing surrounding the Adult Entertainment Parlour. He states that the Town has no responsibility over these Liquor Licence hearings nor does it have any legal expenses in this regard since these hearings fall under the authority of the Liquor Licence Board of Ontario.

I have considered the Town's representations and the affidavit provided by the Co-ordinator. I am satisfied that the Town's search for responsive records was reasonable in the circumstances.

ORDER:

The Town's search for responsive records was reasonable and this appeal is dismissed.

Original signed by: _____

_____ August 21, 1997

Laurel Cropley
Inquiry Officer