



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

# **ORDER M-973**

**Appeal M\_9700082**

**City of Oshawa**



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## **NATURE OF THE APPEAL:**

The City of Oshawa (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to records relating to road and sidewalk inspections for a specified location (Ritson Road and Dean Street) for the months of December, 1995 and January, 1996. The request also included access to records pertaining to snow removal, ice-removal and maintenance for the area during the two month period. The City denied access on the basis that no responsive records exist. The requester appealed the City's decision.

The sole issue on appeal is whether the City's search for records responsive to the request was reasonable in the circumstances. This office provided a Notice of Inquiry to the appellant and the City. 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 such a record does not exist, it is my responsibility to ensure that the City has made a reasonable search to identify any records that are responsive to the request. The Act does not require the City 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 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.

The appellant reiterates that the City has not conducted an adequate search. He submits that it is not reasonable that the City would not have the records. He points out that such records are required to keep track of employees' and/or contractors' assignments and hours of work. The appellant submits that cities normally keep such records in the event of a lawsuit to show that the streets were cleared of snow. The appellant states further that such information may also be required by a liability insurer in order to properly underwrite the risk or to investigate or defend a lawsuit.

The City states that sidewalks are inspected on a rotating basis. The inspection records maintained within the City's Public Works Department were searched and no records were located. The sidewalks are also inspected in response to complaints received from the public. The City states that a computerized data base records all complaints and subsequent site specific inspections. The City states that this data base was searched for the two-month period and no records were located.

The City explains that its Winter Control Standards require that roads must be salted within two hours of any snow or ice accumulation and that the maximum accumulation before plowing is 6 cm. As a result of this policy, staff are dispatched on salting or ploughing assignments on a

needs basis and no records are maintained for specific areas. The City states that, therefore, no specific records exist for any roads within the City.

The City points out that Ritson Road is a regional road under the jurisdiction of the Regional Municipality of Durham and therefore, is not under the City's control. However, its maintenance records for Dean street were searched for the two-month period and no records were located.

I have considered the representations of the parties and I find that the City's search for responsive records was reasonable and I dismiss the appeal.

**ORDER:**

I uphold the City's decision and dismiss this appeal.

Original signed by: \_\_\_\_\_  
Mumtaz Jiwan  
Inquiry Officer

\_\_\_\_\_  
July 22, 1997