



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

INTERIM ORDER M-1040

Appeal M-9700219

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 access to records relating to the names of the individuals on the “Mayor’s Action Committee” (the Committee), the projects reviewed by that Committee, and the funding provided for these projects.

The City provided the requester with copies of a press release and an excerpt from the minutes of a City Council Committee meeting. The press release listed 12 Committee members and described certain Committee activities, and the excerpt identified a project undertaken by the Committee. The City’s decision letter also referred to the amount spent on room rentals and lunches for the Committee.

The requester (now the appellant) appealed the City’s decision, claiming that further responsive records exist. The appellant pointed out that there are more members on the Committee than were identified in the press release, there are more projects than the one identified by the City, and there should be additional records concerning funding.

A Notice of Inquiry was provided to the City and the appellant. Representations were received from the appellant only. The sole issue to be determined in this appeal is whether the City’s search for records responsive to the appellant’s request was reasonable in the circumstances.

DISCUSSION:

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records which she is seeking and the City indicates that such records do not exist, it is my responsibility to ensure that the City has made a reasonable search to identify any and all responsive records. 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 all responsive records.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified, the appellant must provide a reasonable basis for concluding that records may, in fact, exist.

In her letter of appeal and subsequent representations, the appellant describes specific records that she believes should exist and includes newspaper articles which point to the existence of information beyond that provided to the appellant. This information was conveyed to the City and reflected in the Notice of Inquiry. In my view, the appellant has clearly established a reasonable basis for concluding that responsive records exist.

The Notice of Inquiry sent to the City asked for a written summary of all steps undertaken to locate responsive records, and gave particulars as to how the City should approach this exercise. The City

provided no representations. Under these circumstances, I find that the City has not discharged its statutory responsibility to conduct a reasonable search for records responsive to the appellant's request.

ORDER:

1. I order the City to conduct a further search for additional records responsive to all three parts of the appellant's request, and to provide me with a detailed affidavit(s) sworn by the employee(s) of the City who have specific knowledge of and understand the subject matter of the request, by **December 22, 1997**.

At a minimum, the affidavit(s) must contain the following:

- (a) information about the employee(s) swearing the affidavit describing his or her qualifications and responsibilities;
 - (b) a statement describing the employee's knowledge and understanding of the subject matter of the request;
 - (c) the date(s) the person conducted the search and the names and positions of any individuals who were consulted by the person, if any;
 - (d) information about the type of files searched, the nature and location of the search.
2. If, as a result of the further search, the City identifies any responsive records, I order the City to provide a decision letter to the appellant regarding access to these records in accordance with sections 19, 21 and 22 of the Act, treating the date of this Interim order as the date of the request, without recourse to a time extension.
 3. The affidavit(s) referred to in Provision 1 should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ November 21, 1997