



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER M-1111**

**Appeal M-9800067**

**The Corporation of the City of London**



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## **NATURE OF THE APPEAL:**

The appellant made two requests under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Corporation of the City of London (the City). The requests were for access to records relating to:

- the repair of a specified sewer in February 1995; and
- the video taping of a second specified sewer in January 1995.

The City responded by providing the appellant with access to records in their possession which relate to the two requests and indicated that no additional records exist.

The appellant appealed the City's decision, claiming additional records should exist.

This office requested representations from the appellant as to why he thought additional records exist before we would continue with the appeal. The appellant provided sufficient information to provide a basis to continue this appeal.

A Notice of Inquiry was sent to the City and the appellant. A copy of the appellant's initial representations were provided to the City so that they might be able to respond to his claim that additional records exist. Representations were received from the City and the appellant.

## **DISCUSSION:**

### **REASONABLENESS OF SEARCH**

Where a requester provides sufficient details 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 provide a reasonable basis for concluding that such records may, in fact, exist.

The appellant submits that the City has misinterpreted his request as one for personal as opposed to general information and states:

Unless the City produces evidence of its attempt to exercise its control, or can explain why it has not control over the record of an inspection of the City's own sanitary main and storm main, an inspection it requested and partook in when it viewed the records, then the search for these two records (video and report) was not reasonable in my opinion.

The City submits that it has received eight requests from either the appellant or his mother since November 1995, all dealing with the matter of a canola oil spill which originated from the Dempsters Bread Plant on South Street. It has attempted to provide the records requested in each instance, but responses to each request have only had the affect of generating successive new requests for additional records.

The City submits that a request for responsive records was directed to the Environmental Services Department, to the Division Head of Public Services in City Hall and to the Director of Operations in the Tyler Operations Centre (which is the primary outside operations facility). It also asked the Division Head of Pollution Control Operations to examine that Division's records as there could have been pollution control treatment plant implications from this spill.

The City submits that the appellant has dramatically expanded the scope of his request in his initial representations, beyond anything that was specifically requested in his original access requests. The City indicates that the appellant appears throughout to be taking a position that various records, even if they do not exist, should exist or should have been created at various stages in this matter. The City states that it cannot respond on the basis of record keeping that the appellant believes **should** have been undertaken. The City submits that there was no obligation on its part to create such records nor any practical reason to generate them. The City takes the position that it cannot be expected to produce records that the appellant believes should have been created, but that may in fact not have been created.

I accept the City's position that the appellant's representations represent an expansion of the scope of the original request. I am also satisfied that, in the circumstances, the search conducted by the City was reasonable and I dismiss this appeal.

**ORDER:**

I dismiss this appeal.

Original signed by: \_\_\_\_\_

Holly Big Canoe

Adjudicator

(formerly Inquiry Officer)

\_\_\_\_\_ June 3, 1998