



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-1151

Appeal M-9800096

City of Hamilton



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NATURE OF THE APPEAL:

The appellant made a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the City of Hamilton (the City) for a copy of the permit issued to a named construction company which authorized the construction company to operate construction equipment at a particular location after 11:00 p. m. on the night of December 5th, 1997. The appellant also indicated that he was seeking any documentation justifying the permit in contravention of the Noise By-law 79-292.

The City searched for responsive records, and then advised the appellant in its decision letter that it did not have a permit or any exemption documents authorizing the construction company to work after 11:00 p. m. on the night in question.

In appealing this decision, the appellant indicated that he had been told by the police that a permit had been issued allowing the construction company to work after 11.00 p.m. He indicated further that the inspector on the job also expressed this understanding. The appellant contends that the work record and inspection report that the inspector would have been required to submit should contain the information he has requested.

During mediation, the mediator assigned to this appeal contacted the inspector. The inspector stated that he did not tell the appellant that the City had authorized the company to work past 11.00 p.m. He explained that he had called his supervisor and the supervisor had authorized the work to be done. He indicated that since the company was installing sewers he felt that it would be more beneficial to work through the night and finish the job rather than leaving it for the weekend. He considered the matter to be a "deemed emergency".

This office sent a Notice of Inquiry to the City and the appellant. Representations were received from both parties.

DISCUSSION:

In cases where a requester provides sufficient details about the records which he or she is seeking and the City indicates that records do not exist, it is my responsibility to insure 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 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 responsive records.

A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request.

In his representations, the appellant reiterates that the police and the inspector on the job both told him that a permit to work after 11.00 p.m. had been issued by the City. He contends that the City should have contacted the inspector and obtained his department's records regarding this matter.

The City indicates that any potential records responsive to the request would have been located in the Noise Control Office of the City's Public Works and Traffic Department. The City states that the Chief Noise Control Officer was asked on two occasions to identify any applicable records. On the first occasion, the Chief Noise Control Officer advised that no permit or exemption had been provided to the construction company. On the second occasion, the Co-ordinator of Parking Control/Prosecution of the Public Works and Traffic Department replied and confirmed that no such permit existed.

I have considered the representations submitted by the parties and the comments made by the inspector during mediation. In my view, the appellant has pursued this appeal on the basis of what he believes was said to him on the night in question. He has asked that the inspector be contacted to verify his version of the events of that evening. The inspector was contacted and does not confirm the appellant's view. It appears that there may have been some miscommunication between the parties. However, I am not satisfied that the appellant has established that responsive records should exist. I am satisfied with the explanation provided by the inspector as to what transpired that evening. I am further satisfied that the search conducted by the City for responsive records was reasonable.

ORDER:

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

Original signed by: _____
 Laurel Cropley
 Adjudicator

_____ October 8, 1998