



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

ORDER MO-1828

Appeal MA-040174-1

City of Windsor



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NATURE OF THE APPEAL:

The City of Windsor (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of “the business plan submitted by [a named company] in 1999 (Part one)- ...the copy of [a second named company’s] objection against [the named company] in 2001-2001 ...file provided to [a named employee] (Part two)...[the second named company’s] dismissal in 2002” (Part three).

The City issued a decision letter stating that

No responsive records were located in regards to Parts one, two and three of your request. The Executive Director of Licensing and Enforcement informs me that the court decisions regarding [the other company] (Part three) must be retrieved from the courts themselves since the Licensing Division does not receive transcripts from the courts.

The requester, now the appellant, appealed this decision. The appellant explained that he operates a company to provide shuttle service for residents and visitors of the City of Windsor. He stated that he had submitted the business plan to the City’s Licensing office in 1999 and this is a requirement for obtaining a licence. He believed that the City should have a copy of this business plan. He believed that the other records should exist as they were the basis for the court proceedings.

I provided the appellant and the City with a Notice of Inquiry informing them that an oral inquiry would be held to determine whether the City had conducted a reasonable search for records responsive to the request.

Prior to the inquiry, during mediation, the City provided to this office an affidavit stating that two searches had been undertaken for records responsive to the appellant’s request, and no records had been found. A copy of this affidavit was provided to the appellant.

Also during mediation, the appellant removed Parts two and three from the appeal.

The appeal was not resolved in mediation, and an oral inquiry was conducted. The only issue in the oral inquiry was the adequacy of the search the City undertook to locate the business plan that the appellant indicated he had submitted to the Licensing Office for his company in 1999.

The inquiry was conducted via teleconference. The appellant was present, as were the Freedom of Information Coordinator and the Executive Director of Licensing and Enforcement Services for the City. Both the appellant and the City provided oral representations.

DISCUSSION:

Introduction

Where a requester provides sufficient details about the records that he or she is seeking, and the institution indicates that records do not exist, it is my responsibility to ensure that the institution has made a reasonable search to identify all responsive records. The *Act* does not require the institution to prove with absolute certainty that records do not exist; however, in order to properly discharge its statutory obligations, the institution 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 expending reasonable effort conducts a search to identify any records that are reasonably related to the request (Order M-909).

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, nevertheless, provide a **reasonable** basis for concluding that such records may in fact exist.

In this case, if I am satisfied that the City's search was reasonable in the circumstances, I will uphold the City's decision. If I am not satisfied, I may order the City to conduct further searches.

Representations

Appellant

The appellant stated that he is seeking a copy of a business plan which he believes he submitted with his application in 1999. He believes that the City would not have provided him with a license for his business without a business plan. The appellant provided additional information during the inquiry with respect to his business which did not address the issue to be determined in this inquiry.

Institution

The City described the process in place for livery vehicle plates in the City of Windsor. Applicants for a livery vehicle plate are required to submit to the City an application with supporting documentation, and to appear at a statutory hearing before the Windsor Licensing Commission (WLC). Prior to this hearing, the City is required to send the applicant by registered mail a copy of the submission to be presented to the WLC, which includes a copy of the applicant's submission. The documentation required by the WLC is determined by Bylaw 20-2001, and includes the type and number of vehicles, details and nature of the operation, market studies or other information to justify the need for the service in the current market place including details of any specific contracts for service, an assessment of the impact and the rate structure for the proposed services.

The City explained that the appellant submitted an application with a picture of the vehicle to the WLC for the first time in February 1999 and was granted a licence for one livery vehicle. The City states that the appellant did not submit a business plan or any other documentation at that time.

In October of that year, he returned to the WLC to request an additional licence with supporting documentation, including a picture of the vehicle, the transportation agreements which justified his company's services, and his rates. He was approved for the license.

The appellant applied again in 2002 for two limousine licenses. At that time according to the City, he submitted the application, a photograph of the proposed vehicles, rates schedule and a letter, with a copy of a contract his company had with a local venue.

The City indicated that prior to each hearing, the appellant was provided by registered mail with notice of the hearing and copies of the supporting documentation which he submitted to the Licensing Bureau at the time of his applications to the WLC, in accordance with their statutory requirements. The City stated the WLC does not specifically require a business plan and also indicated that it does not have a business plan from the appellant in their records. The City believes that when the appellant refers to the business plan, he means the supporting documentation that he provided with his application, in accordance with the criteria outlined in section L1, Bylaw 20-2001.

During mediation, however, the City provided the appellant with copies of all the supporting documentation on file which accompanied his 1999 application: the transportation agreement dated September 10, 1999; shuttle service schedule to and from Detroit Metro Airport, shuttle service schedule to a local venue, shuttle ground transportation, shuttle service schedule to and from Detroit Metro Airport, shuttle service to a local venue and a specific hotel.

The City explained that all files relating to the Windsor Licensing Commission are maintained in a fireproof vault, and are kept for seven years after the last action on the file. These records are filed by company or applicant name. To maintain continuity, there is only one file for each company, and each file may have several years of historical information as long as the company continues to be active. Seven years after a company ceases operation, after the last action on the file, the file is destroyed. Until that time, it is maintained in the active files.

The City pointed out that all records relating to the appellant's company would be contained in one file. The City explained that the appellant's licensing file contains records for each year from 1999, up to and including the year 2002. The file is active and contains all records relevant to the appellant's licensing requests.

In response to the appellant's request, the City searched the licensing file for his named company. The Executive Director of Licensing and Enforcement Services indicated that her secretary undertook this search. During the mediation process, the City expanded its search to the General Licensing files, which contain correspondence to and from the Licensing and

Enforcement Services, but no records responsive to the request were found. The City pointed out that records in the General Licensing files are destroyed after four years.

Conclusion

I have carefully considered all of the representations provided by the parties. As I indicated earlier, the *Act* does not require the institution to prove with absolute certainty that records do not exist; however, in order to properly discharge its statutory obligations, the institution must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate any records which are responsive to the request.

Based on the representations provided by the City, I am satisfied that the search undertaken was conducted by an experienced, knowledgeable employee of the institution and that all reasonable steps were taken to respond to the appellant's request.

ORDER:

I dismiss the appeal.

Original Signed by: _____
Leslie McIntyre
Acting Adjudicator

_____ September 8, 2004