



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-442

Appeal M-9400371

City of Mississauga



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NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The City of Mississauga (the City) received a request for access to records relating to the management of its Cawthra woodlot and for a copy of a tree survey undertaken in 1989 on the property. The requester specifically sought access to those records which were in the possession of the individual who was employed as the City's Commissioner of Community Services at the time of the request. The City located the tree survey and provided a copy to the requester. The City did not, however, locate any further records which were responsive to the remainder of the request, and advised the requester that no additional records exist.

The requester appealed the City's decision, maintaining that additional records responsive to his request should exist. A Notice of Inquiry was forwarded to the City and to the appellant. Representations were received from both parties.

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 of the appeal.

DISCUSSION:

REASONABLENESS OF SEARCH

It is my responsibility to ensure that the City has properly discharged its obligations under the Act by making a reasonable effort to search for and identify records which are responsive to the request. When the requester provides sufficient detail about the records which he or she is seeking and the City indicates that such records do not exist, the City must provide me with sufficient evidence to show that its effort was **reasonable**. However, the Act does not require the City to prove to a degree of absolute certainty that the requested records do not exist.

I find that the appellant's request was clear and unambiguous, explaining precisely which records were sought and where he expected them to be located.

With its representations, the City provided an affidavit signed by the Executive Secretary for the former Commissioner of Community Services which simply states that she was informed by the former Commissioner that he held no records in his office relating to the Cawthra woodlot. I find that this evidence is not sufficient to demonstrate that a search was undertaken to locate records responsive to the appellant's request.

I have carefully reviewed the affidavit and the representations of the City and the appellant. I find that, as the City has not provided any evidence as to the nature and extent of the search undertaken, it has not demonstrated that a reasonable effort was made to locate records which are responsive to the appellant's request.

ORDER:

1. I order the City to conduct a further search for records responsive to the appellant's request and to advise the appellant in writing of the results of this search within thirty (30) days of the date of this order.
2. In the event that responsive records are located in the search referred to in Provision 1, I order the City to render a final decision on access to the records in accordance with the provisions of sections 19 and 22 of the Act, treating the date of this order as the date of the request, without recourse to a time extension under section 20 of the Act.
3. I order the City to provide me with a copy of the correspondence referred to in Provisions 1 and 2 (if applicable), within thirty-five (35) days of the date of this order. This 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: _____
Donald Hale
Inquiry Officer

_____ January 16, 1995