



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-401**

**Appeal M-9400208**

**City of Peterborough**



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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 Peterborough (the City) received separate requests from three related individuals for access to any records which contain their personal information. The City responded by denying that it held any "files containing personal information" of any of the three requesters. The requesters appealed this decision.

The appeal ultimately resulted in Order M-275 in which the City was ordered, among other things, to conduct a further search for responsive records and, if responsive records were identified, to provide to the appellants a decision letter in accordance with sections 19 and 22 of the Act.

As a result of this search, the City identified a number of records which were responsive to the request. Although not stated in the City's decision letter, access was denied to portions of these records. The appellant, acting as agent for the other two individuals, appealed the decision to deny complete access to the records and further argued that additional records responsive to the requests should exist.

During the course of the mediation of the appeal, the issues in dispute were narrowed to:

- whether the City conducted a reasonable search for all responsive records, and
- whether section 5 of the Act (grave environmental, health or safety hazard) applies in the circumstances of this appeal.

A Notice of Inquiry was provided to the City, the appellant and an individual whose interests would be affected by the disclosure of the information which was then at issue (the affected person). Representations were received from the City and the appellant only.

## **DISCUSSION:**

### **OBLIGATION TO DISCLOSE**

During the mediation stage of the appeal, the appellant indicated that he owned a building. He further stated that the records which he felt were in the possession of the City related to the health and safety of his tenants and that their disclosure would serve the public interest. Further elaboration was not, however, provided. The Notice of Inquiry provided to the parties asked that they address the possible application of section 5(1) of the Act to the responsive records in this appeal.

Neither the appellant nor the City addressed this issue in their representations.

Section 5(1) of the Act provides as follows:

Despite any other provision of this Act, a head shall, as soon as practicable, disclose any record to the public or persons affected if the head has reasonable and probable grounds to

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believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public.

In Order P-482, Inquiry Officer Holly Big Canoe addressed the application of section 11 of the Freedom of Information and Protection of Privacy Act, which corresponds to section 5 of the Municipal Freedom of Information and Protection of Privacy Act. She stated that:

Section 11 of the Act is a mandatory provision which requires the head to disclose records in certain circumstances. The duties and responsibilities set out in section 11 of the Act belong to the head alone. As a result, the Information and Privacy Commissioner or his delegate do not have the power to make an order pursuant to section 11 of the Act.

I agree with this interpretation and adopt it for the purposes of this appeal. In my view, as a delegate of the Commissioner, I do not have the power to make an order pursuant to section 5(1) of the Act. In addition, I find that records of the sort sought by the appellant would not reveal a grave environmental, health or safety hazard to the public. Rather, such records would pertain to the appellant's compliance with certain fire regulations and his dispute with the City over its interpretation of those regulations. Accordingly, I find that this section has no application in the circumstances of this appeal.

I also find that there does not exist a public interest in the disclosure of these records under section 16 of the Act.

### **REASONABLENESS OF SEARCH**

The Act does not require the City to prove with absolute certainty that the requested records do not exist. However in order to properly discharge its obligations under the Act, the City must provide sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request.

With its representations, the City has provided an affidavit from its former City Clerk who also served as the Freedom of Information and Privacy Co-ordinator at the time that the request was made. In his affidavit, the City Clerk outlines in detail the nature and extent of the searches and consultations which he undertook to locate records responsive to the requests.

In his representations, the appellant asserts that additional responsive records should exist. He has not, however, provided any evidence to substantiate this belief.

I have reviewed the evidence provided by the City and I am satisfied that it has taken all reasonable steps to locate any records which might be responsive to the appellant's requests.

### **ORDER:**

I uphold the decision of the City.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_ October 13, 1994