



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-446

Appeal M-9400432

City of Nanticoke



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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 Nanticoke (the City) received a request for records relating to zoning, by-law enforcement and licensing of a property owned by the requester. Following a search of its records, the City determined that it did not have custody or control over the requested records. Pursuant to section 18(2) of the Act, the City transferred the request to the Regional Municipality of Haldimand-Norfolk as it determined that the Regional Municipality would have custody or control of the requested records.

The requester appealed the City's decision to transfer the request to the Regional Municipality and maintained that the City has custody or control over the requested records. During the course of mediation, it was agreed that the sole issue in this appeal was whether the City's search for records responsive to the request was adequate.

A Notice of Inquiry was forwarded to the appellant and the City. Representations were received from both parties.

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 are not within its custody or control, 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 are not within its custody or control.

With its representations, the City has provided an affidavit from its Clerk/Freedom of Information and Privacy Co-ordinator in which he describes in detail the searches undertaken on three separate occasions for records which are responsive to the appellant's request. By way of further explanation, the City has provided a chronology of events which explain the likely whereabouts of the records sought by the appellant.

The records were originally created by the Township of Woodhouse, which was incorporated into the City of Nanticoke some years ago. When the Regional Municipality of Haldimand-Norfolk was created, the planning functions for the Region, which include the City and the former Township, were assumed by the Regional Municipality. The City maintains that all records relating to zoning, the enforcement of zoning by-laws and licensing were transferred to the Regional Municipality.

The appellant indicates that he has received several contradictory explanations as to where the responsive records are presently located. In his view, the records should be in the custody of the City, as it is the successor municipality of the Township of Woodhouse.

Following my review of the representations of the parties, and considering all of the circumstances of the

appeal, I find that the City's search for records responsive to the appellant's request was reasonable.

ORDER:

I uphold the decision of the City.

Original signed by: _____
Donald Hale
Inquiry Officer

January 20, 1995