



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

ORDER M-547

Appeal M-9500176

City of Thunder Bay



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NATURE OF THE APPEAL:

The City of Thunder Bay (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to the personal services contract of the City Manager for the years 1990-1994. The City informed the requester that a record responsive to the request does not exist. The City indicated that By-law 217-1992 provides for the appointment of a Chief Administrative Officer (prior to 1993, the position of City Manager was titled Chief Administrative Officer) and By-law 84-1993 defines the duties of the Office of the City Manager, and that by-laws are routinely available at the City Clerk's office.

The requester appealed this decision, as it is her belief that a responsive record does exist, and a Notice of Inquiry was provided to the appellant and the City. Representations were received from the City only.

PRELIMINARY ISSUE:

In its representations, the City submits that the 30-day time limit for filing an appeal provided in section 39(2) has been ignored in this instance, suggesting that I have no jurisdiction to conduct this inquiry.

Section 39(2) states that an appeal shall be made within 30 days after the notice of decision was given. The City's decision letter is dated January 31, 1995. The appeal letter is dated March 2, 1995 and was received in this office March 3, 1995. Accordingly, a total of 31 days elapsed between the date the City's decision letter was signed and the appeal was received by this office. There is no evidence before me to suggest that the City's decision letter was mailed and delivered to the appellant on the same day it was signed or even by the next day, or that the City or any other person would be prejudiced by any alleged delay. Accordingly, I have no difficulty in concluding that I have jurisdiction to review the City's decision and proceed with the appeal.

DISCUSSION:

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records which he or she is seeking and the City indicates that such a record does not exist, it is my responsibility to ensure that the City has made a reasonable search to identify any records which are responsive to the request. The Act does not require the City to prove with absolute certainty that the requested record does 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 records responsive to the request.

The City's representations include affidavits sworn by the General Manager of the City's Human Resources Department and the City's Information and Privacy Coordinator. Details of the searches conducted of the City's files, including the City Council Minutes, the City Clerk's files and the City Manager's personnel file are provided. The City indicates that not only did it not locate a personal services contract, but no mention of such a contract for the City Manager was found.

I have carefully reviewed the representations of both parties and the City's affidavits and I am satisfied that the City has taken all reasonable steps to locate the records responsive to the appellant's request.

ORDER:

I uphold the City's decision.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ June 8, 1995