



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

ORDER M-964

Appeal M_9700099

The Town of Niagara-On-The-Lake



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Town of Niagara-On-The-Lake (the Town) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for access to records pertaining to a draft report prepared for the Town by a firm of engineering consultants, as well as any records containing comments about the report which were made at a meeting held on December 23, 1996. In addition, the appellant requested access to subsequent correspondence dated January 20 and 24, 1997 between the Town and the consultants. The Town granted access to the consultant's report but denied access to the January 20 and 24, 1997 letters, claiming the application of section 7 of the Act (advice or recommendations).

The requester, now the appellant, appealed the Town's decision. During the mediation of the appeal, the Town agreed to disclose the January letters to the appellant and also advised him that no records of the meeting of December 23, 1996 exist. The appellant indicated that he wished to proceed with his appeal on the basis that records of the meeting should exist.

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

DISCUSSION:

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records which he is seeking and the Town indicates that further records do not exist, it is my responsibility to ensure that the Town has made a reasonable search to identify any records which are responsive to the request. The Act does not require the Town to prove with absolute certainty that further records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the Town must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records which are responsive to the request.

The Town submits that it conducted a search of the record-holdings of the Town Clerk's office, as well as the records of the two Town employees who were present at the December 23, 1996 meeting. The Town indicates that both the Assistant Director of Public Works and the Chief Administrative Officer (CAO) for the Town advise that they do not have any records or notes concerning the meeting. The Town adds that a representative of the consulting engineering firm was also present at the meeting and that she took notes of the concerns expressed about the report by those present.

The appellant has provided a letter from an individual who was present at the meeting. This individual indicates that he witnessed the Town's CAO taking notes during the meeting. For this reason, the appellant submits that additional records, the CAO's notes, should exist.

I have reviewed the submissions of the appellant and the Town with respect to this issue and find that the Town has made reasonable efforts to identify and locate records responsive to this

portion of the appellant's request in the circumstances. In particular, I accept the Town's evidence with respect to the searches it undertook of the Clerk's office and CAO's record-holdings. Accordingly, I dismiss the appeal.

ORDER:

I find that the Town's search for responsive records was reasonable and dismiss the appeal.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ July 10, 1997