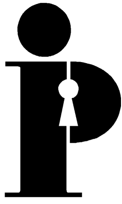

Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-1019

Appeal M-9700167

City of Mississauga

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NATURE OF THE APPEAL:

The appellant made a seven-part request to the City of Mississauga (the City) under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for access to copies of records concerning the Cawthra Woodlot. The appellant asked that his request not include duplicate copies of records he had received previously through other requests. The request specified that records to which the appellant has previously been granted access to not be provided to him and that he be allowed to view the records to identify what he wants copied.

After clarification of the request, the City charged a fee of $92.20 for three hours of search time at $7.50 per 15 minutes and 11 photocopied pages at $0.20 per page. The appellant sought a fee waiver, which was denied by the City. The requester appealed the amount of the fee and the denial of fee waiver. The City's decision not waive the fee and the amount of the fee were upheld by IPC Order M-509.

Approximately two years after the order was issued, the appellant paid the fee of $92.20 and was provided with access to a number of records by the City. He subsequently filed an appeal in which he indicated that the City did not provide a refund, did not provide the records, "made no effort to get the requested records" and changed "the wording...to withhold records."

In its correspondence, the City indicated that the appellant returned some of the records he had been provided with, stating that he already had copies of them.

The IPC sent a Notice of Inquiry to the City and the appellant. Representations were received from both parties.

DISCUSSION:

REASONABLENESS OF SEARCH

Where a requester provides sufficient detail about the records which he is seeking and the City indicates that further records do 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 further records do 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.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records may, in fact, exist.

The City has provided me with affidavits from two of the City employees who conducted the search for responsive records. The affidavits state that the City contacted the appellant for clarification of his request on June 10, 1994, however no response was received. The affidavits also indicate that City employees spent a total of 5 hours and 10 minutes searching for records. Having reviewed the details in the City's submissions, I am satisfied that the search encompassed appropriate departments and was conducted by experienced employees with direct knowledge of the records sought and the areas searched. Accordingly, I find that the City has made a **reasonable** effort to identify and locate records responsive to the request.

Having also reviewed the appellant's representations, it is quite apparent that what he considers to be a reasonable search is quite different from the standard applied here. I'll reiterate that the Act does not require the City to prove with absolute certainty that further records do not exist and, in my view, his requests to have the City's indexing systems and files opened to him far exceed his rights under the Act.

RESPONSIVENESS

The appellant has claimed that 16 pages of records provided to him by the City but returned by him are not responsive to the request. In Order P-880, former Inquiry Officer Anita Fineberg indicated that "responsive" means "reasonably related to the request." I agree.

The City indicates that the records returned by the appellant are not only "reasonably related to the request", but are directly responsive to Items 1, 4 and 5 of his request.

I have reviewed the request, records and representations, and I find that these records are reasonably related to the request.

REFUND

The appellant has asked for a refund of fees in connection with the records he has returned. The City submits that the fee charged to the appellant was $92.20, only $2.20 of which was for the provision of photocopies. The appellant was provided with 39 photocopied pages of records, 16 of which he returned. That leaves him with 23 photocopied pages of records, obtained at a rate of less than half of the legislated fee. In my view, a refund is not appropriate in these circumstances.

METHOD OF ACCESS

Section 23 of the Act specifies:

> (1) Subject to subsection (2), a person who is given access to a record or a part of a record under this Act shall be given a copy of the record or part unless it would not be reasonably practicable to reproduce it by reason of its length or

nature, in which case the person shall be given an opportunity to examine the record or part.

(2) If a person requests the opportunity to examine a record or part and it is reasonably practicable to give the person that opportunity, the head shall allow the person to examine the record or part.

(3) A person who examines a record or a part and wishes to have portions of it copied shall be given a copy of those portions unless it would not be reasonably practicable to reproduce them by reason of their length or nature.

The appellant states quite clearly in the first paragraph of his request that "the preferred method of access is to receive clear photocopies of all originals." In the second paragraph, he indicates "... a broad search under all related names is a must. I would rather go through a larger pile of record to find what is needed than miss what is needed, more not less." With reference to unwanted duplication of records obtained through previous requests, the appellant indicated he would be amenable to "setting up a time that I can come in, to go through the records if possible."

The City submits that the mode of access provided to the appellant is entirely appropriate in the circumstances, and quotes his request.

After reading the appellant's representations, it appears that he believes that opting for access to an original record would permit him to review not only the record identified as responsive, but also the entire file within which the record was located. Such is certainly not the case.

While I agree with the appellant that opting to view records instead of or prior to requesting photocopies can be a cost effective way of obtaining access to information, I find that the City's provision of photocopies in response to his specification in his request of the preferred method of access was entirely appropriate. In any event, as the appellant has been provided with photocopies and as I have found that he obtained these photocopies at significantly less cost than is specified in the Act, no useful purpose would be served by ordering the City to provide the appellant with access to the originals at this point in time. However, in my view, if the appellant wishes to avoid paying photocopying fees for records he has obtained through previous requests, this is the only way these savings can be achieved. The Act does not entitle him to require the City to keep track of what he has obtained previously, particularly given the number and scope of his previous requests.

ORDER:

I uphold the City's decision.

Original signed by: ______________________ ______________ October 9, 1997
Holly Big Canoe
Inquiry Officer