



**Information and Privacy
Commissioner/Ontario**

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

FINAL ORDER MO-1995-F

Appeal MA-040226-1

City of St. Catharines



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NATURE OF THE APPEAL:

This is my final order disposing of the sole outstanding issue in this appeal.

This is an appeal from a decision of the City of St. Catharines (the City), under the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* (the Act). The requester (now the appellant) asked for copies of “all records of information, regardless of how it is recorded” relating to construction projects for an identified address during a particular time period. The request referred to two specific permit numbers, and specified that it was for:

All correspondence, including without limiting to; Computer entries/electronic records, hand written, unedited reports, meeting minutes, log books, records of inspection, daily diaries. Mileage/traveling log books memoranda, call notes, emails, faxes, photographs, receipts, messages, accounts, (etc.).

The City located records responsive to the request and granted partial access to some of them, denying access to others. The appellant appealed the City’s decision. During the mediation stage of this appeal, a number of issues were resolved. The two remaining issues were: (1) whether the requested appointment books, daily diaries, or inspector’s log books are in the custody or the control of the City, and (2) whether additional photographs responsive to the request exist.

Further mediation was not successful, and the appeal was transferred to the inquiry stage of the process. I invited the parties to provide representations to me and, following the receipt of their representations, I issued Interim Order MO-1904-I, in which I required the City to conduct a search for appointment books, daily diaries, or inspector’s log books responsive to the request, and to conduct a further search for responsive photographs.

Following that interim order and after receiving further representations, I issued Interim Order MO-1930-I, in which I identified that I was satisfied that the City has adequately discharged its responsibilities under section 17 of the Act to conduct a reasonable search for all responsive photographs. However, with respect to the issue of whether appointment books, daily diaries, or inspector’s log books responsive to the request exist, I found that the searches conducted by the City were not reasonable. I ordered the City to conduct further searches for responsive records, and to provide me with a detailed affidavit sworn by the employee(s) who conduct the searches. In addition, I attached to the interim order portions of the information provided to me by the appellant, to assist the City in locating responsive records.

In response to Interim Order MO-1930-I, the City conducted further searches, and provided me with representations and an affidavit as required. The City also identified that, as a result of the further searches, it had located additional records (daily diary entries) responsive to the request, and had provided those records to the appellant.

I then sent a supplementary Notice of Inquiry to the appellant, and invited the appellant to provide representations on whether the further searches conducted by the City were reasonable. I also sent the appellant a copy of the City’s representations (with small portions taken out for confidentiality reasons), as well as the City’s affidavit. The appellant did not provide representations in response.

DISCUSSION:

REASONABLE SEARCH

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17 [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624].

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

In Interim Order MO-1930-I, I found that the searches conducted by the City for responsive appointment books, daily diaries or log books were not reasonable. As a result, I ordered the City to conduct further searches, and required it to provide me with an affidavit setting out in detail the nature and extent of the searches conducted. I also identified the information that should be included in the affidavit, as well as the questions that were to be asked of certain identified individuals. In addition, I attached portions of the information provided to me by the appellant concerning the individuals, dates and places where information relating to the requested records may exist, and I required the City to address that information as it relates to the searches for appointment books, daily diaries, or inspector's log books responsive to the request.

Representations

The City provided representations describing the searches it conducted and supporting its position that the searches conducted for responsive appointment books, daily diaries, or inspector's log books were reasonable.

In the representations provided by the City, it indicated that it reviewed the material provided by the appellant when it conducted the further searches for responsive records. The City also stated that, in its further searches for responsive records, it contacted the two identified individuals who were employed by the City as building inspectors at the relevant times and who conducted inspections of the relevant property. It also consulted with the Chief Building Inspector for the City.

Furthermore, the City indicates that one of the identified building inspectors which it contacted advised that he used a diary as an organizational tool. That inspector identified two pages of his

diary which relate to the inspections of the subject property, and the City subsequently disclosed those two pages to the appellant.

The City also provided an affidavit, sworn by the Assistant City Solicitor, which provides detailed information about the searches conducted by the City for the responsive records, and the results of those searches. In addition to confirming and providing additional information about the searches (as summarized in the representations), the affidavit also identifies further additional searches conducted for the responsive records, the details of those searches, and that those searches did not result in the location of any additional records. The affidavit further identifies the specifics of the contact the City had with the two individuals who were employed by the City as building inspectors at the relevant times, and the results of those contacts. Attached to the affidavit are copies of the specific requests made to those two individuals, and the responses received from them. Furthermore, the affidavit provides additional explanations regarding the record-keeping practices of the City and its record retention schedules. Copies of the relevant by-laws, schedules and documentation are also attached to the affidavit.

As set out above, I provided the appellant with a copy of the City's representations (with small portions taken out for confidentiality reasons), as well as the City's affidavit, and invited the appellant to provide representations in response. The appellant indicated that he would not be providing further representations in this appeal.

Finding

Upon my review of the representations, affidavit and attachments provided by the City, I am satisfied that the searches conducted by the City for responsive appointment books, daily diaries or log books were reasonable.

The material provided by the City, including the affidavit evidence supplied by it, identifies in detail the searches conducted for responsive records and the results of those searches. The searches did result in the location of responsive records, and those records have been provided to the appellant. In addition, I find that, based on the evidence provided, the City has complied with the requirements of Interim Order MO-1930-I with respect to describing in detail the nature of the searches that were conducted and the individuals who were contacted in conducting those searches.

There is one additional matter which I will address. In the representations provided to me in the course of this appeal, the appellant provided some material which, in his view, supports the position that identified individuals may have either maintained or been aware of additional responsive records which may have existed. The appellant was given the opportunity to review the material provided by the City, and has chosen not to provide representations in response. As set out above, the *Act* does not require an institution to prove with absolute certainty that further records do not exist; however, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records. In the circumstances, I am

satisfied that the searches conducted by the City for responsive appointment books, daily diaries or log books were reasonable, and I uphold the City's search.

ORDER:

I uphold the City's search for responsive records.

Frank DeVries
Adjudicator

November 18, 2005