



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

ORDER 34

Appeal 880067

Ministry of Community and Social Services



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O R D E R

This appeal was received pursuant to subsection 50(1) of the Freedom of Information and Protection of Privacy Act, 1987, (the "Act") which gives a person who has made a request for access to personal information under subsection 48(1) of the Act a right to appeal any decision of a head to the Commissioner.

The facts of this case and the procedures employed in making this Order are as follows:

1. On January 21, 1988, the Ministry of Community and Social Services (the "institution") received the following request:

"Par la présente et en vertu des droits qui me sont reconnus par la Loi sur l'accès à l'information et à la protection des renseignements personnels de 1987, je demande que vous me fassiez parvenir par la poste copies complètes, lisibles et intelligibles de TOUS les documents de quelque nature que ce soit, y compris notes, rapports, mémos, procès-verbaux, formulaires, lettres, déclarations, résumés, etc, dans TOUS les dossiers, et de tous ceux qui sont à l'extérieur d'un dossier, de votre ministère, de tout organisme dont vous avez la responsabilité et de tout organisme chargé d'appliquer une loi dont vous avez la responsabilité, où vous possédez des renseignements sur ma personne ou qui me concernent de quelque manière que ce soit."

(Institution's Translation)

In virtue of the rights guaranteed under the Freedom of Information and Individual Privacy Act, I am hereby requesting that I be forwarded, by mail, complete, legible and intelligible copies of ALL documents, of any type they may be, including notes, reports, memos, minutes, forms,

letters, statements, summaries, etc., from EACH and EVERY file, as well as those documents which aren't held in files, containing information on myself or concerning me in any way possible, which your ministry or any agency designated to apply legislation for which you are responsible, has in its possession.

2. By letter dated January 28, 1988, in English, the Freedom of Information Co_ordinator (the "Co_ordinator") acknowledged receipt of the request.
3. On January 28, 1988, the request was forwarded to Mr. R. Nadeau of French Services, Mr. Bob Cooke, Director of Income Maintenance; Mr. R. Gregson, Director of Communications Group and Joanne Campbell, Chair of the Social Assistance Review Board, and Fred Purificati, Area Manager in Peterborough.
4. On February 4, 1988, Mr. Purificati approved complete disclosure of the records related to the requester in the custody of his office and provided the records to the Co_ordinator.
5. On February 9, 1988, Ms Campbell sent all of the records pertaining to the requester held by the Social Assistance Review Board to the Co_ordinator.

6. On February 10, 1988, Mr. Gregson sent all of the records pertaining to the requester which were under his control or custody to the Co_ordinator.
7. By letter to the requester dated February 12, 1988 and sent by courier, the Co_ordinator enclosed all of the above_noted personal information, except information which might be in

the control of the Northumberland Department of Social Services. The institution explained that this last_noted information had not been included because the Act does not apply to municipalities at this time.

8. By letter dated February 23, 1988, the Co_ordinator informed the requester that all materials which had been sent to him had been returned to the Co_ordinator's office because the courier service could not deliver to the address which had been given by the requester which was a Post Office box number. The Co_ordinator asked the requester to provide the institution with another address so that delivery by courier could be effected. The institution suggested that, if the requester was unwilling or unable to provide another address, it could deliver the package of documents to its Peterborough office. The requester refused to give another address or to pick up the material, and requested the institution to send the records by ordinary mail, to the Post Office box number. The institution complied with this request.

9. On March 29, 1988, the Co_ordinator received a letter from the requester, in French. This letter was dated March 8, 1988. Included with the letter were several torn_up copies of documents in English which the institution had sent to the requester. The requester noted in this letter that the institution had failed to send him a number of documents, and provided a partial list of such documents, letters and files that he suggested were missing. These documents included correspondence with the Minister's office, with other branches of the institution and with other organizations in Quebec, the Ombudsman, and hearing transcripts. He also requested the regulations concerning retention and destruction of records.
10. In an addendum to his letter to the Ministry dated March 8, which addendum is dated March 20, the appellant made a further request for regulations concerning confidentiality of files. He repeated his request for ALL documents pertaining to him and not just the ones he had specifically mentioned. In addition, he stated that he could prove that other documents existed.
11. By letter dated March 9, 1988, received by my office on March 28, 1988, the requester appealed the response of the institution, stating that the institution had not sent all the information pertaining to him and had also deliberately delayed its partial reply to his request.
12. By letter dated April 7, 1988, I gave notice of the appeal to the institution. I also confirmed receipt of the appeal, to the appellant, in writing.

13. On April 11, 1988, the Institution's Freedom of Information and Privacy Co_ordinator requested the assistance of my office in advising on the institution's obligations in respect of the appellant's March 8, 1988, letter. In particular she wanted to know if a request contained in the letter should be considered a new request, or related to the matters raised in this appeal. Shortly thereafter, a meeting was held between the Co_ordinator and a member of my staff. The staff member advised the Co_ordinator that, in her view, the letter of March 8, 1988, and the addendum dated March 20, 1988 could properly be considered to relate to this appeal.
14. On April 13, 1988, the Co_ordinator sent a letter to the appellant acknowledging receipt of his March 8, 1988 letter.
15. By memorandum of April 18, 1988, the Co_ordinator sent a memo to Ms Campbell, Ms Lovell, Mr. Cooke, Mr. Nadeau, Mr. Purificati, and Mr. Gregson concerning the appellant's letter of March 8, 1988. The Co_ordinator asked them to check their files again to see if they had any further personal information relating to the appellant.
16. On April 20, 1988, Mr. Purificati informed the Co_ordinator that all the information in his custody or control pertaining to the appellant had been forwarded to the Co_ordinator.
17. On April 22, 1988, Ms Campbell of the Social Assistance Review Board confirmed in writing to the Co_ordinator that

the appellant had received all of the material pertaining to him in the custody or control of this Board.

18. On April 25, 1988, the Co_ordinator again wrote to the individuals mentioned in paragraph number 15 above, asking them to review their files for further information pursuant to the appellant's letter of March 8, 1988. This was done at the request of my office.

19. On April 27, 1988, pursuant to the appellant's March 20 addendum to his letter of March 8, 1988, the Co_ordinator sent information concerning privacy and confidentiality of documents to the appellant. The appellant was not charged fees for the following records:
 - (a) A copy of the Ministry of Community and Social Services Act, R.S.O. 1980, c. 273, and Reg. 647;

 - (b) An excerpt from the Social Assistance Review Board Training Manual dealing with confidentiality of information;

 - (c) An excerpt from the General Welfare Assistance Policy Guidelines dealing with confidentiality;

 - (d) An excerpt from the Computer System Access Procedures Guide to CIMS Security.

20. On April 28, 1988, the Co_ordinator wrote to all of the decision_makers in the institution pertaining to the appellant's letter of March 8, 1988, asking them to check their files for any information concerning the appellant.

21. On May 2, 1988, Ms Campbell wrote to the Co_ordinator stating that the Social Assistance Review Board could not locate the letters which the appellant had listed in his letter of March 8, 1988.
22. On May 3, 1988, the Program Supervisor for Peterborough wrote to the Co_ordinator on behalf of Mr. Purificati concerning documents which the appellant stated should be in the custody or control of Mr. Purificati. The Program Supervisor repeated that the Peterborough office had already disclosed all records pertaining to the appellant, and had nothing more.
23. On May 13, 1988, the Co_ordinator sent a letter in French to the appellant informing him that more documents had been located in the institution's files. These documents were mailed with the letter. The Co_ordinator informed the appellant that all records pertaining to him in the custody or control of the institution had been disclosed as of that date. The missing file had been found in the French Language Services Department of the institution.
24. In the course of mediation, the Appeal's Officer reviewed copies of all the records, numbering several hundred pages, sent by the institution to the appellant. Attempts by the Appeals Officer to settle this matter were unsuccessful.
25. By letter dated September 7, 1988, I sent notice to the institution and the appellant that I was conducting an inquiry to review the decision of the head and enclosed a copy of the Appeals Officer's Report prepared by my office.

Both parties were invited to provide written representations to me.

26. Written representations were received from the institution. To the date of this Order, no representations have been received from the appellant.

The issues that arise in the context of this appeal are as follows:

- A. Whether the institution has made reasonable efforts to identify and locate the personal information requested by the appellant;
- B. Whether the delay by the institution in responding to the request was reasonable in the circumstances.

ISSUE A: Whether the institution has made reasonable efforts to identify and locate the personal information requested by the appellant.

Subsection 47(1) of the Freedom of Information and Protection of Privacy Act, 1987 provides a right of access to personal information as follows:

- 47._(1) Every individual has a right of access to,
 - (a) any personal information about the individual contained in a personal information bank in the custody or under the control of an institution; and
 - (b) any other personal information about the individual in the custody or under the control of an institution with respect to which the individual is able to provide sufficiently specific information to render

it reasonably retrievable by the institution.

Subsection 48(1) of the Act sets out the nature and form that a request for personal information must take:

48.(1) An individual seeking access to personal information about the individual shall make a request therefor in writing to the institution that the individual believes has custody or control of the personal information and shall identify the personal information bank or otherwise identify the location of the personal information.

Subsection 48(2) provides that the requirements of subsection 24(2) of the Act apply to a request for personal information. Subsection 24(2) reads as follows:

If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

As a matter of common sense, an institution will, usually, be in a better position than a requester to know what records are within its custody or control. However, a requester may well have some knowledge as to the whereabouts of a record of personal information that pertains to him or her. Sections 47 and 48 of the Act place the responsibility for ascertaining the nature or whereabouts of a record of personal information on both the requester and the institution.

A request for "all information about" a particular requester may not be sufficiently descriptive for the purposes of subsection 48(1), although an institution that is computerized and able to search its files using only a name may be able to answer the request. In the majority of these types of requests for "all

information", an institution is going to have to seek clarification from the requester in order to respond to the request for access. As well, the institution should seek guidance from the published Directory of Personal Information Banks, which sets out the nature of personal information in the custody or control of the institution. This obligation on the part of the institution is clearly set out in subsection 24(2) of the Act as noted above.

When an institution chooses to narrow its area of search based on its interpretation of a request, without seeking clarification from a requester, it should inform the requester of the specific areas of search undertaken. Telling the requester what areas were searched in such circumstances will avoid giving a false impression that the records of the entire institution were searched when this was not the case. Informing the requester as to the area of search would enable the requester to provide any further information in his or her knowledge that might give rise to a wider area of search.

In its submissions, the institution outlined the steps taken to identify and locate the personal information and records requested by the appellant. As a result of various letters from the appellant, and discussion with my office, the Co_ordinator requested various officials to whom the head had delegated the power to make decisions under the Act to search records under their custody or control for all personal information and records relating to the appellant. The decision_makers then provided the Co_ordinator with all records which they had found relating to the appellant.

Following the appellant's March 8, 1988 letter, when the Co_ordinator requested that the decision_makers search through their files again, additional records were located in the French Language Services department. These were provided to the appellant.

On September 23, 1988, the Co_ordinator wrote to all of the institution's decision_makers requesting that they confirm all steps taken to locate any records pertaining to the appellant, to make a note as to whether any records were located, and if records were located, to decide upon disclosure. The Co_ordinator received confirmation from each of the decision_makers that no further records relating to the appellant's request had been located. There has been full disclosure of all records found by the institution's decision_makers.

Although the institution does not ordinarily receive copies of correspondence between municipal welfare authorities and individuals, the institution did in fact have some correspondence between the appellant and the Northumberland Social Services Department. This was provided to the appellant. Also, it would appear that the appellant has been given some disclosure of his welfare file by Northumberland Social Services.

The appellant has already claimed in his letter of March 8th that many more letters and documents exist concerning him. He provided a list of such letters and states that he has proof that they exist. However, although he was specifically asked in the Appeals Officer's Report to provide such proof, he has

failed to do so. In conversation with the Appeals Officer he has stated that he does not have to prove anything.

The appellant has been somewhat inconsistent in the statements he has made in his correspondence, both to the institution and to my office. In several letters, he has insisted that the institution has never sent him anything. However, one such letter stated that certain specified records were missing, in such a way as to make it clear he had received the rest of the records.

Taking into consideration all of the above, I am satisfied that the institution has made reasonable efforts to identify and locate the records requested by the appellant.

ISSUE B: Whether the delay by the institution in responding to the request was reasonable in the circumstances.

The first request by the appellant was received by the institution on January 21, 1988. By courier, February 12, 1988, the Co_ordinator sent the appellant the personal information concerning him which had been located. The initial delay in sending these records to the appellant arose, as noted above, due to the fact that delivery by courier could not be made to a Post Office box. This problem was quickly remedied by the institution, and I do not find any undue delay in its response.

The second cause of delay in response to the appellant's request arose from the fact that the institution had neither consulted with the appellant in order to clarify his broadly _ worded request, nor canvassed all of the decision_makers within the institution. As I noted earlier in this decision, I believe that this approach was incorrect, and I trust that the

institution will implement the advice I have given on this issue when responding to requests in the future.

A final cause of delay was the institution's uncertainty about whether the appellant's letter dated March 8th contained a new request or reiterated previous ones.

The March 8th letter was received from the appellant on March 29, 1988. It is to be noted that the appellant wrote to the institution only in French and these letters were translated for the benefit of the English speaking staff. Also,

correspondence to the appellant was translated from English to French. The letter of March 8th from the appellant is approximately nine pages long and is written in a discursive and repetitive style.

On reviewing the letter, I feel it was reasonable for the institution to be confused as to whether this letter of March 8th constituted a new request for access or was merely a clarification or continuation of the previous request. Accordingly, I do not find that the delay incurred by the institution in responding to the request was unreasonable.

I am satisfied that the institution has complied with the provisions of the Freedom of Information and Protection of Privacy Act, 1987 and dismiss the appeal.

Original signed by: _____
Sidney B. Linden
Commissioner

December 28, 1988
Date