



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

ORDER P-384

Appeal P-9200444

Ministry of Education



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ORDER

On October 1, 1992, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and make orders under the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

The Ministry of Education (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to a list of all retail stores in Cornwall that were given FUTURES program placements in the 12 months preceding the request. The Ministry denied access to the information because responsive records were neither in the custody nor under the control of the Ministry. The requester appealed the Ministry's decision.

Mediation of the appeal was not successful, and notice that an inquiry was being conducted to review the Ministry's decision was sent to the Ministry and the appellant. Written representations were received from the Ministry.

The only issue to be determined in this appeal is whether records responsive to the request are in the custody or under the control of the Ministry as defined by section 10(1) of the Act.

Section 10(1) of the Act states:

Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless the record or the part of the record falls within one of the exemptions under sections 12 to 22.

In its representations, the Ministry states that:

The Ministry has a contractual relationship with Cornwall Youth Employment Centre. The Ministry funds this centre to provide youth employment counselling to youth, as well as deliver the FUTURES program.

...

The Youth Employment Counselling [Centre] (YECC) & the FUTURES program have a contract with the Ministry which sets down the duties and obligations of each party. ... Basically, both agreements require the Delivery Agency to allow the Ministry access to their records for the purpose of determining the program as delivered complies with program guidelines and standards.

As part of its representations, the Ministry has provided copies of these contracts.

The Ministry representations state "[t]hough we have access to these records, it is for audit and accountability purposes only." I have reviewed the contracts, and I agree.

The records at issue do not reside at the Ministry, and FUTURES delivery organizations are not agents of the Ministry. The FUTURES program in Cornwall is delivered on a purchase of service basis through a transfer payment contract with the Youth Employment Counselling Centre. Information respecting employers in the program is not forwarded to the Ministry at any time. The Ministry's inspection and audit rights are only for the purposes of ensuring the program compliance and funding accountability. In addition, similar circumstances were considered by former Commissioner Sidney B. Linden in Order 119, where he found that the Ministry of Skills Development did not have custody or control of records containing the names of employers who have employed FUTURES participants.

In my view, the contractual conditions governing the Ministry's rights with respect to records maintained at the Youth Employment Counselling Centres are not sufficient to give the Ministry custody or control in the sense contemplated by section 10(1) of the Act. Therefore I find that the requested records are not in the custody or under the control of the Ministry.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ December 16, 1992