



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

ORDER P-511

Appeal P-9200186

Ministry of Community and Social Services



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ORDER

BACKGROUND:

The Ministry of Community and Social Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to all records "which concerned him [the requester] in any way." The requester subsequently clarified the request and explained that he was seeking access to any of his personal information that had not been previously provided to him by the Ministry.

The Ministry forwarded the request to thirty delegated decision makers within the Ministry and advised the requester that these individuals would respond directly to him. These delegated decision makers are responsible for making decisions under the Act in response to requests for information located in the various decentralized program areas of the Ministry.

Fourteen decision makers responded by indicating that no records existed in response to the request. Nine decision makers responded by giving the requester access to "all available records". It appeared from the documentation provided to this office by the Ministry that five decision makers did not respond to the request. It was unclear whether the requester had received a response from the remaining two decision makers.

The requester appealed the decision of the Ministry claiming that more records exist which are responsive to his request. The requester also appealed the deemed refusal as set out in section 29(4) of the Act with respect to the seven decision makers from whom he had apparently not received a decision.

Mediation 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. Representations were received from the Ministry only.

ISSUES:

- A. Whether the Ministry is deemed to have refused the appellant access to those records which may be located in the seven program areas which did not respond to the appellant's request.
- B. Whether the Ministry's search for responsive records was reasonable in the circumstances of this appeal.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the Ministry is deemed to have refused the appellant access to those records which may be located in the seven program areas which did not respond to the appellant's request.

Section 29(4) of the Act states:

A head who fails to give the notice required under section 26 or subsection 28(7) concerning a record shall be deemed to have given notice of refusal to give access to the record on the last day of the period during which notice should have been given.

Section 26 of the Act states:

Where a person requests access to a record, the head of the institution to which the request is made or if a request is forwarded or transferred under section 25, the head of the institution to which it is forwarded or transferred, shall, subject to sections 27 and 28, within thirty days after the request is received,

- (a) give written notice to the person who made the request as to whether or not access to the record or a part thereof will be given; and
- (b) if access is to be given, give the person who made the request access to the record or part thereof, and where necessary for the purpose cause the record to be produced.

In its representations, the Ministry clarified the position of the seven decision makers who appeared not to have responded to the appellant's request.

The Ministry explained that the appellant had, in fact, been sent a response from the two decision makers whose replies had not initially been accounted for. The Ministry provided this office with copies of both decision letters, previously sent to the appellant, indicating that no records exist within the particular program areas. Both of these decisions were provided to the appellant within the 30-day time period stipulated in section 26 of the Act.

As far as the remaining five decision makers are concerned, the Ministry provided an explanation of why these individuals had not initially responded to the appellant's request. The Ministry indicated that one of the decision makers had been sent a copy of the request in error. The Ministry also provided this office with a copy of the decisions which were subsequently made by the other four decision makers indicating that no records exist in response to the appellant's request.

Pursuant to section 29(4) of the Act, the Ministry was in a "deemed refusal" situation with respect to any records which might be located in these four program areas. However, this

situation no longer exists given that the Ministry has made a decision on access to these records. A copy of these four decisions should be provided to the appellant.

ISSUE B: Whether the Ministry's search for responsive records was reasonable in the circumstances of this appeal.

I have considered the searches undertaken by the Ministry of all the program areas in which responsive records may be located. This includes those four areas in which a search was undertaken in response to the Notice of Inquiry in this appeal.

In its representations, the Ministry provided a description of the searches that were undertaken to locate records in these four program areas. This description includes correspondence from the Freedom of Information representatives indicating what files were searched and the fact that no responsive records were located.

I have also reviewed the steps taken by other Ministry employees to locate records in the other program areas.

Having reviewed the representations and other documentation submitted by the Ministry, I am satisfied that the Ministry has taken all reasonable steps to locate any responsive records, and I find that the search conducted by the Ministry was reasonable in the circumstances of this appeal.

ORDER:

1. I order the Ministry to provide the appellant with copies of the four decision letters issued by the delegated decision makers in the following program areas: Custody Review Board, Child and Family Service Review Board, Financial and Capital Planning Branch, and the Soldiers' Aid Commission. Copies of these decision letters should be provided to the appellant within 10 days of the date of this order.
2. In order to verify compliance with this order, I order the Ministry to provide me with a copy of the decision letters which are disclosed to the appellant pursuant to Provision 1, **only** upon request.
3. I find that the Ministry's search for responsive records was reasonable in the circumstances.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ August 4, 1993