



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

ORDER P-535

Appeal P-9200690

Ministry of Housing



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ORDER

The Ministry of Housing (the Ministry) received a request for access pursuant to the Freedom of Information and Protection of Privacy Act (the Act) to a list of organizations or persons who had received copies of or excerpts from one or more of the following reports dealing with:

1. Allegations of Sexual Harassment
2. Financial Management Practices
3. Management and Operational Policies, Procedures and Practices

These reports involved the activities of members and staff of the Rent Review Hearings Board. The requester further clarified his request to include any records which would disclose the names of persons to whom copies of the reports may have been forwarded. In its decision letter, the Ministry advised the requester that no list of persons who received the reports exists. However, the Ministry did provide the appellant with the names of seven individuals which it said had "to the best of our knowledge ... seen the full report". The requester appealed the decision of the Ministry.

In his letter of appeal, the appellant supplied the names of two other individuals he believes also received copies of the reports. He also indicated that he accepted the fact that no formal list, or record, of the recipients of the reports may have been compiled by the Ministry. However, he stated that he would be satisfied with receiving copies of the covering letters which accompanied the distribution of the reports or any other documents which would provide him with the information he was seeking. He would then compile his own list.

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 both parties. The representations of the Ministry include an affidavit sworn by its Assistant Deputy Minister, Corporate Resources Management.

The sole issue in this appeal is whether the Ministry's search for the records was reasonable in the circumstances.

In the Notice of Inquiry, the Ministry was asked to address a number of specific questions regarding the nature and extent of the search it had undertaken to locate records which are responsive to the appellant's request, at the time of the request as well as during the mediation of this appeal. The Ministry was also asked to explain why, in its decision letter, it did not identify the two individuals named by the appellant as having received copies of the reports.

The Ministry's affidavit states that no search was undertaken to locate records responsive to the appellant's request. It goes on to state that the investigators who prepared the reports were not Ministry employees and that they "gave it to the seven individuals previously named without keeping a record of its distribution". The names which were provided by the Ministry in its

decision letter were based on the recollection of the affiant only and were not arrived at by reference to any written record.

In its representations, the Ministry indicates that it contacted one of the individuals named by the appellant as having received copies of the reports. The Ministry was advised that this individual did not receive or see copies of or excerpts from the reports on the allegations of Sexual Harassment or Financial Management Practices. The Ministry acknowledged that:

[the named individual] did receive an abridged version of Management Review of Rent Review Hearings Board dated May 7, 1990, which was widely distributed and was therefore not considered to be the subject of this request. [The named individual's] name was therefore not included among those seven individuals originally named.

The Ministry indicated that the other individual named by the appellant no longer works for the Ministry and was not contacted.

Where a requester provides sufficient details about the records which he or she is seeking and a Ministry indicates that additional records do not exist, it is my responsibility to ensure that the Ministry has made a reasonable search to identify any records which are responsive to the request. While the Act does not require that a Ministry prove to the degree of absolute certainty that such records do not exist, the search which an institution undertakes must be conducted by knowledgeable staff in locations where the records in question might reasonably be located. In my view, the Ministry has not met its obligation under section 24 to conduct a reasonable search for records which are responsive to the appellant's request. The affiant indicates that no searches were conducted at all based on his belief that no record existed. However, this comment is made only in relation to the Report on Allegations of Sexual Harassment. The affidavit provides no information whatsoever on what searches, if any, were conducted to determine the recipients of the other two reports. Moreover, it is clear that the Ministry misinterpreted the appellant's request in that it considered that the name of the individual who received one of the reports was not responsive to the request because of the wide distribution of this report. In my view, there is nothing on the face of the appellant's request that could reasonably lead to this interpretation.

Because of the deficiencies in the affidavit produced by the Ministry, I am not satisfied that the search undertaken by the Ministry for records responsive to the appellant's request was reasonable, having regard to all of the circumstances. On this basis, it will be necessary for Ministry staff to conduct additional searches for the records. As the appellant has indicated that he is prepared to compile the actual list of recipients himself, the Ministry's search should include any records that would provide the appellant with the information he has requested, i.e. the names of the recipients of the reports or excerpts therefrom.

ORDER:

1. I order the Ministry to conduct a further search for responsive records and to notify the appellant as to the results, within 20 days of the date of this order.
2. If, as a result of the further search, the Ministry identifies any additional records responsive to the request, I order the Ministry to provide a decision letter to the appellant regarding access to these records in accordance with sections 26 and 29 of the Act, considering the date of this order as the date of the request, without recourse to a time extension.
3. In order to verify compliance with this order, I order the Ministry to provide me with a copy of the letter referred to in Provision 1 of this order within 25 days of the date of this order. This notice should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ September 20, 1993