



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

ORDER P-619

Appeal P-9300432

Ministry of Health



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

The Ministry of Health (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for copies of tape recordings of interviews conducted by a named investigator (the investigator) during a particular investigation (the investigation). The request was worded to also include "any other record of any means". The Ministry indicated that the requested record does not exist. The requester appealed the Ministry's decision.

During mediation, the appellant claimed that responsive records, specifically tape recordings of interviews with him and possibly other individuals, exist and were not addressed in the Ministry's decision. The Ministry provided a copy of a signed memorandum from the investigator indicating that he had made no tape recordings of interviews because the individuals he had interviewed did not permit him to do so. A copy of this memorandum was provided to the appellant who continued to insist that responsive tape recordings must exist.

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 sole issue to be decided in this appeal is whether the Ministry has conducted a reasonable search for the requested records.

Upon receipt of a request, the Ministry must first be satisfied, pursuant to section 24(1) of the Act, that the request is sufficiently clear that "an experienced employee of the institution, upon a reasonable effort, [could] identify the record." If the request is not sufficiently clear, the Ministry is required by section 24(2) to offer the requester assistance in reformulating the request so as to comply with section 24(1).

Where a requester provides sufficient details about the records which he or she is seeking and the 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 a Ministry undertakes must be conducted by knowledgeable staff in locations where the records in question might reasonably be located.

The appellant states that, during a hearing, the investigator testified under oath to having secretly taped "the interview with the employees of the Public Health Laboratory." The appellant's representations also indicate that neither he nor another named individual were asked for their permission to tape interviews with them by the investigator.

As part of its representations, the Ministry has provided a memorandum of a conversation between the appellant and a Program Advisor in which the appellant's request was clarified to be for any "taped interviews held by [the investigator]."

The Ministry also provided the affidavit of a former employee of its Employment Equity Branch who searched for records responsive to the request. This affidavit states that the former employee searched the files of the Employment Equity Office and the investigator and "no records were located in response to the request". The affidavit states that no files were maintained outside that office or that of the investigator which would have been responsive to the request and that every reasonable effort was undertaken in the search.

In addition, the Ministry provided a copy of a memorandum from the investigator to the former Employment Equity Branch employee indicating that he did not have any tape recordings from interviews during the investigation; a copy of a memorandum from the investigator stating that he had not made any tape recording of interviews during the investigation (this memorandum was provided to the appellant in mediation); and an affidavit in which the investigator attests that all interviewees refused to be taped and that he had not taped any of the interviews in the investigation.

Having carefully reviewed the representations of both parties, and the affidavit evidence submitted to me, I am satisfied that the search conducted by the Ministry for the requested records was reasonable in the circumstances.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ February 1, 1994