



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

# **ORDER P-688**

**Appeal P-9400039**

**Ministry of the Attorney General**



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# ORDER

The Ministry of the Attorney General (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for court records dating from 1953 and 1954 relating to the requester and her stepfather.

A similar request was received by the Ministry from the same requester in 1990 (the previous request). Following clarification of the previous request, the Ministry contacted the Office of Criminal Prosecutions, Crown Law Office - Criminal and Courts Administration, but was unable to locate any information pertaining to the request.

The Crown Attorney's office indicated that all their old files had been sent to the Ministry's records storage centre on May 22, 1979. However, records from 1939 to 1954 could not be located.

The Crown Law Office - Criminal Branch advised that records over 40 years old were sent to the Archives of Ontario (the Archives). The Courts Administration Division also advised that files relating to the Court matter were in storage at the Archives.

The Ministry contacted the Archives and a search was conducted of the files in storage. No records were located at this time. The requester was advised that the Ministry was unable to locate records responsive to the request. The requester did not appeal this decision.

With respect to the present request, the requester advised that the Archives had located some information. She then reiterated her request for court records.

The Ministry reviewed the previous steps taken to locate responsive records, and made further inquiries with the Archives. The Ministry determined that some records might exist within the custody and control of the Archives and the request was forwarded to the Archives for their response. The requester was then advised that no records exist in the custody or control of the Ministry. The requester appealed this 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 both parties.

The sole issue in this appeal is whether the Ministry has conducted a reasonable search for responsive records.

In her representations, the appellant outlined the steps she had taken to locate records, the locations she had gone to and the people she had spoken with.

The Act does not require the Ministry to prove with absolute certainty that the requested records do not exist. However, in my view, in order to properly discharge its obligations under the Act,

the Ministry must provide me with sufficient evidence which shows that it has made a **reasonable** effort to identify and locate records responsive to the request (Order M-275).

The Ministry's representations include a memorandum from the office of the Crown Attorney relating to the search conducted in 1990, a copy of the Ministry's Records Transfer List which indicates when records from the Crown Attorney's Office were transferred to Archives and an affidavit from the Assistant Co-ordinator of the Ministry's Freedom of Information and Privacy Office, in which she outlines the steps taken, as identified above, in attempting to locate responsive records.

I have carefully reviewed the representations of the parties, and the affidavit of the Assistant Co-ordinator, and I am satisfied that the Ministry has taken all reasonable steps to locate any records responsive to the appellant's request.

**ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ May 24, 1994