



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

ORDER P-833

Appeal P-9400512

Ministry of Health



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The appellant submitted a multi-part request to the Ministry of Health (the Ministry) for access to his personal information located at a named psychiatric hospital (the hospital). The appellant is an employee at the hospital. Following clarification of the request, the Ministry located 51 responsive records to which access was granted in full. The Ministry also advised the appellant that no documents were found relating to several parts of the request.

The appellant appealed the Ministry's decision on the basis that more records should exist.

A Notice of Inquiry was provided to the Ministry and the appellant. Representations were received from the Ministry only.

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

DISCUSSION:

REASONABLENESS OF SEARCH

During the mediation stage of this appeal, the appellant provided background information to support his belief that more records should exist. The appellant explained that he filed a complaint against his employer with the Ontario Human Rights Commission (the OHRC) in 1983. Based on the investigator's report to the OHRC, the appellant filed a complaint with the College of Nurses of Ontario (the College) against another employee of the hospital.

The appellant provided the Appeals Officer with a copy of a "Decision of the Complaints Committee" of the College. The document outlines the background information which had been submitted to the Complaints Committee. The information in the investigator's report with which the appellant takes issue, as outlined in the Complaints Committee decision, consists of statements about the appellant's character, mental and physical health, and work habits. The appellant believes that records must exist which substantiate the information which was provided by his employer to the OHRC.

Where a requester provides sufficient details about the records to which he is seeking access and the Ministry indicates that no responsive records can be located, it is my responsibility to ensure that the Ministry has made a reasonable search to identify any records which are responsive to the request. In my view, the Act does not require the Ministry to prove with absolute certainty that the requested records do not exist. However, 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.

The Ministry's representations include the sworn affidavit of the Assistant Administrator of the hospital who is also the Freedom of Information Program Area Co-ordinator for the hospital. This affidavit indicates that the Assistant Administrator conducted a search through the hospital's Nursing files, Administration files and Corporate Human Resources records. He indicates that no other files are maintained by the hospital which would have contained the type of information that the appellant was seeking.

I have carefully reviewed the Ministry's representations and the affidavit as well as the supporting documentation provided by the appellant during the course of the appeal. The documentation which was provided by the appellant clearly establishes that certain information was provided to the OHRC by an employee of the hospital. The information relates to the employee/employer relationship and the employee who gave the information did so in the employer capacity. In my view, in order to conduct a complete and full search for records relating to this request, the employee who provided the information should have been contacted to determine whether records exist which support the statements made about the appellant.

There is no indication in the Ministry's representations, or in the affidavit, that this step was taken in searching for responsive records. I am, therefore, not satisfied that the Ministry has taken all reasonable steps to locate records responsive to the appellant's request.

ORDER:

1. I order the Ministry to conduct a further search for records responsive to the parts of the request for which no records were found, and to advise the appellant in writing of the results of this search, within thirty (30) days after the date of this order. In particular, the Ministry is to attempt to contact the named employee referred to in the documentation provided to the Ministry by the appellant along with his request.
2. In the event that additional responsive records are located in the search referred to in Provision 1, I order the Ministry to render a final decision on access to the records in accordance with the provisions of sections 26, 28 and 29 of the Act, treating the date of this order as the date of the request, without recourse to a time extension under section 27.
3. I order the Ministry to provide me with a copy of the correspondence referred to in Provisions 1 and 2 (if applicable), within thirty-five (35) days after the date of this order. This 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: _____
Laurel Cropley

_____ January 11, 1995

Inquiry Officer