



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-824

Appeal P-9400503

Ministry of Finance



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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 has requested information from the Ministry of Finance (the Ministry) relating to a number of specified pension plans.

The Ministry granted access to a large number of records, with several portions withheld pursuant to section 21(1) of the Act, and indicated that a number of other records could not be located within its files. The appellant appealed the Ministry's decision with respect to the withheld portions of the records, and on the basis that the "missing" records ought to exist. During mediation, the portions of the records which had been withheld under section 21(1) were disclosed. In addition, another search was undertaken, and several further responsive records were located.

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

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

DISCUSSION:

REASONABLENESS OF SEARCH

Where the requester provides sufficient details about the records which he is seeking and the Ministry indicates that such 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. 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 to show that it has made a **reasonable** effort to identify and locate records responsive to the request.

The Ministry's representations indicate that there are four types of files maintained for each pension plan registered with the commission. During the course of the request and this appeal, three searches were conducted.

Upon receipt of the request, a preliminary search was conducted by a staff member of the Ministry's Pension Commission (the Commission), which related to three of the four file types mentioned above, for each of the pension plans referred to in the request.

Following this, and prior to completion of the Ministry's response to the request, a second search was done by the Pension Officer responsible for all the plans referred to in the request (the Pension Officer). This search covered all four of the file types maintained in connection with registered pension plans, for each of

the plans mentioned in the request. In connection with this search, the Pension Officer also asked the Commission's Consultant for Financial Reporting to provide any financial statements pertaining to the request which he might have removed from the files during the course of his duties.

After the appeal was filed, the Pension Officer repeated the search described in the preceding paragraph.

The Ministry's representations describing the steps taken to search for responsive records are verified by an attached affidavit sworn by the Pension Officer.

The representations of both parties acknowledge that there are six specified documents which, according to the appellant, ought to exist within the Ministry's files, while the Ministry maintains that they could not be located in its searches. The appellant has made specific representations with respect to each of these documents. I will summarize each of these submissions, and related submissions made by the Ministry.

Document 10

This item refers to financial statements of a specified pension plan for the year 1990. The appellant refers to the requirement to file such statements, which derives from Regulation 909 under the Pension Benefits Act. The appellant also mentions that such statements were produced for this plan for the years 1991 and 1992.

The Ministry's representations indicate that, in addition to conducting the searches described above in its attempt to locate this document, it also contacted the actuary in charge of this pension plan. The actuary indicated that financial statements for the year 1990 were not filed with the Commission with respect to this plan, which subsequently merged with another plan.

Documents 14, 15 and 16

These items refer to Annual Information Forms for a pension fund, for the years 1991, 1992 and 1993, which are required to be filed with the Ministry. The appellant's representations dispute the Ministry's statement that no such documents exist because this plan was wound up in 1988. The appellant claims that if this were the case, there should be documents to corroborate the winding up. According to the Ministry, the searches described above were conducted to locate these Annual Information Forms, and they were not found.

Documents 19 and 20

These items refer to amendments or possible amendments to a pension plan. The appellant's representations in this regard refer to legislative requirements for the filing of documents relating to plan amendments. The Ministry's representations reiterate that the three searches described above were conducted to locate these documents, and that they were not found.

Having carefully reviewed the representations of the parties, I am satisfied that the searches undertaken by the Ministry to locate responsive records were reasonable in the circumstances.

As noted above, the appellant has taken the view that there must be documentation to corroborate the winding up of the plan referred to with respect to Documents 14, 15 and 16. While I am satisfied that, based upon the evidence presented, the Ministry's searches for those items were reasonable, the appellant's representations suggest that he would be interested in obtaining any corroborating documentation relating to the winding up. In my view, this does not fall within the scope of the request which led to this appeal, and if the appellant seeks access to this documentation (if the Ministry in fact has copies), a new request would be required.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____
John Higgins
Inquiry Officer

December 29, 1994