



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-860

Appeal P-9400598

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 Ministry of Finance (the Ministry) received a request for access to all records pertaining to the requester within the Ontario Insurance Commission (the Commission).

The Ministry located responsive records and access was granted to them. Following a review of the records in her files, the appellant advised the Ministry that two investigative reports which, she believed, had been submitted to the Commission's Mediator were missing.

The Ministry responded that the investigative reports were not in the files. The appellant appealed the non-existence of the two investigative reports.

A Notice of Inquiry was sent to the appellant and the Ministry. Representations were submitted by both parties.

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

## **DISCUSSION:**

### **REASONABLENESS OF SEARCH**

Along with her representations, the appellant provided copies of various documents to support her belief that copies of the two investigative reports must be in the Commission's files pertaining to her. In particular, she refers to correspondence between her insurance company and a Commission Mediator relating to one of the investigative reports.

Where the requester provides sufficient details about the records which she 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 include affidavits from the Executive Co-ordinator/Registrar, Dispute Resolution Group of the Commission (the Registrar) and the Mediator, Dispute Resolution Group of the Commission, who was involved in mediation of the appellant's claim against her insurer.

The Mediator outlines the procedures followed during the mediation process as well as the role of the mediator. As part of this process, the mediator may have informal and confidential discussions with the

parties and view confidential information, such as an investigative report from the insurer. An investigative report would not remain with the mediator, however, unless the insurer formally requests the mediator to enter it into the mediation file. The Mediator states that it is his practice not to accept investigative reports for retention on file and to ensure that all reports are returned to the insurer.

The Registrar outlines the steps taken in searching all Commission files pertaining to the appellant, which resulted in extensive information being released to her. He indicates that he personally reviewed the records in the files and confirms that the two investigative reports at issue are not in the Commission's possession.

Having carefully reviewed the representations of both parties, I am satisfied that the search undertaken by the Ministry to locate responsive records was reasonable in the circumstances of this appeal.

**ORDER:**

I uphold the Ministry's decision.

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

\_\_\_\_\_ February 8, 1995