



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-818

Appeal P-9400460

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 Ministry of Health (the Ministry) received a request for copies of Ministry calculations, documentation and/or internal correspondence confirming when \$12.8 million in savings was achieved, under Social Contract legislation, in ODB (Ontario Drug Benefit) fees paid to pharmacists, and whether the target was exceeded. The request was made by a representative of a pharmacists' association (the Association).

The Ministry conducted a search in the Ministry's Drug Programs Branch (the Branch) and denied access on the basis that the requested records do not exist. The appellant believes that records should exist. He indicates in his letter of appeal that documentation may exist in the Negotiations Secretariat of the Ministry (the Secretariat).

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

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

## **DISCUSSION:**

### **REASONABLENESS OF SEARCH**

In his letter of appeal, the appellant indicates that the Association was advised that the Secretariat was doing the calculations arising from savings achieved under the Social Contract legislation.

In its representations, the Ministry describes the steps which its staff took to search for responsive records. The Ministry's representations also include the sworn affidavits of the Policy Unit Task Force Co-ordinator (the Policy Co-ordinator) in the Branch, and the Senior Financial Co-ordinator (the Financial Co-ordinator) in the Secretariat.

The Ministry indicates that following receipt of the request, it determined that the search should be conducted in the Ontario Drug Benefit Program of the Branch since it is responsible for advising, monitoring and auditing the pharmaceutical industry with respect to the Ontario Drug Benefit. The Policy Co-ordinator states that he spoke with other members of the Branch involved in the application of the Social Contract to pharmacists' dispensing fees. He also searched all Branch files which would have contained information, if it existed, responsive to the request.

As a result of this search, one record entitled "Pharmacy Fees 1993/94: Estimated Savings Achieved" was located. Although this document was not directly responsive to the request, it was forwarded to the appellant for his information. No other records were located.

Following receipt of the Notice of Inquiry, a further search was conducted in the Secretariat. In his affidavit, the Financial Co-ordinator states that he searched files pertaining to the Pharmacy, the Association, the Ontario Drug Benefit Program and the Social Contract. In addition, he consulted with other Secretariat staff to determine whether any of them had been involved in performing any calculations relevant to the request. No records were located.

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.

Based on the Ministry's representations and the information contained in the two affidavits prepared by Ministry staff, I am satisfied that the search undertaken by the Ministry for responsive records was reasonable in the circumstances of this appeal.

**ORDER:**

I uphold the Ministry's decision.

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

\_\_\_\_\_ December 16, 1994