



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-917

Appeals P-9400792 and P-9400793

Ministry of Community and Social Services



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## **NATURE OF THE APPEALS:**

These are appeals under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of Community and Social Services (the Ministry) received a request for access to seven categories of information related to the requester and an investigation conducted into an incident in which he was involved. The requester is employed by the Ministry at a detention centre for young offenders.

Three parts of the request related to files "under the requester's name" held by named employees of the Ministry. The Ministry indicated that no records existed which responded to these parts of the request. The requester appealed. The Commissioner's office opened two appeal files to address these issues.

Notices of Inquiry were sent to the Ministry and the appellant. Representations were received from both parties. As the appeal files deal with the same issue, this order will dispose of both of them. The sole issue in these appeals is whether the Ministry's search for records was reasonable in the circumstances of these appeals.

## **DISCUSSION:**

### **REASONABLENESS OF THE SEARCH**

Where the requester provides sufficient details about the records which he or 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 appellant believes that responsive records exist in the files of the Area Manager and the Human Resources Manager of the Ministry's regional office. In addition, he claims that the Superintendent of the detention centre at which he is employed also holds records related to him.

In support of his position, the appellant outlines an incident which occurred some time in October 1994 which leads him to believe that the Superintendent of the detention centre has files concerning him. He also refers to a meeting held on June 15, 1994 at which he states that the Human Resources Manager took notes.

In its representations, the Ministry indicates that, upon receiving the request, it contacted the appellant to clarify what he meant by the term "manager's files" as stated in his request. The Ministry advises that the appellant clearly stated that he did not want to see his human resources file as he had access to it when he so chose. Rather, the appellant was seeking access to any files that the managers kept on him at their desks or filing cabinets.

The Ministry then explains that the managers named in the request were contacted and asked if they maintained any files on the appellant, either in hard copy or electronically. The Ministry states that these individuals replied that they did not. However, the Manager of Human Resources did state that, in addition to the appellant's human resources file, her unit maintained his grievance file. This file is at issue in another appeal with this office.

The Ministry further indicates that the Area Manager does not support the practice of managers maintaining individual staff files for employees reporting to them.

Throughout its submissions, the Ministry makes reference to "**manager's** files". While it is true that, as explained previously, this is the term used in the appellant's request, the individual at the detention centre holds the position of **superintendent** as opposed to being a **manager**. Thus, it is not clear, based on the Ministry submissions, whether or not this individual was contacted to ascertain if she held any responsive records in her files. Given her position, any records which she might have would presumably be held at the detention centre, as opposed to the Ministry office. The Ministry's submissions make no reference to any searches having been conducted at this location.

Based on the information provided by the appellant and the submissions of the Ministry, I cannot conclude that the Ministry's search for files held under the appellant's name by the Superintendent of the detention centre was reasonable. Accordingly, I will order the Ministry to search for any records responsive to this part of the request.

In addition, I am concerned about the appellant's reference to notes supposedly taken by the Human Resources Manager at the June 15, 1994 meeting. While the appellant admits that the notes do not deal with the incident that resulted in the investigation referred to in his request, those portions of the request related to the manager's files held by the Human Resources Manager and the Area Manager are not limited to the investigation records. In my view, the wording of these parts of the request is broad enough to cover any notes taken at that meeting. Thus, I will order the Ministry to conduct an additional search for any records held by the Human Resources Manager, excluding the grievance and personnel files. The search should include, but not be limited to, notes taken at the meeting of June 15, 1994 identified by the appellant.

I am, however, satisfied that the Ministry has taken all reasonable steps to locate any records which are responsive to the part of the request related to files held by the Area Manager.

## **ORDER:**

1. I order the Ministry to conduct a search for any files on the appellant held by (1) the Superintendent of the detention centre at which the appellant is employed, and (2) the Human Resources Manager of the Ministry's regional office, and to advise the appellant in writing of the results of this search, within thirty (30) days after the date of this order. The search for files held by the Human

Resources Manager should include, but not be limited to, any notes taken by the Human Resources Manager at a meeting of June 15, 1994 attended by the appellant and the former superintendent of the detention centre.

2. In the event that the Ministry locates additional responsive records as a result of the searches 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 section 26 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: \_\_\_\_\_  
Anita Fineberg  
Inquiry Officer

\_\_\_\_\_ April 26, 1995