



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-933

Appeal P-9400776

Ministry of Environment and Energy



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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 request for information to the Ministry of Environment and Energy (the Ministry). The appellant sought access to the following records:

- (1) the file and records of a named Ministry employee regarding a particular job competition, including the justification and/or request for a new position, and the justification for cancelling the competition, and
- (2) any correspondence sent by or addressed to several named individuals and organizations regarding a demand for the appellant to be examined by a doctor in March, 1994.

The Ministry responded by granting access to the records it identified as responsive. The appellant filed an appeal on the basis that the following information was not provided to him:

- records explaining why the competition referred to in item (1) was cancelled;
- a letter from the physician who was to conduct the examination referred to in item (2) indicating that the examination would not be performed; and
- a copy of the medical release form which the appellant provided to the doctor referred to in item (2).

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

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

## **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 explain that the search for responsive records involved files of the Ministry itself, as well as the Ontario Clean Water Agency (OCWA). The search was co-ordinated by the OCWA's Corporate Information Analyst. An affidavit sworn by this individual was enclosed with the Ministry's representations.

The affidavit indicates that the Ministry's efforts to locate responsive records included searches of the following:

- files maintained by the Manager, Administrative Services (who maintained the relevant competition and personnel files), at the Ministry's Southeast Regional Office;
- the Ministry's Human Resource Branch;
- the OCWA's Human Resources Department;
- the OCWA's Eastern Area Office;
- the OCWA's staff relations section and corporate personnel files.

All responsive records located by these searches were disclosed. The Ministry's representations specifically refer to all of the types of records identified by the appellant in his letter of appeal (summarized as bullet points on the first page of this order) and confirm that the Ministry does not possess any such records.

With regard to part (1) of the request, the Ministry also submits that it is not obliged to create responsive records. I agree with this submission.

Based upon the evidence provided, I am satisfied that the Ministry's efforts to locate responsive records were reasonable in the circumstances.

**ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_  
John Higgins  
Inquiry Officer

\_\_\_\_\_ May 24, 1995