



Information and Privacy
Commissioner/Ontario

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

ORDER P-929

Appeal P-9400762

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 to the Ministry of Environment and Energy (the Ministry), in which he asked whether a named individual is a civil servant or public servant within the meaning of the Public Service Act, O. Reg 587/91, section 6.

Prior to the Ministry issuing its decision, the appellant filed an appeal with the Commissioner's office on the basis that the Ministry had not responded to the request. Subsequently, the Ministry issued a decision in which it advised the appellant that it has no records containing the requested information.

The appeal proceeded to the inquiry stage to determine whether the search conducted by the Ministry, in connection with its response to the request, was reasonable in the circumstances. A Notice of Inquiry was sent to the appellant and the Ministry. Representations were submitted by 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 states that the appellant provided a letter indicating that the individual named in his request is a court reporter. A copy of this letter was provided with the Ministry's representations. The Ministry indicates that, although it conducts prosecutions, it does not employ court reporters. Notwithstanding this fact, the Ministry forwarded the request to its Human Resources Branch to determine whether any responsive records could be located.

The Ministry's representations go on to describe the searches undertaken. Both computer and manual searches were conducted. The computer search produced no responsive information. A manual search of personnel files within the Ministry's Human Resources Branch, and similar files which had been sent by that branch to the Records Centre, also produced no responsive records. Another manual search of the Ministry's internal employee listings back to 1978 was also carried out. Again, no responsive records were located. The two manual searches confirmed that the named individual has not been a Ministry employee from 1978 to the present.

The Ministry considers a search back to 1978 to be sufficient in view of the fact that the request relates to a

trial involving the appellant which took place in 1992. Records prior to 1978 are in the possession of the Civil Service Commission archives.

With his representations, the appellant provided a copy of a letter sent to him by the Ministry of the Attorney General to the effect that the named individual is a civil servant classified as a court reporter. While this might initially appear to suggest that the appellant already has the information to which he is seeking access in this appeal, a more careful reading indicates that the appellant is really trying to find out whether the named individual is a civil servant **within the meaning of section 6 of O. Reg 587/91**. The appellant is of the view that this has a bearing on the fees which this individual may charge for transcripts. This specific information is not contained in the letter from the Ministry of the Attorney General.

However, as noted above, my responsibility in deciding this case is to determine whether the Ministry has conducted a reasonable search for responsive records. The Ministry is under no obligation to create records, nor to conduct legal research to provide an interpretation on this point for the appellant. I accept the Ministry's evidence concerning its searches, and I find that it has conducted a reasonable search for records containing the requested information, and that no such records were located.

If the appellant's access requests do not produce the interpretation he seeks regarding the named individual's status in relation to section 6 of O. Reg 587/91, it would be appropriate for the appellant to obtain his own legal advice in this regard.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
John Higgins
Inquiry Officer

_____ May 17, 1995