



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-976

Appeal P-9500229

Ontario Insurance Commission



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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 detailed request to the Ontario Insurance Commission (the OIC) for access to all information relating to the following:

- (1) communication from the appellant to the OIC and minutes and memos of any resulting meetings, communication between the OIC and a named insurance company relating to the appellant and OIC policies on agent recruitment/HIV virus/AIDS and related underwriting practices;
- (2) OIC policies on agent recruiting and underwriting policies for insurance companies in relation to HIV/AIDS and the homosexual community between 1980 and 1992 directed to the Superintendent of Financial Institutions, a named insurance company and any other insurance companies and including "Million Dollar Round Table" meetings and discussions concerning the HIV/AIDS issue above;
- (3) research materials and discussion documents on HIV/AIDS and the homosexual community and the impact on agent recruiting policies and any recommendations made by the OIC, the Superintendent of Financial Institutions or any insurance companies;
- (4) the role of a named company in this matter and any information provided by it; and
- (5) a list of all OIC members, executives, managers and consultants from 1980 to 1992.

The request sought access to all documents, letters, minutes of meetings and correspondence relating to the above. In addition, the appellant asked for information regarding the dismissal of a homosexual lawyer from a named insurance company and information regarding the members or senior employees of the agency preceding the OIC. The appellant also wanted to know whether any of the senior employees of the OIC had ever been appointed to the Ontario Human Rights Commission (OHRC).

The Minister of Finance is the "head" of the OIC for the purposes of the Act. Requests and appeals under the Act are dealt with on behalf of the OIC by the Ministry of Finance. For ease of reference, this order will refer to actions taken by the Ministry on the OIC's behalf as actions of the OIC.

The appellant is a former employee of an insurance company.

The OIC found nine records relating to communications between the appellant and the OIC and granted access in full to these records. The OIC indicated that records responsive to items 2, 3, 4 and 5 of the request did not exist and that it had no jurisdiction to deal with such matters. It referred the appellant to the Canadian Life and Health Insurance Association Inc. for possible assistance.

The appellant appealed this decision on the basis that records responsive to items 2, 3, 4 and 5 of the request, and additional records relating to item 1, should exist.

Subsequent to the filing of the appeal, the appellant was advised by the OIC that it had never corresponded with the named insurance company regarding its recruitment practices, problems encountered with HIV/AIDS in general or the homosexual community; that the OIC does not attend the "Million Dollar Round Table" meetings and that it has no information related to the firing of any lawyer from the named insurance company.

With respect to item 5 of the request, the appellant was advised that the OIC, an agency of the government, was established in 1990, and does not have members appointed by the government. The OIC stated that, to the best of its knowledge, neither the current commissioner of the OIC nor his predecessors were appointed to the OHRC. The OIC stated that a listing of its senior employees is included in the Ontario government Telephone Directory.

The appellant did not accept the position of the OIC. The sole issue to be determined in this order is whether the search conducted by the OIC for responsive records was reasonable in the circumstance of this appeal.

A Notice of Inquiry was provided to the appellant and the OIC. Representations were received from both parties.

DISCUSSION:

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records which he or she is seeking and the Ministry indicates that such a record does 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 record does 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 OIC's representations include an affidavit sworn by the Director of the Market Conduct Branch of the OIC (the Director) who is also responsible for co-ordinating the Branch responses to requests made under the Act. The Director states that prior to receiving the request, she had several telephone discussions with the appellant in 1992 in regard to the employment practices of the insurance industry and that the former Superintendent of Insurance and another staff member also had discussions with the appellant during the same period. The Director states that the appellant was told by the various parties that these matters were outside the jurisdiction of the OIC. The affiant indicates that the appellant was referred to the OHRC, the Federal Human Rights Commission and a lawyer referral service which provides one half hour of free legal advice.

The Director states that, upon receipt of the request, searches for responsive records were conducted in the Market Conduct Branch, the Agents and Adjusters Branch, the Superintendent's office and the Actuarial Branch and no responsive records, other than the ones disclosed to the appellant, were located.

I have carefully reviewed the representations of the parties and the affidavit provided by the OIC. I find that the search conducted by the OIC and the steps taken by it to assist the appellant were reasonable in the circumstances.

ORDER:

I uphold the decision of the OIC.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ August 14, 1995