



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

ORDER P-1040

Appeals P-9500449 and P-9500450

Ministry of Environment and Energy



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NATURE OF THE APPEALS:

These appeals under the Freedom of Information and Protection of Privacy Act (the Act) arise from two requests made to the Ministry of Environment and Energy (the Ministry). The requests were for information about charges or prosecutions brought against two businesses (named separately in the requests) since 1988. The Ministry responded to both requests by stating that no records existed in relation to either of the requests. The requester appealed the decisions of the Ministry on the basis that records should exist.

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

DISCUSSION:

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records which he or she is seeking and the Ministry indicates that no such record exists, 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.

In approaching reasonableness of search issues in appeals, the Commissioner's office has recognized that an appellant is rarely in a position to **know** that records do, in fact, exist. An appellant is therefore asked to provide his or her reasons for believing that a record should exist. At the same time, the institution is asked to provide details of the search which it has conducted. Upon consideration of the information provided by the parties, a conclusion will be made as to whether or not the search was reasonable in the circumstances of the appeal.

In these appeals the appellant has provided **no** information as to why he believes that responsive records should exist, either through correspondence with this office or by way of representations. In my view, the appellant has provided no reasonable basis for his claim that records should exist.

The Ministry has provided a summary of the steps taken to search for records responsive to the appellant's two requests and has provided affidavits of the Ministry employee who conducted the searches of the Ministry's Investigation and Enforcement Branch database for any record of investigations of the businesses named in the appellant's requests.

In the circumstances of these appeals, I am satisfied that the Ministry has taken all reasonable steps to locate records responsive to the appellant's requests.

ORDER:

I uphold the Ministry's decisions.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ November 3, 1995