



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

ORDER P-1289

Appeal P-9600243

Ministry of Health



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NATURE OF THE APPEAL:

The Ministry of the Attorney General received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to a “confidential document” which was referred to in the transcript of the Examination for Discovery of an employee of the Ministry of Health held on May 20, 1994. The Ministry of the Attorney General then transferred the request to the Ministry of Health (the Ministry) as it appeared that it had a greater interest in the records requested, pursuant to section 25 of the Act.

The Ministry located a document dated August 17, 1983 which appeared to be responsive to the request and provided a copy to the requester. The requester then advised the Ministry that the record disclosed was not the record she was seeking. The Ministry replied by advising the requester that no other documents responsive to her request exist.

The requester, now the appellant, appealed the Ministry’s decision. A Notice of Inquiry was provided to the appellant and the Ministry. Representations were received from both parties.

The requester is a plaintiff in a legal action against the Ministry and several of its current and former employees. With her submissions, the appellant provided several pages taken from the transcript of the Examination for Discovery of one of the Ministry employees in which he refers to a “confidential document”. The appellant maintains that this is the record to which she seeks access in this appeal.

DISCUSSION:

REASONABLENESS OF SEARCH

With its representations, the Ministry has provided me with a copy of the entire transcript of the Examination for Discovery of the Ministry employee. In addition, it has provided me with affidavits sworn by the employee who referred to a “confidential document” in his Examination for Discovery. The employee describes the nature and extent of the search which he undertook for records other than those disclosed in the legal action. These documents are described in detail in his Affidavit of Documents which was provided to the appellant’s counsel.

Counsel to the Ministry who attended with the employee at his examination also provided an affidavit describing the efforts he made in locating any responsive records. A lengthy summary was also prepared by the Program Advisor who processed the request on behalf of the Ministry detailing the efforts made by the Ministry’s Freedom of Information and Protection of Privacy office to locate the requested document.

The appellant continues to rely on the reference to a “confidential document” made by the Ministry employee at his Examination for Discovery as proof that such a record must exist.

Where a requester provides sufficient details about the records which he is seeking, 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 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 appellant's request.

Having reviewed the submissions of both the appellant and the Ministry, I find that the Ministry has taken all reasonable steps in the circumstances of this appeal to identify and locate the requested record.

ORDER:

I uphold the Ministry's decision and dismiss the appeal.

Original signed by: _____

Donald Hale
Inquiry Officer

November 6, 1996