



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1504

Appeals P-9700174 and P-9700234

Ministry of Natural Resources



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BACKGROUND:

On April 18, 1997, the Ministry of Natural Resources (the Ministry) received a request for access under the Freedom of Information and Protection of Privacy Act (the Act) to all records pertaining to the requester's work-related back injury and surrounding employment, re-employment, evaluations, tests, meetings and other employment placement. In particular, the requester sought access to these records for the period between April 9, 1995 and April 18, 1997, as they relate to:

- (1) his Workers' Compensation Board (the WCB) claim file,
- (2) his employment and re-employment to a specified position, and
- (3) other employment/re-employment placement.

The requester also described the types of records which may contain the information requested and the possible location of such records. In response, the Ministry advised the requester of an extension of time of an additional 20 days, taken under section 27(1) of the Act, citing the necessity to consult with various individuals and the large number of records requiring review.

On June 2, 1997, well beyond the expiry of the time extension of twenty days, the Ministry issued a decision letter indicating that access was granted. In its decision letter, the Ministry referred to the recent change in legislation under section 65(6) of the Act, which removed employment-related and labour relations records from the scope of the Act. The Ministry also indicated that an estimated fee of \$605 was payable for the 700-page record. The requester appealed the estimated fee and the apparent denial of access under section 65(6) of the Act and Appeal Number P-9700174 was opened.

On June 9, 1997, the appellant submitted another request for the same records covering the period between April 19, 1997 and June 9, 1997. The Ministry obtained clarification of the request and subsequently issued a decision granting full access to five pages of responsive records. The appellant filed an appeal with this office on the basis that additional records must exist. Appeal Number P-9700234 was opened.

Because the parties to the appeal, the issues and the records requested are the same, albeit covering a different time period, this order will dispose of the issues arising in both appeals.

NATURE OF THE APPEALS:

During the mediation of Appeal Number P-9700174, the Ministry clarified its position and stated that it was prepared to disclose the records to the appellant in accordance with its human resources practice. The Ministry advised that in referring to section 65(6) of the Act, its intention was not to deny access to the records. It had, in fact, exercised its discretion to disclose all the records to the appellant, outside the Act. The Ministry also stated that it was prepared to waive the estimated fee of \$605. On July 29, 1997, 233 pages were disclosed to the appellant. The appellant advised this office that he had only received 233 pages of the original 700 pages referred to in the Ministry's decision letter.

On August 5, 1997, 275 pages were disclosed from another office of the Ministry, for a total of 508 pages. Another 50 pages were located from a former Ministry employee and disclosed to the appellant on August 18, 1997. In addition, records of handwritten minutes of a November 5, 1996 meeting were also provided to the appellant on August 25, 1997. On August 28, 1997, the Ministry issued a letter to the appellant stating that all responsive records had now been disclosed to him and that any missing pages could be attributed to duplicate pages and discrepancies in arriving at the original estimate.

During the mediation of Appeal P-9700234, the Ministry conducted a further search for responsive records. Additional records were found and disclosed to the appellant.

The Ministry's position is that all the records responsive to the requests fall under section 65(6) of the Act. It states that it has exercised its discretion to disclose all responsive records to the appellant, outside of the Act. The appellant maintains that further records exist.

In spite of the Ministry's position that the records fall outside of the Act under section 65(6), it has nonetheless participated in mediation, conducting a further search for records and disclosing those found to the appellant. The Ministry has provided me with affidavit evidence and submissions with respect to the reasonableness of the search it has undertaken for any additional records. Accordingly, I will describe the search undertaken by the Ministry.

DISCUSSION:

REASONABLENESS OF SEARCH

The Ministry submits that upon receipt of the requests, the Ministry contacted the appellant in order to clarify the requests. In the process, the appellant was advised that while the records were excluded from the Act under section 65(6), it was the human resource section's practice to disclose standard records once they have been reviewed for confidentiality and sensitivity.

The Ministry submits that searches were conducted in all the locations that the records were likely to be. With respect to Appeal Number P-9700174, the Ministry has provided an affidavit sworn by the Acting Human Resources Consultant for the Human Resources Branch who is also responsible for all access requests made to the department (the consultant).

The consultant states that each office and person named in the request was contacted and asked to search for both hard and electronic copies of any responsive records they may have. The consultant states that during the appeal, these individuals were asked to conduct a further search and that this search covered the Nipigon office, as well as any records generated during teleconferences in 1996 and 1997, that may have been overlooked in the earlier search. As a result of this second search, the Ministry located some handwritten records and some responsive records in the file of a former employee. All the records found were disclosed to the appellant. The affiant states further that the discrepancy between the estimated number of records and the actual number found to be responsive to the request is due to the removal of duplicate records and that over 500 pages have now been disclosed to the appellant.

With respect to Appeal Number P-9700234, the Ministry has also provided an affidavit sworn by the Acting Senior Management Group Specialist for the Main office who also has responsibility for access requests made under the Act (the specialist). The specialist states that each of the individuals named by the appellant were contacted and asked to search for responsive records. In addition, the Ministry's offices in Kapuskasing, Nipigon, Thunder Bay and Peterborough, being the only locations known to have records, were also searched. The records located consist of WCB reports, memoranda, invoices, doctor's reports, e-mails, handwritten notes and daybook notes and were all disclosed to the appellant.

With respect to the appellant's representations setting out the reasons for his belief that more records exist, the Ministry has confirmed to this office that thorough searches of all the offices were conducted and each individual identified by the appellant was also contacted as part of the searches. The Ministry has confirmed that no additional records have been located and that all responsive records have been disclosed to the appellant.

The appellant states that copies of certain records provided to him are not legible (handwritten minutes of the November 5, 1996 meeting and page 62 which is one of four pages attached to the minutes). The Ministry points out that handwritten notes do not copy well but it has undertaken to provide the appellant with another copy of the pages identified above.

The information provided by the Ministry indicates that a reasonable search was conducted.

ORDER:

I dismiss the appeals.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

December 16, 1997