



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1577

Appeal P-9800045

Ministry of Community and Social Services



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The appellant made a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of Community and Social Services (the Ministry). The request was for access to records showing the extent of legal expenses of the Barrie & District Association for People with Special Needs (the Association). The appellant specifically asked to be provided with records containing the following information:

- all of the Association's legal budgets for litigation involving the appellant's construction of the child care facility in Bradford, Ontario, for the Association;
- all of the Association's actual legal expenditures to date on this project, as shown by copies of all legal accounts paid by the Association to date; and
- all of the Association's outstanding liabilities for legal fees as shown by the outstanding legal accounts of the Association for the project.

The appellant indicated he was only interested in the dollar amounts in legal invoices and not in detailed descriptions of legal services shown on invoices which are considered to be privileged.

The Ministry provided the appellant with access to responsive portions of a December 6, 1996 letter from the Association and five pages of enclosures. The appellant has appealed the decision of the Ministry because he believes that there are further responsive records in the custody or under the control of the Ministry. In particular, he notes that the responsive records contained legal accounts for the Association, but did not contain legal accounts for the Ministry, invoices from lawyers and legal budgets.

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

DISCUSSION:

REASONABLENESS OF SEARCH

Where a requested provides sufficient details about the records which he is seeking and the Ministry indicates that further 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 further 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.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response to a request, the appellant must provide a reasonable basis for concluding that such records may, in fact, exist.

The Ministry submits that payments to service providers are based on a Ministry claim form that is backed up by an architect's report on the level of completion of a construction project. The

Ministry indicates it does not require invoices from service providers. As part of the agreement between the Ministry and the service provider, however, the Ministry retains the right to audit the project at its discretion.

The Ministry indicates that its search encompassed the Capital Projects Unit of the Financial Planning and Business Management Branch, its Legal Services Branch and the Barrie Area Office. The results of these searches are reported as follows by the Ministry:

The staff member in Capital Projects reported that there is only one project file per project. All information from this project file was provided to the requester. This Unit is not in receipt of copies of the Associations invoices. All documents provided to the requester were located in this office.

Legal Services Branch conducted a search of records within the office and reported that there were no records pertaining to the request.

The Barrie Area Office search was conducted in the Barrie Office and the Aurora Office by the Program Supervisor responsible for the Association and the Freedom of Information and Privacy Representative. The files searched were funding files which contain information regarding Ministry funding of start-up costs at the Bradford facility other than the cost of construction. No records regarding legal expenses were found except a copy of the funding agreement also located in the Capital Projects file.

I accept the Ministry's position that invoices or budgets for particular services purchased by agencies are not required by the Ministry unless there is a particular reason to do so, and that the Ministry file would not be expected to contain this information. I am also satisfied that, in the circumstances, the search conducted by the Ministry was reasonable and I dismiss this appeal.

ORDER:

I dismiss this appeal.

Original signed by: _____

June 4, 1998

Holly Big Canoe
Adjudicator
(formerly Inquiry Officer)