



Information and Privacy  
Commissioner/Ontario

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

# **ORDER PO-1689**

Appeal PA-980297-1

Ministry of Consumer and Commercial Relations



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/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

On October 5, 1998, the appellant made a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of Consumer and Commercial Relations (the Ministry). The request was for access to copies of all materials in the possession of the Ministry relating to a specific company. In particular, access was sought to a copy of Form 6 issued on May 28, 1998 and records relating to the dates on which this company commenced, terminated and resumed its business activities in Ontario.

On October 8, 1998, the appellant provided the Ministry with a copy of a corporate profile for the company which contained a reference to Form 6 and indicated that he was expanding his request to include all records relating to the Ministry's investigation of the company.

On November 4, 1998, the Ministry responded to the appellant's request of October 5, 1998. The Ministry denied access on the basis that responsive records did not exist. The Ministry explained that the "Form 6" notation on the corporate profile provided by the appellant indicates that a special notice (Notice of Intention to Dissolve) was sent to the company on May 28, 1994, regarding a failure to file. The Ministry indicated that the number six on the system printout refers to section 6, special filing, under the Corporations Information Act. The Ministry also advised that the Companies Branch had conducted a search for records relating to the company and no records were found. The Ministry noted there was a federal corporation registered under the company name and provided the appellant with contact information.

Finally, the Ministry's decision letter also indicated that the requested records are publicly available through the Companies Branch upon payment of the requisite fees, though it did not specifically cite section 22 of the Act. While the Ministry is of the view that it is entitled to claim this exemption, they agreed in mediation not to pursue it.

On November 10, 1998 the appellant appealed the Ministry's decision as he believes that responsive records do exist. The appellant also submitted a second request to the Ministry, and clarified that the Form 6 referred to in his request of October 5, 1998 was dated May 28, 1994 and that he was seeking a record entitled "Failure to File". This second request expanded the original request to include "all filings, or any information pertaining to [the company's] registration under the Extra-Provincial Corporations Act or any materials relating thereto."

On November 13, 1998, the Ministry advised that the second request was being treated as a clarification and expansion and would be dealt with as part of the same request.

The Ministry clarified that under section 6 of the Corporations Information Act (the CIA), the Minister may, by written notice, request a corporation to make a special filing for the purpose of establishing and maintaining an electronic database (ONBIS) of the records required to be prepared and maintained by the Ministry under the CIA. A bulk mailing of such notices was made by the Ministry in 1994 and 1995 for this purpose. The Ministry stated that copies of such bulk filings are not kept; the only record is a computer entry reference indicating that such a notice was sent on May 28, 1994.

The section 6 Notice of Special Filing requests the corporation to make the special filing (a Form 1 if an Ontario corporation, a Form 2 if extra provincial as in this case) within 30 days after the day the Notice is sent. If the filing is not made within the time period, a Failure to File Notice is sent to the corporation reminding the corporation of the requirement to file and providing a further 30 days for compliance.

The appellant provided the IPC Mediator with an affidavit from a solicitor acting for the company attesting to the existence of a Form 2. Based on the information provided, the Ministry conducted a further search regarding a registration attempted on a specific date and located a record, known as Form 2. A copy of this record was disclosed to the appellant on January 12, 1999. Also based on the information provided, the Ministry advised that there was no "investigation", rather it was a request for additional information related to the attempted filing of Form 2.

The appellant maintains that additional records exist.

I sent a Notice of Inquiry to the appellant and the Ministry. Representations were received from both parties.

## **DISCUSSION:**

### **REASONABLENESS OF SEARCH**

In appeals involving a claim that further responsive records exist, as is the case in this appeal, the issue to be decided is whether the Ministry conducted a reasonable search for the records as required by section 24 of the Act. If I am satisfied that the search carried out was reasonable in the circumstances, the Ministry's decision will be upheld. If I am not satisfied, further searches may be ordered.

The Ministry was asked to provide a written summary of all steps taken in response to the appellant's request. The Ministry provided this information in affidavit form. The affidavit was sworn by the Director of the Ministry's Companies Branch.

The Director states that the following searches were performed to locate records responsive to the request

- a search of ONBIS for the company;
- a search of the tracking system maintained in a computer subsystem of ONBIS which tracks letters forwarded by Compliance Section/Companies Branch staff to corporations in default in filing notices, other than notices under section 6;
- a search of the microfilmed record of documents maintained in the public record for this company by Companies Branch;

As a result of these searches, one responsive record was located and disclosed to the appellant.

The Ministry states that it made a bulk mailing of section 6 notices in 1993 and 1994 to every corporation on the public record (several hundred thousand). Section 6 provides the Minister with the authority to do so for the purpose of establishing or maintaining the electronic data base. The Ministry states that copies of such notices are not kept and the Ministry does not have the technical ability to replicate the document. It states that the only record kept is a computer reference "Form 6" indicating the date a notice of default was sent to the corporation. The Ministry has provided me with a copy of the substantive portion of the text of the notice of default. The Ministry states that it has no objection to sharing a copy of the text with the appellant, and I will direct it to do so in this order.

With respect to the appellant's expanded request, the Ministry states that the Extra-Provincial Corporations Act requires foreign extra-provincial corporations to obtain a licence prior to commencing business in Ontario. Corporations incorporated in other provincial jurisdictions or federally are not required to obtain a licence or to provide any filings with the Companies Branch under that Act.

The Ministry states that the additional information provided by the appellant during the mediation stage of this appeal enabled it to locate information which facilitated a replication of a deficiency letter sent to the company indicating that the Form 2 submitted for filing under the Corporations Information Act was incomplete. The Ministry states that it is not investigating the company, but considered the record responsive as the appellant may have been referring to the administrative compliance process rather than a formal investigation.

In my view, the Ministry's search for responsive records was reasonable in the circumstances. I do not agree with the appellant's contention that either the Ministry or I should have contacted the company. The Act is restricted to records which are in the custody or under the control of the Ministry, and I do not accept that the company would be of assistance in locating or replicating the Ministry's copy of the record within the Ministry's filing system.

**ORDER:**

1. I find that the Ministry's search for responsive records was reasonable and the appeal is dismissed.
2. I order the Ministry to disclose the text of the section 6 notice to the appellant by sending him a copy by **July 20, 1999**.

3. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the record disclosed to the appellant.

Original signed by: \_\_\_\_\_

\_\_\_\_\_ June 28, 1999

Holly Big Canoe  
Adjudicator