



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

ORDER PO-1751

Appeal PA-990239-1

Ministry of the Solicitor General



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:

The appellant made a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of the Solicitor General (the Ministry). The request was for access to all files in the Ministry's possession concerning the appellant.

The Ministry advised the appellant that the only record in its possession relating to him was his request under the Act.

The appellant appealed the Ministry's decision on the basis that more records should exist.

During the course of mediation, the appellant informed the Mediator that the appeal would be resolved if the Ministry provided written confirmation that it has a 28 page letter with attachments dated March, 1999, from the appellant to the Ontario Provincial Police Commissioner, or if it disclosed the letter to him.

Also during mediation, the appellant agreed to send another copy of the letter to the Ministry, along with a one page covering letter outlining the matters he wanted addressed. The Ministry provided the appellant with written confirmation of receipt of this copy of the letter and informed him that his correspondence will be forwarded to the Criminal Investigation Bureau which will deal with the concerns he raised.

I initiated this inquiry by sending a Notice of Inquiry to the appellant. He submitted written representations.

DISCUSSION:

Where a requester provides sufficient details about the records which he or she is seeking and the Ministry indicates that such a record does 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 the requested 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.

Based on the information before me, it is clear that, although the Ministry was unable to locate the appellant's letter, the appellant has provided the Ministry with a copy of it and the Ministry has agreed to investigate the concerns expressed therein.

In Order M-271, former Assistant Commissioner Irwin Glasberg dealt with a situation in which a requester had obtained a copy of the record from someone other than the institution. In that case, he proceeded with the appeal because one of the issues was the appellant's desire to request a correction of personal information under section 36 of the Municipal Freedom of Information and Protection of Privacy Act (the equivalent of section 47 of the Act). He indicated that, in this situation, the institution in question would have to acknowledge that it had custody of the record for which the correction was to be requested. Also, the

parties in that case had been involved in an ongoing series of requests and the Assistant Commissioner was of the view that his order might reduce the need for future appeals.

However, he also made the following comments of a more general nature about situations where an appellant already has the record at issue:

In the ordinary course of events, I would be extremely reluctant to apply the resources of the Commissioner's office to decide an appeal where the appellant is already in possession of the records at issue through legitimate means. In my view, such an exercise would serve no useful purpose. In addition, appeals of this nature consume the scarce resources of institutions and impede the ability of the Commissioner's office to deal with the files of other appellants.

I believe these comments are equally applicable to a situation where the appeal concerns the adequacy of search for a record which has since been provided to the institution. In these circumstances, no purpose would be served by ordering the Ministry to undertake a search for this record and there is no remedial order for me to make.

ORDER:

I dismiss the appeal.

Original signed by:
Holly Big Canoe
Adjudicator

January 31, 2000