



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

# ORDER 44

Appeal 880126

Ministry of the Attorney General



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## O R D E R

This appeal was received pursuant to subsection 50(1) of the Freedom of Information and Protection of Privacy Act, 1987 (the "Act") which gives a person who has made a request for access to personal information under subsection 48(1) of the Act, a right to appeal any decision of a head to the Commissioner.

The facts of this case and the procedures employed in making this Order are as follows:

1. On February 17, 1988, the Ministry of the Attorney General (the "institution") received a letter containing the following request:

"Par la présente, je demande à recevoir par la poste copie complète de tous les documents, de quelque nature que ce soit, qui se rapportent et font suite aux échanges qui se sont produits en 1987 et 1988 entre votre ministère et le département des services sociaux du comté de Northumberland au sujet de ma personne.

Je veux savoir exactement ce qui fut transmis par ce département à votre ministère et ce qui fut transmis par votre ministère à ce département, en plus de savoir ce qui fut fait par vous suite à cet échange.

Je n'ai aucune idée dans quelle banque de renseignements vous pouvez conserver de tels

renseignements. Je demande donc à recevoir copie de tous les renseignements personnels me concernant qui sont en possession de votre ministère dans quelque banque de

renseignements personnels que ce soit.

N.B. Veuillez avoir l'obligeance de correspondre avec moi en français."

Translation by the institution:

"I am asking hereby to receive via post office a complete copy of all documents, of whichever nature, concerning and following the 1987 and 1988 exchanges between your Ministry and the Department of Social Services of the county of Northumberland regarding myself.

I want to know exactly what has been transmitted by this Department to your Ministry and vice-versa, and I want to know what has been done following this exchange.

I have no idea about which data bank you use to keep such information. I will thereby ask to receive a copy of all personal information about me which are in your Ministry's possession in whatever personal data bank you may use.

N.B. Please be kind enough to correspond with me in French."

2. On the same day, the Freedom of Information and Privacy Co\_ordinator (the "Co\_ordinator") sent the letter for translation from French to English, and a draft reply from English to French. These translations were completed the same day.
  
3. Also on February 17, 1988, the Co\_ordinator sent a letter to the requester acknowledging receipt of his letter and asking for further clarification concerning the request. The Co\_ordinator pointed out that the requester's letter did not provide sufficient detail to identify the record, as required under subsections 48(2) and 24(2) of the Act. The Co\_ordinator asked for any information about offices or individuals the requester had corresponded with, and any details regarding court proceedings involving the requester. In order to assist the requester in clarifying or reformulating his request, the Co\_ordinator enclosed a copy of the Directory of Personal Information Banks maintained by the institution. The Co\_ordinator also encouraged the requester to contact the institution if further assistance was required.
  
4. On March 8, 1988, the institution received a letter dated March 3, 1988 in French from the requester, which was sent for translation. This letter identified an individual employed by a Department of Social Services, but provided no additional details regarding particular records, correspondence or court proceedings. The requester repeated that he wanted access to all records concerning him, and that he had no idea which data banks might contain these records.

5. On March 8, 1988, the Co\_ordinator acknowledged receipt of the requester's letter, in French.
6. By memorandum dated March 11, 1988, the Co\_ordinator asked the following offices to search for any records or correspondence that might pertain to the requester:

Executive Assistant in the Attorney General's Office.

Crown Attorney at County of Northumberland.

Crown Attorney's Office (Head Office).

Crown Law Office \_ Criminal.

Supreme and District Court Services.

Provincial Court Services.

7. Staff of the Supreme Court Services, District Court Services and Provincial Court Services Branches contacted their offices in the Northumberland area to determine whether any records or correspondence relating to the requester existed.
8. The Provincial Court Services Branch made a similar request of the Support and Custody Enforcement Branch.
9. All of the above\_mentioned offices advised the Co\_ordinator that no record concerning the requester could be located.
10. On March 22, 1988, the Co\_ordinator also asked the Crown Law Office \_ Civil Division to search for any records  
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relating to the requester, and was informed on March 23, 1988 that none could be found.

11. The institution then drafted a letter to the requester informing him that the requested records did not exist. It was translated into French, and sent by courier on April 7, 1988. The address for the requester used on the courier slip was the same post office box number as had been used for all previous correspondence.
12. On April 18, 1988, the courier returned the letter to the institution, indicating that they had been unable to effect delivery because a post office box rather than street address had been used on the letter. The institution sent the same letter that day to the requester by regular mail.
13. In the meantime, on April 11, 1988, my office received a letter from the requester, dated April 8, 1988, complaining that the institution had not responded to his request within the time frame prescribed by section 26 of the Act. In response to this letter, a member of my staff contacted the Co\_ordinator, who explained the problems the institution had experienced in delivering the letter, and indicated that she had sent the response by regular mail on April 18, 1988. As a result, my staff person notified the requester that the response was en route, and an appeal file was not opened.
14. On May 18, 1988, the requester telephoned my office, stating that he had received no records from the institution, and requesting an appeal. An appeal file was opened at that time.

15. By letter dated May 20, 1988, I gave notice of the appeal to the appellant and the institution.
16. Attempts were made by an Appeals Officer from my staff to settle this matter through mediation. However, these settlement attempts were not successful.
17. On September 12, 1988, I sent notice to the institution and the appellant that I was conducting an inquiry to review the decision of the head. An Appeals Officer's Report accompanied this notice, and both parties were invited to provide written submissions. The letter and the Appeals Officer's Report were provided to the appellant in French.
18. Written representations were received from the institution in the form of an affidavit.
19. The appellant did not provide written representations.

The issues that arise in the context of this appeal are as follows:

- A. Whether the institution made reasonable efforts to identify and locate the records which respond to the appellant's request.
- B. Whether the explanation offered by the institution for the delay in responding to the request was reasonable.

**ISSUE A: Whether the institution made reasonable efforts to identify and locate the records which respond to the appellant's request.**

Subsection 47(1) of the Act provides a right of access to personal information as follows:

- 47.(1) Every individual has a right of access to,
- (a) any personal information about the individual contained in a personal information bank in the custody or under the control of an institution; and
  - (b) any other personal information about the individual in the custody or under the control of an institution with respect to which the individual is able to provide sufficiently specific information to render it reasonably retrievable by the institution.

Subsection 48(1) of the Act, sets out the nature and form that a request for personal information must take:

An individual seeking access to personal information about the individual shall make a request therefor in writing to the institution that the individual believes has custody or control of the personal information and shall identify the personal information bank or otherwise identify the location of the personal information.

Subsection 48(2) provides that the requirements of subsection 24(2) of the Act apply to a request for personal information. Subsection 24(2) reads as follows:

If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).



I considered the proper interpretation of these sections of the Act in my Order No. 33 (Appeal No. 880053), released on December 28, 1988. At page 6 of that Order I stated:

As a matter of common sense an institution will, usually, be in a better position than a requester to know what records are within its custody or control. However, a requester may well have some knowledge as to the whereabouts of a record or personal information that pertains to him or her. Sections 47 and 48 of the Act place the responsibility for ascertaining the nature or whereabouts of a record of personal information on both the requester and the institution.

The requester has an obligation under sections 47 and 48 to provide as much direction as possible to an institution regarding where the requested records may be found and/or to describe the records sought. It is, however, recognized that the degree of assistance a requester is able to offer will depend on the circumstances of each individual case.

In this case, the appellant asked for access to all documents relating to him that were held by the institution. When in receipt of such a request for "all" information, I believe an

institution has two choices. As I stated in Order No. 33 supra:

1. it [the institution] must search each and every division, agency, etc. within the institution, or
2. it must clarify with the requester what it is the requester is specifically seeking, and to elicit information that would narrow the area of search.

The institution should also seek guidance from the published Directory of Personal Information Banks, which sets out the

nature of personal information in the custody or control of the institution.

In this appeal, the Co\_ordinator's February 19, 1988 letter asked the appellant to reformulate his request and provide further information and details. To assist the appellant, the Co\_ordinator sent him a copy of the Directory of Personal Information Banks maintained by the institution. The Co\_ordinator also offered further assistance to the appellant, if needed. In his March 3, 1988 letter, the appellant provided the name of an individual in the Department of Social Services and suggested the Co\_ordinator search for his personal information in its offices in Cobourg and neighborliness region. The appellant was unable to provide any additional assistance.

By affidavit, the Co\_ordinator outlined the steps taken to identify and locate the personal information and records requested by the appellant. A translation of the appellant's request and a letter from the Co\_ordinator were sent to all of the branches of the institution mentioned earlier in this Order. The branch staff in turn searched their records for any correspondence or proceedings relating to the appellant, and reported that they could find no such records.

Based on the above search, the institution concluded that no records existed and advised the appellant accordingly. During the mediation stage of this appeal, the Appeals Officer reviewed

and corroborated all steps taken by the institution, and inspected all correspondence between the Co\_ordinator and various staff of the institution and Department of Social Services.

Taking all factors into consideration, I am satisfied that the institution has made reasonable efforts to identify and locate the personal information requested by the appellant, and has satisfied its obligations under subsection 48(2) of the Act.

**ISSUE B: Whether the explanation offered by the institution for the delay in responding to the request was reasonable.**

According to the Co\_ordinator, a courier service was used to deliver the institution's response to the appellant's request in order to satisfy the time requirements imposed by section 26 of the Act. The Co\_ordinator maintains she was not aware that a street address was required for courier delivery, and as soon as the letter was returned by the courier, it was sent to the appellant by ordinary mail.

Although use of a courier service resulted in a delay in delivery of the institution's response, in my view, the appellant did not suffer unduly as a result, and I find that the explanation offered by the institution was reasonable in the circumstances.

Accordingly, I am satisfied that the institution has complied with the requirements of the Act, and dismiss this appeal.

Original signed by: \_\_\_\_\_  
Sidney B. Linden  
Commissioner

\_\_\_\_\_ March 9, 1989  
Date