



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

ORDER 45

Appeal 880160

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) 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 March 28, 1988, the requester made the following request to the Ministry of the Attorney General (the "institution"):

"(Re: my complaint against the Ontario Human Rights Commission _ first letter sent to the Attorney General, December 1st, 1985). I request the record pertaining to this matter, preceding and after December 1st, 1985".

2. The institution responded on May 3, 1988 by stating that "...access to the requested record has been granted in full".
3. The requester believed that full access had not been granted and contacted the institution by telephone on May 4, 1988 to request additional correspondence for the period 1985 to 1986.
4. On June 8, 1988, the institution wrote to the requester to advise that "...we have conducted a further review of our

records and wish to confirm that we do not have any additional records in our custody".

5. By letter dated June 2, 1988, the requester appealed the institution's decision, and I gave notice of the appeal to the institution.
6. The appellant advised the Appeals Officer assigned to this case that he had possession of copies of a letter he had written to the Attorney General in December, 1985, which was not included in the file provided to him by the institution. As a result, the appellant concluded that the institution had not provided full access to the requested records. The appellant also felt that the institution was attempting to "...conceal evidence of criminal and otherwise illegal behavior in the conduct of Government operations...".
7. This information was provided by the Appeals Officer to the institution's Freedom of Information Co_ordinator (the "Co_ordinator"), and the institution undertook to search its records again and provide my office with a memorandum outlining the steps taken in trying to locate the requested records (in particular, the appellant's letter to the Attorney General dated December 1, 1985). The appellant meanwhile provided the Appeals Officer with a copy of this letter.
8. The memorandum prepared by the institution indicated that the second search had failed to locate any additional records.

9. Further settlement attempts were unsuccessful, and on December 9, 1988, I advised the appellant and the institution by letter that I was conducting an inquiry into this matter. Included with this notice was a copy of the Appeals Officer's report which outlined the issues considered by my office to be relevant. On consent of the institution, the appellant was also provided with a copy of the institution's memorandum. Both the institution and the appellant were invited to make written representations.
10. On February 24, 1989, a Compliance Auditor from my staff attended with the Appeals Officer at the institution's offices and reviewed the procedures employed by the institution in logging and tracking correspondence.
11. I received written representations from the institution and the appellant and have considered them, together with the report from the Compliance Auditor, in making my Order.

The issue in this appeal is whether the institution has taken all reasonable steps to locate records that respond to the appellant's request.

In its memorandum outlining the steps taken by the institution to search for the requested records the Co_ordinator stated:

A branch search was conducted by the Director of Crown Attorneys involving file searches by the Deputy Director's secretary, Counsel's secretary and an articling law student. This branch also contacted the

Forms & Records Branch as well as the correspondence assistant in the Minister's office.

In the Minister's Office, correspondence was tracked on the computerized mail log (in use since May 1986); The alphabetical print_out of mail received from October 1985 to April 31, 1986 was reviewed; Daily mail records maintained from May 1985 to October 1985 were also reviewed.

With respect to the Minister's Office, all documents received are recorded in the above mail log systems and sent to appropriate divisions for reply. No copies are retained in the Minister's Office while a reply is being prepared. All completed replies, however, are filed in the Minister's Office. No correspondence is ever shredded. The only foreseeable situation in which

a letter may have become lost was during the change of government in the Autumn of 1987. It is also foreseeable that the Minister's office never received [the appellant's] letter.

The Co_ordinator also provided me with copies of memoranda provided to her by institution officials who conducted searches in their respective offices or departments.

In a sworn affidavit provided by the institution, the Co_ordinator stated:

The steps taken to locate the record revealed three (3) letters written by the Appellant to the Attorney General, dated August 11, 1987, January 29, 1988, and May 25, 1988. Each of these letters was in turn answered by the Minister on August 28, 1987, February 19, 1987 and June 6, 1988 respectively. No letter dated December 1, 1985 was found.

...I submit that the steps taken were reasonable and sufficient. This office and the Ministry branches that could possibly have retained records pertaining to the Appellant undertook every possible conceivable

step to locate a record which might provide the information requested by the Appellant.

The appellant, on the other hand, has provided me with copies of letters dated December 1, 1985 and May 30, 1986 written by him to the Attorney General, together with a letter dated June 12, 1986 from the Attorney General, acknowledging receipt of a letter from the appellant dated May 13, 1986 (which I believe to be an erroneous reference to the appellant's May 30, 1986 letter). None of these letters were included in the material provided to the appellant, prompting him to conclude that he had not been granted full access to all relevant records.

While I am satisfied that the two searches undertaken by the institution were reasonable in the circumstances, it concerns me that neither search produced all of the requested records. It

is possible that the letter purportedly sent by the appellant in December 1985 was not actually mailed; and it is also possible that it was sent but never received by the institution. However copies of the December 1, 1985 letter were sent to other persons who apparently did receive them. As for the appellant's May 30, 1986 letter to the Attorney General, the fact that it was replied to on June 12, 1986 would appear to indicate it had been received.

This June 12, 1986 letter from the Attorney General to the appellant gives me greatest cause for concern. Neither it nor the letter it refers to, was included in the material provided to the appellant, despite the fact that the Attorney General's correspondence has been tracked on a computerized mail log since May, 1986. The institution submits that "...the only

foreseeable situation in which a letter may have become lost was during the change of government in the Autumn of 1987". I find this explanation unsatisfactory, particularly since the person holding the position of Attorney General did not change during 1987. In the appellant's view, the Ministry of the Attorney General was deliberately concealing parts of his record.

The Compliance Auditor, as part of his investigation, reviewed all logs of incoming documents, and found no record of any correspondence from the appellant during the periods in question. The logs also showed no indication that any entries had been deleted or removed. However, the investigation revealed that the procedures used to record the receipt of incoming mail in the Minister's Office and to trace its movement within the Ministry during the period of December 1985 through June 1986 had a number of weaknesses. Many of these weaknesses were eliminated in May 1986 when the system was automated, but some problems still exist. For instance, there is no assurance that all documents received in the Minister's Office are entered into the computerized tracking system. Therefore, if a document is lost during transit within the Ministry after leaving the Minister's Office, there could be no record of its receipt.

Having reviewed the submissions of both parties and the Compliance Auditor's report, I am reluctantly drawn to the conclusion that the institution no longer has copies of the December 1, 1985, May 30, 1986 and June 12, 1986 letters. This conclusion troubles me, since these records should have been retrievable from the institution's files.

I am hopeful that problems with the retrieval of records will diminish considerably in the future. The Freedom of Information

and Protection of Privacy Act, 1987 prescribes practices relating to the use, disclosure, collection, retention and destruction of records. A recently published regulation (Ontario Regulation 15/89) respecting the disposal of personal information addresses this very important issue. Of course, no system of record_keeping will ever be free of human involvement and, therefore, human error. However, the likelihood of errors would be reduced if institutions would examine and improve their record_keeping practices.

While the appellant has not obtained all of the records he requested, I am satisfied, on the basis of the institution's submissions and the independent investigation of my Compliance Auditor, that the appellant has received all records in the institution's possession.

Over the next several months, I intend to work with this institution and others to determine ways of improving records management systems throughout the government. In my view, improvements in these systems will be one of the major long_term benefits of the Freedom of Information and Protection of Privacy Act, 1987. Hopefully the appellant can gain some comfort from having brought these matters to our attention.

Original signed by: _____
Sidney B. Linden
Commissioner

_____ March 21, 1989
Date