



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

ORDER 33

Appeal 880053

Ministry of the Solicitor 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 8, 1988, a request was made to the Ministry of the Solicitor General (the "institution") for,

"...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, y compris la Sûreté de l'Ontario, 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, en incluant la Sûreté de l'Ontario, et ce qui fut transmis par votre ministère, en incluant la Sûreté de l'Ontario, 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 et de la Sûreté de l'Ontario dans quelque banque de renseignements personnels que ce soit..." (hereinafter referred to as the "records").

(Institution's Translation):

"...Copies of all documents whatsoever related to and following up on exchanges concerning myself occurring in 1987 and 1988 between your Ministry (including the Ontario Provincial Police) and the Department of Social Services, Northumberland County.

I want to know exactly what was communicated by that department to your Ministry (including the Ontario Provincial Police) and what was communicated by your Ministry (including the Ontario Provincial Police) to that department, as well as what action was subsequently taken by yourselves.

I have no idea what information bank is being used to store this information. I am thus asking for copies of all information concerning myself in the possession of your Ministry and the Ontario Provincial Police, from wherever it is being stored..."

2. By letter dated February 22, 1988, the institution advised the requester that it could not provide access to the records requested, as the records did not exist.
3. By letter dated February 26, 1988, the requester again wrote to the institution, stating in part:

"...Vous ne pouvez pas me dire que "ce document n'existant pas (sic), nous ne pouvons pas vous y donner accès" alors que je sais pertinement que "... (la) ...", directrice du département des services sociaux du comté de Northumberland, ou d'autres personnes, ou bien, et d'autres personnes de ce département ou de

l'administration de ce comté ont eu des échanges avec votre ministère et avec la Sûreté de l'Ontario entre au moins juin 1987 et maintenant.

Veillez aller vérifier auprès des bureaux de votre ministère à Cobourg et à la direction régionale, ainsi que partout ailleurs à votre ministère, et auprès des bureaux de la Sûreté de l'Ontario à Cobourg et à Brighton, ainsi que partout ailleurs à la Sûreté, en particulier en demandant à "... (un) ...", policier de la Sûreté à Brighton.

Je n'ai aucune idée dans quelle catégorie de fichier vous pouvez conserver de tels renseignements puisque j'en ignore même la nature, c'est donc à vous, le coordonnateur, d'en faire la recherche. Je crois vous avoir donné suffisamment d'indices pour ce faire..."

(Institution's Translation):

"...You cannot tell me that "since this document does not exist (sic), we cannot give you access to it", when I know for a fact that "... (the) ...", Director of the Social Services Department, Northumberland County or others in

that department or within the county administration have exchanged correspondence with your Ministry and the Ontario Provincial Police from at least June 1987 to the present.

Please check with your Ministry offices in Cobourg and with the Regional Branch, as well as everywhere else in your Ministry. Check as well with the Ontario Provincial Police Offices in Cobourg, Brighton and everywhere else. You might particularly check with "... (name) ...", a police officer with the Brighton Ontario Provincial Police.

I have no idea what type of file this information might be kept in, since I have no idea what it includes. Thus, it's up to you as the Co_ordinator, to look into it. I feel I have provided you with enough information to do so."

4. The institution treated the February 26 letter as a new request "because it provided more information and it was specific".
5. By letter dated March 31, 1988, the institution advised the requester that records did not exist for his second request for access.
6. On March 3, 1988, the requester wrote to me appealing the February 22, 1988 decision of the head. A second letter was received from the appellant dated April 7, 1988 wherein he appealed the head's decisions of February 22, 1988 and March 31, 1988.
7. By letter dated April 6, 1988, I gave notice of the appeal to the institution.

8. Attempts by an Appeals Officer to settle this matter were unsuccessful.
9. By letter dated July 18, 1988, I sent notice to the institution and the appellant that I was conducting an inquiry to review the decision of the head and enclosing a copy of the Appeals Officer's Report prepared by my office. Both parties were invited to provide written representations to me.
10. Written representations were received from the institution. To the date of this Order, no representations have been received from the appellant.

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

Before dealing with the specifics of this case, I think that it would be useful to review the statutory provisions relating to a request for personal information.

Subsection 47(1) of the Freedom of Information and Protection of Privacy Act, 1987 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:

48.(1) 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)."

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 of 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.

It is clear from sections 47 and 48 of the Act that there is some obligation placed on the requester to provide as much direction to an institution as possible to where the records he or she is requesting may be found and/or to describe the records sought. A requester's knowledge as to what records are in an institution's custody and control will vary.

A danger exists that, due to a lack of knowledge on the part of a requester, a record that would respond to his or her request may not be considered for release because it has not been identified by the requester with sufficient precision. A request for "all" information relating to a requester, held by an institution, is one example where there is a potential to frustrate the right to access provided for in the Act because a request for "all" information may not be sufficiently descriptive for the purposes of subsection 48(1), although an institution that is computerized and able to search its files using only a name may be able to answer the request. In the majority of these types of requests for "all" information, an institution is going to have to seek clarification from the requester in order to respond to the request for access. As well, the institution should 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. This obligation on the part of the institution is clearly set out in subsection 24(2) of the Act, as noted above.

When an institution chooses to narrow its area of search based on its interpretation of a request, without seeking clarification from a requester, it should inform the requester

of the specific areas of search undertaken. Telling the requester what areas were searched in such circumstances will avoid giving a false impression that the records of the entire institution were searched when this was not the case. Informing the requester as to the area of search would enable the requester to provide any further information in his or her knowledge that might give rise to a wider area of search.

Turning to the circumstances of this appeal, I note that the appellant, in his first request (dated February 8, 1988), attempted to identify the location of the personal information at issue. However, I find that the request did not contain sufficient identifying information in the circumstances, since the organizational structure of the institution is large, comprising four main divisions and six affiliated agencies. The appellant's request was broadly worded, but he did provide some details. Rather than asking for more details as to the area of search, the institution unilaterally decided to limit its search to the Ontario Provincial Police and to narrow the area of search even further by including only the Number 8 district (that being the district which includes the appellant's mailing address), the Technical Support Branch, the Intelligence Branch, the Anti_rackets Branch and the Security Branch. Based on this search, the appellant was advised that no records existed. The appellant was not advised as to the extent of the search conducted by the institution.

Without further information, the appellant might well have concluded that his request had been taken literally and that the entire institution had been searched without success. This potential misunderstanding did not transpire, mainly because the appellant was not satisfied with the institution's response to

his original request and he did provide further unsolicited details to the institution (request dated February 26, 1988) that precipitated another, wider search by the institution. Again, no records were found and the appellant was so advised.

In its submissions to me, the institution set out the extent of the second search, and I am satisfied that the institution has now taken reasonable steps to locate records responding to the appellant's request. The institution searched the Brighton and Cobourg detachments and the Number 8 district headquarters, Peterborough. It also checked with an individual mentioned in the request. That individual is an Ontario Provincial Police Officer but at the relevant time, he was seconded to the local Cobourg Police Force. The institution explained that if records existed as described by the appellant, the Cobourg Police Force would have custody and control of the documents as they would have been prepared for that police force. It further clarified that the individual involved would not have made or retained any notes for the Ontario Provincial Police/Ministry's records.

Although the institution may not have completely fulfilled its responsibilities, pursuant to subsection 48(2) of the Act, in its first attempt to answer the request, I am satisfied that it did discharge its responsibilities on its second search. I therefore dismiss this appeal.

Original signed by: _____
Sidney B. Linden
Commissioner

December 28, 1988
Date