



Information and Privacy
Commissioner/Ontario

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

ORDER 79

Appeal 880127

Ministry of Community and Social Services



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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 Information and Privacy Commissioner.

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

1. On January 21, 1988, the Ministry of Community and Social Services (the "institution") received the following request:

Par la présente et en vertu des droits qui me sont reconnus par la Loi sur l'accès à l'information et à la protection des renseignements personnels de 1987, je demande que vous me fassiez parvenir par la poste copies complètes, lisibles et intelligibles de TOUS les documents de quelque nature que ce soit, y compris notes, rapports, mémos, procès-verbaux, formulaires, lettres, déclarations, résumés, etc, dans TOUS les dossiers, et de tous ceux qui sont à l'extérieur d'un dossier, de votre ministère, de tout organisme dont vous avez la responsabilité et de tout organisme chargé d'appliquer une loi dont vous avez la responsabilité, où vous possédez des renseignements sur ma personne ou qui me concernent de quelque manière que ce soit.

The institution translated the request as follows:

In virtue of the rights guaranteed under the Freedom of Information and Individual Privacy Act, I am hereby requesting that I be forwarded, by mail, complete, legible and intelligible copies of ALL documents, of any type they may be, including notes, reports, memos, minutes, forms, letters, statements, summaries, etc., from EACH and EVERY file, as well as those documents which aren't held in files, containing information on

myself or concerning me in any way possible, which your ministry or any agency designated to apply legislation for which you are responsible, has in its possession.

2. The requester specifically asked for copies of the following files of the Social Assistance Review Board (the "SARB"), pertaining to himself :

E-09-23-09; E-11-04-15; F-01-15-12; F-03-05-17;
F-04-02-04; F-04-07-15; F-06-18-26; F-07-15-09.

He advised that there were other files for which he did not have the numbers and he was requesting them as well.

3. On January 28, 1988, the institution's Freedom of Information and Privacy Co-ordinator (the "Co-ordinator") forwarded the request to the Chair of SARB.
4. On February 9, 1988, the Chair photocopied the following records pertaining to the requester which were held by SARB, and sent them to the Co-ordinator for transmittal to the requester, without severances:

E-09-23-09; E-11-04-15; F-01-15-12; F-03-05-17;
F-04-02-04; F-04-07-15; F-06-18-28*; F-07-15-09.

The Chair indicated that File F-06-18-26 contained information pertaining to another individual and not the requester. However, File F-06-18-28, a file not specifically referred to by the requester, contained information pertaining to the requester and an unsevered copy of this record was provided to the Co-ordinator.

The Chair also informed the Co-ordinator that shredded pieces of correspondence, received from the requester and contained in envelopes in the files, could not be provided to the requester. This correspondence had originally been sent to the requester by SARB and the requester had shredded the correspondence and

returned it to SARB. It was not possible for SARB's staff to photocopy these shredded pieces of correspondence.

5. On February 12, 1988, the Co-ordinator wrote to the requester enclosing copies of all the above-mentioned records. The letter and enclosures were sent by courier to the requester's post office box. Because couriers do not deliver to post office boxes, the letter and enclosures were returned to the institution after some time. Subsequently, the Co-ordinator sent the letter and enclosures by regular mail to the post office box.
6. On March 8, 1988, the requester wrote to the Co-ordinator, claiming that he had not received all information about him held by SARB. In particular, he referred to two letters he had sent to a former Chair of SARB dated 6/12/87 and 9/9/87, and a letter from the former Chair to him dated 6/17/87. The requester also asked for transcripts of hearings, with reference to file numbers F-04-07-15 and F-03-05-17.
7. Upon receipt of this letter, the Co-ordinator asked SARB to conduct a further search of its files.
8. On April 22, 1988, the Chair advised the Co-ordinator by letter that SARB had been unable to locate any further correspondence relating to the requester. The Chair indicated that it was possible that copies of the requested correspondence had been lost or destroyed during the period of transition from the former Chair to herself. As far as the requested transcripts were concerned, the Chair advised the Co-ordinator that they did not exist because they had not been ordered. She pointed out the practice of SARB to order a transcript only in the following circumstances:
 - (a) in the event of an appeal to the Divisional Court;
 - (b) at the request of a SARB member; or
 - (c) at the request of a party.

When a party requests a transcript, that party is responsible for

the cost of transcription. Therefore, if the requester wanted the transcripts of any hearings before SARB, he could request that the proceedings be transcribed, but would be required to assume the cost of transcription.

This information was conveyed to the requester by the Co-ordinator.

9. On March 9, 1988, the requester wrote to my office expressing dissatisfaction with the institution's response to his January 11, 1988 request.
10. One of my staff met with the Co-ordinator on April 22, 1988, and on April 25, 1988 the Co-ordinator asked SARB to review its files again and to look specifically for the following correspondence identified in the requester's March 9, 1988 letter to me:
 - letter from the requester to the former Chair, dated 6/7/87;
 - letter from the requester to the former Chair, dated 26/6/87;
 - letter from the requester to the former Chair, dated 9/7/87;
 - copy of a letter to the requester from a named individual dated 10/3/87, together with any other correspondence between the requester and that individual.
11. SARB again searched its files and on May 2, 1988 the Chair wrote to the Co-ordinator advising that the specified correspondence could not be located.
12. By letter dated May 20, 1988, I advised the Co-ordinator that an appeal had been filed by the requester.
13. Between May 20, 1988 and August 22, 1988 efforts were made by an Appeals Officer and the parties to settle the appeal.

efforts were not successful.

14. On August 31, 1988, I sent notice to the institution and appellant that I was conducting an inquiry to review the decision of the head, and invited the parties to make written representations.
15. Written representations were received from SARB. To date, no further representations have been received from the appellant.

The issues arising in this appeal are as follows:

- A. Whether the steps taken by SARB to identify and locate the requested records were reasonable and sufficient in the circumstances of this appeal.
- B. Whether the delay by the institution in responding to the initial request was reasonable in the circumstances.

ISSUE A: Whether the steps taken by SARB to identify and locate the requested records were reasonable and sufficient in the circumstances of this appeal.

In its representations, SARB outlined the steps taken to identify and locate the personal information requested by the appellant.

When the appellant's initial request was received, SARB was able to identify a total of eight known files pertaining to the appellant. These files were then reviewed, and a decision was made to release all information in these files, including all phone messages and internal memos, to the appellant without severances.

When asked to review its files again on two separate occasions in March and April of 1988, SARB went back to its files, but was unable to locate any of the additional correspondence identified by the appellant.

In order to obtain an independent assessment of the adequacy of the

search conducted by SARB, a member of my compliance staff attended at SARB's premises to review its records management systems.

SARB staff explained that a new computerized system had been introduced in June 1988 to assist in the management of appeal files. Prior to this date, SARB operated with a manual filing system. SARB appeals were and continue to be filed according to appeal number and not the name of the individual appellant. All correspondence relating to a particular appeal is kept in this appeal file. Under the old system, whenever an appeal file was opened, the appellant's name, address, telephone number and the appeal number assigned to the file was recorded on a separate file index card, which was indexed alphabetically, by surname of appellant. Therefore, when the same individual submitted a second appeal, a new file would be opened to deal with that appeal, but the number assigned to this new file would be recorded on the appellant's existing file index card. When the computerized system was introduced in June 1988, all information previously contained on a file index card was thereafter stored on computer. After a period of parallel operation of the manual and computerized systems, the file index card system was discontinued in April 1989. SARB staff also explained that no attempts were made to integrate old files into the new computerized system.

This compliance investigation also identified the following information:

- there is no record of incoming mail because SARB has no system in place to log incoming mail;
- SARB's present staff have no idea how previous staff filed correspondence which did not require an appeal file to be opened prior to the introduction of the computerized system in June 1988;
- the file index card used by SARB to identify files related to the appellant was missing at the time of the review and could not be inspected by my staff;
- before SARB introduced the new computerized system in June 1988, it had difficulty physically locating open appeal files;
- during the period in 1987 that the missing correspondence between SARB and the appellant took place, the SARB Chair changed twice.

As a result of the investigation conducted by my compliance staff, I am reluctantly drawn to the conclusion that either SARB no longer has copies of the correspondence identified by the appellant, or it is unable to locate them with the current records management systems. In my view, this conclusion is regrettable, because it appears to me that these records should be retrievable from SARB's files.

While I am satisfied that the efforts by SARB to identify and locate the personal information requested by the appellant were reasonable in the circumstances, the general state of SARB's records management systems concerns me. Elementary systems such as an incoming mail log have not been implemented, indicating what appears to be a lack of concern on SARB's part for the need to introduce and maintain effective records management systems.

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.

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.

ISSUE B: Whether the delay by the institution in responding to the initial request was reasonable in the circumstances.

The appellant's initial request was received by the institution on January 21, 1988. The institution responded by letter, dated February 12, 1988, which is within the 30-day period prescribed by section 26 and subsection 48(2) of the Act. The letter enclosed copies of all files pertaining to the appellant.

The delay in receiving this letter arose due to the fact that delivery by courier could not be made to a Post Office box. This problem was quickly remedied by the institution, and I do not find any undue delay in the circumstances.

Original signed by: _____
Sidney B. Linden
Commissioner

July 21, 1989
Date