



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

ORDER P-303

Appeal 900605

Ministry of Community and Social Services



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O R D E R

The Ministry of Community and Social Services (the "institution") received a request for access to:

- [1] ... any records and notes regarding alleged incidents at Balmy Beach Day Care Centre, Toronto, June 18th, 1990 and relating to subsequent Day Care Inspection by [named individual] June 26th, 90, also any subsequent relating notes by [three named individuals]....
- [2] ... [copies of the] "Serious Occurrence" Report and "Exceptions" report....
- [3] ... any correspondence between the Child Care office and the Board of Directors of Balmy Beach Day Care since June 19, 1990....
- [4] ... any records re firing/staff changes approx. 3 yrs ago at Balmy Beach Day Care....
- [5] Policy Manual for Programme Advisors (COMSOC).

The institution granted partial access to the first three items of the appellant's request, with severances made pursuant to section 21 of the Freedom of Information and Protection of Privacy Act (the "Act"). The appellant has no objections to these severances. Full access was granted to item five and the appellant was advised that no record existed in respect of item four.

The appellant appealed the head's decision, claiming that additional records existed which were responsive to the first and third items of her request. The appellant claims that notes in respect of complaints and interviews with an institution employee, notes of discussions of day care staff with the Children's Aid Society, and an original draft of the Serious Occurrence Report exist and are responsive to her request but were not identified by the institution.

During the course of mediation, the institution provided an affidavit which addressed the appellant's questions relating to

the existence and treatment of records relating to the Day Care Centre. A copy of the affidavit was provided to the appellant. The institution subsequently determined that additional records existed

which were responsive to the request. These records consist of three pages of handwritten notes made by a Programme Supervisor from a meeting he had with the appellant, and a Contentious Issue Report. These records, once identified, were released to the appellant.

The appellant believes that even more records exist, specifically ones regarding communications between the Children's Aid Society and the Day Care Centre, and is not satisfied with the institution's response.

Because further mediation was not successful, the appeal proceeded to an inquiry. A Notice of Inquiry, accompanied by an Appeals Officer's Report, was sent to the institution and the appellant, outlining the outstanding issues raised by the appeal and inviting representations. Written representations were received from the institution and the appellant.

The sole issue in this appeal is whether a reasonable search for records responsive to the request was carried out by the institution.

In a letter dated October 10, 1991, and in its representations, the institution identified the steps taken to locate all the relevant records. The individual responsible for conducting the search for records was a Program Co-ordinator who, as part of her responsibilities, also acted as the Freedom of Information Co-ordinator for that particular part of the institution.

The initial search was restricted to the institution's program and licensing file relating to the Day Care Centre. Although the appropriate Program Supervisor was contacted during the course of the search, relevant handwritten notes prepared by this person, which were kept in his desk and not filed in the program and licensing file, were not identified as being responsive to the request.

Although the institution was aware of the Contentious Issue Report, it was also not included in the original decision letter sent to the appellant, nor was it identified during the initial investigative stages of this appeal. The explanation offered by the institution was that, because the institution considered this type of record to be exempt under section 13(1) of the Act,

the Program Co-ordinator determined that the record was not responsive to the request. Clearly, this explanation is not satisfactory.

I have reviewed the various notes and correspondence between the Appeals Officer, the appellant and the institution; the affidavit sworn by the three institution employees; and representations provided by the institution and the appellant. In my view, the original search conducted by the institution was not reasonable in the circumstances. However, during the course of this appeal, the institution's search for records was expanded, and I am satisfied that the institution has now made all reasonable efforts to locate records responsive to the request.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ May 28, 1992