



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

ORDER P-354

Appeal P-9200236

Ministry of the Attorney General



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ORDER

On October 1, 1992, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and make orders under the provincial Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

On September 30, 1991, the Ministry of the Attorney General (the ministry) received the following request under the Freedom of Information and Protection of Privacy Act (the Act):

Any and all documents, internal memoranda, notes, letters pertaining to the office of the Attorney General assisting in the funding or not funding of one [a named individual] who was involved in litigation with [a named organization] in and around 1978.

The requester appealed the ministry's failure to respond to his request within the 30 day time limit under section 29(4) of the Act, which provides as follows:

A head who fails to give the notice required under section 26 or subsection 28(7) concerning a record shall be deemed to have given notice of refusal to give access to the record on the last day of the period during which notice should have been given.

In accordance with the usual practice, the appeal was assigned to an Appeals Officer who contacted the appellant, and the ministry's Freedom of Information and Privacy Co-ordinator to investigate the circumstances of the appeal and to try to effect a settlement of the matter.

Several attempts were made by the Appeals Officer to have the institution issue a written decision on the matter. These attempts were unsuccessful and the matter proceeded to inquiry. Notice that an inquiry was being conducted on the ministry's "deemed refusal" to give access to the requested records was sent to the appellant and the ministry. Enclosed with each Notice of Inquiry was a report prepared by the Appeals Officer, intended to assist the parties in making their representations concerning the subject matter of the appeal.

In response to the Notice of Inquiry, the ministry stated that, after conducting a search, it was unable to locate any records that would be responsive to the request. The Appeals Officer provided this information to the appellant and requested his comments on this issue.

The appellant responded by saying that he believed records exist and provided his reasons and documentary evidence in support of his position to the Appeals Officer, who communicated the information to the ministry. A representative of the ministry subsequently advised the Appeals Officer that a further search failed to yield any records.

The sole issue in this appeal is whether the ministry's search for the requested records was reasonable in the circumstances.

The appellant believes that the ministry has, in its custody and control, records that would be responsive to his request. In support of his position, the appellant submits that a court transcript and a letter (dated January 12, 1978, and signed by an Ontario Provincial Police Officer and addressed to the then Deputy Attorney General, Allen Leal) point to the existence of the records he requested.

In its representations, the ministry outlines the steps taken by its officials to locate any records in its custody and control that would be responsive to the request. The ministry points out that its search included the areas of "Crown Law Office - Criminal and Crown Law Office - Civil". The ministry further submits that:

It came to the attention of this office that there might be records relating to this matter in the Financial and Administrative Services Branch of this Ministry. However, since the record retention schedules for maintaining such financial information is three years plus current, after which they are destroyed; and the request was for records during the time period in and around 1978, it was evident that no records would exist in that area.

The ministry submitted two affidavits which were sworn to by the two ministry representatives who conducted the search. The affidavits describe the search, which included computer and manual searches and speaking with various ministry employees who would be familiar with this matter.

I have carefully reviewed the representations of both parties and the documentary evidence submitted by the appellant. I am satisfied that the ministry has taken all reasonable steps to locate the records that would specifically respond to the appellant's request, and that the search conducted by the ministry was reasonable in the circumstances of this appeal.

Original signed by: _____
Asfaw Seife
Inquiry Officer

_____ October 5, 1992