



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

## **ORDER P-337**

Appeals P-920103, P-920104, P-920105, P-920106  
and P-920107

Ministry of Housing



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

# ORDER

## BACKGROUND:

The Ministry of Housing (the institution) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to records supporting two letters he had received from Lillian Hulme-Smith, a Senior Program Administrator with the institution, in response to previous inquiries regarding the Ontario Home Renewal Program for Disabled Persons (the OHRP-D). The request stated that "[T]he reply should have the quotation of the documents without your opinion, the title page and the page referred to", and went on to list 16 numbered paragraphs relating to various OHRP-D program eligibility criteria and guidelines.

Before receiving a response to this request, the requester submitted another request asking for access to records related to the exclusion of psychiatric patients from the OHRP-D.

The institution responded to the first and second requests in separate decision letters. With respect to the first request, the institution assigned it sixteen different file numbers, and responded to each by either providing access to what it felt were responsive records, or by claiming that no responsive records existed. Some of these responses contained explanatory comments. With respect to the second request, the institution claimed that no record existed.

The requester appealed the institution's decision relating to the second request, and five of the sixteen decisions relating to the first request. On the agreement of both parties, the decision in the second request and one of the decisions in the first request were combined in Appeal Number P-920103.

Attempts to mediate these appeals were not successful and the matters proceeded to inquiry. Notice that an inquiry was being conducted to review the decisions of the head was sent to the appellant and the institution. 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 appeals. Representations were received from both parties.

The sole issue in these appeals is whether the institution's decision letters are in accordance with the provisions of the Act.

Section 26 of the Act reads as follows:

Where a person requests access to a record, the head of the institution to which the request is made or if a request is forwarded or transferred under section 25, the head of the institution to which it is forwarded or transferred, shall, subject to sections 27 and 28, within thirty days after the request is received,

- (a) give written notice to the person who made the request as to whether or not access to the record or a part thereof will be given; and

- (b) if access is to be given, give the person who made the request access to the record or part thereof, and where necessary for the purpose cause the record to be produced.

Section 29(1)(a) of the Act reads as follows:

Notice of refusal to give access to a record or a part thereof under section 26 shall set out,

- (a) where there is no such record,
  - (i) that there is no such record, and
  - (ii) that the person who made the request may appeal to the commissioner the question of whether such a record exists;

The appellant submits that none of the records provided by the institution were responsive to his first request because they did not specifically support the wording in Ms Hulme-Smith's letters. The appellant feels that the institution should have responded to his request by stating that no records exist. He also maintains that a proper decision letter should quote the request, and either state that no records exist or, where access is granted, refer to the title page and page number on which the requested information can be found. He also feels that it is not appropriate for institutions to include opinions or explanations in decision letters issued under the Act.

The institution submits that the decision letters in these appeals satisfy the requirements of sections 26 and 29(1)(a) of the Act. Where access was granted, copies of records which the institution felt were responsive to the request were provided. Where no responsive records existed, the appellant was advised of this fact and notified of his right to appeal. With respect to the issue of offering an explanations, the institution states:

Given the wording of the appellant's request and previous discussions between the appellant and the Senior Program Administrator, the appellant did not seem to understand the OHRP-D Program. A note of clarification seemed appropriate.

In all cases where an access request is received, the institution has an obligation to identify and locate any records which it believes are responsive to the request. If responsive records are located and access is being granted, it would be of assistance to requesters in situations involving a large number of records for the institution to identify the particular pages or paragraphs that appear most directly responsive to the request.

In the present appeals, where access was granted to records, I am satisfied that the institution identified records which it believed were responsive to the request (i.e. records explaining the OHRP-D program), and advised the appellant accordingly. Where no responsive records could be identified, the institution stated this fact in its decision letters.

In my view, the decision letters issued by the institutions in these appeals satisfy the requirements of sections 26 and 29(1)(a) of the Act. Although these sections do not impose a specific requirement that an explanation be provided, they also do not preclude one, and, in my view, offering additional explanations to requesters is consistent with the spirit of the Act.

Original signed by: \_\_\_\_\_  
Tom Mitchinson  
Assistant Commissioner

\_\_\_\_\_  
August 6, 1992