



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

# **ORDER P-476**

**Appeal P-9200400**

**Ministry of the Solicitor General and Correctional Services**



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

On May 10, 1993, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and to make orders under the provincial Freedom of Information and Protection of Privacy Act and Municipal Freedom of Information and Protection of Privacy Act.

The Ministry of Correctional Services (now the Ministry of the Solicitor General and Correctional Services) (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to any documents, reports or decisions relating to an incident in which the requester was allegedly assaulted by a correctional officer while incarcerated at the Metro West Detention Centre (the Centre). The requester also sought access to any and all information held by the Ministry concerning himself.

The Ministry provided the requester with copies of his own statements, but denied him access to an investigation report pursuant to sections 14(2)(a), (e) and (k) of the Act. The requester appealed the Ministry's decision.

On the same date as he filed his appeal, the appellant clarified his request and indicated that he wanted access to all documents in his institutional and health care files from the Centre. In response, the Ministry advised the appellant that no health care file had been opened, due to his brief detention. The Ministry disclosed the appellant's institutional file to him, with the exception of two pages which it denied access to under section 49(e) of the Act.

During mediation, the appellant learned that his lawyer had received a copy of the investigation report through proceedings in the civil action the appellant had brought against the Ministry. The appellant accordingly withdrew his claim for this document.

Further mediation was not successful and the two pages to which access was denied under section 49(e) remained at issue. In addition, the appellant maintains that additional records exist which pertain to him and which are in the custody and control of the Ministry.

Notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant and the Ministry. During the inquiry, the appellant determined that, as was the case with the investigation report, the two outstanding pages in the institutional file had been released to the appellant's lawyer in the course of the civil action. Accordingly, the appellant withdrew his claim to these two pages.

Written representations were received from the Ministry respecting the existence of additional records. The appellant did not submit any representations but advised the Appeals Officer that he had stated his position during the course of the appeal.

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

The appellant bases his position that more records exist on the fact that, during the proceedings in the civil action, he received two documents from his lawyer which were not identified by the Ministry when it responded to the appellant's freedom of information request. Therefore, it is the view of the appellant that there must exist in the custody or under the control of the Ministry another file which contains these documents and which possibly contains other records relating to him.

As part of its representations, the Ministry submitted sworn affidavits from several Ministry employees attesting to the steps taken to locate responsive records and to the extent of the search conducted. An affidavit from the Health Care Coordinator attests to the fact that no medical file exists for the appellant. Affidavits from the Manager and Records Clerk of the Centre state that they have searched the Records Office at the Centre and confirm that there is only one institutional file for the appellant. These two affidavits further state that one of the particular documents identified by the appellant as having been given to him by his lawyer is not located in the appellant's institutional file.

With respect to the second document that the appellant states he received from his lawyer, the Ministry submitted an affidavit by the individual believed to have authored the report. This individual states that she did not do so.

The Ministry further indicates that the Freedom of Information branch contacted legal counsel to search his files to ascertain if these two documents were among the records compiled as preparation for the litigation. Legal counsel confirmed that he did not have copies of these two documents.

Having reviewed the representations of the parties and the affidavits provided by the Ministry, I am satisfied that the Ministry has taken all reasonable steps to locate any responsive records, and I find that the search conducted by the Ministry was reasonable in the circumstances of this appeal.

Original signed by: \_\_\_\_\_  
Anita Fineberg  
Inquiry Officer

\_\_\_\_\_ June 11, 1993