



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

ORDER P-481

Appeal P-9200728

Ministry of the Attorney General



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ORDER

BACKGROUND:

The Ministry of the Attorney General (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) which was phrased as follows:

I am requesting all information on file concerning myself and the Crown Attorney's office, Whitby courthouse concerning witness statements, crown notes and crown briefs.

Further, I am requesting copies of telephone bills at Ontario Court (Provincial Division) ... August 9, 1991 at Oshawa Ontario entered as Exhibit One Page 26 and consisting of telephone bills dated November and December 1989 and January 1990.

The Ministry did not issue a decision within the 30 day period prescribed in the Act and the requester appealed this deemed refusal to provide access pursuant to section 29(4) of the Act. Shortly after the appeal was filed, the Ministry issued a decision letter where it identified a total of 113 pages of documentation which was responsive to the request. The Ministry, however, withheld certain information pursuant to section 21 of the Act on the basis that its release would constitute an unjustified invasion of another individual's personal privacy. In the same decision letter, the Ministry indicated that it had not been able to locate the telephone bills.

As mediation efforts continued, the appellant agreed that the remaining basis for her appeal would be limited to the issue of whether additional records existed. Further mediation was not possible, and notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant and to the Ministry. Written representations were received from the Ministry only.

SUBMISSIONS/CONCLUSIONS:

In support of the Ministry's claim that it undertook a reasonable search for the records in question, the Ministry has provided an affidavit signed by Counsel to the Director of Criminal Prosecutions. To this affidavit is attached a letter from the Freedom of Information Co-ordinator for the Whitby Crown Attorney's Office. This letter states that, when the appellant's request was received, the Co-ordinator contacted the Assistant Crown Attorney responsible for the case in which the appellant was involved. The Co-ordinator then reviewed all of the materials provided to him by his colleague concerning this matter which also included the relevant Crown Brief.

In his letter, the Co-ordinator also indicates that the appellant was seeking copies of Bell Canada records entered as exhibits in a previous trial. The letter then goes on to set out the exhaustive efforts which the institution took to locate the documentation including contact with the court office in Oshawa. The result of this search was that the Bell Canada records were not located. The Co-ordinator then states that he has no additional information on the whereabouts of the telephone records and that, based on his search, his office has no further records which would be responsive to the appellant's request.

The appellant has not provided me with any representations to substantiate her claim that additional records should exist other than the fact that the telephone bills were entered as exhibits in the trial.

Where a requester provides sufficient details about the records that he or she is seeking and a Ministry indicates that the records do not exist, it is my responsibility to ensure that the Ministry has made a reasonable effort to identify any records which are responsive to the request. In my view, the Act does not require that an institution prove to the degree of absolute certainty that the requested records do not exist.

I have carefully reviewed the Ministry's representations and the affidavit evidence submitted to me. Based on the information provided, I am satisfied that the Ministry has taken all reasonable steps to locate records responsive to the appellant's request. I therefore, find that the search conducted by the Ministry was reasonable in the circumstances of this appeal.

Original signed by: _____
Irwin Glasberg
Assistant Commissioner

_____ June 17, 1993