



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

# ORDER P-458

Appeal P-9200235

Ministry of the Attorney General



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/Télééc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## ORDER

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 correspondence, notes, documents, internal memoranda in relation to the Attorney General's offer of assistance to [a named Toronto law firm] in or around 1974 in relation to [a named organization].

The Ministry wrote to the requester advising that the request did not provide sufficient detail to enable it to identify the record responsive to the request and offered to assist him in reformulating his request. In an attempt to clarify his request, the requester sent the Ministry a copy of a letter dated March 26, 1974, signed by the Deputy Attorney General, and addressed to the named law firm. The Ministry did not make a decision on the request within the statutory 30 day period, and the requester appealed this lack of decision as a "deemed refusal", as provided under section 29(4) of the Act.

During the processing of the appeal, the Ministry indicated that there were no records responsive to the request beyond the original file copy of the letter of March 26, 1974. The Ministry advised the Appeals Officer that, based on the search it conducted, it was unable to identify other responsive records; however, if the appellant wished to get a statement of absolute certainty that no records exist, it would have to charge him a fee for searching through other voluminous records but that it was almost certain that such a search would not yield any additional records.

The Ministry then issued a decision advising the appellant as follows:

Upon a review of the current files, there do not appear to be any records which would fall within the subject matter of your request. However, in order to confirm with certainty that there is not any information relating to this request an extensive search of all the records would be required. ... The estimated fee for processing this request would be \$2,640.00.

Mediation of the appeal was not successful and notice that an inquiry was being conducted to review the decision of the Ministry was sent to the Ministry and the appellant. Written representations were received from both parties.

Upon receipt of a request, the Ministry must first be satisfied, pursuant to section 24(1) of the Act that the request is sufficiently clear that "an experienced employee of the institution, upon a reasonable effort, [could] identify the record." If the request is not sufficiently clear, the Ministry is required by section 24(2) to offer the requester assistance in reformulating the request so as to comply with section 24(1). Where, as in this appeal, the request provides

sufficient details about the record and the Ministry indicates that the record does not exist, my responsibility is to ensure that the Ministry has made a reasonable effort to identify the record, as required under section 24(1). In my view, the Act does not require the Ministry to prove to the degree of absolute certainty that the requested record does not exist.

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

In its representations, the Ministry states that a copy of the letter provided by the appellant contained a Ministry reference number which indicated that the file would be located in the Civil Law Division. This was a general file maintained by the Division and housed a variety of documents and correspondence touching on matters relating to the named organization. However, due to the fact that the records requested relate to a period of almost 20 years ago, the Ministry states that it was unable to locate the file during the initial search of that Division. The file was subsequently located in the possession of the Crown Law Office - Criminal Division which was engaged in criminal litigation with the named organization at the time. A search of this file revealed a copy of the March 26, 1974 letter, but no other records relevant to that matter were contained in this file.

In addition, the Ministry states that counsel from the Crown Law Office - Criminal Division who conducted the criminal litigation and were familiar with the records were consulted. They indicated that they are "almost certain" that there are no records pertaining to the request in the files of the Crown Law Office-Criminal. However, they could not confirm with "absolute certainty" that no records exist.

The Ministry has provided me with an affidavit sworn by the Assistant Freedom of Information and Privacy Co-ordinator who states that having reviewed the file from the Crown Law Office-Civil, the only record which was responsive to the request that she located is the letter of March 26, 1974.

The appellant states in his representations:

I have requested information regarding correspondence from the Deputy Attorney General in 1974 to a major private law firm in Toronto. This letter offers the assistance of the Ministry to this firm in a private civil matter. This then is not correspondence between two minor posts within the Ministry, communicating about arcane matters that would take time to locate. This letter is direction and communication of the highest sort.

The appellant contends that the Ministry's inability to identify responsive records is caused by the "disarray" in its record keeping system and submits that "such disorganization, whether intentional or otherwise, defeats the intent and spirit of the Access to Information Act and acts as a punitive measure against those who request information from the Ministry".

Having carefully considered the representations of the parties and the affidavit evidence, and having regard to the broad nature of the request, and the age of the record requested, I find that the Ministry's search for the responsive records is reasonable in the circumstances of this appeal.

Original signed by: \_\_\_\_\_  
Asfaw Seife  
Inquiry Officer

\_\_\_\_\_ May, 14, 1993