



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

ORDER P-495

Appeal P-9300084

Ministry of Health



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ORDER

BACKGROUND:

The Ministry of Health (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to any and all information relating to the requester in the custody or control of the Hamilton Psychiatric Hospital. The Ministry granted access in full to 15 records which it considered responsive to the request. The requester appealed the decision of the Ministry based on his belief that additional records should exist, particularly for the time period prior to 1977.

During mediation, the appellant identified an additional record which the Ministry located and released. The appellant, however, continued to take the position that other responsive records were in existence.

Further mediation was not successful and notice that an inquiry was being conducted to review the Ministry's decision was sent to the Ministry and the appellant. Written representations were received from the Ministry only.

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

In the Inquiry Status Report (which is similar to a Notice of Inquiry), the Ministry was asked to respond to specific questions relating to the steps which it took to search for responsive records. The Ministry was also asked to submit an affidavit sworn by the Ministry employee who conducted the search to substantiate these representations. The Ministry's written representations, signed by its Acting Freedom of Information and Privacy Co-ordinator (the Co-ordinator), did not include such an affidavit.

The Ministry's representations indicate that, in response to the request, hospital personnel conducted a search of files located in (1) the office of the Director of Nursing, (2) the nursing office and (3) the office of the Assistant Administrator for Patient Care Services. According to the Ministry, these searches were undertaken by "secretaries in the respective offices". The Ministry further states that all of the responsive records that were found were disclosed to the appellant. When the appeal was filed, the Ministry undertook a second search where the record identified by the appellant was located and disclosed.

Further information about the two searches is contained in a letter authored by the Director of Nursing for the Hospital, portions of which are quoted in the Ministry's representations. It appears, however, that neither the Director of Nursing nor the Program Area Co-ordinator conducted the actual searches themselves (with the exception of files located in the Administrator's office). Rather, senior personnel within the Hospital relied on assurances provided by staff that records responsive to the request had been provided. Finally, the Director of Nursing has indicated that she has not reviewed the contents of the appellant's corporate file. The Ministry then submits that the search conducted for the records was reasonable in the circumstances.

Where a requester provides sufficient details about the records which he or she is seeking and a Ministry indicates that additional records do not exist, it is my responsibility to ensure that the Ministry has made a reasonable search to identify any records which are responsive to the request. While the Act does not require that a Ministry prove to the degree of absolute certainty that such records do not exist, the search which an institution undertakes must be conducted by knowledgeable staff in locations where the records in question might reasonably be located.

The appellant has stated that the records she is seeking encompass all documents relating to her employment at the Hamilton Psychiatric Hospital from July 1974 to-date, including a secondment to the McMaster University Medical Centre which commenced in January 1976.

In its representations the Ministry has not, in a co-ordinated way, set out the specific steps which it took to search for the responsive records, identified the staff members who undertook the searches which were conducted nor commented on the knowledge of these employees with respect to both the Hospital's records management system and the subject matter of the request.

Based on the quality of the representations provided, I am unable to conclude that the search which the Hospital undertook for responsive records was reasonable in the circumstances of the case. On this basis, it will be necessary for Hospital staff to conduct additional searches for the records.

ORDER:

1. I order the Ministry to conduct a further search for responsive records and to notify the appellant by letter as to the results, within 15 days of the date of this order.
2. In undertaking this search, the Ministry should obtain further information about the responsive records from employees with knowledge of the Hospital's records management system and the subject matter of the request. The search should include a careful review of the appellant's corporate file.
3. If, as a result of the further search, the Ministry identifies any additional records responsive to the request, I order the Ministry to provide a decision letter regarding access to these records in accordance with sections 26 and 29 of the Act, considering the date of this order as the date of the request and without recourse to a time extension.
4. In order to verify compliance with this order, I order the Ministry to provide me with a copy of the letter referenced in Provision 1 of this order within 20 days of the date of this order. This notice should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by:
Irwin Glasberg
Assistant Commissioner

July 13, 1993