



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

ORDER P-573

Appeal P-9300087

Ministry of Housing



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ORDER

The Ministry of Housing (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to "copies of all draft reports to the Management Review of the Rent Review Hearings Board Advice to the Minister of Housing and Secretary of Cabinet dated March 1991". The Ministry responded to the request stating that no responsive records exist. The appellant appealed the Ministry's decision.

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. Representations were received from both parties. The representations of the Ministry include an affidavit sworn by a Labour Relations Advisor in its Human Resources Branch.

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

In support of his position, the appellant refers to a document entitled, "Report of the Implementation of Recommendations of the Rodrigues Report". He believes that this document is responsive to his request, but notes that it was not identified by the Ministry. He consequently believes that there are other records which exist and which are responsive to his request, but which the Ministry has not identified as responsive. The appellant also contends that the records responsive to his request may be found in the following offices: Minister of Housing, the Deputy Minister of Housing, the Assistant Deputy Minister - Corporate Resources Management, Margaret Rodrigues and members of her audit team, civil servant Peter Barns and the Ministry of the Attorney General.

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.

In the Notice of Inquiry, the Ministry was asked to address a number of specific questions regarding the nature and extent of the search it had undertaken to locate records which are responsive to the appellant's request. The Ministry was also asked to comment on the appellant's assertions regarding the existence of responsive records.

As part of its representations, the Ministry submitted an affidavit sworn by the Ministry's Labour Relations Advisor in the Human Resources Branch of the Ministry of Housing. The affidavit states that this individual searched through a collection of records situated within the Human Resources Branch which pertained to the 1991 Management Review of the Rent Review

Hearings Board. He further states that he was unable to locate any records requested by the appellant.

The information provided in the affidavit is insufficient. The affidavit does not specify which files were searched, does not provide reasons why only one area of the Ministry was searched, nor does it indicate which, if any, individuals were contacted in the course of the search. Because of the deficiencies in the affidavit produced by the Ministry, I am not satisfied that the search undertaken by the Ministry for records responsive to the appellant's request was reasonable, having regard to all of the circumstances. On this basis, it will be necessary for Ministry staff to conduct additional searches for the records. As the appellant has indicated that he has knowledge of areas of the Ministry where the responsive records may be located, the Ministry's search should include these areas.

ORDER:

1. I order the Ministry to conduct a further search for records responsive to the appellant's request, and to notify the appellant as to the results, within 20 days of the date of this order.
2. 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 to the appellant 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, without recourse to a time extension.
3. In order to verify compliance with this order, I order the Ministry to provide me with a copy of the letter referred to in Provision 1 of this order within 25 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: _____
Holly Big Canoe
Inquiry Officer

_____ November 5, 1993