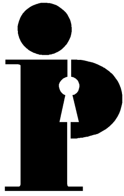

Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-554

Appeal P-9300049

Management Board Secretariat

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/Téléc: 416-325-9195
TTY: 416-325-7539
http://www.ipc.on.ca

ORDER

The Ministry of Government Services (now the Management Board Secretariat) (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to all records pertaining to the refurbishment, repair, alteration and inspection of the water tower at the Penetanguishene Mental Health Centre. The time period to which the request was to apply was March 1990 to November 1992. The Ministry denied access to the records in their entirety pursuant to the exemptions contained in sections 14(1)(i) and (k) of the Act. The requester appealed the denial of access and the adequacy of the Ministry's decision letter.

During mediation, the Ministry provided the Commissioner's office with 85 records that were responsive to the request along with an index of these records. The appellant subsequently indicated that the sole issue that he wished to pursue in this appeal involved the adequacy of the Ministry's decision letter.

Further mediation was not successful and notice that an inquiry was being conducted to review the adequacy of the decision letter was sent to the Ministry and to the appellant. Representations were received from both parties. While the appeal was in the inquiry stage, the Ministry furnished the appellant with an index of the records. This index, however, was less detailed than the one which had previously been supplied to the Commissioner's office. The appellant was not satisfied with the level of detail contained in the index and indicated that he wished to continue with the appeal.

The sole issue in this appeal, therefore, is whether the Ministry's decision letter and the subsequent index which it provided to the appellant comply with the requirements of section 29(1)(b) of the Act. It is to this issue that I will now turn.

When an institution denies access to a record, in whole or in part, pursuant to section 26 of the Act, it is required to issue a notice of refusal to the requester setting out the elements enumerated in section 29(1)(b) of the Act. This provision states that:

> Notice of refusal to give access to a record or a part thereof under section 26 shall set out,
>
> where there is such a record,
>
> (i) the specific provision of this Act under which access is refused,
>
> (ii) the reason the provision applies to the record,
>
> (iii) the name and position of the person responsible for making the decision, and

(iv) that the person who made the request may appeal to the Commissioner for a review of the decision.

In providing a notice of refusal under section 29, the extent to which an institution describes a record in its decision letter will have an impact on the amount of detail required under section 29(1)(b)(ii). For example, should an institution merely describe a record as a "memo", more detailed reasons for denying access would be required than if a more expansive description of the record had been provided. Whichever approach is taken, the key requirement is that the requester must be put in a position to make a reasonably informed decision on whether to seek a review of the institution's decision (Orders 158, P-235, P-324 and P-537).

In its representations, the Ministry points out that the appellant is no longer appealing the decision to deny access to the records. On this basis, the Ministry submits that it ought not to be required to provide the appellant with a more detailed index of the records. The Ministry puts its case as follows:

> In not contesting the Ministry's decision, the requester has acknowledged that he has no right of access to the records. As a result, the requirement that the requester be given enough information to make a reasonably informed decision about initiating an appeal of the head's decision to deny access to the records, is immaterial.

I will address this submission once I have considered the contents of the Ministry's decision letter.

Following a review of this decision letter, I find that it does not meet the requirements of section 29(1)(b)(ii) of the Act. While the decision letter indicates, in a general way, why the records will not be released, it does not contain any description whatsoever of these records. A general decision letter of this sort, however, can still comply with section 29(1)(b)(ii) where it is accompanied by a more detailed index of the records at issue.

As I indicated previously, the Ministry prepared two separate indices of the records, one of which was provided to the appellant and the other supplied to the Commissioner's office. I have reviewed the version provided to the appellant and find that it lacks the necessary detail to comply with section 29(1)(b)(ii) of the Act. While the version supplied to the Commissioner's office is more detailed, it also fails to generally describe the contents and subject matter of 14 records that are at issue in this appeal. On this basis, I find that the decision letter and index which the Ministry provided to the appellant collectively fail to meet the requirements of section 29(1)(b)(ii) of the Act.

In June 1992, the Commissioner's office published an issue of "IPC Practices" which outlines the requirements for a proper decision letter. I would encourage the Ministry to refer to this document for future decisions made under the Act.

In a case such as this, my usual practice would be to order that the Ministry issue a proper decision letter to the appellant. In the present appeal, however, the appellant has indicated that he is not challenging the Ministry's decision to withhold the relevant records from him.

As I indicated previously in this order, the purpose of an adequate decision letter is to put a requester in a position to make a reasonably informed decision on whether to seek a review of an institution's decision. Since the appellant has already decided not to pursue the substantive aspects of this appeal, I find that no useful purpose would be served by requiring that the Ministry issue a revised decision letter.

The result, therefore, is that while the Ministry's decision letter does not comply with the Act, I will not order that a new letter be issued.

Original signed by: October 18, 1993
Irwin Glasberg
Assistant Commissioner