



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

ORDER P-536

Appeal P-9200609

Ministry of Housing



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 Housing (the Ministry) received a request for access pursuant to the Freedom of Information and Protection of Privacy Act (the Act) to all correspondence and documents dealing with the position of Program Supervisor, Central Region for the Rent Review Hearings Board. Specifically, the request was for any documentation dealing with the need for this position and the need for consultants to study the Central Region in the summer or fall of 1991. The Ministry located and granted the requester access in full to seven pages of records. In a subsequent decision, following the receipt of additional correspondence from the requester, the Ministry disclosed an additional one-page record. The requester took the position that other responsive records were in existence, and, based on this belief, appealed the decision of the Ministry.

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 both parties. The representations of the Ministry consist of an affidavit sworn by its Assistant Deputy Minister, Corporate Resources Management.

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

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 set forth in detail the extent of the search it had undertaken for records which may indicate the need for and setting out the early development of the position of Program Supervisor.

The Ministry's affidavit states that searches for records were undertaken by staff of the Human Resources Branch and that the information disclosed was obtained from the relevant competition file. It goes on to state that such records are awaiting transfer to storage and have not been destroyed. The affidavit contains no information as to where the search took place, who conducted the search and particularly, the results of the search.

The affidavit does address two specific issues raised by the appellant. The first, concerning the assessment of candidates for the position of Program Supervisor, was discussed in the Ministry's representations as follows:

Human Resources Branch policy does not require that an explanation (as to why candidates would be assessed as unqualified at the screening stage) such as this be produced. Therefore, no such record exists in the competition file, or any other file in Human Resources Branch. Applicants are assessed against the selection criteria based on information presented in their resume.

I am satisfied that this response adequately addresses one of the issues raised in the appellant's request and that further searches need not be undertaken to locate records responsive to this portion of the request.

The second specific issue addressed in the affidavit concerns the appellant's query as to records relating to "the need for and early development of the Program Supervisor position". The affiant states that no such records exist within the Human Resources Branch which is responsive to this portion of the request. The nature and extent of the search, the individual who undertook the search and the location of the search were not, however, described in the affidavit.

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 affidavit, the Ministry does not describe its search for the majority of the classes of records responsive to the appellant's request. As I have indicated, it refers to only two specific portions of the request and, in respect of records dealing with the "need for and development of the Program Supervisor" position, merely concludes that they do not exist.

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.

Based on information provided by the appellant and to assist the Ministry in this regard, the Ministry's search should include, but not be limited to, the following locations:

- the office of the Regional Manager of the Rent Review Hearings Board
- the office of the Vice-Chair of the Rent Review Hearings Board
- the office of the Senior Advisor, Human Resources

In addition, the Ministry should search all files relating to the Program Supervisor position, manpower staffing requirements and the investigation undertaken into management deficiencies at the Central Region office of the Rent Review Hearings Board.

ORDER:

1. I order the Ministry to conduct a further search for responsive records and to notify the appellant as to the results, within 20 days of the date of this order.
2. This search should include, but not be limited to, the offices of the three individuals referred to above as well as the files relating to the three matters referred to above.

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 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 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 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: _____
Anita Fineberg
Inquiry Officer

_____ September 20, 1993