



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

ORDER P-596

Appeal P-9300318

Ministry of Health



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ORDER

The Ministry of Health (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for notes made by the panellists of a specific hearing of the Health Disciplines Review Board (the Board) and a Ministry employee who was present during the hearing. The requester also sought access to the "information file" used by the Board for that hearing. The Ministry located the "information file" and disclosed it to the requester with severances made pursuant to section 21 of the Act. The Ministry also informed the requester that all notes taken during the hearing, either by the Board's panellists or by the Ministry employee, did not exist as they were destroyed after the review was concluded and written reasons for the decision of the Board mailed to the parties. The requester appealed the Ministry's decision.

During mediation, the appellant indicated that he already had a complete copy of the "information file" prepared for the Board's hearing and advised that he was not pursuing the issues regarding the severances made by the Ministry to this record. However, he maintained that the notes taken during the hearing and other responsive records did exist.

The appellant also indicated that he was seeking access to additional records, e.g. administrative documents and correspondence to and from the Board. Since these records were not covered by his initial request, the Ministry treated this request independently and provided the requester with a separate decision letter. These records will not be at issue in this appeal.

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. Representations were received from the Ministry only.

In its representations, the Ministry stated that the fact that it contacted the panellists to determine whether or not the notes existed should not be construed as the Ministry's acknowledgment that the records, if they existed, would be in its custody or under its control.

The only issue remaining in this appeal is whether the Ministry's search for any notes made by the Board's panellists or by the Ministry employee was reasonable in the circumstances.

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

In its representations, the Ministry provided two affidavits and an explanatory note in support of its position that no additional records responsive to the request exist. The affidavits are sworn by the Chair and a member of the Board, both panellists for this hearing. Each affidavit outlines

the steps taken to locate records which are responsive to the request, and describes the Board's practice and procedures regarding the routine disposal of such records. The explanatory note, submitted by the employee of the Board who conducted the initial search for the requested records, indicates that the panellists and the Ministry employee were individually contacted and confirmed that their notes were destroyed as per the Board's established procedures.

Having carefully reviewed the representations and the affidavit evidence submitted, I am satisfied that the Ministry has made every effort to locate any records responsive to the appellant's request, and that the search conducted by the Ministry was reasonable in the circumstances of this appeal.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____
Asfaw Seife
Inquiry Officer

_____ December 7, 1993