



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

ORDER P-720

Appeal P_9400131

Ministry of Environment and Energy

NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The appellant has requested copies of records from the Ministry of Environment and Energy (the Ministry) relating to the Ministry's investigation and prosecution of the appellant and the private sewage system at his cottage. The request was divided into four parts, as follows:

- a copy of any document which shows that the Ministry received a complaint about the appellant's sewage system from an individual other than Ministry personnel
- a copy of the Review of Proposed Prosecution
- a copy of any document which shows that the sewage system at the appellant's cottage was in operation on or prior to July 18, 1990
- a copy of the results of sewage and water tests which support the sworn testimony of Ministry personnel given at the appellant's trial

The Ministry responded that the information relating to part two of the request was contained in the Crown Brief which had been disclosed to the appellant in a previous access request. With respect to parts one, three and four of the request, the Ministry responded that records of the type requested do not exist. The appellant believes that such records should exist.

A notice of inquiry was provided to the Ministry and the appellant. Representations were received from both parties. The Ministry included, with its representations, sworn affidavits from the Investigator involved in the prosecution of the appellant and a student-at-law, who was responsible for conducting the search for responsive records within the Legal Services Branch of the Ministry.

DISCUSSION:

REASONABLENESS OF SEARCH

The Act does not require that the Ministry prove with absolute certainty that the requested records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the Ministry must provide me with sufficient evidence which shows that it has made a **reasonable** effort to identify and locate records responsive to the request (Order M-275).

In part one of the request, the appellant is essentially seeking the identity of the individual who, he believes, complained to the Ministry about his sewage system. In its representations, the Ministry indicates that the appellant has, on three occasions, requested the name of the individual whose complaint led to the Ministry's investigation and prosecution of the appellant. The Ministry responded each time that the investigation and prosecution were both Ministry initiated and that there is no complainant. The affidavit of the Investigator confirms the Ministry's position.

With respect to parts three and four of the request, the Investigator states that a search of the prosecution and abatement files relating to the appellant's property failed to produce any document which would indicate that the appellant's sewage system was in operation on July 18, 1990 or that documented sewage or water tests were conducted.

The affidavit of the student-at-law indicates that all files relating to the appellant which are located in the Legal Services Branch have been gathered into one location. She outlines the steps she took in searching through the files and in following up with the Investigator to determine whether records responsive to this request might exist. She states that a search through Legal Services files failed to produce records responsive to parts one, three or four of the request.

Based on the evidence before me, I am satisfied that the Ministry's search for records regarding parts one, three and four of the request was reasonable in the circumstances.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ July 11, 1994