



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-761

Appeal P-9400228

Ministry of the Attorney General



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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 the Attorney General (the Ministry) relating to an incident which occurred in 1986 involving himself. Specifically, the appellant sought police reports and information with respect to criminal charges brought against his former landlady, court records connected to this matter and any information relating to the withdrawal of the charges.

The Ministry responded that access could not be provided because no responsive records exist.

In appealing the Ministry's decision, the appellant claimed that he attached documents to his request which indicate that records do exist. These documents appear to have been obtained from the Metropolitan Toronto Police Services Board (the Police). He stated further that the Ministry acknowledged that the Crown Attorney involved with the case was contacted when his request was received. He concludes that in order to determine the identity of the Crown Attorney records must exist.

A Notice of Inquiry was provided to the appellant and the Ministry. Representations were received from both parties.

The sole issue in this appeal is whether the Ministry conducted a reasonable search for records responsive to the appellant's request.

The Act does not require the Ministry to 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 sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request.

In its representations, the Ministry describes the steps taken to locate records responsive to the appellant's request. Included with the Ministry's representations is the sworn affidavit of the Acting Crown Attorney at the Etobicoke Crown Attorney's Office, who was responsible for conducting the search for responsive records.

The Ministry's submissions state that it is the practice of some Crown Attorney's offices, including the office at Etobicoke, to return all prosecution files (also referred to as the "Crown Brief") in completed matters to the investigating police force. In this case, the files were returned to the Police.

The Ministry also states that it contacted the Police to retrieve the Crown Brief but was advised that the records were shredded along with all other 1986 files in early 1994 in accordance with Police retention schedules. The Ministry provided a copy of the Police's Record Retention Schedule which indicates that Crown Briefs are to be retained for seven years.

Finally, the Ministry indicates that police records are not within its custody or control, and points out that the appellant had submitted an earlier access request to the Police for police records.

Where an institution determines that another institution has custody or control of a record, section 25(1) of the Act requires that the request be forwarded to the other institution. In this case, I am satisfied that the Police were already aware of and had made an access decision with respect to the information the appellant was seeking. It was not necessary, in this case, for the request relating to police records to be forwarded to the Police.

I have reviewed the representations of the parties and the affidavit provided by the Ministry, and I am satisfied that, in the circumstances, the Ministry has taken all reasonable steps to locate the records responsive to the appellant's request.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ September 20, 1994