



Information and Privacy
Commissioner/Ontario

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

ORDER P-753

Appeal P-9400095

Ministry of Consumer and Commercial Relations



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>

NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of Consumer and Commercial Relations (the Ministry) received a request for the following three documents:

- (1) the requester's application for job competition #CR171-89,
- (2) the Ministry's reply to this application, and
- (3) the requester's Workforce Profile (the Profile) from the Ministry's Employment Equity Office.

The Ministry informed the requester that records relating to the competition no longer exist. The portion of the request relating to the Profile was not addressed in the Ministry's initial decision. The requester appealed the Ministry's decision on the non-existence of the competition record, and continued to seek access to the Profile.

The Ministry subsequently informed the appellant that the Profile does not exist. The appellant challenges this decision as well.

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

DISCUSSION:

The sole issue in this appeal is whether the Ministry has conducted a reasonable search for records which respond 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 me with sufficient evidence which shows that it has made a **reasonable** effort to identify and locate records responsive to the request (Order P-457).

The Workplace Profile (the Profile)

In her representations, the appellant states that she cannot recall completing the Profile. However, in November 1993, in response to allegations made by the appellant in a complaint to the Ontario Human Rights Commission (the OHRC), the Ministry's representative indicated that the appellant **had** completed a Profile and described its contents. The appellant provided this office with a copy of this reference. She therefore questions how the Ministry can allude to the Profile during the proceedings before the OHRC, while maintaining that the Profile does not exist in response to her request for this information under the Act.

The Ministry's representations include an affidavit sworn by an employee of the Ministry's Employment Equity Branch. The information contained in the affidavit indicates that a search for the Profile has been conducted and that it does not exist within the Ministry's Employment Equity Office. The affidavit explains that it is the responsibility of Management Board of Cabinet, another government institution, to maintain this document.

Based on the submissions provided by the Ministry, I accept that the Profile does not exist in the Ministry's Employment Equity Office. However, given the information provided by the appellant, I am not satisfied that it does not exist elsewhere within the Ministry.

I therefore order the Ministry to conduct a search for the appellant's Profile not only in the Ministry's Employment Equity Office, but in other areas within the Ministry in which the Profile could reasonably be located. The additional reference provided by the appellant in her representations referred to above should assist the Ministry in this regard.

I would note that, if in fact the Ministry was of the view that the Profile was in the custody or under the control of Management Board of Cabinet, the Ministry should have transferred the request to that institution pursuant to section 25 of the Act.

The Job Competition Application and Reply

As part of its representations, the Ministry has provided an affidavit sworn by an employee of the Ministry's Human Resources Branch. The affidavit explains that the records at issue were retained in the Human Resources Branch of the Ministry for a period of one year **from the date of the competition closing**. The records were then forwarded to the Government Records Centre for a further two year retention. After the three year retention period, competition files are destroyed as prescribed by the government retention schedule policy.

In addition to the initial search, the affiant subsequently confirmed with the Records Retention Centre that the relevant competition file was destroyed in 1992. The affiant states that a complete search for the record was conducted at the time of the request and verifies that a copy of the job application and the reply from the Human Resources Branch do not exist.

The Ministry had previously provided a copy of this affidavit to the appellant. Nowhere in this affidavit is there an indication that competition records are retained for **four** years as the appellant appears to suggest in her submissions. It is clear that the affidavit refers to a total retention period of **three** years.

Given the fact that the appellant applied for competition #CR171-89 in March **1990**, it seems possible that the competition, begun in 1989, did not close until some time in 1990. In this case, according to the retention information in the affidavit, the competition file should have been retained until some time in 1993, rather than having been destroyed in 1992. However, even if the competition did not close until sometime in

1990, the job competition application and reply would have been destroyed some time prior to the appellant's request under the Act.

Having carefully reviewed the representations of the appellant and those of the Ministry, and based on the reasoning above, I am satisfied that the Ministry has taken all reasonable steps to locate records relating to the appellant's job application and the Ministry's reply.

ORDER:

1. I uphold the decision of the Ministry with respect to the existence of the appellant's application for job #CR171-89 and the Ministry's reply to that application.
2. I order the Ministry to conduct a further search for the appellant's Workforce Profile and to notify the appellant in writing as to the results of this search, within thirty (30) days of the date of this order.
3. I further order that the search described in Provision 2 of this order be undertaken by an employee or employees with knowledge of the Ministry's records management system and the subject matter of the request.
4. If, as a result of this further search, the Ministry locates any records responsive to the request, I order the Ministry to provide a decision letter regarding access to these records to the appellant in accordance with sections 26 and 29 of the Act, within thirty (30) days of the date of this order and without recourse to a time extension.
5. In order to verify compliance with Provisions 2 and 4 of this order, I order the Ministry to provide me with copies of the correspondence referred to in these provisions within thirty-five (35) days of the date of this order. These 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 12, 1994