



Information and Privacy
Commissioner/Ontario

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

ORDER P-789

Appeal P-9400343

Ministry of the Solicitor General and Correctional Services



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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 Ministry of the Solicitor General and Correctional Services (the Ministry) received a three-part request for access to documents regarding three specific matters relating to the appellant.

The Ministry provided the appellant with two decision letters. In the first, the appellant was notified that the Ministry could only respond to the first part of his request. He was advised to contact the Ministry of the Attorney General regarding the other two parts. In its second decision letter, the Ministry responded that access could not be granted to records relating to part one of the request as the records did not exist. The appellant appealed the decision provided in the second decision letter only.

The sole issue in this appeal is whether the Ministry has conducted a reasonable search to locate records responsive to the request.

A Notice of Inquiry was provided to the Ministry and the appellant. Representations were received from the Ministry. In responding to the Notice of Inquiry, the appellant indicated only that he objected to the Ministry's decision regarding both decision letters. He did not provide any further representations.

PRELIMINARY MATTER:

SCOPE OF THE APPEAL

As I indicated above, in his initial letter of appeal, the appellant specified that he was only appealing the Ministry's decision relating to the first part of his request. Following receipt of the Notice of Inquiry, he has indicated that he wishes both decisions to be addressed in this order.

In my view, the scope of the appeal is, in most cases, determined initially by the letter of appeal and may be clarified or narrowed by any subsequent discussions during the mediation stage of the appeal. There was no indication during the mediation stage of the appellant's intention to raise the Ministry's first decision letter as an issue in this appeal. The Notice of Inquiry does not address the issue and the Ministry has not been notified of the issue.

Had the appellant wished the first decision to be addressed in this appeal, he had opportunity during the appeals process to raise the issue. To bring the matter forward at this late stage of the appeal would, in my view, unnecessarily delay its conclusion. I will, therefore, only address the reasonableness of the Ministry's search for records relating to part one of the request in this order.

DISCUSSION:

REASONABLENESS OF SEARCH

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

The Ministry's representations contain a detailed and lengthy description of the steps taken to search for records responsive to the request as well as an explanation of its parameters of search.

The Ministry indicates that the appellant sought records which would provide evidence that the Ontario Provincial Police - Anti-Rackets Branch (Anti-Rackets) was not aware of investigations being conducted by other police agencies.

The Ministry indicates that Anti-Rackets only maintains records which relate to matters of interest to the Branch. The Ministry states that it would not be possible to conduct a search for records which would indicate that Anti-Rackets was not aware of an investigation being conducted by another agency. It was determined, therefore, that a search for records relating to the appellant would be the only way of determining whether or not Anti-Rackets was aware of any matters relating to him.

The Ministry states that a search through the Anti-Rackets data base and old records file was conducted by a police officer in Anti-Rackets responsible for responding to access requests. No records pertaining to the appellant could be located.

The Ministry indicates that this officer claimed to have received an unsolicited package from the appellant, but that he had determined that the information contained in it was not pertinent to Anti-Rackets. He could not recall when he received the package. He did recall, however, sending the package out, but could not remember whether it was returned to the appellant or was sent to another agency. Nor could he recall if he had attached a covering letter to the package. A search was conducted through Anti-Rackets' general correspondence file, however no records could be located.

The Ministry indicates that the record retention schedule for correspondence files is two years plus the current year. If there had been any correspondence relating to this package prior to 1992, it would have been destroyed.

I have carefully reviewed the Ministry's representations. I am satisfied that it has taken all reasonable steps to locate any records responsive to the appellant's request.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ October 31, 1994