



Information and Privacy
Commissioner/Ontario

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

ORDER P-785

Appeal P-9400250

Ministry of Labour



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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 requested records from the Ministry of Labour (the Ministry), relating to the building located at 2 St. Clair Avenue West, in the City of Toronto. In particular, the request was for records pertaining to a number of specified accidents and other incidents, as well as records relating to various environmental matters.

The Ministry released a large number of documents to the requester, with portions withheld regarding identifiable individuals, pursuant to section 21(1) of the Act.

The requester appealed the decision of the Ministry on the basis that additional records should exist.

The sole issue in this appeal is whether the Ministry's search for records was reasonable in the circumstances of this appeal. A Notice of Inquiry was provided to the appellant and the Ministry. Representations were received from both parties.

DISCUSSION:

REASONABLENESS OF SEARCH

Where the requester provides sufficient details about the records which he is seeking and the Ministry indicates that such records do not exist, it is my responsibility to ensure that the Ministry has made a reasonable search to identify any records which are responsive to the 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 to show that it has made a **reasonable** effort to identify and locate records responsive to the request.

The Ministry's representations outline the steps which were undertaken to identify responsive records. The representations include an affidavit from the Ministry's Freedom of Information and Privacy Co-ordinator concerning his role in these searches.

The Ministry's files, both at Head Office and the Toronto Field Office, were searched for records generated during inspections or investigations carried out under the Ontario Health and Safety Act by the Ministry's Health and Safety Program.

In addition, records held by the Ministry's Professional and Specialized Services Program (formerly the Occupational Health Branch) were searched. Records relating to construction and building renovation, held by the Ministry's Construction Health and Safety Program, were also searched.

The responsive records located during these searches were disclosed with the Ministry's decision letter, except for information which was withheld under the exemption in section 21(1) of the Act.

The Ministry's representations also indicate that several meetings were held with the appellant in an attempt to explain why no additional records existed within the Ministry's custody or control.

The appellant's representations indicate that the appellant disagrees with the contents of some records which have been disclosed to him, but they do not provide any evidence to indicate that further responsive records should exist under the custody or control of the Ministry.

Having reviewed the representations of both parties, I am satisfied that the search undertaken by the Ministry for responsive records was reasonable in the circumstances of this appeal.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____
John Higgins
Inquiry Officer

_____ October 19, 1994